WATER INFRASTRUCTURE FINANCE AUTHORITY
Title 18, Chapter 15 Article 8

New Article: Article 8

New Section: R18-15-801, R18-15-802, R18-15-803, R18-15-804, R18-15-805, R18-15-806, R18-15-807, R18-15-808, R18-15-809, R18-15-810, R18-15-811, R18-15-812, R18-15-813, R18-15-814, R18-15-815, R18-15-816, R18-15-817, R18-15-818, R18-15-819, R18-15-820, R18-15-821, R18-15-822, R18-15-823, R18-15-824, R18-15-825, R18-15-826

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: April 2, 2024

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

FROM: Council Staff

DATE: March 14, 2024

SUBJECT: **WATER INFRASTRUCTURE FINANCE AUTHORITY**
Title 18, Chapter 15 Article 8

New Article: Article 8

New Section: R18-15-801, R18-15-802, R18-15-803, R18-15-804, R18-15-805, R18-15-806, R18-15-807, R18-15-808, R18-15-809, R18-15-810, R18-15-811, R18-15-812, R18-15-813, R18-15-814, R18-15-815, R18-15-816, R18-15-817, R18-15-818, R18-15-819, R18-15-820, R18-15-821, R18-15-822, R18-15-823, R18-15-824, R18-15-825, R18-15-826

Summary:

This expedited rulemaking from the Water Infrastructure Finance Authority (WIFA) seeks to add a new Article 8 containing twenty-six (26) new Sections to add procurement rules governing the Long-Term Water Augmentation Fund ("LTWAF").

On September 24, 2022, Arizona Senate Bill 1740 (Fifty-fifth Legislature, Second Regular Session (2022)) became effective, establishing WIFA as an independent state agency and transferring governance of WIFA from the Arizona Finance Authority Board of Directors to the WIFA Board of Directors. Among other changes, SB1740 established the LTWAF to finance water supply development opportunities that increase water supplies for Arizona. Notably,

SB1740 exempted WIFA from the Arizona Procurement Code and required WIFA to establish procurement procedures by rule to administer the LTWAF.

As part of its Five-Year Review Report (5YRR) approved by the Council on November 7, 2023, WIFA proposed submitting rules to govern the LTWAF during FY2024 to comply with the new statutory requirements. After receiving an exception according to A.R.S. § 41-1039(A), WIFA now submits those rules through expedited rulemaking.

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

WIFA indicates expedited rulemaking is appropriate pursuant to A.R.S. § 41-1027(A)(7) because this rulemaking will implement without material change, a course of action that was proposed in WIFA's 5YRR. This rulemaking does not increase the cost of regulatory compliance, increase fees, or reduce the procedural rights of any regulated person.

WIFA indicates this expedited rulemaking adopts procurement rules governing the Long-Term Water Augmentation Fund, the addition of which establishes procedural rights for those responding to a solicitation issued by WIFA. Prior to submitting the proposed rules WIFA consulted with the Arizona Department of Administration's State Procurement Office and General Services Division. WIFA believes the rules are effective and reduce burdens when compared to the Arizona Procurement Code.

Council staff believes WIFA has satisfied the criteria for expedited rulemaking pursuant to A.R.S. § 41-1027(A)(7).

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

WIFA 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?

WIFA indicates it received no public comments related to this rulemaking.

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

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

6. 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. WIFA indicates there are no corresponding federal laws.

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

Not applicable. WIFA indicates the rules do not require the issuance of a regulatory permit, license, or agency authorization.

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?

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

9. Conclusion

This expedited rulemaking from WIFA seeks to add a new Article 8 containing twenty-six (26) new Sections to add procurement rules governing the Long-Term Water Augmentation Fund ("LTWAF").

SB1740 established WIFA as an independent state agency and transferred governance of WIFA from the Arizona Finance Authority Board of Directors to the WIFA Board of Directors. SB1740 also established the LTWAF to finance water supply development opportunities that increase water supplies for Arizona. Notably, SB1740 exempted WIFA from the Arizona Procurement Code and required WIFA to establish procurement procedures by rule to administer the LTWAF.

As part of its 5YRR approved by the Council on November 7, 2023, WIFA proposed submitting rules to govern the LTWAF during FY2024 to comply with the new statutory requirements. After receiving an exception according to A.R.S. § 41-1039(A), WIFA now submits those rules through expedited rulemaking.

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.

February 20, 2024

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

Re: A.A.C. Title 18. Environmental Quality Chapter 15. Water Infrastructure Finance Authority of Arizona

Dear Chair Sornsin:

The Water Infrastructure Finance Authority of Arizona (the **"Authority"**) is submitting the attached rule package for its consideration and approval at the Council meeting scheduled for April 2, 2024.

The following information is provided for the Council's use in reviewing the enclosed rules for approval pursuant to A.R.S. § 41-1027(E) and A.A.C. R1-6-202:

- Information Required by A.A.C. R1-6-202(A)(1):
    a. Close of record date: The rulemaking record was closed on January 19, 2024, following a period for public comment.
    b. Explanation of meeting A.R.S. § 41-1027(A): A.R.S. § 41-1027(A)(7) allows an agency to complete an expedited rulemaking if it "implements, without material change, a course of action that is proposed in a five-year review report approved by the council." The expedited rulemaking from the Authority seeks to establish a new article with twenty six (26) rules in Title 18, Chapter 15 regarding procurements from the Long-Term Water Augmentation Fund. As part of a recent five year review report for Title 18, Chapter 15 approved by the Council on November 7, 2023, the Authority identified that a rulemaking should be conducted to address recent statutory changes including the establishment of the Long-Term Water Augmentation Fund.
    c. Relation of the rulemaking to a five-year-review report: This rulemaking relates to the Five-Year Review Report approved by the Council on November 7, 2023.
    d. Certification regarding studies: I certify that the Authority did not rely on any studies for this rulemaking.
- List of documents enclosed under A.A.C. R1-6-202(A)(1)(e):
    a. This signed cover letter;
    b. The Notice of Final Expedited Rulemaking, including the preamble, table of contents for the rulemaking, and text of each rule as required by A.A.C. R1-6-202(A)(2);
    c. Relevant statutory authority; and
    d. The Authority's most recent five year review report, approved by the Council on November 7, 2023.
- Written comments received by the agency: The Authority did not receive any written comments regarding the proposed expedited rulemaking revisions for Title 18, Chapter 15. An oral proceeding was held on January 16, 2024. There were no oral comments made during the proceeding or

additional written comments received. The record closed at 5:00 p.m. on January 19, 2024. There is no further record or transcript of such testimony included in this submittal.

- Any analysis submitted to the agency regarding the rule's impact on business competitiveness: The Authority did not receive any analysis regarding the rules' impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states, and therefore, no such analysis is included in this submittal.
- Material incorporated by reference: The rules amended or repealed by this rulemaking do not incorporate materials by reference, and therefore, no such materials are included.
- Court decision declaring a statute unconstitutional: No statute was declared unconstitutional.
- General and specific statutes authorizing the rule: The general and specific statutes authorizing the rule, including relevant statutory definitions: A.R.S. §§ 49-1201, 49-1203(E), 49-1211 through 49-1213, and 49-1301 through 49-1313.
- List of statutes or rules referred to by definition: The following terms are defined in the rule by referring to another rule or statute:
    a. "Board" has the same meaning as prescribed in A.R.S. § 49-1201(2);
    b. "Construction" has the same meaning as prescribed in A.R.S. § 41-2503(4);
    c. "Day" means a calendar day and time is computed under A.R.S. § 1-243, unless otherwise specified;
    d. "Water-Related Facilities" has the same meaning as prescribed in A.R.S. § 49-1201(21); and
    e. "Water Supply Development" has the same meaning as prescribed in A.R.S. § 49-1201(22).

If you have any questions, or require additional information, please contact Joe Citelli, General Counsel, Water Infrastructure Finance Authority of Arizona, at 602-647-4403 or JCitelli@azwifz.gov.

Sincerely,

Chuck Podolak, Director, Water Infrastructure Finance Authority of Arizona

Enclosures (3)
-Notice of Final Expedited Rulemaking
-Statutory authority for rulemaking
-Five year review report, approved November 7, 2023

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

ARITCLE 8. LONG-TERM WATER AUGMENTATION PROCUREMENT

PREAMBLE

1.	Articles, Part, and Sections Affected (as applicable)	Rulemaking Action
	Article 8	New Article
	R18-15-801	New Section
	R18-15-802	New Section
	R18-15-803	New Section
	R18-15-804	New Section
	R18-15-805	New Section
	R18-15-806	New Section
	R18-15-807	New Section
	R18-15-808	New Section
	R18-15-809	New Section
	R18-15-810	New Section
	R18-15-811	New Section
	R18-15-812	New Section
	R18-15-813	New Section
	R18-15-814	New Section
	R18-15-815	New Section
	R18-15-816	New Section
	R18-15-817	New Section
	R18-15-818	New Section
	R18-15-819	New Section
	R18-15-820	New Section
	R18-15-821	New Section
	R18-15-822	New Section

R18-15-823	New Section
R18-15-824	New Section
R18-15-825	New Section
R18-15-826	New Section

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

Authorizing statute: A.R.S. § 49-1203(E)

Implementing statutes: A.R.S. §§ 49-1211 through 49-1213; 49-1301 through 49-1313

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. 3806 (December 15, 2023)

Notice of Proposed Expedited Rulemaking: 29 A.A.R. 3796 (December 15, 2023)

Notice of Public Information 29 A.A.R. 3958 (December 29, 2023)

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

Name: Joe Citelli, General Counsel

Address: Water Infrastructure Finance Authority of Arizona

100 N. 7th Avenue, Suite 130

Phoenix, Arizona 85007

Telephone: (602) 364-1314

Email: JCitelli@azwifa.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 purpose of this Water Infrastructure Finance Authority of Arizona (**"WIFA"**) rulemaking is to add procurement rules governing the Long-Term Water Augmentation Fund (**"LTWAF").** Additionally, this rulemaking effort is required by recent changes to WIFA's governing statutes. *See* A.R.S. § 49-1203(E) ("…In coordination with the department of administration, the authority shall establish procurement procedures by rule to administer the long-term water augmentation fund").

On September 24, 2022, Arizona Senate Bill 1740 (Fifty-fifth Legislature, Second Regular Session (2022)) became effective, establishing WIFA as an independent state agency and transferring

governance of WIFA from the Arizona Finance Authority Board of Directors to the WIFA Board of Directors. Among other changes, SB1740 established the LTWAF to finance water supply development opportunities that increase water supplies for Arizona.

Notably, SB1740 exempted WIFA from the Arizona Procurement Code and required WIFA to establish procurement procedures by rule to administer the LTWAF. As part of its five-year review report approved by the Governor's Regulatory Review Council on November 7, 2023, WIFA proposed submitting rules to govern the LTWAF during FY2024 to comply with the new statutory requirements. After receiving an exception according to A.R.S. § 41-1039(A), WIFA now submits those rules through expedited rulemaking. Expedited rulemaking is appropriate pursuant to A.R.S. § 41-1027(A)(7) because this rulemaking will implement without material change, a course of action that was proposed in WIFA's five-year review report.

This rulemaking does not increase the cost of regulatory compliance, increase fees, or reduce the procedural rights of any regulated person. Rather, the rulemaking adopts procurement rules governing the Long-Term Water Augmentation Fund, the addition of which establishes procedural rights for those responding to a solicitation issued by WIFA. Prior to submitting the proposed rules WIFA consulted with the Arizona Department of Administration's State Procurement Office and General Services Division. WIFA believes the rules are effective and reduce burdens when compared to the Arizona Procurement Code. For example, the proposed rules streamline the procurement process with an emphasis on simplicity, understandability, and accessibility. Under A.R.S. § 49-1212, WIFA may utilize a variety of procurement methods to procure services for the development, design, acquisition, construction, improvement, or equipping of water-related facilities. The Arizona Procurement Code establishes a separate set of rules and procedures for each of these procurement methods. However, WIFA's proposed rules simplify the LTWAF procurement process by establishing a single set of rules to govern the various types of procurements authorized under A.R.S.§ 49-1212. Furthermore, by modeling the procurement rules after existing rules in the Arizona Procurement Code, the proposed rulemaking promotes understandability and utilizes definitions and processes familiar to those who conduct procurements with the State of Arizona.

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

Under A.R.S. § 41-1055(D)(2), the Authority 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. The comment period was extended for the proposed expedited rulemaking to allow for an additional comment period to comply with A.R.S. § 41-1027(C).

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

The Authority did not receive public or stakeholder comments about the rulemaking.

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

There are no other matters prescribed by statutes applicable to the Authority or this specific rulemaking.

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

The rule does not require the issuance of a regulatory permit. Therefore, a general permit is not applicable.

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

There are no federal rules applicable to the subject of the rule.

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

No business competitiveness analysis was submitted to the Authority.

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 emergency rules. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

The proposed rules were not previously made as emergency rules.

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

ARTICLE 8. LONG-TERM WATER AUGMENTATION FUND PROCUREMENT

Section

R18-15-801 Definitions

R18-15-802 Solicitations

R18-15-803 Solicitation Amendment

R18-15-804 Cancellation of Solicitation Before Offer Due Date and Time

R18-15-805 Pre-offer Conferences

R18-15-806 Modification or Withdrawal of Offer Before Offer Due Date and Time

R18-15-807 Confidential Information

R18-15-808 Receipt, Opening, and Recording of Offers

R18-15-809 Late Offers, Modifications, and Withdrawals Before Offer Due Date and Time

R18-15-810 Only One Offer Received

R18-15-811 Extension of Offer Acceptance Period

R18-15-812 Cancellation of Solicitation After Offer Opening and Before Award

R18-15-813 Clarification of Offers

R18-15-814 Responsibility of Offerors

R18-15-815 Negotiations with Responsible Offerors and Revisions of Offers

R18-15-816 Determination of Not Susceptible for Award

R18-15-817 Offer Revisions and Best and Final Offers

R18-15-818 Evaluation of Offers

R18-15-819 Contract Award

R18-15-820 Mistakes Discovered After Award

R18-15-821 Protest of Solicitations and Contract Awards

R18-15-822 Stay of Procurements During the Protest

R18-15-823 Protest Dismissal

R18-15-824 Resolution of Solicitation and Contract Award Protests

R18-15-825 Remedies by the Authority

R18-15-826 Provisions for Construction Contracts

ARTICLE 8. LONG-TERM WATER AUGMENTATION FUND PROCUREMENT

R18-15-801. Definitions

The terms of this Article, unless otherwise specified, have the following meanings:

"Award" means a determination by the Authority that it is entering into a Contract with one or more Offerors.

"Board" has the same meaning as prescribed in A.R.S. § 49-1201(2).

"Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or other private legal entity.

"Competitive Range" is a range of scores used by the Authority to determine whether an Offer will be considered for further evaluation after an initial susceptibility determination and the scoring of Offers received in the Solicitation process. The Authority may conduct multiple reviews and narrow or expand the Competitive Range throughout the procurement process. Those Offers that have no reasonable chance for Award when compared on a relative basis with more highly ranked Offers will not be in the Competitive Range. Offers to be considered within the Competitive Range must, at a minimum, demonstrate the following:

Affirmative compliance with mandatory requirements designated in the Solicitation.

An ability to deliver goods or services on terms advantageous to the Authority sufficient to be entitled to continue in the competition.

That the Offer as submitted is technically acceptable under the criteria set forth in the Solicitation.

"Construction" has the same meaning as prescribed in A.R.S. § 41-2503(4).

"Contract" means all types of agreements, regardless of what they may be called, for any Procurement related to a Water-Related Facilities project or Water Supply Development project.

"Contractor" means any Person who has a Contract with the Authority.

“Data” means documented information, regardless of form or characteristic.

“Day” means a calendar day and time is computed under A.R.S. § 1-243, unless otherwise specified in the Solicitation or Contract.

“Director” means the Director of the Water Infrastructure Finance Authority of Arizona.

“Interested Party” means an Offeror or prospective Offeror whose economic interest is affected substantially and directly by issuance of a Solicitation, an Award or loss of an Award. Whether an Offeror or prospective Offeror has an economic interest depends upon the circumstances of each case.

“May” means something is permissive.

“Negotiation” means an exchange or series of exchanges between the Authority and an Offeror or Contractor that allows the Authority or the Offeror or Contractor to revise an Offer or Contract.

“Offer” means a response to a Solicitation.

“Offeror” means a Person who responds to a Solicitation.

"Person" means any corporation, Business, individual, union, committee, club, other organization, or group of individuals.

"Procurement":

Means buying, purchasing, renting, leasing or otherwise acquiring any materials, property, services, or construction, in connection with a Water-Related Facilities project or a Water Supply Development project.

Includes all functions that pertain to obtaining any materials, services, or construction, including description of requirements, selection and Solicitation of sources, preparation and Award of Contract, and all phases of Contract administration.

Does not include providing financial assistance in the form of loans or grants.

“Procurement File” means the official records file of the Authority. The Procurement File shall include (electronic or paper) the following:

List of notified vendors;

Final Solicitation;

Solicitation amendments;

Bids and Offers;

Offer revisions;

Best and final Offers;

Negotiations;

Clarifications;

Final evaluation reports; and

Additional information, if requested by the Authority.

"Shall" means something is mandatory.

"Solicitation" means any Solicitation method authorized under A.R.S. § 49-1212, issued by the Authority to invite a Person to submit an Offer.

"Subcontractor" means a Person who contracts to perform work or render service to a Contractor or to another Subcontractor as a part of a Contract with the Authority.

"Trade Secret" means information, including a formula, pattern, device, compilation, program, method, technique, or process, that is the subject of reasonable efforts to maintain its secrecy and that derives independent economic value, actual or potential, as a result of not being generally known to and not being readily ascertainable by legal means.

"Water-Related Facilities" has the same meaning as prescribed in A.R.S. § 49-1201(21).

"Water Supply Development" has the same meaning as prescribed in A.R.S. § 49-1201(22).

R18-15-802. Solicitations

A. A Procurement for a Water-Related Facilities project or a Water Supply Development project shall commence by issuing a Solicitation. The Solicitation shall be developed in consultation with the Arizona Department of Administration.

B. The Authority shall issue a Solicitation at least fourteen Days before the Offer due date and time, unless the Authority determines a shorter time is necessary for a particular Procurement. The Solicitation shall be posted at a designated site on a worldwide public network of interconnected computers and may also be distributed in any other manner deemed appropriate by the Authority. If a shorter time is necessary, the Authority shall document the specific reasons in the Procurement File.

C. Offers shall be opened on the date and time designated in the Solicitation. The name of each Offeror shall be recorded in accordance with procedures adopted by the Authority. All other information contained in the Offers shall be confidential to avoid disclosure of contents prejudicial to competing Offerors during the process of Negotiation. The Authority has determined that the only way to ensure best value is through a competitive Procurement process in which Offers are kept confidential during the Procurement process as described herein. This confidential Negotiation process allows the Authority to get the best possible value in each of its separate Negotiations with Offerors. The Offers shall be open for public inspection after Contract Award. To the extent the Offeror designates, and the

Authority concurs, Trade Secrets or other proprietary Data contained in the Offer documents shall remain confidential in accordance with procedures adopted by the Authority.

D. The Solicitation shall state the relative importance of price and other evaluation factors. Specific numerical weighting is not required.

E. The Authority may require the submission of security to guarantee faithful bid and Contract performance. The amount and type of security required for each Contract shall be in the sole discretion of the Authority. The requirement for security shall be included in the Solicitation.

F. The Authority shall include the following in the Solicitation:

1. Instructions to Offerors, including:
    a. Instructions and information to Offerors concerning the Offer submission requirements, Offer due date and time, the location where Offers will be received, and the Offer acceptance period;
    b. The deadline date for requesting a substitution or exception to the Solicitation;
    c. The manner by which the Offeror is required to acknowledge amendments;
    d. The minimum information required in the Offer;
    e. The specific requirements for designating Trade Secrets and other proprietary information as confidential;
    f. Any specific responsibility or susceptibility criteria;
    g. Whether the Offeror is required to submit samples, descriptive literature, and technical Data with the Offer;
    h. Evaluation factors and the relative order of importance;
    i. A statement of where documents incorporated by reference are available for inspection and copying;
    j. A statement that the Authority may cancel the Solicitation or reject an Offer in whole or in part;
    k. Certification by the Offeror that submission of the Offer did not include collusion or other anticompetitive practices;
    l. That the Offeror is required to declare whether the Offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public Procurement activity, including, but not limited to, being disapproved as a Subcontractor of any public Procurement unit or other governmental body;
    m. Any Offer security required;

n. The means required for submission of Offer. The Solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;

o. Any cost or pricing Data required;

p. The type of Contract to be used;

q. A statement that Negotiations may be conducted with Offerors reasonably susceptible of being selected for Award and that fall within the Competitive Range; and

r. Any other Offer requirements specific to the Solicitation.

2. Specifications, including:

a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;

b. If a brand name or equal specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The Solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration; and

c. Any other specification requirements specific to the Solicitation.

3. Terms and Conditions, including:

a. Whether the Contract is to include an extension option; and

b. Any other Contract terms and conditions.

R18-15-803. Solicitation Amendment

A. The Authority may issue a Solicitation amendment to do any or all of the following:

1. Make changes in the Solicitation;
2. Correct defects or ambiguities;
3. Provide additional information or instructions; or
4. Extend the Offer due date and time if the Authority determines that an extension is in the best interest of the Authority.

B. If a Solicitation is changed by a written Solicitation amendment, the amendment shall be distributed in the same manner as the Solicitation.

C. It is the responsibility of the Offeror to obtain any Solicitation amendments. An Offeror shall acknowledge receipt of an amendment in a manner specified in the Solicitation amendment on or before the Offer due date and time.

R18-15-804. Cancellation of Solicitation Before Offer Due Date and Time

A. A Solicitation may be cancelled, or any or all Offers may be rejected in whole or in part, as may be specified in the Solicitation if it is in the best interests of the Authority. The reasons for the cancellation or rejection shall be made part of the Procurement file.

B. The Authority shall notify Offerors who submitted an Offer.

C. The Authority shall not open Offers after cancellation. The Authority may discard the Offer after thirty Days from notice of Solicitation cancellation unless the Offeror requests the Offer be returned.

R18-15-805. Pre-Offer Conferences

A. The Authority may conduct one or more pre-Offer conferences or site visits. Pre-Offer conferences must be open to the public. If a pre-Offer conference is conducted, it shall be not less than seven Days before the Offer due date and time, unless the Authority makes a written determination that the specific needs of the Procurement justify a shorter time. Statements made during a pre-Offer conference are not amendments to the Solicitation.

B. Notice of a pre-Offer conference shall be posted at a designated site on a worldwide public network of interconnected computers, no less than seven Days prior to the pre-Offer conference, as part of the Solicitation materials.

R18-15-806. Modification or Withdrawal of Offer Before Offer Due Date and Time

A. An Offeror may modify or withdraw their Offer at any time, in writing, before the Offer due date and time.

B. The Authority shall place the document submitted in the Procurement File as a record of the modification or withdrawal.

R18-15-807. Confidential Information

A. If a Person wants to assert that a Person's Offer, specification, or protest contains a Trade Secret or other proprietary information, a Person shall include with the submission a statement supporting this assertion. A Person shall clearly designate any Trade Secret and other proprietary information, using the term "confidential". Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Section.

B. Until a final determination is made under subsection (C), the Authority shall not disclose information designated as confidential under subsection (A) except to those individuals deemed by the Authority to have a legitimate state interest.

C. Upon receipt of a submission, the Authority shall make one of the following written determinations:

1. The designated information is confidential, and the Authority shall not disclose the information except to those individuals deemed by the Authority to have a legitimate state interest;
2. The designated information is not confidential; or
3. Additional information is required before a final confidentiality determination can be made.

D. If the Authority determines that information submitted is not confidential, a Person who made the submission shall be notified in writing. The notice shall include a time period for requesting a review of the determination by the Authority.

E. The Authority may release information designated as confidential under subsection (A) if:

1. A request for review is not received by the Authority within the time period specified in the notice; or
2. The Authority, after review, makes a written determination that the designated information is not confidential.

R18-15-808. Receipt, Opening, and Recording of Offers

A. The Authority shall maintain a record of Offers received for each Solicitation and shall record the time and date when an Offer is received. The Authority shall store each unopened Offer in a secure place until the Offer due date and time.

B. The Authority may open an Offer to identify the Offeror. If this occurs, the Authority shall record the reason for opening the Offer, the date and time the Offer was opened, and the Solicitation number. The Authority shall secure the Offer and retain it for opening.

C. The Authority shall open Offers at or after the Offer due date and time. The Authority shall record the name of each Offeror and any other relevant information as determined by the Authority. The Authority shall make the record of Offers available for public viewing.

D. Except for the information identified in subsection (C) and the information deemed confidential under R18-15-807, the Authority shall ensure that information contained in the Offer remains confidential until Contract Award and is shown only to those Persons assisting in the evaluation process.

R18-15-809. Late Offers, Modifications, and Withdrawals Before Offer Due Date and Time

A. If an Offer, modification, or withdrawal is not received by the Offer due date and time, at the location designated in the Solicitation, the Authority shall determine the Offer, modification, or withdrawal as late. This rule does not apply to revision or withdrawal of Offers as described in R18-15-816.

B. The Authority shall reject a late Offer, modification, or withdrawal unless:

1. The document is received before Contract Award at the location designated in the Solicitation; and
2. The document would have been received by the Offer due date and time, but for the action or inaction of personnel directly serving the Authority.

C. Upon receiving a late Offer, modification, or withdrawal, the Authority shall:

1. If the document is hand delivered, refuse to accept the delivery; or
2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the Offeror. The Authority may discard the document within thirty Days after the date on the notice unless the Offeror requests the document be returned.

D. The Authority shall document a refusal under (C)(1) and place the document or a copy of the notice required in (C)(2) in the Procurement File.

R18-15-810. Only One Offer Received

If only one Offer is received in response to a Solicitation, the Authority shall review the Offer and either:

1. Award the Contract to the Offeror and prepare a written determination that:
   a. The price submitted is fair and reasonable; and
   b. The Offeror is responsive; and
   c. The Offeror is responsible; or
2. Reject the Offer and:
   a. Resolicit for new Offers; or
   b. Cancel the Procurement.

R18-15-811. Extension of Offer Acceptance Period

A. To extend the Offer acceptance period, the Authority shall notify Offerors in writing of an extension and request written concurrence from all Offerors.

B. To be eligible for a Contract Award, an Offeror shall submit written concurrence to the extension. The Authority shall not consider the Offer from an Offeror who fails to respond to the notice of extension.

R18-15-812. Cancellation of Solicitation After Offer Opening and Before Award

A. Based on the best interest of the Authority, the Authority may cancel a Solicitation after Offer due date and time. The Authority shall prepare a written justification for cancellation and place it in the Procurement File.

B. The Authority shall notify Offerors of the cancellation in writing.

C. The Authority shall retain Offers received under the canceled Solicitation in the Procurement File. If the Authority intends to issue another Solicitation within six months after cancellation of the Procurement, the Authority may withhold the Offers from public inspection. After Award of a Contract under the subsequent Solicitation, the Authority shall make Offers submitted in response to the cancelled Solicitation open for public inspection except for information determined to be confidential.

D. In the event of cancellation, the Authority shall promptly return any Offer security provided by an Offeror.

R18-15-813. Clarification of Offers

A. The purpose for clarifications is to provide for a greater mutual understanding of the Offer. Clarifications are not Negotiations and material changes to the Solicitation or Offer shall not be made by clarification.

B. The Authority may request clarifications from Offerors at any time after receipt of Offers. Clarifications may be requested orally or in writing. If clarifications are requested orally, the Offeror shall confirm the request in writing. A request for clarification shall not be considered a determination that the Offeror is susceptible for Award.

C. The Authority may request an interview or demonstration with a reasonably susceptible Offeror for the purpose of clarifying an Offer.

D. The Authority shall retain any clarifications in the Procurement File.

R18-15-814. Responsibility of Offerors

A. The Authority shall determine, at any time during the evaluation period and before Award, whether an Offeror is responsible or nonresponsible. A finding of nonresponsibility shall not be construed as a violation of the rights of any Person.

B. The unreasonable failure of an Offeror to promptly supply information in connection with an inquiry with respect to responsibility shall be grounds for a determination of nonresponsibility with respect to the Offeror.

C. Information furnished by an Offeror pursuant to this section shall not be disclosed outside of the Authority without prior written consent by the Offeror except to law enforcement agencies.

D. The Authority may consider the following factors before determining that an Offeror is responsible or nonresponsible:

1. The Offeror's financial, Business, personnel, or other resources, including Subcontractors;
2. The Offeror's record of performance and integrity;

3. Whether the Offeror has been debarred or suspended;
4. Whether the Offeror is legally qualified to contract with the Authority;
5. Whether the Offeror promptly supplied all requested information concerning its responsibility; and
6. Whether the Offeror meets any responsibility criteria specified in the Solicitation.

E. The Authority shall promptly notify the Offeror in writing of the final determination that the Offer is nonresponsible unless the Authority determines notification to the Offeror would compromise the Authority's ability to negotiate with other Offerors. The Authority shall file a copy of the determination in the Procurement File.

F. For the Offeror awarded a Contract, the Authority's signature on the Contract constitutes a determination that the Offeror is responsible.

R18-15-815. Negotiations with Responsible Offerors and Revisions of Offers

A. Negotiations may be conducted with responsible Offerors who submit Offers determined to be reasonably susceptible to being selected for Award for the purpose of clarification to ensure full understanding of the Solicitation requirements and to permit revision of Offers. The Authority shall ensure there is no disclosure of one Offeror's price, or any information derived from competing Offers to another Offeror. The Authority shall establish procedures and schedules for conducting Negotiations.

B. Negotiations may be conducted orally or in writing. If oral Negotiations are conducted, the Authority shall confirm the Negotiations in writing and provide a copy to the Offeror.

C. If Negotiations are conducted, Negotiations shall be conducted with all Offerors determined to be in the Competitive Range or reasonably susceptible for Award. Offerors may revise Offers based on Negotiations provided that any revision is confirmed in writing.

D. The Authority may conduct Negotiations with responsible Offerors to improve Offers in such areas as cost, price, specifications, performance, or terms, to achieve best value for the Authority based on the requirements and the evaluation factors set forth in the Solicitation.

E. Responsible Offerors determined to be susceptible for Award and within the Competitive Range with which Negotiations have been held, may revise their Offer in writing during Negotiations.

F. An Offeror may withdraw an Offer at any time before the final Offer revision due date and time by submitting a written request to the Authority.

R18-15-816. Determination of Not Susceptible for Award

A. The Authority may determine at any time during the evaluation period and before Award that an Offer is not susceptible for Award or not within the Competitive Range. The Authority shall place a written determination, based on one or more of the following, in the Procurement File:

1. The Offer fails to substantially meet one or more of the mandatory requirements of the Solicitation;
2. The Offer fails to comply with any susceptibility criteria identified in the Solicitation; or
3. The Offer is not susceptible for Award or is not within the Competitive Range in comparison to other Offers based on the criteria set forth in the Solicitation. When there is doubt as to whether an Offer is susceptible for Award or is in the Competitive Range, the Offer should be included for further consideration.

B. The Authority shall promptly notify the Offeror in writing of the final determination that the Offer is not susceptible for Award or not within the Competitive Range, unless the Authority determines notification to the Offeror would compromise the Authority's ability to negotiate with other Offerors.

R18-15-817. Offer Revisions and Best and Final Offers

A. The Authority may request one or more written revisions to an Offer. The Authority shall include in the written request:

1. The date, time, and place for submission of Offer revisions; and
2. A statement that if Offerors do not submit a written notice of withdrawal or a written Offer revision, their immediate previous written Offer revision will be accepted as their final Offer.

B. The Authority shall request best and final Offers from any Offeror with whom Negotiations have been conducted, unless the Offeror has been determined to be nonresponsible under R18-15-814, or not within the Competitive Range or not susceptible for Award under R18-15-816. The Authority shall include in the written request:

1. The date, time, and place for submission of the best and final Offer; and
2. A statement that if Offerors do not submit a written best and final Offer, their immediate previous written Offer will be accepted as their best and final Offer.

C. If an apparent mistake, relevant to the Award determination, is discovered after opening of best and final Offers, the Authority shall contact the Offeror for written confirmation. The Authority shall designate a timeframe within which the Offeror shall either:

1. Confirm that no mistake was made and assert that the Offer stands as submitted; or
2. Acknowledge that a mistake was made, and include the following in a written response:
   a. Explanation of the mistake and any other relevant information;

b. A request for correction including the corrected Offer or a request for withdrawal; and

c. The reasons why correction or withdrawal are consistent with fair competition and in the best interest of the Authority.

D. An Offeror who discovers a mistake in their best and final Offer may request withdrawal or correction in writing, and shall include the following in the written request:

1. Explanation of the mistake and any other relevant information;
2. A request for correction including the corrected Offer or a request for withdrawal; and
3. The reasons why correction or withdrawal are consistent with fair competition and in the best interest of the Authority.

E. In response to a request made under subsections (C) or (D), the Authority shall make a written determination of whether correction or withdrawal will be allowed based on whether the action is consistent with fair competition and in the best interest of the Authority. If an Offeror does not provide written confirmation of the best and final Offer, the Authority shall make a written determination that the most recent written Offer submitted is the best and final Offer.

R18-15-818. Evaluation of Offers

The Authority shall evaluate best and final Offers based on the evaluation criteria contained in the Solicitation. The Authority shall not modify evaluation criteria or their relative order of importance after Offer due date and time.

R18-15-819. Contract Award

A. The Authority shall Award the Contract to the responsible Offeror whose Offer is determined to be most advantageous to the Authority based on the evaluation factors set forth in the Solicitation. The Authority shall make a written determination explaining the basis for the Award and place the determination, including any evaluation report or other supporting documentation, in the Procurement File. This subsection shall not apply to any Solicitation cancelled by the Authority prior to an Award.

B. The Authority shall notify all Offerors of an Award.

C. After Contract Award, the Authority shall return any Offer security provided by the Offeror as part of the Offer submission.

D. Within thirty Days after Contract Award the Authority shall make the Procurement File, including all Offers, available for public inspection, redacting information that is confidential under R15-18-807. A copy of the non-redacted information, if pertinent to the functioning of the Contract, shall be retained for reference in the Contract file, but marked confidential and not made available for public review.

R18-15-820. Mistakes Discovered After Award

A. If a mistake in the Offer is discovered after the Award, the Offeror may request correction or withdrawal in writing, and shall include all of the following in their written request:

1. Explanation of the mistake and any other relevant information;
2. A request for correction including the corrected Offer or a request for withdrawal; and
3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Authority.

B. Based on the considerations of fair competition and the best interest of the Authority, the Authority may:

1. Allow correction of the mistake;
2. Cancel all or part of the Award; or
3. Deny correction or withdrawal.

C. After cancellation of all or part of an Award, if the Offer acceptance period has not expired, the Authority may Award all or part of the Contract to the next responsible Offeror whose Offer is determined to be the next most advantageous to the Authority according to the evaluation factors contained in the Solicitation.

R18-15-821. Protest of Solicitations and Contract Awards

A. Any Interested Party may protest a Solicitation, a determination of not susceptible for Award, the Award of a Contract.

B. The Interested Party shall file the protest in writing with the Authority and shall include the following information:

1. The name, address, and telephone number of the Interested Party;
2. The signature of the Interested Party or the Interested Party's representative;
3. Identification of the Solicitation or Contract number;
4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
5. The form of relief requested.

C. If the protest is based upon alleged improprieties in a Solicitation that are apparent before the Offer due date and time, the Interested Party shall file the protest before the Offer due date and time.

D. In cases other than those covered in subsection (C), the Interested Party shall file the protest within ten Days after the Authority makes the Procurement File available for public inspection.

E. The Interested Party may submit a written request to the Director for an extension of the time limit for protest filing set forth in subsection (D). The written request shall be submitted before the expiration of the time limit set forth in subsection (D) and shall set forth good cause as to the specific action or inaction of the Authority that resulted in the Interested Party being unable to submit the protest within the ten Days. The Director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for submission of the filing.

F. If the Interested Party shows good cause, the Director may consider a protest that is not timely filed.

G. The Director shall, upon request, furnish copies of the protest to all Offerors subject to the provisions of R18-15-807.

R18-15-822. Stay of Procurements During the Protest

A. If a protest is filed before the Solicitation due date, before the Award of a Contract, or before performance of a Contract has begun, the Authority shall make a written determination to either:

1. Proceed with the Award or Contract performance, or
2. Stay all or part of the Procurement if there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the Authority.

B. The Authority shall provide the Interested Party and all Offerors with a copy of the written determination.

C. The Director may stay all or part of the Procurement if it is determined that there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the Authority. Determination of the stay decision shall be issued no later than the time of issuance of the Authority's decision in accordance with R18-15-824.

D. The Director may consider any protest that is not filed timely if:

1. The Interested Party shows good cause; or
2. The Director finds there is good cause.

R18-15-823. Protest Dismissal

A. The Director shall dismiss, upon written determination, a protest in whole or in part before scheduling a hearing if:

1. The protest does not state a valid basis for protest; or
2. The protest is untimely as prescribed under R18-15-821

B. The Director shall notify the Interested Party, the Authority, and the Board in writing of a determination to dismiss a protest.

R18-15-824. Resolution of Solicitation and Contract Award Protests

A. The Director has the authority to resolve a protest. The Director shall issue a written recommended decision within twenty-one Days after a protest has been filed under R18-15-821. The recommended decision contain:

1. The protest;
2. The Offer submitted by the Interested Party;
3. The Offer of the firm that is being considered for Award;
4. The Solicitation, including the specifications or portions relevant to the appeal;
5. The abstract of Offers or relevant portions;
6. Any other documents that are relevant to the protest; and
7. The basis for the decision.

B. The Director shall furnish the recommended decision to the Board, with a copy to the Interested Party, by any method that provides evidence of receipt.

C. Within thirty Days after the date the Director issues the written recommended decision, the Board shall review the recommended decision and accept, reject, or modify it. If the Board rejects or modifies the recommended decision, the Authority shall issue the rejection or modification and a written justification setting forth the reasons for the rejection or modification to the Interested Party. The decision of the Board is a final administrative decision.

R18-15-825. Remedies by the Authority

A. If the Authority sustains a protest in whole or part and determines that a Solicitation, a determination of not susceptible for Award, or Contract Award does not comply with the Procurement statutes and regulations, the Authority shall implement an appropriate remedy.

B. In determining an appropriate remedy, the Authority shall consider all the circumstances surrounding the Procurement or proposed Procurement including:

1. The seriousness of the Procurement deficiency;
2. The degree of prejudice to other interested parties or to the integrity of the Procurement system;
3. The good faith of the parties;
4. The extent of performance;
5. The costs to the Authority;
6. The urgency of the Procurement;
7. The impact on the agency's mission; and
8. Other relevant issues.

C. The Authority may implement any of the following appropriate remedies:

1. Decline to exercise an option to renew under the Contract;
2. Terminate the Contract;
3. Amend the Solicitation;
4. Issue a new Solicitation;
5. Award a Contract consistent with this Article; or
6. Render such other relief as determined necessary to ensure compliance with this Article.

R18-15-826. Provisions for Construction Contracts

A. Any Contract for Construction of a Water-Related Facility procured through the provisions of this Article, shall contain the following:

1. Requirement for performance and payment bonds or other security in a manner similar to those required under A.R.S. § 41-2574. The Authority may require performance and payment bonds or other security in amounts greater than those required under A.R.S. § 41-2574.
2. Requirement for retention of payments by the Authority as insurance for the proper performance of the Contract in a manner similar to that required by A.R.S. § 41-2576. The Authority may require retention in amounts greater than those required by A.R.S. § 41-2576.
3. Requirement for progress payments made by the Authority to the Contractor in a manner similar to that required under A.R.S. § 41-2577. The Authority may specify a progress payment schedule that differs from that required by A.R.S. § 41-2577.
4. Provisions similar to those required under A.R.S. § 41-2580. The Authority may specify additional requirements.

B. Pursuant to A.R.S. § 41-2501(C), the Authority adopts A.R.S. § 41-2583 for any Contract for Construction of a Water-Related Facility procured through the provisions of this Article.

C. The Authority may require that any Construction of a Water-Related Facility be subject to oversight by State of Arizona personnel.

Katie Hobbs, Governor
Chuck Podolak, Director

July 18, 2023

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

Subject: Water Infrastructure Finance Authority of Arizona, Title 18, Chapter 15, Articles 1 through 7, Five Year Rule Report

Dear Chairwoman Sornsin:

Please find enclosed the Five Year Review Report of the Water Infrastructure Finance Authority of Arizona (WIFA) for Title 18, Chapter 15, Articles 1 through 7 of the Arizona Administrative Code, which is due on August 31, 2023.

WIFA hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact WIFA's General Counsel, Joe Citelli, at JCitelli@azwifa.gov or 602-647-4403.

Sincerely,

Chuck Podolak
Director
Water Infrastructure Finance Authority of Arizona

enclosures (1)

WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

Five-Year Review Report

A.A.C. Title 18, Chapter 15

Submitted to the

Governor's Regulatory Review Council

July 2023

Introduction

The Water Infrastructure Finance Authority of Arizona's (WIFA) Five-Year Review Report for A.A.C. Title 18, Chapter 15 was originally due to be submitted to the Governor's Regulatory Review Council (GRRC) by August 31, 2022. On July 20, 2022, WIFA requested a one-year extension due to pending legislation which would substantially impact WIFA's governing statutes. On August 2, 2022, GRRC granted WIFA's request and set a new deadline of August 31, 2023. WIFA now submits this Five-Year Review Report for GRRC's review and approval. A copy of the rules being reviewed in this report is included in Attachment A.

On September 24, 2022, Arizona Senate Bill 1740 (Fifty-fifth Legislature, Second Regular Session (2022)) became effective, establishing WIFA as an independent state agency and transferring governance of WIFA from the Arizona Finance Authority Board of Directors to the WIFA Board of Directors (WIFA Board). A copy of SB1740 is included as Attachment B. The newly constructed WIFA Board consists of eighteen members: eight members from counties with specified population sizes, one person who specializes in finance or statewide water needs, and nine specified public officers, including the Director of the Arizona Department of Environmental Quality (ADEQ) or a designee. The WIFA Board succeeds the authority, powers, duties and responsibilities of the AFA Board with respect to the Clean Water Revolving Fund Program, Drinking Water Revolving Fund Program, Hardship Grant Fund financial provisions, and Water Supply Development Revolving Fund financial provisions. In addition, SB1740 significantly modified the existing Water Supply Development Revolving Fund and established two new financial assistance programs: the Long-Term Water Augmentation Fund, and the Water Conservation Grant Fund. As indicated in this report, WIFA anticipates initiating rulemaking proceedings related to the changes enacted by SB1740.

Title 18. Environmental Quality

Chapter 15. Water Infrastructure Finance Authority of Arizona

Five-Year Review Report

1. Authorization of the rule by existing statutes.

Article 1. General Provisions

The rules within Title 18, Chapter 15, Article 1 of the Arizona Administrative Code are authorized by the following statutes: A.R.S. § 49-1203(B)(10); and A.R.S. § 49-1203(C).

Article 2. Clean Water Revolving Fund

The rules within Title 18, Chapter 15, Article 2 of the Arizona Administrative Code are authorized by the following statutes: A.R.S. § 49-1203(B)(10); A.R.S. § 49-1203(C); A.R.S. § 49-1222(A); A.R.S. § 49-1224(B)(2); A.R.S. § 49-1225(C).

Article 3. Drinking Water Revolving Fund

The rules within Title 18, Chapter 15, Article 3 of the Arizona Administrative Code are authorized by the following statutes: A.R.S. § 49-1203(B)(10); A.R.S. § 49-1203(C); A.R.S. § 49-1242(A); A.R.S. § 49-1244(B)(2); A.R.S. § 49-1245(C).

Article 4. Water Supply Development Revolving Fund

The rules within Title 18, Chapter 15, Article 4 of the Arizona Administrative Code are authorized by the following statutes: A.R.S. § 49-1203(B)(10); A.R.S. § 49-1203(C); A.R.S. § 49-1274(B)(2); and A.R.S. § 49-1275(C).

Article 5. Technical Assistance

The rules within Title 18, Chapter 15, Article 5 of the Arizona Administrative Code are authorized by the following statutes: A.R.S. §§ 49-1203(B)(10), (16), & (17); and A.R.S. § 49-1203(C).

Article 6. Hardship Grant Fund Program

The rules within Title 18, Chapter 15, Article 6 of the Arizona Administrative Code are authorized by the following statutes: A.R.S. §§ 49-1203(B)(10), (16), & (17); and A.R.S. § 49-1203(C).

Article 7. Interest Rate Setting and Forgivable Principal

The rules within Title 18, Chapter 15, Article 7 of the Arizona Administrative Code are authorized by the following statutes: A.R.S. §§ 49-1203(B)(10), (16), & (17); and A.R.S. § 49-1203(C); A.R.S. § 49-1225(C); A.R.S. § 49-1245(C); A.R.S. § 49-1275(C).

2. Objective of the rule, including the purpose for the existence of the rule.

Rule	Objective
Article 1. General Provisions	
R18-15-501. Definitions	The rule establishes definitions used in the rules in a manner that is not explained adequately by a dictionary definition. The rule's objective is to facilitate understanding by those who use the rules.
R18-15-502. Types of Assistance.	The rule describes the types of financial and technical assistance available from WIFA.
R18-15-103. Application Process.	The rule specifies how to apply for financial and technical assistance. The rule's objective is to guide applicants to the appropriate article for each type of assistance.
R18-15-104. General Financial Assistance Application Requirements.	The rule establishes the common application requirements for the Clean Water State Revolving Fund, Drinking Water State Revolving Fund, Water Supply Development Revolving Fund, and technical assistance programs. The objective of the rule is to inform applicant of the materials required to be submitted with financial assistance applications.
R18-15-105. General Financial Assistance Conditions.	The rule informs applicants of general conditions associated with receiving financial assistance from WIFA.
R18-15-106. Environmental Review.	The rule describes the environmental review process for projects funded through the Clean Water and Drinking Water State Revolving Funds. This review is a condition of the federal capitalization grants. The rule enables an applicant to anticipate steps in the evaluation process.
R18-15-107. Disputes.	The rule describes the process to file a letter of dispute and the actions taken thereafter.
Article 2. Clean Water Revolving Fund	
R18-15-201. Clean Water Revolving Fund Financial Assistance Eligibility Criteria.	The rule specifies who may apply for funding from the Clean Water Revolving Fund and the kinds of projects eligible for funding. The rule's objective is to promote efficient operation of the program by ensuring only eligible applicants submit applications and only eligible projects are submitted.
R18-15-202. Clean Water Revolving Fund Intended Use Plan.	The rule describes the process used to prepare the Intended Use Plan for the Clean Water Revolving Fund, as required by federal regulations. The rule also specifies the public comment process for the Intended Use Plan.
R18-15-203. Clean Water Revolving Fund Project Priority List.	The rule describes the process to prepare and update the Project Priority List, as required by federal regulations. The rule also describes the application process and timing requirements, and enables an applicant to anticipate steps in the evaluation process.
R18-15-204. Clean Water Revolving Fund Project Priority List Ranking.	The rule describes the application ranking process, including the criteria used to score applications, and describes the process to break tied scores. This rule also describes how the Authority determines the subsidy on the interest rate for each application. The rule's objective is to enable an applicant to submit an

	application with the correct information required to receive an appropriate score and ranking, resulting in the appropriate subsidy for the project.
R18-15-205. Clean Water Revolving Fund Fundable Range for Financial Assistance.	The rule describes how the Authority determines a project is ready to proceed for placement on the Fundable Range . The rule's objective is to enable an applicant to anticipate steps in the evaluation process.
R18-15-206. Clean Water Revolving Fund Application for Financial Assistance.	The rule establishes requirements for presentation of a project to the Board of Directors for consideration. The rule's objective is to standardize the treatment of applications under the Clean Water Revolving Fund.
R18-15-207. Clean Water Revolving Fund Application Review for Financial Assistance.	The rule describes the application evaluation process. The rule also describes the procedure for Board approval of an application for Financial Assistance.
R18-15-208. Clean Water Revolving Fund Requirements.	The rule requires applicants to certify that no laws have been violated related to the funded projects, and to comply with applicable federal laws. The rule's objective is to enforce compliance with federal laws.
Article 3. Drinking Water Revolving Fund	
R18-15-301. Drinking Water Revolving Fund Financial Assistance Eligibility Criteria	The rule specifies who may apply for funding from the Drinking Water Revolving Fund and the kinds of projects eligible for funding. The rule's objective is to promote efficient operation of the program by ensuring only eligible applicants submit applications and only eligible projects are submitted.
R18-15-302. Drinking Water Revolving Fund Intended Use Plan	The rule describes the process to prepare the Intended Use Plan for the Fund, as required by federal regulations. The rule also specifies the public comment process for the Intended Use Plan.
R18-15-303. Drinking Water Revolving Fund Project Priority List	The rule describes the process to prepare and update the Project Priority List, as required by federal regulations. The rule also describes the application process and timing requirements, and enables an applicant to anticipate steps in the evaluation process.
R18-15-304. Drinking Water Revolving Fund Project Priority List Ranking	The rule describes the application ranking process, including the criteria used to score applications, and describes the process to break tied scores. This rule also describes how the Authority determines the subsidy on the interest rate for each application. The rule's objective is to enable an applicant to submit an application with the correct information required to receive an appropriate score and ranking, resulting in the appropriate subsidy for the project.
R18-15-305. Drinking Water Revolving Fund Fundable Range for Financial Assistance	The rule describes how the Authority determines a project is ready to proceed for placement on the Fundable Range (a list of projects that are ready to proceed). The rule's objective is to enable an applicant to anticipate steps in the evaluation process.
R18-15-306. Drinking Water Revolving Fund Application for Financial Assistance	The rule establishes requirements for presentation of a project to the Board of Directors for consideration. The rule's objective

	is to standardize the treatment of applications under the Drinking Water Revolving Fund.
R18-15-307. Drinking Water Revolving Fund Application Review for Financial Assistance	The rule describes the application evaluation process. The rule also describes the procedure for Board approval of an application for Financial Assistance.
R18-15-308. Drinking Water Revolving Fund Requirements	The rule requires applicants to certify that no laws have been violated related to the funded projects, and to comply with applicable federal laws.
Article 4. Water Supply Development Revolving Fund	
R18-15-502. Types of Assistance	The rule specifies who may apply for funding from the Water Supply Development Revolving Fund and the kinds of projects eligible for funding. The rule's objective is to promote efficient operation of the program by ensuring only eligible applicants submit applications and only eligible projects are submitted.
R18-15-401. Water Supply Development Revolving Fund Financial Assistance Eligibility Criteria	The rule describes the process used to prepare the Intended Use Plan for the Fund. The rule also specifies the public comment process for the Intended Use Plan.
R18-15-402. Water Supply Development Revolving Fund Project List	The rule describes the process used to prepare the Project Priority List, as well as the process to update the Project Priority List. The rule also describes the application process and timing requirements, and enables an applicant to anticipate steps in the evaluation process.
R18-15-403. Water Supply Development Revolving Fund Project List Ranking	The rule describes the application ranking process, including the criteria used to score applications, and describes the process to break tied scores. This rule also describes how the Authority determines the subsidy on the interest rate for each application. The rule's objective is to enable an applicant to submit an application with the correct information required to receive an appropriate score and ranking, resulting in the appropriate subsidy for the project.
R18-15-404. Water Supply Development Revolving Fund Application for Financial Assistance	The rule establishes requirements for presentation of a project to the Board of Directors for consideration.
R18-15-405. Water Supply Development Revolving Fund Application Review for Financial Assistance	The rule describes the application evaluation process. The rule also describes the procedure for Board approval of an application for Financial Assistance.
R18-15-406. Water Supply Development Revolving Fund Requirements	The rule requires applicants to certify that no laws have been violated related to the funded projects, and to comply with applicable federal laws.
Article 5. Technical Assistance	
R18-15-501. Technical Assistance.	The rule describes the types of technical assistance available from the Authority.
R18-15-502. Technical Assistance Intended Use Plan.	The rule describes the process used to prepare the Intended Use Plan(s) for technical assistance. The rule also specifies the public comment process for the Intended Use Plan.

R18-15-503. Clean Water Planning and Design Assistance.	The rule describes the technical assistance available for the Clean Water Revolving Fund. The rule also describes the application and evaluation process to receiving planning and design assistance from the Clean Water Revolving Fund.
R18-15-504. Drinking Water Planning and Design Assistance.	The rule describes the technical assistance available for the Drinking Water Revolving Fund. The rule also describes the application and evaluation process to receiving planning and design assistance from the Drinking Water Revolving Fund.
R18-15-505. Water Supply Development Planning and Design Assistance Grants.	The rule describes the technical assistance available for the Water Supply Development Revolving Fund. The rule also describes the application and evaluation process to receiving planning and design assistance from the Water Supply Development Revolving Fund.
Article 6. Hardship Grant Fund	
R18-15-601. Hardship Grant Fund Administration	The rule describes how the Authority administers the Hardship Grant Fund. The rule's objective is to inform the public about the types of funding available under the Hardship Grant Fund.
R18-15-602. Hardship Grant Fund Financial Assistance	The rule specifies who may apply for financial assistance from the Hardship Grant Fund and the process for awarding funding, when funds are available. The rule's objective is to maximize efficient operation of the program by ensuring only eligible applicants submit applications and only eligible projects are submitted.
R18-15-603. Hardship Grant Fund Technical Assistance	The rule specifies who may apply for technical assistance from the Hardship Grant Fund and the process for awarding funding, when funds are available. The rule's objective is to maximize efficient operation of the program by ensuring only eligible applicants submit applications and only eligible projects are submitted.
Article 7. Interest Rate Setting and Forgivable Principal	
R18-15-701. Interest Rate Setting and Forgivable Principal	The rule describes the process by which the Authority sets interest rates for the various funds. The rule also specifies which applicants and projects may be eligible for forgivable principal.

3. Are the rules effective in achieving their objectives? Yes ____ No X

Article 1. General Provisions

The rules are effective in achieving the objectives stated above.

Article 2. Clean Water Revolving Fund

The rules are effective in achieving the objectives stated above.

Article 3. Drinking Water Revolving Fund

The rules are effective in achieving the objectives stated above.

Article 4. Water Supply Development Revolving Fund

SB1740 significantly changed the statutes governing the Water Supply Development Fund. In their current form, the rules governing the Water Supply Development Fund are not effective. WIFA proposes amending the rules in Title 18, Chapter 15, Article 4 to correctly reflect the changes enacted by SB1740.

Article 5. Technical Assistance

SB1740 significantly changed the statutes governing technical assistance. In their current form, the rules governing Technical Assistance are not effective. WIFA proposes amending the rules in Title 18, Chapter 15, Article 5 to correctly reflect the changes enacted by SB1740.

Article 6. Hardship Grant Fund Program

The rules are effective in achieving the objectives stated above.

Article 7. Interest Rate Setting and Forgivable Principal

The rules are effective in achieving the objectives stated above.

4. Are the rules consistent with other rules and statutes? Yes ____ No __X__

Article 1. General Provisions

The following rules are consistent with, and are not in conflict, with statutes and rules:

R18-15-104. General Financial Assistance Application Requirements

R18-15-105. General Financial Assistance Conditions

R18-15-106. Environmental Review

R18-15-107. Disputes

The following rules are not consistent with, or conflict with, statutes and rules; WIFA proposes to increase their consistency with statutes and rules as indicated:

R18-15-101. Definitions.

SB1740 enacted significant changes to WIFA's governing statutes and renumbered the definitions in A.R.S. § 49-1201. This renumbering created inconsistencies between the statutes and rule. WIFA proposes to amend the rule to accurately reference the current citations.

SB1740 modified WIFA's governing structure. The definition of "Board" therefore inaccurately references the Arizona Finance Authority. WIFA proposes rewriting the definition to correctly reflect the change in WIFA's governing structure.

SB1740 added two new programs: the Long-Term Water Augmentation fund, and the Water Conservation Grant Fund. WIFA proposes to amend the definition of "Applicant" to account for these new programs. WIFA

anticipates pursuing rulemaking to adopt rules for the two new programs during FY2024.

R18-15-102. Types of Assistance.

SB1740 added two new programs: the Long-Term Water Augmentation fund, and the Water Conservation Grant Fund. WIFA proposes to amend the rule to reference these new programs. WIFA anticipates pursuing rulemaking to adopt rules for the two new programs during FY2024.

SB1740 granted WIFA the ability to participate in public-private partnerships. WIFA proposes amending the rule to reference this new type of assistance. WIFA anticipates pursuing rulemaking to adopt rules for the new type of assistance during FY2024.

R18-15-103. Application Process.

SB1740 added two new programs: the Long-Term Water Augmentation fund, and the Water Conservation Grant Fund. WIFA proposes to amend the rule to reference these new programs. WIFA anticipates pursuing rulemaking to adopt rules for the two new programs during FY2024.

Article 2. Clean Water Revolving Fund

The following rules are consistent with, and are not in conflict with, statutes and rules:

R18-15-201. Clean Water Revolving Fund Financial Assistance Eligibility Criteria.

R18-15-202. Clean Water Revolving Fund Intended Use Plan.

R18-15-203. Clean Water Revolving Fund Project Priority List.

R18-15-204. Clean Water Revolving Fund Project Priority List Ranking.

R18-15-205. Clean Water Revolving Fund Fundable Range for Financial Assistance.

R18-15-206. Clean Water Revolving Fund Application for Financial Assistance.

R18-15-207. Clean Water Revolving Fund Application Review for Financial Assistance.

R18-15-208. Clean Water Revolving Fund Requirements.

Article 3. Drinking Water Revolving Fund

The following rules are consistent with and are not in conflict with statutes and rules:

R18-15-301. Drinking Water Revolving Fund Financial Assistance Eligibility Criteria.

R18-15-302. Drinking Water Revolving Fund Intended Use Plan.

R18-15-303. Drinking Water Revolving Fund Project Priority List.

R18-15-305. Drinking Water Revolving Fund Fundable Range for Financial Assistance.

R18-15-306. Drinking Water Revolving Fund Application for Financial Assistance.

R18-15-307. Drinking Water Revolving Fund Application Review for Financial Assistance.

R18-15-308. Drinking Water Revolving Fund Requirements.

The following rules are not consistent with, or conflict with, statutes and rules; WIFA proposes to increase their consistency with statutes and rules as indicated:

R18-15-304. Drinking Water Revolving Fund Project Priority List Ranking.

Subsection B of this rule incorrectly refers to "clean water revolving loan funds." WIFA proposes correcting this error and replacing with "drinking water revolving loan funds."

Article 4. Water Supply Development Revolving Fund

SB1740 significantly changed the statutes governing the Water Supply Development Fund. In their current form, the rules governing the Water Supply Development Fund are in conflict or otherwise inconsistent with statute. WIFA proposes amending the rules in Title 18, Chapter 15, Article 4 to correctly reflect the changes enacted by SB1740.

Article 5. Technical Assistance

SB1740 significantly changed the statutes governing technical assistance. In their current form, the rules governing Technical Assistance are in conflict or otherwise inconsistent with statute. WIFA proposes amending the rules in Title 18, Chapter 15, Article 5 to correctly reflect the changes enacted by SB1740.

Article 6. Hardship Grant Fund Program

The following rules are consistent with, and are not in conflict with, statutes and rules:

R18-15-601. Hardship Grant Fund Administration

R18-15-602. Hardship Grant Fund Financial Assistance

R18-15-603. Hardship Grant Fund Technical Assistance

Article 7. Interest Rate Setting and Forgivable Principal

The following rules are consistent with, and are not in conflict with, statutes and rules:

R18-15-701. Interest Rate Setting and Forgivable Principal

5. Are the rules enforced as written? **Yes ____** **No __X__**

Article 1. General Provisions

The rules are currently being enforced. To the extent that WIFA is aware, there have been no problems with enforcement.

Article 2. Clean Water Revolving Fund

The rules are currently being enforced. To the extent that WIFA is aware, there have been no problems with enforcement.

Article 3. Drinking Water Revolving Fund

The rules are currently being enforced. To the extent that WIFA is aware, there have been no problems with enforcement.

Article 4. Water Supply Development Revolving Fund

Currently, there is no financial assistance available under the Water Supply Development Fund, and therefore, there are no applications for assistance for WIFA to review under these rules. Moreover, SB1740 significantly changed the statutes governing the Water Supply Development Fund. To the extent the current rules governing the Water Supply Development Fund are in conflict or otherwise inconsistent with statute, WIFA proposes amending the rules in Title 18, Chapter 15, Article 4 to correctly reflect the changes enacted by SB1740 with the expectation that financial assistance will be available under the Water Supply Development Revolving Fund in the future.

Article 5. Technical Assistance

SB1740 significantly changed the statutes governing technical assistance. To the extent the current rules governing Technical Assistance are in conflict or otherwise inconsistent with statute, WIFA proposes amending the rules in Title 18, Chapter 15, Article 5 to correctly reflect the changes enacted by SB1740.

Article 6. Hardship Grant Fund Program

The rules are currently being enforced. To the extent that WIFA is aware, there have been no problems with enforcement.

Article 7. Interest Rate Setting and Forgivable Principal

The rules are currently being enforced. To the extent that WIFA is aware, there have been no problems with enforcement.

6. Are the rules clear, concise, and understandable? Yes ____ No __X__

Article 1. General Provisions

The following rules are clear, concise, understandable, are logically organized, and generally written in the active voice:

R18-15-102. Types of Assistance

R18-15-103. Application Process

R18-15-104. General Financial Assistance Application Requirements

R18-15-105. General Financial Assistance Conditions

R18-15-106. Environmental Review

The following rules are not clear, concise, or easily understood; WIFA proposes to increase clarity, conciseness, and understandability as indicated:

R18-15-101. Definitions.

The term "Advisory Board" does not appear anywhere in Title 18, Chapter 15 of the Arizona Administrative Code outside of the definitions section. WIFA proposes deleting the section of the rule defining "Advisory Board."

The term "Clean Water Revolving Fund" does not match the terminology used in statute. WIFA proposes replacing this term with "Clean Water State Revolving Fund".

The term "Dedicated revenue source for repayment" does not provide value and does not need to be defined. WIFA proposes deleting this definition.

The term "Department" is used in Title 18, Chapter 15 of the Arizona Administrative Code, to refer to the "Arizona Department of Environmental Quality." WIFA proposes replacing the term "Department" with "ADEQ".

The term "Drinking Water Revolving Fund" does not match the terminology used in statute. WIFA proposes replacing this term with "Drinking Water State Revolving Fund".

The term "Executive Director" refers to a position which no longer exists. WIFA proposes striking the definition of "Executive Director" and replacing with the defined term "Director."

The term "FONSI" as defined does not provide value. WIFA proposes amending this definition to increase its clarity and public understanding of the term.

The term "Governmental unit" does not appear anywhere in Title 18, Chapter 15 of the Arizona Administrative Code outside of the definitions section. WIFA proposes deleting the section of the rule defining "Governmental unit."

The term "Planning and design technical assistance applicant" does not appear anywhere in Title 18, Chapter 15 of the Arizona Administrative Code outside of the definitions section. WIFA proposes deleting the section of the rule defining "Planning and design technical assistance applicant."

The term "Planning and design technical assistance application" does not appear anywhere in Title 18, Chapter 15 of the Arizona Administrative Code outside of the definitions section. WIFA proposes deleting the section of the rule defining "Planning and design technical assistance application."

The term "Recipient" does not provide value and does not need to be defined. WIFA proposes deleting this definition.

The term "Staff assistance" contains a limitation that restricted assistance to water providers to the planning and design of water supply development projects in accordance with A.R.S. § 49-1203(B)(17). SB1704 removed this restriction and expanded eligibility to "eligible entities" as defined by statute. WIFA

proposes removing the now superseded language restricting staff assistance for water providers.

R18-15-107. Disputes.

The "Executive Director" position no longer exists. WIFA proposes striking references to "Executive Director" and replacing with "Director."

Article 2. Clean Water Revolving Fund

The following rules are clear, concise, understandable, are logically organized, and generally written in the active voice:

R18-15-201. Clean Water Revolving Fund Financial Assistance Eligibility Criteria.

R18-15-202. Clean Water Revolving Fund Intended Use Plan.

R18-15-203. Clean Water Revolving Fund Project Priority List.

R18-15-204. Clean Water Revolving Fund Project Priority List Ranking.

R18-15-205. Clean Water Revolving Fund Fundable Range for Financial Assistance.

R18-15-206. Clean Water Revolving Fund Application for Financial Assistance.

R18-15-207. Clean Water Revolving Fund Application Review for Financial Assistance.

R18-15-208. Clean Water Revolving Fund Requirements.

Article 3. Drinking Water Revolving Fund

The following rules are clear, concise, understandable, are logically organized, and generally written in the active voice:

R18-15-301. Drinking Water Revolving Fund Financial Assistance Eligibility Criteria.

R18-15-302. Drinking Water Revolving Fund Intended Use Plan.

R18-15-303. Drinking Water Revolving Fund Project Priority List.

R18-15-304. Drinking Water Revolving Fund Project Priority List Ranking.

R18-15-305. Drinking Water Revolving Fund Fundable Range for Financial Assistance.

R18-15-306. Drinking Water Revolving Fund Application for Financial Assistance.

R18-15-307. Drinking Water Revolving Fund Application Review for Financial Assistance.

R18-15-308. Drinking Water Revolving Fund Requirements.

Article 4. Water Supply Development Revolving Fund

The following rules are clear, concise, understandable, are logically organized, and generally written in the active voice:

R18-15-401. Water Supply Development Revolving Fund Financial Assistance Eligibility Criteria

R18-15-402. Water Supply Development Revolving Fund Project List

R18-15-403. Water Supply Development Revolving Fund Project List Ranking

R18-15-404. Water Supply Development Revolving Fund Application for Financial Assistance

R18-15-405. Water Supply Development Revolving Fund Application Review for Financial Assistance

R18-15-406. Water Supply Development Revolving Fund Requirements

Article 5. Technical Assistance

The following rules are clear, concise, understandable, are logically organized, and generally written in the active voice:

R18-15-501. Technical Assistance

R18-15-502. Technical Assistance Intended Use Plan

R18-15-503. Clean Water Planning and Design Assistance

R18-15-504. Drinking Water Planning and Design Assistance

R18-15-505. Water Supply Development Planning and Design Assistance Grants

Article 6. Hardship Grant Fund Program

The following rules are clear, concise, understandable, are logically organized, and generally written in the active voice:

R18-15-601. Hardship Grant Fund Administration

R18-15-602. Hardship Grant Fund Financial Assistance

R18-15-603. Hardship Grant Fund Technical Assistance

Article 7. Interest Rate Setting and Forgivable Principal

The following rules are clear, concise, understandable, are logically organized, and generally written in the active voice:

R18-15-701. Interest Rate Setting and Forgivable Principal

7. Has the agency received written criticisms of the rules within the last five years?

Yes ____ No __X__

Article 1. General Provisions

WIFA did not receive any written comments of the rules in Article 1.

Article 2. Clean Water Revolving Fund

WIFA did not receive any written comments of the rules in Article 2.

Article 3. Drinking Water Revolving Fund

WIFA did not receive any written comments of the rules in Article 3.

Article 4. Water Supply Development Revolving Fund

WIFA did not receive any written comments of the rules in Article 4.

Article 5. Technical Assistance

WIFA did not receive any written comments of the rules in Article 5.

Article 6. Hardship Grant Fund Program

WIFA did not receive any written comments of the rules in Article 6.

Article 7. Interest Rate Setting and Forgivable Principal

WIFA did not receive any written comments of the rules in Article 7.

8. Economic, small business, and consumer impact comparison.

The economic, small business and consumer impact of the rules has not changed from that projected in the Economic, Small Business and Consumer Impact Statement submitted for the 2017 rulemaking. A copy of the 2017 Economic, Small Business and Consumer Impact Statement is included in Attachment C.

9. Has the agency received any business competitiveness analyses of the rules?

Yes ____ No __X__

Article 1. General Provisions

WIFA did not receive any analyses that compared the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

Article 2. Clean Water Revolving Fund

WIFA did not receive any analyses that compared the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

Article 3. Drinking Water Revolving Fund

WIFA did not receive any analyses that compared the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

Article 4. Water Supply Development Revolving Fund

WIFA did not receive any analyses that compared the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

Article 5. Technical Assistance

WIFA did not receive any analyses that compared the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

Article 6. Hardship Grant Fund Program

WIFA did not receive any analyses that compared the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

Article 7. Interest Rate Setting and Forgivable Principal

WIFA did not receive any analyses that compared the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

In WIFA's 2017 Five-Year Review Report, WIFA reported it had initiated a rulemaking, expected to be completed in early 2018, to address the issues identified in the 2017 Report. That rulemaking was completed on March 11, 2018.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

WIFA reports that the following information is identical for all WIFA rules:

WIFA is a public financing authority; it does not regulate any consumer or business. WIFA determined the probable benefits of the rules outweigh the probable costs of the rules.

12. Are the rules more stringent than corresponding federal laws?

Yes ____ No __X__

Article 1. General Provisions

The following rules are based on state law and federal law is not directly applicable to the rule:

R18-15-101. Definitions

R18-15-102. Types of Assistance

R18-15-103. Application Process

R18-15-104. General Financial Assistance Application Requirements

R18-15-105. General Financial Assistance Conditions

R18-15-107. Disputes

Title IV of the Clean Water Act, as amended (33 U.S.C. § 1251 et seq.), and the federal regulations adopted pursuant to the same, are applicable to the subject of the rules. *See* 33 U.S.C. § 1383; *see also* 40 CFR Part 35 Subpart K. Section 1452 of the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), and the federal regulations adopted pursuant to the same, are also applicable to the subject of the rules. *See* 42 U.S.C. 300j-12 *see also* 40 CFR Part 35, Subpart L. WIFA has determined the following rules are not more stringent than their corresponding federal law(s):

R18-15-106. Environmental Review

Article 2. Clean Water Revolving Fund

Title IV of the Clean Water Act, as amended (33 U.S.C. § 1251 et seq.), and the federal regulations adopted pursuant to the same, are applicable to the subject of the rules. *See* 33 U.S.C. § 1292 and 33 U.S.C. §§ 1381-1387; *see also* 40 CFR Part 35 Subpart K. WIFA has determined the following rules are not more stringent than their corresponding federal law(s):

R18-15-201. Clean Water Revolving Fund Financial Assistance Eligibility Criteria.

R18-15-202. Clean Water Revolving Fund Intended Use Plan.

R18-15-203. Clean Water Revolving Fund Project Priority List.

R18-15-204. Clean Water Revolving Fund Project Priority List Ranking.

R18-15-205. Clean Water Revolving Fund Fundable Range for Financial Assistance.

R18-15-206. Clean Water Revolving Fund Application for Financial Assistance.

R18-15-207. Clean Water Revolving Fund Application Review for Financial Assistance.

R18-15-208. Clean Water Revolving Fund Requirements.

Article 3. Drinking Water Revolving Fund

Section 1452 of the Safe Drinking Water Act, as amended (42 U.S.C. § 300f et seq.), and the federal regulations adopted pursuant to the same, are applicable to the subject of the rules. *See* 42 U.S.C. 300j-12; *see also* 40 CFR Part 35, Subpart L. WIFA has determined the following rules are not more stringent than their corresponding federal law(s):

R18-15-301. Drinking Water Revolving Fund Financial Assistance Eligibility Criteria.

R18-15-302. Drinking Water Revolving Fund Intended Use Plan.

R18-15-303. Drinking Water Revolving Fund Project Priority List.

R18-15-304. Drinking Water Revolving Fund Project Priority List Ranking.

R18-15-305. Drinking Water Revolving Fund Fundable Range for Financial Assistance.

R18-15-306. Drinking Water Revolving Fund Application for Financial Assistance.

R18-15-307. Drinking Water Revolving Fund Application Review for Financial Assistance.

R18-15-308. Drinking Water Revolving Fund Requirements.

Article 4. Water Supply Development Revolving Fund

The following rules are based on state law and federal law is not directly applicable to the rule:

R18-15-401. Water Supply Development Revolving Fund Financial Assistance Eligibility Criteria

R18-15-402. Water Supply Development Revolving Fund Project List

R18-15-403. Water Supply Development Revolving Fund Project List Ranking

R18-15-404. Water Supply Development Revolving Fund Application for Financial Assistance

R18-15-405. Water Supply Development Revolving Fund Application Review for Financial Assistance

R18-15-406. Water Supply Development Revolving Fund Requirements

Article 5. Technical Assistance

The following rules are based on state law and federal law is not directly applicable to the rule:

R18-15-505. Water Supply Development Planning and Design Assistance Grants

Title IV of the Clean Water Act, as amended (33 U.S.C. § 1251 et seq.), and the federal regulations adopted pursuant to the same, are applicable to the subject of the rules. *See* 33 U.S.C. § 1383; *see also* 40 CFR Part 35 Subpart K. Section 1452 of the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), and the federal regulations adopted pursuant to the same, are also applicable to the subject of the rules. *See* 42 U.S.C. 300j-12 *see also* 40 CFR Part 35, Subpart L. WIFA has determined the following rules are not more stringent than their corresponding federal law(s):

R18-15-501. Technical Assistance

R18-15-502. Technical Assistance Intended Use Plan

R18-15-503. Clean Water Planning and Design Assistance

R18-15-504. Drinking Water Planning and Design Assistance

Article 6. Hardship Grant Fund Program

The following rules are based on state law and federal law is not directly applicable to the rule:

R18-15-601. Hardship Grant Fund Administration

R18-15-602. Hardship Grant Fund Financial Assistance

R18-15-603. Hardship Grant Fund Technical Assistance

Article 7. Interest Rate Setting and Forgivable Principal

Title IV of the Clean Water Act, as amended (33 U.S.C. § 1251 et seq.), and the federal regulations adopted pursuant to the same, are applicable to the subject of the rules. *See* 33 U.S.C. § 1383; *see also* 40 CFR Part 35 Subpart K. Section 1452 of the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), and the federal regulations adopted pursuant to the same, are also applicable to the subject of the rules. *See* 42 U.S.C. 300j-12 *see also* 40 CFR Part 35, Subpart L. WIFA has determined the following rules are not more stringent than their corresponding federal law(s):

R18-15-701. Interest Rate Setting and Forgivable Principal

13. For a rule adopted after July 29, 2020, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

WIFA reports that the following information is identical for all WIFA rules:

WIFA's rules do not require the issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action.

WIFA has contacted the Governor's Office to request approval pursuant to A.R.S. § 49-1039(A) to conduct rulemaking consistent with this report. If granted approval, WIFA anticipates submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by July 2024.

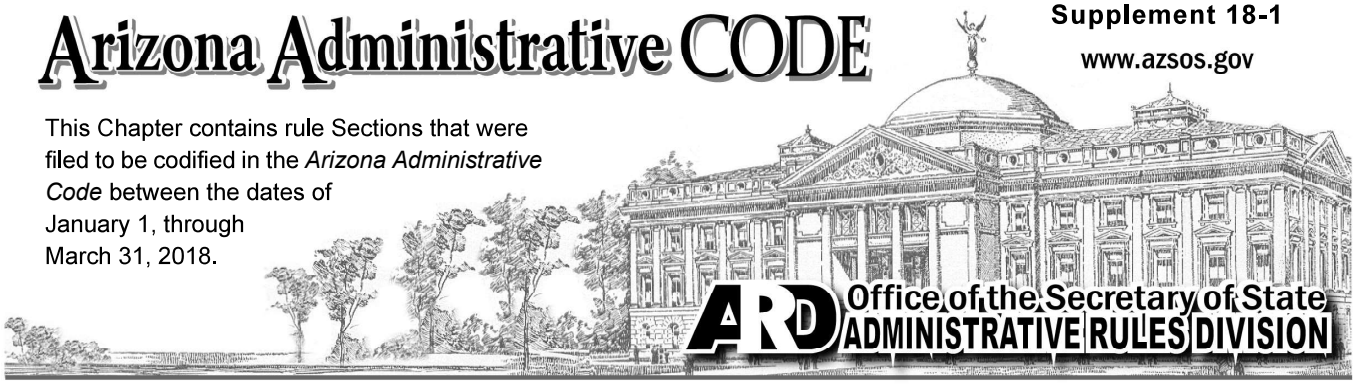
ATTACHMENT A

Arizona Administrative CODE

Supplement 18-1

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of January 1, through March 31, 2018.



TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

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ARTICLE 7. INTEREST RATE SETTING AND FORGIVABLE PRINCIPAL

Section
R18-15-701. Interest Rate Setting and Forgivable Principal 18

Questions about these rules? Contact:

Department: Water Infrastructure Finance Authority of Arizona
Name: Trish Incognito, Executive Director
Address: 100 N. 15th Ave., Suite 103
Phoenix, AZ 85007
Telephone: (602) 364-1310
E-mail: pincognito@azwifa.gov

The release of this Chapter in supplement 18-1 replaces supplement 10-3, 19 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. "'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.
First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31
For example, the first supplement for the first quarter of 2018 is cited as Supp. 18-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document's content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State's website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency's exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor's notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

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Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.

Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

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ARTICLE 1. GENERAL PROVISIONS

R18-15-101. Definitions

In addition to the definitions prescribed in A.R.S. § 49-1201, the terms of this Chapter, unless otherwise specified, have the following meanings:

"Advisory Board" has same meaning as prescribed in A.R.S. § 41-5356(A)(5).

"Applicant" means a governmental unit, a non-point source project sponsor, a drinking water facility, or a water provider that is seeking financial or technical assistance from the Authority under the provisions of this Chapter.

"Application" means a request for financial or technical assistance submitted to the Board by an applicant.

"Authority" means the Water Infrastructure Finance Authority of Arizona pursuant to A.R.S. § 49-1201(1).

"Board" means the board of directors of the Arizona finance authority established by A.R.S. Title 41, Chapter 53, Article 2.

"Certified Water Quality Management Plan" means a plan prepared by a designated Water Quality Management Planning Agency under Section 208 of the Federal Water Pollution Control Act (P.L. 92-500) as amended by the Water Quality Act of 1987 (P.L. 100-4), certified by the Governor or the Governor's designee, and approved by the United States Environmental Protection Agency.

"Clean Water Revolving Fund" means the fund established by A.R.S. § 49-1221.

"DBE" means EPA's Disadvantaged Business Enterprise Program.

"Dedicated revenue source for repayment" means a source of revenue pledged by a borrower to repay the financial assistance.

"Department" means the Arizona Department of Environmental Quality.

"Disbursement" means the transfer of cash from a fund to a recipient.

"Discharge" has same meaning as prescribed in A.R.S. § 49-201(12).

"Drinking water facility" has same meaning as prescribed in A.R.S. § 49-1201(5).

"Drinking Water Revolving Fund" means the fund established by A.R.S. § 49-1241.

"EA" means an environmental assessment.

"EID" means an environmental information document.

"EIS" means an environmental impact statement.

"EPA" means the United States Environmental Protection Agency.

"Executive director" means the executive director of the Water Infrastructure Finance Authority of Arizona.

"Federal capitalization grant" means the assistance agreement by which the EPA obligates and awards funds allotted to the Authority for purposes of capitalizing the Clean Water Revolving Fund and the Drinking Water Revolving Fund.

"Financial assistance" means the use of monies for any of the purposes identified in R18-15-102(B).

"Financial assistance agreement" means any agreement that defines the terms for financial assistance provided according to this Chapter.

"FONSI" means a finding of no significant impact.

"Fundable range" means a subset of the project priority list that demarcates the ranked projects which have been determined to be ready to proceed and will be provided with a project finance application.

"Governmental unit" means a political subdivision or Indian tribe that may receive technical or financial assistance from the Authority pursuant to A.R.S. § 49-1203.

"Impaired water" means a navigable water for which credible scientific data exists that satisfies the requirements of A.R.S. § 49-232 and that demonstrates that the water should be identified pursuant to 33 U.S.C. 1313(d) and the regulations implementing that statute.

"Intended Use Plan" means the document prepared by the Authority identifying the intended uses of Clean Water Revolving Fund and Drinking Water Revolving Fund federal capitalization grants according to R18-15-202 and R18-15-302, and the intended uses of funds for technical assistance according to R18-15-502.

"Master priority list" means the master priority list for Capacity Development developed by the Arizona Department of Environmental Quality under A.A.C. R18-4-803, which ranks public water systems according to their need for technical assistance.

"Onsite system" means a conventional septic tank system or alternative system that is installed at a site to treat and dispose of wastewater of predominantly human origin that is generated at that site.

"Planning and design assistance" means technical assistance that provides for the use of monies for a specific water facility, wastewater treatment facility, or water supply delivery system for planning or design to facilitate the design, construction, acquisition, improvement, or consolidation of a drinking water project, wastewater project, or water supply development project.

"Planning and design assistance agreement" means any agreement that defines the terms for technical assistance provided according to Article 5 of this Chapter.

"Planning and design technical assistance applicant" means a governmental unit, a nonpoint source project sponsor, a drinking water facility, or a water provider that is seeking planning and design assistance from the Authority under the provisions of this Chapter.

"Planning and design technical assistance application" means a request for planning and design assistance submitted to the Board by an applicant in a format prescribed by the Authority.

"Planning and design loan repayment agreement" means the same as technical assistance loan repayment agreement and has the meaning at A.R.S. § 49-1201(11).

"Professional assistance" means the use of monies by or on behalf of the Authority to conduct research, conduct studies, conduct surveys, develop guidance, and perform related activities that benefit more than one water or wastewater treatment facility.

"Project" means any distinguishable segment or segments of a wastewater treatment facility, drinking water facility, water

supply delivery system, or nonpoint source pollution control that can be bid separately and for which financial or technical assistance is being requested or provided.

"Project priority list" means the document developed by the Board according to R18-15-203 or R18-15-303 that ranks projects according to R18-15-204 or R18-15-304.

"Recipient" means an applicant who has entered into a financial assistance agreement or planning and design assistance agreement with the Authority.

"ROD" means a record of decision.

"Staff assistance" means the use of monies for a specific water or wastewater treatment facility to assist that system to improve its operations or assist a specific water provider with a water supply delivery system. For water providers, staff assistance is limited to planning and design of water supply development projects according to A.R.S. § 49-1203(B)(17).

"Technical assistance" means assistance provided by the Authority in the form of staff assistance, professional assistance and planning and design assistance.

"Wastewater treatment facility" has the same meaning as prescribed in A.R.S. § 49-1201(12).

"Water provider" has the same meaning as prescribed in A.R.S. § 49-1201(13).

"Water supply development" has the same meaning as prescribed in A.R.S. § 49-1201(14).

"Water Supply Development Revolving Fund" means the fund established by A.R.S. § 49-1271.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-102. Types of Assistance Available

A. The Authority may provide financial and technical assistance under the following programs if the Board determines funding is available:
1. Clean Water Revolving Fund Program and Clean Water Technical Assistance Program,
2. Drinking Water Revolving Fund Program and Drinking Water Technical Assistance Program,
3. Water Supply Development Revolving Fund Program and Water Supply Development Technical Assistance Program, and
4. Hardship Grant Fund Program.

B. Financial assistance available from the Authority includes any of the following:
1. Financial assistance loan repayment agreements;
2. The purchase or refinance of local debt obligations;
3. The guarantee or purchase of insurance for local obligations to improve credit market access or reduce interest rates;
4. Short-term emergency loan agreements in accordance with A.R.S. § 49-1269; and
5. Providing linked deposit guarantees through third-party lenders as authorized by A.R.S. §§ 49-1223(A)(6), 49-1243(A)(6), and 49-1273(A)(6).

C. Technical assistance available from the Authority includes planning and design assistance, staff assistance, and professional assistance. Technical assistance may be offered at the Board's discretion.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Former R18-15-102 renumbered to R18-15-103; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-103. Application Process

A. An applicant requesting assistance shall apply to the Authority for the financial or technical assistance described in R18-15-102 on forms provided by the Authority.

B. An applicant seeking financial assistance through the Clean Water Revolving Fund Program shall apply for financial assistance according to Articles 1 and 2 of this Chapter.

C. An applicant seeking financial assistance through the Drinking Water Revolving Fund Program shall apply for financial assistance according to Articles 1 and 3 of this Chapter.

D. An applicant seeking financial assistance through the Water Supply Development Revolving Fund Program shall apply for financial assistance according to Articles 1 and 4 of this Chapter.

E. An applicant seeking technical assistance available through the technical assistance programs shall apply for technical assistance according to Articles 1 and 5 of this Chapter.

F. An applicant shall mark any confidential information with the words "confidential information" on each page of the material containing such information. A claim of confidential information may be asserted for a trade secret or information that, upon disclosure, would harm a person's competitive advantage. The Authority shall not disclose any information determined confidential. Upon receipt of a claim of confidential information, the Authority shall make one of the following written determinations:
1. The designated information is confidential and the Authority shall not disclose the information except to those individuals deemed by the Authority to have a legitimate interest.
2. The designated information is not confidential.
3. Additional information is required before a final confidentiality determination can be made.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new R18-15-103 renumbered from R18-15-102 and amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-104. General Financial Assistance Application Requirements

A. The applicant shall provide in the financial assistance application the information in subsections (B), (C), (D), and (E).

B. The applicant shall demonstrate the applicant is legally authorized to apply for long-term indebtedness, and is legally authorized to declare its intent to obligate a dedicated revenue source for repayment under subsection (C).
1. If the applicant is a political subdivision and the long-term indebtedness is authorized through an election, the applicant shall provide all of the following:

a. One copy of the sample election ballot and election pamphlet, if applicable,
b. One copy of the governing body resolution calling for the election, and
c. Official evidence of the election results following the election.

2. If the applicant is a political subdivision and the long-term indebtedness is not required by law to be authorized through an election, the applicant shall provide one copy of the approved governing body resolution authorizing the application for long-term indebtedness and an identification of the dedicated revenue source.
3. If the applicant is a political subdivision and the long-term indebtedness is authorized through a special taxing district creation process, the applicant shall provide one copy of the final documentation, notices, petitions, and related information authorizing the long-term indebtedness.
4. If the applicant is regulated by the Arizona Corporation Commission, the applicant shall provide evidence that the financial assistance from the Authority to the applicant is authorized by the Arizona Corporation Commission.
5. All other applicants shall demonstrate that a majority of the beneficiaries consent to apply to the Authority for financial assistance. The Authority shall assist each applicant to devise a process by which this consent is documented.

C. The applicant shall identify a dedicated revenue source for repayment of the financial assistance and demonstrate that the dedicated revenue source is sufficient to repay the financial assistance.

1. The applicant shall provide the following information:
   a. Amount of the financial assistance requested;
   b. One copy of each financial statement, audit, or comprehensive financial statement from at least the previous three financial operating years (fiscal or calendar);
   c. One copy of each budget, business plan, management plan, or financial plan from the current financial operating years (fiscal or calendar);
   d. One copy of the proposed budget, business plan, management plan, or financial plan for the next financial operating year (fiscal or calendar);
   e. Documentation of current rates and fees for drinking or wastewater services including, as applicable, any resolutions related to rates and fees passed by the governing body of a political subdivision; and
   f. Copies of documentation relating to outstanding indebtedness pledged to the dedicated source for repayment, including official statements, financial assistance agreements, and amortization schedules.
2. If any of the required information listed in subsection (C)(1) is not available, the Authority may assist the applicant in determining alternative documentation to support the applicant's financial capability.
3. The Authority may ask for additional financial information as necessary to evaluate the applicant's financial capability.

D. The applicant shall demonstrate the applicant is technically capable to construct, operate, and maintain the proposed project.

1. The applicant shall provide the following information:
   a. An estimate of the project costs in as much detail as possible, including an estimate of applicable planning, design, construction, and material costs;
   b. The number of connections to be served by the proposed project;
   c. The most recent version of the applicant's capital improvement plan or other plan explaining proposed infrastructure investments;
   d. One copy of each feasibility study, engineering report, design memorandum, set of plans and specifications, and other technical documentation related to the proposed project and determined applicable by the Authority for the stage of project completion;
   e. Biographies or related information of the certified operators, system employees, or contractors employed by the applicant to operate and maintain the existing facilities and the proposed project;
   f. A description of the service area, including maps; and
   g. A description of the existing physical facilities.
2. The Authority may ask for additional information as necessary to evaluate the applicant's technical capability.

E. The applicant shall demonstrate the applicant is capable of managing the system and the proposed project.

1. The applicant shall provide the following information:
   a. Years of experience and related information regarding the owners, managers, chief elected officials, and governing body members of the applicant; and
   b. A list of professional and outside services retained by the applicant.
2. If any of the required information listed in subsection (E)(1) is not available, the Authority may assist the applicant in determining alternative documentation to support the applicant's managerial capability.
3. The Authority may ask for additional information as necessary to evaluate the applicant's managerial capability.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-105. General Financial Assistance Conditions

A. The Authority shall not execute a financial assistance agreement with an applicant until the applicant provides all documentation specified by the Authority.

B. The documentation required prior to execution of the financial assistance agreement shall at a minimum include:

1. If there is a governing body, one copy of the governing body resolution approving the execution of the financial assistance agreement,
2. A project budget, and
3. An estimated disbursement schedule.

C. The financial assistance agreement between the recipient and the Authority shall at a minimum specify:

1. Rates of interest, fees, and any costs as determined by the Authority;
2. Project details;
3. The maximum amount of principal and interest due on any payment date;
4. Debt service coverage requirements;
5. Reporting requirements;
6. Debt service reserve fund and repair and replacement reserve fund requirements;
7. The dedicated source for repayment and pledge;
8. The requirement that the recipient comply with applicable federal, state and local laws;

9. A schedule for repayment; and
10. Any other agreed-upon conditions.

D. The Authority may require a recipient to pay a proportionate share of the expenses of the Authority's operating costs.

E. The recipient shall maintain the project account in accordance with generally accepted government accounting standards. After reasonable notice by the Authority, the recipient shall make available any project records reasonably required to determine compliance with the provisions of this Chapter and the financial assistance agreement.

F. The Authority shall release loan proceeds subject to a disbursement request if the request is consistent with the financial assistance agreement and the disbursement schedule.

1. The applicant shall submit each disbursement request on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, a cost-incurred report, and a DBE report. The Authority shall not process a disbursement until the applicant provides a completed disbursement form.
2. The applicant shall include copies of invoices or other documents that show proof of eligible costs incurred with each disbursement request.

G. The recipient shall make repayments according to an agreed-upon schedule in the financial assistance agreement. The Authority may charge a late fee for any loan repayment not paid when due. The Authority may refer any loan repayment past due to the Office of the Attorney General for appropriate action.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-106. Environmental Review

A. The Authority shall conduct an environmental review according to this Section for impacts of the design or construction of water infrastructure. As part of the application process, the Authority shall request information from the applicant to conduct an environmental review consistent with 40 CFR 35.3140 and 40 CFR 35.3580. The Authority shall determine whether the project meets the criteria for categorical exclusion under subsections (B) and (C), or whether the project requires the preparation of an environmental assessment (EA) or an environmental impact statement (EIS) to identify and evaluate its environmental impacts.

1. The Authority shall not execute a technical or financial assistance agreement with an applicant until the requirements of this section are met. For projects that include an environmental information document or an environmental impact statement, the Authority may execute a technical or financial assistance agreement with an applicant prior to the completion of the conditions of this section, provided that the applicant meets the requirements of this section before proceeding with the design of the selected alternative.
2. Projects under the Water Supply Development Revolving Fund Program are not subject to the requirements of this section.

B. A project may be categorically excluded from environmental review if the project fits within a category that is eligible for exclusion and the project does not involve any of the extraordinary circumstances listed in subsection (C). If, based on the application and other information submitted by the applicant, the Authority determines that a categorical exclusion from an environmental review is warranted, the project is exempt from the requirements of this Section, except for the public notice and participation requirements in subsection (J). The Authority may issue a categorical exclusion if information and documents demonstrate that the project qualifies under one or more of the following categories:

1. Any project relating to existing infrastructure systems that involves minor upgrading, minor expansion of system capacity, rehabilitation (including functional replacement) of the existing system and system components, or construction of new minor ancillary facilities adjacent to or on the same property as existing facilities. This category does not include projects that:
   a. Involve new or relocated discharges to surface water or groundwater,
   b. Will likely result in the substantial increase in the volume or the loading of pollutant to the receiving water,
   c. Will provide capacity to serve a population 30% greater than the existing population,
   d. Are not supported by the state or other regional growth plan or strategy, or
   e. Directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development.
2. Any clean water project in unsewered communities involving the replacement of existing onsite systems, providing the new onsite systems do not result in substantial increases in the volume of discharge or the loadings of pollutants from existing sources, or relocate an existing discharge.

C. The Authority shall deny a categorical exclusion if any of the following extraordinary circumstances apply to the project:

1. The project is known or expected to have potentially significant adverse environmental impacts on the quality of the human environment either individually or cumulatively over time.
2. The project is known or expected to have disproportionately high and adverse human health or environmental effects on any community, including minority communities, low-income communities, or federally-recognized Indian tribal communities.
3. The project is known or expected to significantly affect federally listed threatened or endangered species or their critical habitat.
4. The project is known or expected to significantly affect national natural landmarks or any property with nationally significant historic, architectural, prehistoric, archaeological, or cultural value, including but not limited to, property listed on or eligible for the Arizona or National Registers of Historic Places.
5. The project is known or expected to significantly affect environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, wild and scenic rivers, and significant fish or wildlife habitat.
6. The project is known or expected to cause significant adverse air quality effects.
7. The project is known or expected to have a significant effect on the pattern and type of land use or growth and distribution of population, including altering the character of existing residential areas, or may not be consistent with state or local government, or federally-recognized

Indian tribe approved land use or federal land management plans.

8. The project is known or expected to cause significant public controversy about a potential environmental impact of the proposed action.
9. The project is known or expected to be associated with providing financial assistance to a federal agency through an interagency agreement for a project that is known or expected to have potentially significant environmental impacts.
10. The project is known or expected to conflict with federal, state, or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws or regulations.

D. If the Authority denies the categorical exclusion under subsection (C), the Authority shall conduct an EA according to subsection (E), unless the Authority decides to prepare an EIS according to subsections (F) and (G) without first undertaking an EA. If the Authority conducts an EA, the applicant shall:

1. Prepare an environmental information document (EID) in a format prescribed by the Authority. The EID shall be of sufficient scope to undertake an environmental review and to allow development of an EA under subsection (E); or
2. Provide documentation, upon Authority approval, in another format if the documentation is of sufficient scope to allow the development of an EA under subsection (E).

E. The Authority shall conduct the EA that includes:

1. A brief discussion of:
   a. The need for the project;
   b. The alternatives, including a no action alternative;
   c. The affected environment, including baseline conditions that may be impacted by the project and alternatives;
   d. The environmental impacts of the project and alternatives, including any unresolved conflicts concerning alternative uses of available resources; and
   e. Other applicable environmental laws.
2. A listing or summary of any coordination or consultation undertaken with any federal agency, state or local government, or federally-recognized Indian tribe regarding compliance with applicable laws and executive orders;
3. Identification and description of any mitigation measures considered, including any mitigation measures that must be adopted to ensure the project will not have significant impacts; and
4. Incorporation of documents by reference, if appropriate, including the EID.

F. Upon completion of the EA required by subsection (E), the Authority shall determine whether an environmental impact statement (EIS) is necessary.

1. The Authority shall prepare or direct the applicant to prepare an EIS in the manner prescribed in subsection (G) if any of the following conditions exist.
   a. The project would result in a discharge of treated effluent from a new or modified existing facility into a body of water and the discharge is likely to have a significant effect on the quality of the receiving water.
   b. The project is likely to directly, or through induced development, have significant adverse effect upon local ambient air quality or local ambient noise levels.
   c. The project is likely to have significant adverse effects on surface water reservoirs or navigation projects.
   d. The project would be inconsistent with state or local government, or federally-recognized Indian tribe approved land use plans or regulations, or federal land management plans.
   e. The project would be inconsistent with state or local government, or federally-recognized Indian tribe environmental, resource-protection, or land-use laws and regulations for the protection of the environment.
   f. The project is likely to significantly affect the environment through the release of radioactive, hazardous, or toxic substances, or biota.
   g. The project involves uncertain environmental effects or highly unique environmental risks that are likely to be significant.
   h. The project is likely to significantly affect national natural landmarks or any property on or eligible for the Arizona or National Registers of Historic Places.
   i. The project is likely to significantly affect environmentally important natural resources such as wetlands, significant agricultural lands, aquifer recharge zones, wild and scenic rivers, and significant fish or wildlife habitat.
   j. The project in conjunction with related federal, state, or local government, or federally-recognized Indian tribe projects is likely to produce significant cumulative impacts.
   k. The project is likely to significantly affect the pattern and type of land use or growth and distribution of population, including altering the character of existing residential areas.
   l. The project is a new regional wastewater treatment facility or water supply system for a community with a population greater than 100,000.
   m. The project is an expansion of an existing wastewater treatment facility that will increase existing discharge to an impaired water by more than 10 million gallons per day (mgd).
2. The Authority may issue a finding of no significant impact (FONSI) if the EA supports the finding that the project will not have a significant impact on the environment. The FONSI shall include the submitted EA and a brief description of the project, alternatives considered, and project impacts. The FONSI must also include any commitments to mitigation that are essential to render the impacts of the project not significant. The Authority shall issue the FONSI for public comment in accordance with subsection (J).

G. The Authority shall prepare or direct the applicant to prepare an EIS required by subsection (F)(1) when the project will significantly impact the environment, including any project for which the EA analysis demonstrates that significant impacts will occur and not be reduced or eliminated by changes to, or mitigation of, the project. The Authority shall perform the following actions:

1. As soon as practicable after its decision to prepare an EIS and before the scoping process, the Authority shall prepare a notice of intent. The notice of intent shall briefly describe the project and possible alternatives and the proposed scoping process. The Authority shall distribute the notice of intent to affected federal, state, and local agencies, any affected Indian tribe, the applicant, and other interested parties. The Authority shall issue the notice of intent for public comment in accordance with subsection (J)(3).

2. As soon as possible after the distribution and publication of the notice of intent required by subsection (G)(1), the Authority shall convene a meeting of affected federal, state, and local agencies, affected Indian tribes, the applicant, and other interested parties. At the meeting, the parties attending the meeting shall determine the scope of the EIS by considering a number of factors, including all of the following:
   a. The significant issues to be analyzed in depth in the EIS,
   b. The preliminary range of alternatives to be considered,
   c. The potential cooperating agencies and information or analyses that may be needed from cooperating agencies or other parties, and
   d. The method for EIS preparation and the public participation strategy.
3. Upon completion of the process described in subsection (G)(2), the Authority shall identify and evaluate all potentially viable alternatives to adequately address the range of issues identified. Additional issues also may be addressed, or others eliminated, and the reasons documented as part of the EIS.
4. After the analysis of issues is conducted according to subsection (G)(3), the Authority shall issue a draft EIS for public comment according to subsection (J)(4).
5. Following public comment according to subsection (J), the Authority shall prepare a final EIS, consisting of all of the following:
   a. The draft EIS;
   b. An analysis of all reasonable alternatives and the no action alternative;
   c. A summary of any coordination or consultation undertaken with any federal, state, or local government, or federally-recognized Indian tribe;
   d. A summary of the public participation process;
   e. Comments received on the draft EIS;
   f. A list of persons commenting on the draft EIS;
   g. The Authority's responses to significant comments received;
   h. A determination of consistency with the Certified Water Quality Management Plan, if applicable;
   i. The names and qualifications of the persons primarily responsible for preparing the EIS; and
   j. Any other information added by the Authority.
6. The Authority shall prepare or direct the applicant to prepare a supplemental EIS when appropriate, including when substantial changes are made to the project that are relevant to environmental concerns, or when there are significant new circumstances or information relevant to environmental concerns bearing on the project.

H. After issuance of a final EIS under subsection (G)(5), the Authority shall prepare and issue a record of decision (ROD) containing the Authority's decision whether to proceed or not proceed with a project. A ROD issued with a decision to proceed shall include a brief description of the project, alternatives considered, and project impacts. In addition, the ROD must include any commitments to mitigation, an explanation if the environmental preferred alternative was not selected, and any responses to substantive comments on the final EIS. A ROD issued with a decision not to proceed shall preclude the project from receiving financial assistance under this Article.

I. For all determinations (categorical exclusions, FONSIs, or RODs) that are five years old or older and for which the project has not been implemented, the Authority shall re-evaluate the project, environmental conditions, and public views to determine whether to conduct a supplemental environmental review of the project and complete an appropriate environmental review document or reaffirm the Authority's original determination. The Authority shall provide public notice of the re-evaluation according to subsection (J)(5).

J. The Authority shall conduct public notice and participation under this Section as follows:
1. If a categorical exclusion is granted under subsection (B), the Authority shall provide public notice of that fact by publishing the notice as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned.
2. If a FONSI is issued under subsection (F)(2), the Authority shall provide public notice that the FONSI is available for public review by publishing the notice as a legal notice at least once in one or more newspapers of general circulation in the county or counties concerned. The notice shall provide that comments on the FONSI may be submitted to the Authority for a period of 30 days from the date of publication of the notice. If no comments are received, the FONSI shall immediately become effective. The Authority may proceed with the project subject to any mitigation measures described in the FONSI after responding to any substantive comments received on the FONSI during the 30-day comment period, or 30 days after issuance of the FONSI if no substantive comments are received.
3. If a notice of intent is prepared and distributed under subsection (G)(1), the Authority shall publish it as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned.
4. If a draft EIS is issued under subsection (G)(4), the Authority shall provide public notice by publishing the notice as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned, that the draft EIS is available for public review. The notice shall provide that comments on the draft EIS may be submitted to the Authority for a period of 45 days from the date of publication of the notice. When the Authority determines that a project may be controversial, the notice shall provide for a general public hearing to receive public comments.
5. If the Authority reaffirms or revises a decision according to subsection (I), the Authority shall provide public notice of that fact by publishing the notice as a legal notice at least once, in one or more newspapers of general circulation in the county or counties concerned.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section repealed; new R18-15-106 renumbered from R18-15-107 and amended at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-107. Disputes

A. Any interested party having a substantial financial interest in or suffering a substantial adverse financial impact from an action taken under this Chapter, excluding actions taken under R18-15-503, R18-15-504, and R18-15-505, may file a formal letter of dispute with the executive director according to subsections (B), (C), (D), and (E). Any interested party having a substantial financial interest in or suffering a substantial

adverse financial impact from an action taken under R18-15-503, R18-15-504 or R18-15-505 shall proceed under R18-15-503(H), R18-15-504(H) or R18-15-505(H), as applicable.

B. The interested party shall file the formal letter of dispute with the executive director within 30 days of the action and provide a copy to each member of the Board. The formal letter of dispute shall include the following information:

1. The name, address, and telephone number of the interested party;
2. The signature of the interested party or the interested party's representative;
3. A detailed statement of the legal and factual grounds of the dispute including:
   a. Copies of relevant documents, and
   b. The nature of the substantial financial interest or the nature of the substantial adverse financial impact of the interested party; and
4. The form of relief requested.

C. Within 30 days of receipt of a dispute letter, the Authority shall issue a preliminary decision in writing, to be forwarded by certified mail to the party.

D. Any party filing a dispute under subsection (B) that disagrees with a preliminary decision of the Authority may file a formal letter of appeal, explaining why the party disagrees with the preliminary decision, with the Board, provided the letter is received by the executive director not more than 15 days after the receipt by the party of the preliminary decision.

E. The Board shall issue a final decision on issues appealed under subsection (D) not more than 60 days after receipt of the formal letter of appeal.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Former R18-15-107 renumbered to R18-15-106; new R18-15-107 renumbered from R18-15-112 and amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-108. Repealed

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Section repealed; new Section R18-15-108 renumbered from R18-15-109 by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-109. Repealed

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Former Section R18-15-109 renumbered to R18-15-108; new Section R18-15-109 renumbered from R18-15-110 by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-110. Repealed

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Former Section R18-15-110 renumbered to R18-15-111; new Section adopted effective June 4, 1998 (Supp. 98-2). Former Section R18-15-110 renumbered to R18-15-109; new Section R18-15-110 renumbered from R18-15-111 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-111. Repealed

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Former Section R18-15-111 renumbered to R18-15-112; new Section R18-15-111 renumbered from R18-15-110 and amended effective June 4, 1998 (Supp. 98-2). Former Section R18-15-111 renumbered to R18-15-110; new Section R18-15-111 renumbered from R18-15-112 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-112. Renumbered

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Former Section R18-15-112 renumbered to R18-15-113; new Section R18-15-112 renumbered from R18-15-111 (Supp. 98-2). Former Section R18-15-112 renumbered to R18-15-111; new Section R18-15-112 renumbered from R18-15-113 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Former R18-15-112 renumbered to R18-15-107 by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-113. Renumbered

Historical Note

Section R18-15-113 renumbered from R18-15-112 (Supp. 98-2). Section R18-15-113 renumbered to R18-15-112 by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4).

ARTICLE 2. CLEAN WATER REVOLVING FUND

R18-15-201. Clean Water Revolving Fund Financial Assistance Eligibility Criteria

To receive financial assistance from the Clean Water Revolving Fund, the applicant shall demonstrate the applicant is eligible under A.R.S. § 49-1224(A) to request financial assistance for a purpose as defined in A.R.S. § 49-1223(A); the proposed project is to design, construct, acquire, improve, or refinance a publicly owned wastewater treatment facility, or for any other purpose permitted by the Clean Water Act including nonpoint source projects; and the proposed project appears on the Clean Water Revolving Fund Project Priority List developed under R18-15-203.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-202. Clean Water Revolving Fund Intended Use Plan

A. The Authority annually shall develop and publish a Clean Water Revolving Fund Intended Use Plan that identifies the intended uses of funds available in the Clean Water Revolving Fund Program. The Intended Use Plan shall include the project priority list according to R18-15-203. If the Intended Use Plan

is to be submitted as one of the documents required to obtain a federal capitalization grant under Title VI of the Clean Water Act, 33 U.S.C. 1381 to 1387, the Intended Use Plan shall include any additional information required by federal law.

B. The Authority shall provide for a public review and written comment period of the draft Clean Water Revolving Fund Intended Use Plan for a minimum of 14 calendar days. The Authority shall summarize all written comments submitted and prepare responses for Board review. After review of the summary, the Board shall make any appropriate changes to the Plan and then adopt the Clean Water Revolving Fund Intended Use Plan at a public meeting.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new R18-15-202 renumbered from R18-15-203 and amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-203. Clean Water Revolving Fund Project Priority List

A. The Authority annually shall prepare a Clean Water Revolving Fund Project Priority List as part of the Intended Use Plan described in R18-15-202. The Board may waive the requirement to develop a Clean Water Revolving Fund Project Priority List if funds are not adequate to assist any projects or if the Board determines that no financial assistance will be offered for the annual funding cycle.

B. An applicant pursuing financial assistance from the Authority for a project shall request to have the project included on the Clean Water Revolving Fund Project Priority List. The applicant may request that multiple projects be placed on the Clean Water Revolving Fund Project Priority List. An applicant shall make a request for placement of a project on the Clean Water Revolving Fund Project Priority List on or before a date specified by the Authority and in an application format specified by the Authority. The Authority shall include with the project priority list application form the criteria under each ranking category in R18-15-204(A), by which the project will be evaluated and the relative importance of each of the criterion.

C. In preparing the Clean Water Revolving Fund Project Priority List, the Authority shall consider all project priority list applications submitted under subsection (B). The Authority shall evaluate the merits of each project with respect to water quality issues and determine the total points of each project according to R18-15-204. At a minimum, the Clean Water Revolving Fund Project Priority List shall identify:

1. The applicant,
2. Project title,
3. Type of project,
4. The amount requested for financial assistance,
5. The subsidy according to R18-15-204(C),
6. Whether the project is within the fundable range according to R18-15-205, and
7. The rank of each project by its total points, determined according to R18-15-204.

D. After adoption of the annual Intended Use Plan and project priority list according to R18-15-202, the Board may allow:

1. Updates and corrections to the adopted Clean Water Revolving Fund Project Priority List, if the updates and corrections are adopted by the Board after public notice; or
2. Additions to the Clean Water Revolving Fund Project Priority List, if the additions are adopted by the Board after public notice.

E. After public notice, the Board may remove a project from the Clean Water Revolving Fund Project Priority List under one or more of the following circumstances:

1. The recipient has received all financial assistance identified in the executed financial assistance agreement with the Authority;
2. The project was financed from another source;
3. The project is no longer an eligible project;
4. The applicant requests removal;
5. The applicant is no longer an eligible applicant; or
6. The applicant did not update, modify, correct or resubmit a project from the project priority list developed for the previous funding cycle.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Former R18-15-203 renumbered to R18-15-202; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-204. Clean Water Revolving Fund Project Priority List Ranking

A. The Authority shall rank each project on the Clean Water Revolving Fund Project Priority List based on the total points of each project. The Authority shall consider the following categories to determine the total points of each project:

1. The Authority shall evaluate the current conditions of the project, including existing environmental, structural, and regulatory integrity and the degree to which the project is consistent with the Clean Water Act, 33 U.S.C. 1251 to 1387.
2. The Authority shall evaluate the degree to which the project improves or protects water quality.
3. The Authority shall evaluate the degree to which the project addresses water or energy efficiency or environmentally innovative approaches.
4. The Authority shall evaluate the degree to which the project promotes any of the following:
   a. Consolidation of facilities, operations, and ownership;
   b. Extending service to existing areas currently served by another facility; or
   c. A regional approach to operations, management, or new facilities.
5. The Authority shall determine whether the project received assistance from the Authority in a previous funding cycle.
6. The Authority shall evaluate the applicant's local fiscal capacity.

B. Two or more projects may receive the same total points. If sufficient clean water revolving loan funds are not available to fund the projects, the Authority shall give priority to the project with the highest current condition score under subsection (A)(1). If projects remain tied, priority will be given to the project with the highest water quality improvement score under subsection (A)(2). If projects remain tied, this process shall continue through the categories under subsections (A)(3) through (6), sequentially. If projects continue to have the same total points, the Board shall determine the priority of the tied projects.

C. The Authority shall determine the subsidy for each project on the Clean Water Revolving Fund Project Priority List based on the applicant's local fiscal capacity score under subsection

(A)(6) and the total points of the project. The Authority shall incorporate the subsidy in the financial assistance agreement.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-205. Clean Water Revolving Fund Fundable Range for Financial Assistance

A. Prior to adoption by the Board of the Clean Water Revolving Fund Project Priority List, the Authority shall determine which projects are within the fundable range.

B. In determining the fundable range, the Authority shall evaluate each project for evidence of debt authorization according to R18-15-104(B).

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Section repealed; new Section R18-15-205 renumbered from R18-15-206 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-206. Clean Water Revolving Fund Application for Financial Assistance

A. The Authority shall accept an application for financial assistance from an eligible applicant for a project that appears on the Clean Water Revolving Fund Project Priority List and is determined to be in the fundable range. At the Authority's discretion, the Authority may accept an application for financial assistance prior to the project appearing on a Board-adopted Clean Water Revolving Fund Project Priority List and in the fundable range.

B. The Authority shall not present an application to the Board for consideration until all the following conditions are met:

1. The project is on the Clean Water Revolving Fund Project Priority List, including the Project Priority List to be adopted at the Board meeting;
2. The applicant has provided supporting documentation according to R18-15-205(B);
3. The applicant has demonstrated legal capability, financial capability, technical capability, and managerial capability as described in R18-15-104;
4. For nonpoint source projects, the applicant has provided evidence that the project is consistent with Section 319 and Title VI of the Clean Water Act, 33 U.S.C. 1329, 1381 to 1387; and
5. The proposed project is consistent with the Certified Water Quality Management Plan.

C. The application criteria required under subsections (A) and (B) shall not apply to financial assistance requests for short-term emergency loans under A.R.S. § 49-1269.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Former Section R18-15-206 renumbered to R18-15-205; new Section R18-15-206 made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-207. Clean Water Revolving Fund Application Review for Financial Assistance

A. The Authority shall evaluate and summarize each application received and develop an analysis that provides recommendations to the Board. The analysis shall at a minimum include:

1. The scope, size, and budget of the proposed project, including as much cost detail as possible;
2. A summary of the applicant's legal capability including authorization to enter into long-term indebtedness and to pledge the specified dedicated revenue source for repayment;
3. A summary of the applicant's technical capability including its ability to construct, operate, and maintain the proposed project;
4. A summary of the applicant's managerial capability, including the experience of elected officials and management team in managing similar organizations and similar projects;
5. A summary of the applicant's financial capability, including:
   a. The amount of money collected through the dedicated revenue source for repayment for each of the previous three financial operating years (fiscal or calendar),
   b. An estimate of the amount of money that will be collected through the dedicated revenue source for repayment for the current financial operating year (fiscal or calendar), and
   c. A projection of the amount of money that will be collected through the dedicated revenue source for repayment for each of the next five financial operating years (fiscal or calendar);
6. The applicant's history of compliance with, as applicable, the Clean Water Act, 33 U.S.C. 1251 to 1387, related Arizona statutes, and related rules, regulations, and policies; and
7. A summary of any previous assistance provided by the Authority to the applicant.

B. After an opportunity for public comment, the Board shall make a determination regarding the applicant's request for financial assistance at a public meeting. The Board shall base this determination on the information provided in the application, the analysis prepared by the Authority, and any other information provided at the public meeting. The Authority shall inform the applicant of the Board's determination, which may include recommended modifications to any of the following:

1. The proposed project,
2. The applicant's legal structure and organization,
3. The dedicated revenue source for repayment, or
4. The structure of the financial assistance request.

C. If the Board determines at any time during a funding cycle that funds are limited or are not available to provide financial assistance, the Authority shall notify applicants on the current Clean Water Revolving Fund Project Priority List that the Authority is no longer accepting applications. The Board shall determine the amount of funding available, if any, to provide financial assistance for the applications already accepted by the Authority. The Board shall consider each application in the order the project appears within the fundable range on the current Clean Water Revolving Fund Project Priority List. The Board shall make a determination as described in subsection (B) on each application until the available funds are committed.

D. Upon Board approval of the applicant's request for financial assistance, the Authority shall prepare a financial assistance agreement for execution by the applicant and the Authority.

Historical Note
Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-208. Clean Water Revolving Fund Requirements

A. The duly authorized agent, principal or officer of the applicant shall certify that the applicant has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practices relating to or in connection with facilities planning, design, or construction work on a wastewater treatment facility project.

B. All projects shall comply with the provisions of the Civil Rights Act of 1964, P.L. 88-352, 42 U.S.C. 2000d et seq., and all other applicable federal laws.

Historical Note
Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

ARTICLE 3. DRINKING WATER REVOLVING FUND

R18-15-301. Drinking Water Revolving Fund Financial Assistance Eligibility Criteria

To be eligible to receive financial assistance from the Drinking Water Revolving Fund, the applicant shall demonstrate that the applicant is a drinking water facility as defined by A.R.S. § 49-1201 requesting financial assistance for a purpose as defined in A.R.S. § 49-1243(A); the proposed project is to plan, design, construct, acquire, or improve a drinking water facility or refinance an eligible drinking water facility; and the proposed project appears on the Drinking Water Revolving Fund Project Priority List developed under R18-15-303.

Historical Note
Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-302. Drinking Water Revolving Fund Intended Use Plan

A. The Authority annually shall develop and publish a Drinking Water Revolving Fund Intended Use Plan that identifies the intended uses of funds available in the Drinking Water Revolving Fund Program. The Intended Use Plan shall include the project priority list according to R18-15-303. If an Intended Use Plan is to be submitted as one of the documents required to obtain a federal capitalization grant under the Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26, the Intended Use Plan shall include any additional information required by federal law.

B. The Authority shall provide for a public review and written comment period of the draft Drinking Water Revolving Fund Intended Use Plan for a minimum of 14 calendar days. The Authority shall summarize all written comments submitted and prepare responses for Board review. After review of the summary, the Board shall make any appropriate changes to the Plan and then adopt the Drinking Water Revolving Fund Intended Use Plan at a public meeting.

Historical Note
Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new R18-15-302 renumbered from R18-15-303 and amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-303. Drinking Water Revolving Fund Project Priority List

A. The Authority annually shall prepare a Drinking Water Revolving Fund Project Priority List as part of the Intended Use Plan described in R18-15-302. The Board may waive the requirement to develop an annual Drinking Water Revolving Fund Project Priority List if funds are not adequate to assist any projects or if the Board determines that no financial assistance will be offered for the annual funding cycle.

B. An applicant pursuing financial assistance from the Authority for a project shall request to have the project included on the Drinking Water Revolving Fund Project Priority List. The applicant may request that multiple projects be placed on the Drinking Water Revolving Fund Project Priority List. An applicant shall make a request for placement of a project on the Drinking Water Revolving Fund Project Priority List on or before a date specified by the Authority and in an application format specified by the Authority. The Authority shall include with the project priority list application form the criteria under each ranking category in R18-15-304(A) by which the project will be evaluated and the relative importance of each of the criterion.

C. In preparing the Drinking Water Revolving Fund Project Priority List, the Authority shall consider all project priority list applications submitted under subsection (B). The Authority shall evaluate the merits of each project with respect to water quality issues and determine the total points of each project according to R18-15-304. At a minimum, the Drinking Water Revolving Fund Project Priority List shall identify:

1. The applicant;
2. Project title;
3. Type of project;
4. Population of service area;
5. The amount requested for financial assistance;
6. The subsidy according to R18-15-304(C);
7. Whether the project is within the fundable range according to R18-15-305; and
8. The rank of each project by its total points, determined according to R18-15-304.

D. After adoption of the annual Intended Use Plan and project priority list according to R18-15-302, the Board may allow:

1. Updates and corrections to the adopted Drinking Water Revolving Fund Project Priority List, if the updates and corrections are adopted by the Board after public notice; or
2. Additions to the Drinking Water Revolving Fund Project Priority List, if the additions are adopted by the Board after public notice.

E. After public notice, the Board may remove a project from the Drinking Water Revolving Fund Project Priority List under one or more of the following circumstances:

1. The recipient has received all financial assistance identified in the executed financial assistance agreement with the Authority;

2. The project was financed from another source;
3. The project is no longer an eligible project;
4. The applicant requests removal;
5. The applicant is no longer an eligible applicant; or
6. The applicant did not update, modify, correct or resubmit a project from the project priority list developed for the previous funding cycle.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Former R18-15-303 renumbered to R18-15-302; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-304. Drinking Water Revolving Fund Project Priority List Ranking

A. The Authority shall rank each project listed on the Drinking Water Revolving Fund Project Priority List based on the total points of each project. The Authority shall consider the following categories to determine the total points of each project:
1. The Authority shall evaluate the current conditions of the system through the system's scores on the Department's master priority list.
2. The Authority shall evaluate the degree to which the project will result in improvement to the water system.
3. The Authority shall evaluate the degree to which the project addresses water or energy efficiency or environmentally innovative approaches.
4. The Authority shall evaluate the degree to which the project promotes any of the following:
   a. Consolidation of facilities, operations, and ownership;
   b. Extending service to existing areas currently served by another facility; or
   c. A regional approach to operations, management, or new facilities.
5. The Authority shall determine whether the project received assistance from the Authority in a previous funding cycle.
6. The Authority shall evaluate the applicant's local fiscal capacity.

B. Two or more projects may receive the same total points. If sufficient clean water revolving loan funds are not available to fund the projects, the Authority shall give priority to the project with the highest current condition score under subsection (A)(1). If projects remain tied, priority will be given to the project with the highest water system improvement score under subsection (A)(2). If projects remain tied, this process shall continue through the categories under subsections (A)(3) through (6), sequentially. If projects continue to have the same total points, the Board shall determine the priority of the tied projects.

C. The Authority shall determine the subsidy for each project on the Drinking Water Revolving Fund Project Priority List based on the applicant's local fiscal capacity score and the total points of the project. The Authority shall incorporate the subsidy in the financial assistance agreement.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-305. Drinking Water Revolving Fund Fundable Range for Financial Assistance

A. Prior to adoption by the Board of the Drinking Water Revolving Fund Project Priority List, the Authority shall determine which projects are within the fundable range.

B. In determining the fundable range the Authority shall evaluate each project for evidence of debt authorization according to R18-15-104(B).

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Former Section R18-15-305 repealed; new Section R18-15-305 renumbered from R18-15-306 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-306. Drinking Water Revolving Fund Application for Financial Assistance

A. The Authority shall accept an application for financial assistance from an eligible applicant for a project that appears on the Drinking Water Revolving Fund Project Priority List and is determined to be within the fundable range. At the Authority's discretion, the Authority may accept an application for financial assistance prior to the project appearing on a Board-adopted Drinking Water Revolving Fund Project Priority List.

B. The Authority shall not present an application to the Board for consideration until all the following conditions are met:
1. The project is on the Drinking Water Revolving Fund Project Priority List, including the Project Priority List to be adopted at the Board meeting;
2. The applicant has provided supporting documentation according to R18-15-305(B); and
3. The applicant has demonstrated legal capability, financial capability, technical capability and managerial capability as described in R18-15-104.

C. The application criteria required under subsections (A) and (B) shall not apply to financial assistance requests for short-term emergency loans under A.R.S. § 49-1269.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Former Section R18-15-306 renumbered to R18-15-305; new Section R18-15-306 made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-307. Drinking Water Revolving Fund Application Review for Financial Assistance

A. The Authority shall evaluate and summarize each application received and develop an analysis that provides recommendations to the Board. At a minimum, the analysis shall include:
1. The scope, size, and budget of the proposed project, including as much cost detail as possible;
2. A summary of the applicant's legal capability, including authorization to enter into long-term indebtedness and to pledge the specified dedicated revenue source for repayment;

3. A summary of the applicant's technical capability, including its ability to construct, operate, and maintain the proposed project;
4. A summary of the applicant's managerial capability, including the experience of elected officials and management team in managing similar organizations and similar projects;
5. A summary of the applicant's financial capability, including:
   a. The amount of money collected through the dedicated revenue source for repayment for each of the previous three financial operating years (fiscal or calendar),
   b. An estimate of the amount of money that will be collected through the dedicated revenue source for repayment for the current financial operating year (fiscal or calendar), and
   c. A projection of the amount of money that will be collected through the dedicated revenue source for repayment for each of the next five financial operating years (fiscal or calendar);
6. The applicant's history of compliance with, as applicable, the Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26, related Arizona statutes, and related rules, regulations and policies; and
7. A summary of any previous assistance provided by the Authority to the applicant.

B. After an opportunity for public comment, the Board shall make a determination regarding the applicant's request for financial assistance at a public meeting. The Board shall base this determination on the information provided in the application, the analysis prepared by the Authority, and any other information provided at the public meeting. The Authority shall inform the applicant of the Board's determination, which may include recommended modifications to any of the following:
1. The proposed project,
2. The applicant's legal structure and organization,
3. The dedicated revenue source for repayment, or
4. The structure of the financial assistance request.

C. If the Board determines at any time during a funding cycle that funds are limited or are not available to provide financial assistance, the Authority shall notify applicants on the current Drinking Water Revolving Fund Project Priority List that the Authority is no longer accepting applications. The Board shall determine the amount of funding available, if any, to provide financial assistance for the applications already accepted by the Authority. The Board shall consider each application in the order the project appears within the fundable range on the current Drinking Water Revolving Fund Project Priority List. The Board shall make a determination as described in subsection (B) on each application until the available funds are committed.

D. Upon Board approval of the applicant's request for financial assistance, the Authority shall prepare a financial assistance agreement for execution by the applicant and the Authority.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-308. Drinking Water Revolving Fund Requirements

A. The duly authorized agent, principal or officer of the applicant shall certify the applicant has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practices relating to or in connection with facilities planning, design, or construction work on a project.

B. All projects shall comply with the provisions of the Civil Rights Act of 1964, P.L. 88-352, 42 U.S.C. 2000d et seq., and all other applicable federal laws.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

ARTICLE 4. WATER SUPPLY DEVELOPMENT REVOLVING FUND

R18-15-401. Water Supply Development Revolving Fund Financial Assistance Eligibility Criteria

To be eligible to receive financial assistance from the Water Supply Development Revolving Fund, the applicant shall demonstrate the applicant is a water provider as defined by A.R.S. § 49-1201(13) requesting financial assistance for a purpose as defined in A.R.S. § 49-1273(A); the water provider meets the requirements of A.R.S. § 49-1273(C); and the proposed project appears on the Water Supply Development Revolving Fund project list developed under R18-15-402.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-402. Water Supply Development Revolving Fund Project List

A. The Authority annually shall prepare a Water Supply Development Revolving Fund project list. The Authority is not required to prepare a Water Supply Development Revolving Fund project list if funds are not adequate to assist any projects or if the Board determines that no financial assistance will be offered for the annual funding cycle.

B. An applicant pursuing financial assistance from the Authority for a water supply development project shall request to have the project included on the Water Supply Development Revolving Fund project list. The applicant may request that multiple projects be placed on the Water Supply Development Revolving Fund project list. An applicant shall make a request for placement of a project on the Water Supply Development Revolving Fund project list on or before a date specified by the Authority and in an application format specified by the Authority. The Authority shall include with the project list application form the criteria under each ranking category in R18-15-403(A) by which the project will be evaluated and the relative importance of each of the criterion.

C. In preparing the Water Supply Development Revolving Fund project list, the Authority shall consider all project list applications submitted under subsection (B). The Authority shall evaluate the merits of each project with respect to water supply development issues and determine the order and priority of each project according to R18-15-403. At a minimum, the

Water Supply Development Revolving Fund project list shall identify:

1. The applicant;
2. Project title;
3. Population of water provider's service area;
4. The amount requested for financial assistance; and
5. The order and priority of each project, determined according to R18-15-403.

D. The Authority shall provide for a public comment period of the draft Water Supply Development Revolving Fund project list for a minimum of 14 calendar days. The Authority shall summarize all written comments submitted and prepare responses for Board review. After review of the summary, the Board shall make any appropriate changes to the project list and then adopt the Water Supply Development Revolving Fund project list at a public meeting.

E. After adoption of the annual project list, the Board may allow:

1. Updates and corrections to the adopted Water Supply Development Revolving Fund project list, if the updates and corrections are adopted by the Board after an opportunity for public notice; or
2. Additions to the Water Supply Development Revolving Fund project list, if the additions are adopted by the Board after an opportunity for public notice.

F. After an opportunity for public notice, the Board may remove a project from the Water Supply Development Revolving Fund project list under one or more of the following circumstances:

1. The recipient has received all financial assistance identified in the executed financial assistance agreement with the Authority;
2. The project was financed from another source;
3. The project is no longer an eligible project;
4. The applicant requests removal;
5. The applicant is no longer an eligible applicant; or
6. The applicant did not update, modify, correct or resubmit a project from the project list developed for the previous funding cycle.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Section repealed; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section R18-15-402 repealed; new Section R18-15-402 renumbered from R18-15-403 and amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-403. Water Supply Development Revolving Fund Project List Ranking

A. The Authority shall consider the following categories to determine the order and priority of each project on the Water Supply Development Revolving Fund project list.

1. The Authority shall evaluate the existing, near-term, and long-term water demands of the water provider as compared to the existing water supplies of the water provider.
2. The Authority shall evaluate the existing and planned conservation and water management programs of the water provider.
3. The Authority shall evaluate the current conditions of the water provider's facilities and the water provider's water supply needs, and evaluate how effectively the project will benefit the infrastructure or water supply needs.
4. The Authority shall evaluate the sustainability of the water supply to be developed through the project.
5. The Authority shall evaluate the applicant's need for financial assistance.

B. Two or more projects may receive the same total points. If sufficient water supply development revolving loan funds are not available to fund the projects, the Authority shall give priority to the project with the highest water demand score under subsection (A)(1). If projects remain tied, priority will be given to the project with the highest conservation and water management score under subsection (A)(2). If projects remain tied, this process shall continue through the categories under subsections (A)(3) through (5), sequentially. If projects continue to remain tied, the Board shall determine the priority of the tied projects.

Historical Note

Adopted effective September 18, 1997 (Supp. 97-3). Amended effective June 4, 1998 (Supp. 98-2). Section repealed by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section R18-15-403 renumbered to R18-15-402; new Section R18-15-403 renumbered from R18-15-404 and amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-404. Water Supply Development Revolving Fund Application for Financial Assistance

A. The Authority shall accept an application for financial assistance from an eligible applicant for a project that appears on the Water Supply Development Revolving Fund project list. At the Authority's discretion, the Authority may accept an application for financial assistance prior to the project appearing on a Board-adopted Water Supply Development Revolving Fund project list.

B. The Authority shall not forward an application for financial assistance to the Board for consideration until all the following conditions are met:

1. The water supply development project has been prioritized;
2. The applicant has provided supporting documentation according to R18-15-104;
3. The applicant has demonstrated legal capability, financial capability, technical capability, and managerial capability under R18-15-104; and
4. The applicant has demonstrated the ability to meet any applicable environmental requirements imposed by federal, state, or local agencies.

Historical Note

New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section R18-15-404 renumbered to R18-15-403; new Section R18-15-404 renumbered from R18-15-406 and amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-405. Water Supply Development Revolving Fund Application Review for Financial Assistance

A. The Authority shall evaluate and summarize each application for financial assistance received and develop an analysis that provides recommendations to the Board. The analysis shall at a minimum include:

1. The scope, size, and budget of the proposed project, including as much cost detail as possible;
2. A summary of the applicant's legal capability including authorization to enter into long-term indebtedness and to pledge the specified dedicated revenue source for repayment;

3. A summary of the applicant's technical capability, including its ability to construct, operate and maintain the proposed project;
4. A summary of the applicant's managerial capability, including the experience of elected officials and management team in managing similar organizations and similar projects;
5. A summary of the applicant's financial capability, including:
   a. The amount of money collected through the dedicated revenue source for repayment for each of the previous three financial operating years (fiscal or calendar),
   b. An estimate of the amount of money that will be collected through the dedicated revenue source for repayment for the current financial operating year (fiscal or calendar), and
   c. A projection of the amount of money that will be collected through the dedicated revenue source for repayment for each of the next five financial operating years (fiscal or calendar);
6. A summary of any previous assistance provided by the Authority to the applicant; and
7. A summary of the applicant's ability to meet any applicable permitting and environmental requirements imposed by federal, state, or local agencies.

B. The Board shall make a determination regarding the applicant's request for financial assistance at a public meeting. The Board shall base this determination on the information provided in the application, the analysis prepared by the Authority, and any other information provided at the public meeting. The Authority shall inform the applicant of the Board's determination, which may include recommended modifications to any of the following:
1. The proposed project,
2. The applicant's legal structure and organization,
3. The dedicated revenue source for repayment, or
4. The structure of the financial assistance request.

C. If the Board determines at any time during a funding cycle that funds are limited or are not available to provide financial assistance, the Authority shall notify applicants on the current Water Supply Development Revolving Fund project list that the Authority is no longer accepting applications. The Board shall determine the amount of funding available, if any, to provide financial assistance for the applications by the Authority. The Board shall consider each application in the order the project appears on the current Water Supply Development Revolving Fund project list. The Board shall make a determination as described in subsection (B) on each application until the available funds are committed.

D. Upon Board approval of the applicant's request for financial assistance, the Authority shall prepare a financial assistance agreement for execution by the applicant and the Authority.

Historical Note

New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section R18-15-405 repealed; new Section R18-15-405 renumbered from R18-15-407 and amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-406. Water Supply Development Revolving Fund Requirements

The duly authorized agent, principal or officer of the applicant shall certify the applicant has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practices relating to or in connection with facilities planning, design, or construction work on a project.

Historical Note

New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section R18-15-406 renumbered to R18-15-404; new Section R18-15-406 renumbered from R18-15-408 and amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-407. Renumbered

Historical Note

New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section R18-15-407 renumbered to R18-15-405 by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-408. Renumbered

Historical Note

New Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section R18-15-408 renumbered to R18-15-406 by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

ARTICLE 5. TECHNICAL ASSISTANCE

R18-15-501. Technical Assistance

The Authority may provide Clean Water technical assistance, Drinking Water technical assistance, and Water Supply Development technical assistance. The Authority shall provide technical assistance in compliance with A.R.S. § 49-1203(B)(16) and (17).

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Former R18-15-501 renumbered to R18-15-502; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-502. Technical Assistance Intended Use Plan

A. The Authority annually shall develop and publish one or more Technical Assistance Intended Use Plans that identify intended uses of funds available for Clean Water technical assistance and Drinking Water technical assistance. The Intended Use Plan shall identify whether funds are available and the amount of funds available for planning and design assistance, staff assistance, and professional assistance for Clean Water and Drinking Water. The Authority may develop Technical Assistance Intended Use Plans separately for Clean Water and Drinking Water or as parts of the Intended Use Plans required under R18-15-202 and R18-15-302. If the Technical Assistance Intended Use Plan is to be submitted as a document required to obtain a federal capitalization grant, the Technical Assistance Intended Use Plan shall include any additional information required by federal law.

B. The Authority shall provide for a public review and written comment period of any draft Technical Assistance Intended Use Plan for a minimum of 14 calendar days. The Authority shall summarize all written comments received and prepare responses. The Authority shall provide a summary of the written comments and the Authority's responses regarding the Clean Water and Drinking Water Technical Assistance

Intended Use Plans to the Board. After review of the comments and the Authority's responses to comments received during the public review and written comment period, the Board, as applicable, shall adopt the applicable Technical Assistance Intended Use Plan or Plans at a public meeting with any changes made in response to public comments or comments by members of the Board.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new R18-15-502 renumbered from R18-15-501 and amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-503. Clean Water Planning and Design Assistance

A. Planning and design assistance to a specific wastewater treatment facility shall assist that system to achieve or enhance its legal, financial, technical, or managerial capability to facilitate the design, construction, acquisition, improvement, or consolidation of the wastewater treatment facility. Projects for any other purpose permitted by the Clean Water Act including nonpoint source projects are also eligible. The Board shall approve funds available for planning and design assistance in the annual Clean Water Technical Assistance Intended Use Plan. The Board may determine that no assistance will be offered for the annual funding cycle.

B. To be eligible to receive planning and design assistance under the Clean Water Technical Assistance Program, the applicant shall demonstrate the applicant is eligible under R18-15-201. An eligible applicant shall apply for planning and design assistance on or before a date specified by the Authority and on an application form specified by the Authority.

C. An applicant shall commit to a matching contribution toward the total project cost as specified in the Request for Applications. The matching contribution may include cash contributions or in-kind contributions. The Board may waive or modify the applicant's match requirement according to criteria established in the Request for Applications.

D. The Authority shall solicit, evaluate, and award planning and design assistance in accordance with A.R.S. § 41-2702.

E. The Authority shall evaluate the applications received to determine which projects are eligible under the Clean Water Act, 33 U.S.C. 1381 to 1387. Eligible applications shall specify a demonstrated need of the applicant for assistance in securing financial assistance for development and implementation of a wastewater capital improvement project or stormwater or nonpoint source project.

F. The Authority shall determine planning and design assistance awards based on the amount of funding available. If funding is limited, all eligible projects may not be funded. The Authority shall provide the planning and design assistance award recommendations to the Board for review and approval at a public meeting. The Board may adopt, modify, or reject the Authority's recommendations in whole or in part.

G. Within 30 days after the adoption of the planning and design assistance awards at a public meeting, the Authority shall notify all applicants whether or not they received an award.

H. An unsuccessful applicant may submit an appeal in writing in accordance with A.R.S. § 41-2704.

I. The Authority and the applicant shall enter into a planning and design assistance agreement that shall include at a minimum:

1. A scope of work,
2. The amount awarded,
3. The amount of the local match required,
4. A final project budget and timeline, and
5. Reporting requirements.

J. The Authority shall release proceeds subject to a disbursement request if the request is consistent with the planning and design assistance agreement and the disbursement schedule.

1. The recipient shall request each disbursement on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, a cost-incurred report, and a DBE report. The Authority shall not process a disbursement until the recipient provides a completed disbursement form.
2. The recipient shall include copies of invoices or other documents that show proof of eligible costs incurred with each disbursement request.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-504. Drinking Water Planning and Design Assistance

A. Planning and design assistance to a specific drinking water facility, excluding a nonprofit noncommunity water system, shall assist that facility to achieve or enhance its legal, financial, technical, or managerial capability to facilitate the design, construction, acquisition, improvement, or consolidation of a community water system. The Board shall approve funds available for planning and design assistance in the annual Drinking Water Technical Assistance Intended Use Plan. The Board may determine that no assistance will be offered for the annual funding cycle.

B. To be eligible to receive planning and design assistance under the Drinking Water Technical Assistance Program, the applicant shall demonstrate the applicant owns a drinking water facility, excluding a nonprofit noncommunity water system. An eligible applicant shall apply for planning and design assistance on or before a date specified by the Authority and on an application form specified by the Authority.

C. An applicant shall commit to a matching contribution toward the total project cost as specified in the Request for Applications. The matching contribution may include cash contributions or in-kind contributions. The Board may waive or modify the applicant's match requirement according to criteria established in the Request for Applications.

D. The Authority shall solicit, evaluate, and award planning and design assistance in accordance with A.R.S. § 41-2702.

E. The Authority shall evaluate the applications received to determine which projects are eligible under the Safe Drinking Water Act, 42 U.S.C. 300f to 300j-26. Eligible applications shall specify a demonstrated need of the applicant for assistance in securing financial assistance for development and implementation of a drinking water capital improvement project.

F. The Authority shall determine planning and design assistance awards based on the amount of funding available. If funding is limited, all eligible projects may not be funded. The Authority shall provide the planning and design assistance award recommendations to the Board for review and approval at a public meeting. The Board may adopt, modify, or reject the Authority's recommendations in whole or in part.

G. Within 30 days after the adoption of the planning and design assistance awards at a public meeting, the Authority shall notify all applicants whether or not they received an award.

H. An unsuccessful applicant may submit an appeal in writing according to A.R.S. § 41-2704.

I. The Authority and the applicant shall enter into a planning and design assistance agreement that shall include at a minimum:

1. A scope of work,
2. The amount awarded,
3. The amount of the local match required,
4. A final project budget and timeline, and
5. Reporting requirements.

J. The Authority shall release proceeds subject to a disbursement request if the request is consistent with the planning and design assistance agreement and the disbursement schedule.

1. The recipient shall request each disbursement on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, a cost-incurred report, and a DBE report. The Authority shall not process a disbursement until the recipient provides a completed disbursement form.
2. The recipient shall include copies of invoices or other documents that show proof of eligible costs incurred with each disbursement request.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Former Section R18-15-504 repealed; new Section R18-15-504 renumbered from R18-15-505 and amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-505. Water Supply Development Planning and Design Assistance Grants

A. Planning and design assistance grant funding to a water provider shall assist the water provider in the planning or design of a water supply development project. A single planning and design assistance grant award shall not exceed $100,000. The Board may determine that no assistance will be offered for the annual funding cycle.

B. To be eligible to receive a planning and design assistance grant under the Water Supply Development Technical Assistance Program, the grant applicant shall demonstrate the applicant is a water provider as defined in A.R.S. § 49-1201 and meet the requirements of A.R.S. § 49-1273(C). An eligible grant applicant shall apply for a planning and design assistance grant on or before a date specified by the Authority and on a grant application form specified by the Authority.

C. A grant applicant shall commit to a matching contribution toward the total project cost as specified in the Request for Grant Applications. The matching contribution may include cash contributions or in-kind contributions. The Board may waive or modify the grant applicant's match requirement according to criteria established in the Request for Grant Applications.

D. The Authority shall solicit, evaluate, and award planning and design assistance grants in accordance with A.R.S. § 41-2702.

E. The Authority shall evaluate the grant applications received to determine which projects are eligible. Eligible applications shall specify a demonstrated need of the grant applicant for assistance in securing financial assistance for planning and design of a water supply capital improvement project.

F. The Authority shall determine planning and design assistance grant awards based on the amount of funding available. If funding is limited, all eligible projects may not be funded. The Authority shall provide the planning and design assistance grant award recommendations to the Board for review and approval at a public meeting. The Board may adopt, modify, or reject the Authority's recommendations in whole or in part.

G. Within 30 days after the adoption of the planning and design assistance grant awards at a public meeting, the Authority shall notify all grant applicants whether or not they received an award.

H. An unsuccessful grant applicant may submit an appeal in writing according to A.R.S. § 41-2704.

I. The Authority and the grant applicant shall enter into a planning and design assistance grant agreement that shall include at a minimum:

1. A scope of work,
2. The amount of the grant awarded,
3. The amount of the local match required,
4. A final project budget and timeline, and
5. Reporting requirements.

J. The Authority shall release grant proceeds subject to a disbursement request if the request is consistent with the planning and design assistance grant agreement and the disbursement schedule.

1. The grant recipient shall request each disbursement on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, and a cost-incurred report. The Authority shall not process a disbursement until the recipient provides a completed disbursement form.
2. The grant recipient shall include copies of invoices or other documents that show proof of eligible costs incurred with each disbursement request.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Former Section R18-15-505 renumbered to R18-15-504; new Section R18-15-505 made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-5-506. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-507. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Section repealed; new Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-508. Repealed

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-509. Repealed

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-510. Repealed

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-511. Repealed

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

ARTICLE 6. HARDSHIP GRANT FUND PROGRAM

R18-15-601. Hardship Grant Fund Administration

A. The Authority shall establish a separate account or accounts for the Hardship Grant Fund Program from any monies received according to A.R.S. § 49-1267(A). The Authority shall only use the monies from the Hardship Grant Fund Program for:

1. Providing hardship grants to political subdivisions or Indian tribes to plan, design, acquire, construct or improve wastewater collection and treatment facilities; and
2. Providing training and technical assistance related to operation and maintenance of wastewater treatment facilities.

B. The Authority shall identify any funding available for financial assistance under the Hardship Grant Fund Program in the annual Clean Water Revolving Fund Intended Use Plan described in R18-15-202 and any funding available for technical assistance in the Clean Water Technical Assistance Intended Use Plan described in R18-15-502. If the Board determines no funding is available for the Hardship Grant Fund Program, the Authority shall not evaluate any applications for financial assistance or grant applications for technical assistance for funding from the Hardship Grant Fund Program.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Section repealed; new Section made by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

R18-15-602. Hardship Grant Fund Financial Assistance

A. If funding is available in the Hardship Grant Fund Program, the Authority shall determine if any of the applicants requesting placement on the Clean Water Revolving Fund Project Priority List meet the requirements according to A.R.S. § 49-1268(A)(2). Criteria by which assistance will be awarded shall be based on criteria established in the capitalization grant providing the funding.

B. The Authority shall make the determination of applicant's eligibility for the Hardship Grant Fund Program during the ranking of the project under R18-15-204. Of the applicants eligible to receive financial assistance from the Hardship Grant Fund Program, the Authority shall award the hardship grant monies based on an applicant's financial capability and ability to generate sufficient revenues to pay for debt service.

C. The Authority shall proceed according to Article 2 of this Chapter for any applicant meeting the eligibility requirements for the Hardship Grant Fund Program. In addition to proceeding under R18-15-207, the Authority shall identify any applicant that qualifies for Hardship Grant Fund Program financial assistance and shall make a recommendation to the Board regarding the amount of funding to provide the applicant from the Hardship Grant Fund Program.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

R18-15-603. Hardship Grant Fund Technical Assistance

A. If funding is available in the Hardship Grant Fund Program, the Authority shall identify in the Request for Grant Applications prepared according to A.R.S. § 41-2702(B) the amount of funding for technical assistance available from the Hardship Grant Fund Program.

B. The Authority shall make the determination of grant applicant's eligibility for the Hardship Grant Fund Program during the ranking of the project under R18-15-503. Of the grant applicants eligible to receive technical assistance from the Hardship Grant Fund Program, the Authority shall award the hardship grant monies based on the financial capability of a grant applicant.

C. The Authority shall proceed according to R18-15-503 for any grant applicant requesting assistance for operation and maintenance for a wastewater treatment facility. In addition to proceeding under R18-15-503(F), the Authority shall identify any grant applicant that qualifies for Hardship Grant Fund Program technical assistance and shall make a recommendation to the Board regarding the amount of funding to provide the grant applicant from the Hardship Grant Fund Program.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3).

ARTICLE 7. INTEREST RATE SETTING AND FORGIVABLE PRINCIPAL

R18-15-701. Interest Rate Setting and Forgivable Principal

A. The Authority shall prescribe the rate of interest, including interest rates as low as 0% on Authority loans, bond purchase agreements, and linked deposit guarantees based on the applicant's local fiscal capacity under R18-15-204(A)(6) or R18-15-304(A)(6), or financial need under R18-15-404(A)(5), and an applicant's ability to generate sufficient revenues to pay debt service.

B. The Authority may forgive principal on Clean Water and Drinking Water loans, bond purchase agreements, and linked deposit guarantees based on:

1. The applicant's local fiscal capacity under R18-15-204(A)(6) and R18-15-304(A)(6),
2. Whether the applicant cannot otherwise afford the project,
3. Whether the project qualifies for the Green Project Reserve as defined by EPA, and
4. Whether the project mitigates stormwater runoff.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2). Amended by final rulemaking at 7 A.A.R. 5956, effective December 4, 2001 (Supp. 01-4). Amended by final rulemaking at 16 A.A.R. 1709, effective October 9, 2010 (Supp. 10-3). Section amended by final rulemaking at 24 A.A.R. 239, effective March 11, 2018 (Supp. 18-1).

ATTACHMENT B

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 366

SENATE BILL 1740

AN ACT

AMENDING SECTION 41-192, ARIZONA REVISED STATUTES; REPEALING SECTION 41-3002.09, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-3027.05; REPEALING SECTION 41-3031.01, ARIZONA REVISED STATUTES; AMENDING SECTIONS 41-5355, 41-5356, 45-105, 45-111 AND 48-6415, ARIZONA REVISED STATUTES; REPEALING SECTIONS 49-193, 49-193.02, 49-193.03, 49-193.04 AND 49-193.05, ARIZONA REVISED STATUTES; AMENDING SECTIONS 49-1201 AND 49-1202, ARIZONA REVISED STATUTES; AMENDING SECTION 49-1203, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2022, CHAPTER 63, ARTICLE 1; AMENDING TITLE 49, CHAPTER 8, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-1203.01; PROVIDING FOR TRANSFERRING AND RENUMBERING; AMENDING SECTION 49-1205, ARIZONA REVISED STATUTES, AS TRANSFERRED AND RENUMBERED; AMENDING TITLE 49, CHAPTER 8, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 49-1206, 49-1207, 49-1208, 49-1209, 49-1210, 49-1211, 49-1212, 49-1213, 49-1214 AND 49-1215; AMENDING TITLE 49, CHAPTER 8, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-1270; AMENDING SECTION 49-1271, ARIZONA REVISED STATUTES; AMENDING SECTION 49-1273, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2022, CHAPTER 63, SECTION 2; AMENDING SECTION 49-1274, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2022, CHAPTER 63, SECTION 3; AMENDING SECTION 49-1275, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2022, CHAPTER 63, SECTION 4; AMENDING TITLE 49, CHAPTER 8, ARIZONA REVISED STATUTES, BY ADDING ARTICLES 4 AND 5; AMENDING LAWS 2021, CHAPTER 408, SECTION 115; APPROPRIATING MONIES; RELATING TO THE WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 41-192, Arizona Revised Statutes, is amended to read:

41-192. Powers and duties of attorney general; restrictions on state agencies as to legal counsel; exceptions; compromise and settlement monies

A. The attorney general shall have charge of and direct the department of law and shall serve as chief legal officer of the state. The attorney general shall:

1. Be the legal advisor of the departments of this state and render such legal services as the departments require.

2. Establish administrative and operational policies and procedures within his department.

3. Approve long-range plans for developing departmental programs therein, and coordinate the legal services required by other departments of this state or other state agencies.

4. Represent school districts and governing boards of school districts in any lawsuit involving a conflict of interest with other county offices.

5. Represent political subdivisions, school districts and municipalities in suits to enforce state or federal statutes pertaining to antitrust, restraint of trade or price-fixing activities or conspiracies, if the attorney general notifies in writing the political subdivisions, school districts and municipalities of the attorney general's intention to bring any such action on ~~its~~ THEIR behalf. At any time within thirty days after the notification, ~~the political subdivisions, school districts and municipalities~~ A POLITICAL SUBDIVISION, SCHOOL DISTRICT OR MUNICIPALITY, by formal resolution of its governing body, may withdraw the authority of the attorney general to bring the intended action on its behalf.

6. In any action brought by the attorney general pursuant to state or federal statutes pertaining to antitrust, restraint of trade, or price-fixing activities or conspiracies for the recovery of damages by this state or any of its political subdivisions, school districts or municipalities, in addition to the attorney general's other powers and authority, the attorney general on behalf of this state may enter into contracts relating to the investigation and prosecution of such action with any other party plaintiff who has brought a similar action for the recovery of damages and with whom the attorney general finds it advantageous to act jointly or to share common expenses or to cooperate in any manner relative to such action. In any such action, notwithstanding any other laws to the contrary, the attorney general may undertake, among other things, to render legal services as special counsel or to obtain the legal services of special counsel from any department or agency of the United States, of this state or any other state or any department or agency thereof or any county, city, public corporation or public district

in this state or in any other state that has brought or intends to bring a similar action for the recovery of damages or ~~their~~ ITS duly authorized legal representatives in such action.

7. Organize the civil rights division within the department of law and administer such division pursuant to the powers and duties provided in chapter 9 of this title.

8. Compile, publish and distribute to all state agencies, departments, boards, commissions and councils, and to other persons and government entities on request, at least every ten years, the Arizona agency handbook that sets forth and explains the major state laws that govern state agencies, including information on the laws relating to bribery, conflicts of interest, contracting with the government, disclosure of public information, discrimination, nepotism, financial disclosure, gifts and extra compensation, incompatible employment, political activity by employees, public access and misuse of public resources for personal gain. A supplement to the handbook reflecting revisions to the information contained in the handbook shall be compiled and distributed by the attorney general as deemed necessary.

B. Except as otherwise provided by law, the attorney general may:

1. Organize the department into such bureaus, subdivisions or units as he deems most efficient and economical, and consolidate or abolish them.

2. Adopt rules for the orderly conduct of the business of the department.

3. Subject to chapter 4, article 4 of this title, employ and assign assistant attorneys general and other employees necessary to perform the functions of the department.

4. Compromise or settle any action or claim by or against this state or any department, board or agency of this state. If the compromise or settlement involves a particular department, board or agency of this state, the compromise or settlement shall be first approved by the department, board or agency. If no department or agency is named or otherwise materially involved, the approval of the governor shall be first obtained.

5. Charge reasonable fees for distributing official publications, including attorney general legal opinions and the Arizona agency handbook. The fees received shall be transmitted to the state treasurer for deposit in the state general fund.

C. The powers and duties of a bureau, subdivision or unit shall be limited to those assigned by law to the department.

D. Notwithstanding any law to the contrary, except as provided in subsections E and F of this section, no state agency other than the attorney general shall employ legal counsel or make an expenditure or incur an indebtedness for legal services, but the following are exempt from this section:

1. The director of water resources.
2. The residential utility consumer office.
3. The industrial commission.
4. The Arizona board of regents.
5. The auditor general.
6. The corporation commissioners and the corporation commission other than the securities division.
7. The office of the governor.
8. The constitutional defense council.
9. The office of the state treasurer.
10. The Arizona commerce authority.
11. THE WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA.

E. If the attorney general determines that he is disqualified from providing judicial or quasi-judicial legal representation or legal services on behalf of any state agency in relation to any matter, the attorney general shall give written notification to the state agency affected. If the agency has received written notification from the attorney general that the attorney general is disqualified from providing judicial or quasi-judicial legal representation or legal services in relation to any particular matter, the state agency is authorized to make expenditures and incur indebtedness to employ attorneys to provide the representation or services.

F. If the attorney general and the director of the department of agriculture cannot agree on the final disposition of a pesticide complaint under section 3-368, if the attorney general and the director determine that a conflict of interest exists as to any matter or if the attorney general and the director determine that the attorney general does not have the expertise or attorneys available to handle a matter, the director is authorized to make expenditures and incur indebtedness to employ attorneys to provide representation or services to the department with regard to that matter.

G. Any department or agency of this state authorized by law to maintain a legal division or incur expenses for legal services from funds derived from sources other than the general revenue of the state, or from any special or trust fund, shall pay from such source of revenue or special or trust fund into the general fund of the state, to the extent such funds are available and ~~upon~~ ON a reimbursable basis for warrants drawn, the amount actually expended by the department of law within legislative appropriations for such legal division or legal services.

H. Appropriations made pursuant to subsection G of this section shall not be subject to lapsing provisions otherwise provided by law. Services for departments or agencies to which this subsection and subsection F of this section are applicable shall be performed by special or regular assistants to the attorney general.

I. Notwithstanding section 35-148, monies received by the attorney general from charges to state agencies and political subdivisions for legal services relating to interagency service agreements shall be deposited, pursuant to sections 35-146 and 35-147, in an attorney general agency services fund. Monies in the fund are subject to legislative appropriation and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

J. Unless otherwise provided by law, monies received for and belonging to the state and resulting from compromises and settlements entered into pursuant to subsection B of this section, excluding restitution and reimbursement to state agencies for costs or attorney fees, shall be deposited into the state treasury and credited to the state general fund pursuant to section 35-142. Monies received for and belonging to the state and resulting from a compromise or settlement are not considered custodial, private or quasi-private monies unless specifically provided by law. On or before January 15, April 15, July 15 and October 15, the attorney general shall file with the governor, with copies to the director of the department of administration, the president of the senate, the speaker of the house of representatives, the secretary of state and the staff director of the joint legislative budget committee, a full and complete account of the deposits into the state treasury made pursuant to this subsection in the previous calendar quarter. For the purposes of this subsection, "restitution" means monies intended to compensate a specific, identifiable person, including this state, for economic loss.

Sec. 2. Repeal

Section 41-3002.09, Arizona Revised Statutes, is repealed.

Sec. 3. Title 41, chapter 27, article 2, Arizona Revised Statutes, is amended by adding section 41-3027.05, to read:

41-3027.05. Water infrastructure finance authority of Arizona; termination July 1, 2027

A. THE WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA TERMINATES ON JULY 1, 2027.

B. TITLE 49, CHAPTER 8, ARTICLES 1 AND 3 AND SECTIONS 49-1224, 49-1225, 49-1226, 49-1244, 49-1245, 49-1246, 49-1261, 49-1262, 49-1263, 49-1264, 49-1265, 49-1266, 49-1267, 49-1268, 49-1269, 49-1301, 49-1303, 49-1304, 49-1305, 49-1306, 49-1307, 49-1308, 49-1309, 49-1310, 49-1311, 49-1312 AND 49-1313 ARE REPEALED ON JANUARY 1, 2028, IF THE AUTHORITY EITHER:

1. HAS NO OUTSTANDING CONTRACTUAL OBLIGATIONS WITH THE UNITED STATES OR ANY UNITED STATES AGENCY AND HAS NO DEBTS, OBLIGATIONS OR GUARANTEES THAT WERE ISSUED FOR THE PURPOSES OF TITLE 49, CHAPTER 8.

2. HAS OTHERWISE PROVIDED FOR PAYING OR RETIRING SUCH DEBTS OR OBLIGATIONS.

C. IF ANY DEBT OR OBLIGATION LISTED IN SUBSECTION B OF THIS SECTION EXISTS AND NO SATISFACTORY PROVISION HAS BEEN MADE TO PAY OR RETIRE THE DEBT OR OBLIGATION, THE AUTHORITY AND STATUTES CONTINUE IN EXISTENCE UNTIL THE DEBT OR OBLIGATION IS FULLY SATISFIED.

Sec. 4. Repeal

Section 41-3031.01, Arizona Revised Statutes, is repealed.

Sec. 5. Section 41-5355, Arizona Revised Statutes, is amended to read:

41-5355. Assets; cost of operation and administration; taxation

A. Any monies, pledges or property issued or given to the Arizona finance authority, whether by appropriation, loan, gift or otherwise, constitute the assets of the Arizona finance authority.

B. This state is not responsible for any obligation incurred by the authority.

C. All costs and expenses of the ARIZONA FINANCE authority shall be paid from bond proceeds of bonds issued by any industrial development authority established by the Arizona finance authority or other monies of the ARIZONA FINANCE authority, and to the extent not prohibited by state or federal law or by contract, the monies of the greater Arizona development authority ~~and the water infrastructure finance authority of Arizona~~ that are available to pay the Arizona finance authority's costs and expenses.

D. The authority and its income are exempt from taxation in this state.

Sec. 6. Section 41-5356, Arizona Revised Statutes, is amended to read:

41-5356. Duties of board; annual report

A. The board shall:

1. Establish an industrial development authority under title 35, chapter 5 and, notwithstanding the requirements of section 35-705, serve as the board of the industrial development authority.

2. Serve as the board of the greater Arizona development authority and have all powers and authority to take action on behalf of the greater Arizona development authority pursuant to chapter 18 of this title.

~~3. Serve as the board of the water infrastructure finance authority of Arizona and have all powers and authority to take action pursuant to title 49, chapter 8 regarding water infrastructure financing.~~

~~4.~~ 3. Approve the authority's budget.

~~5. Establish a water and infrastructure finance authority advisory board to advise the board of directors of the authority consisting of relevant state agency representatives and the following additional members:~~

~~(a) One member who represents a public water system that serves five hundred or more connections.~~

~~(b) One member who represents a public water system that serves less than five hundred connections.~~

~~(c) One member who represents a sanitary district in a county with a population of less than five hundred thousand persons.~~

~~(d) One member who represents a sanitary district in a county with a population of five hundred thousand or more persons.~~

~~(e) One member who represents a city or town with a population of less than fifty thousand persons.~~

~~(f) One member who represents a city or town with a population of fifty thousand or more persons.~~

~~(g) One member who represents a county with a population of five hundred thousand or more persons.~~

B. On or before October 1 of each year, the industrial development authority shall submit a report to the president of the senate, the speaker of the house of representatives and the directors of the joint legislative budget committee and the governor's office of strategic planning and budgeting regarding the authority's revenues, expenditures and program activity for the previous fiscal year.

Sec. 7. Section 45-105, Arizona Revised Statutes, is amended to read:

45-105. Powers and duties of director

A. The director may:

1. Formulate plans and develop programs for the practical and economical development, management, conservation and use of surface water, groundwater and the watersheds in this state, including the management of water quantity and quality.

2. Investigate works, plans or proposals pertaining to surface water and groundwater, including management of watersheds, and acquire, preserve, publish and disseminate related information the director deems advisable.

3. Collect and investigate information on and prepare and devise means and plans for the development, conservation and ~~utilization~~ USE of all waterways, watersheds, surface water, groundwater and groundwater basins in this state and of all related matters and subjects, including irrigation, drainage, water quality maintenance, regulation of flow, diversion of running streams adapted for development in cooperating with the United States or by this state independently, flood control, ~~utilization~~ USE of water power, prevention of soil waste and storage, conservation and development of water for every useful purpose.

4. Measure, survey and investigate the water resources of this state and their potential development and cooperate and contract with agencies of the United States for such purposes.

5. Acquire, hold and dispose of property, including land, rights-of-way, water and water rights, as necessary or convenient for the

performance of the groundwater and water quality management functions of the department.

6. Acquire, other than by condemnation, construct, improve, maintain and operate early warning systems for flood control purposes and works for the recovery, storage, treatment and delivery of water.

7. Accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title. All property acquired by the director is public property and is subject to the same tax exemptions, rights and privileges granted to municipalities, public agencies and other public entities.

8. Enter into an interagency contract or agreement with any public agency pursuant to title 11, chapter 7, article 3 and contract, act jointly or cooperate with any person to carry out the purposes of this title.

9. Prosecute and defend all rights, claims and privileges of this state respecting interstate streams.

10. Initiate and participate in conferences, conventions or hearings, including ~~meetings of the Arizona water resources advisory board,~~ congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

11. Apply for and hold permits and licenses from the United States or any agency of the United States for reservoirs, dam sites and rights-of-way.

12. Receive and review all reports, proposed contracts and agreements from and with the United States or any agencies, other states or governments or their representatives and recommend to the governor and the legislature action to be taken on such reports, proposed contracts and agreements. The director shall take action on such reports, if authorized by law, and review and coordinate the preparation of formal comments of this state on both the preliminary and final reports relating to water resource development of the United States army corps of engineers, the United States secretary of the interior and the United States secretary of agriculture, as provided for in the flood control act of 1944 (58 Stat. 887; 33 United States Code section 701-1).

13. Contract with any person for imported water or for the acquisition of water rights or rights to withdraw, divert or use surface water or groundwater as necessary for the performance of the groundwater management functions of the director prescribed by chapter 2 of this title. If water becomes available under any contract executed under this paragraph, the director may contract with any person for its delivery or exchange for any other water available.

14. Recommend to the administrative heads of agencies, boards and commissions of this state, and political subdivisions of this state, rules to promote and protect the rights and interests of this state and its inhabitants in any matter relating to the surface water and groundwater in this state.

15. Conduct feasibility studies and remedial investigations relating to groundwater quality and enter into contracts and cooperative agreements under section 104 of the comprehensive environmental response, compensation, and liability act of 1980 (P.L. 96-510) to conduct such studies and investigations.

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.

17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

1. Exercise and perform all powers and duties vested in or imposed on the department and adopt and issue rules necessary to carry out the purposes of this title.

2. Administer all laws relating to groundwater, as provided in this title.

3. Be responsible for the supervision and control of reservoirs and dams of this state and, when deemed necessary, conduct investigations to determine whether the existing or anticipated condition of any dam or reservoir in this state is or may become a menace to life and property.

4. Coordinate and confer with and may contract with:

(a) The Arizona power authority, the game and fish commission, the state land department, the Arizona outdoor recreation coordinating commission, the Arizona commerce authority, the department of health services, active management area water authorities or districts and political subdivisions of this state with respect to matters within their jurisdiction relating to surface water and groundwater and the development of state water plans.

(b) The department of environmental quality with respect to title 49, chapter 2 for its assistance in the development of state water plans.

(c) The department of environmental quality regarding water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of this title pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5.

(d) The department of environmental quality regarding coordination of databases that are necessary for activities conducted pursuant to title 49, chapter 2, article 5.

5. Cooperate with the Arizona power authority in the performance of the duties and functions of the authority.

6. Maintain a permanent public depository for existing and future records of stream flow, groundwater levels and water quality and other data relating to surface water and groundwater.

7. Maintain a public docket of all matters before the department that may be subject to judicial review pursuant to this title.

8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.

~~9. Report to and consult with the Arizona water resources advisory board at regular intervals.~~

~~10.~~ 9. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.

~~11.~~ 10. Provide staff support to the Arizona water protection fund commission established pursuant to chapter 12 of this title.

~~12.~~ 11. Exercise and perform all powers and duties invested in the chairperson of the Arizona water banking authority commission as prescribed by chapter 14 of this title.

~~13.~~ 12. Provide staff support to the Arizona water banking authority established pursuant to chapter 14 of this title.

~~14.~~ 13. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:

(a) The current status of the water supply in this state and any likely changes in that status.

(b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.

(c) The status of current water conservation programs in this state.

(d) The current state of each active management area and the level of progress toward management goals in each active management area.

(e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.

(f) The status of any pending or likely litigation regarding surface water adjudications or other ~~water related~~ WATER-RELATED litigation and the potential impacts on this state's water supplies.

(g) The status of Indian water rights settlements and related negotiations that affect this state.

(h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

14. NOT LATER THAN DECEMBER 1, 2023 AND ON OR BEFORE DECEMBER 1 OF EACH YEAR THEREAFTER, PREPARE AND ISSUE A WATER SUPPLY AND DEMAND ASSESSMENT FOR AT LEAST SIX OF THE FORTY-SIX GROUNDWATER BASINS ESTABLISHED PURSUANT TO SECTION 45-403. THE DIRECTOR SHALL ENSURE THAT A WATER SUPPLY AND DEMAND ASSESSMENT IS COMPLETED FOR ALL GROUNDWATER BASINS AT LEAST ONCE EVERY FIVE YEARS. THE DIRECTOR MAY CONTRACT WITH OUTSIDE ENTITIES TO PERFORM SOME OR ALL OF THE ASSESSMENTS AND THOSE OUTSIDE ENTITIES SHALL BE IDENTIFIED IN THE ASSESSMENT.

Sec. 8. Section 45-111, Arizona Revised Statutes, is amended to read:

45-111. Annual report by director

On or before July 1 each year the director shall render to the governor and the legislature a full and true report of the department's operations under this title. The report shall include suggestions as to amending existing laws or enacting new legislation as the director ~~and the Arizona water resources advisory board deem~~ DEEMS necessary and such other information, suggestions and recommendations as the director considers of value to the public. The report shall be published and made available to the public.

Sec. 9. Section 48-6415, Arizona Revised Statutes, is amended to read:

48-6415. District and municipal water delivery systems in the district eligible to receive financial assistance from water supply development revolving fund

The district is deemed to be a water provider for the purposes of title 49, chapter 8. The district and municipal water delivery systems serving water in the district are eligible to apply for and receive financial assistance from monies in the water supply development revolving fund established under section 49-1271 ~~notwithstanding section 49-1273, subsection C~~.

Sec. 10. Heading repeal

The article heading of title 49, chapter 1, article 8, Arizona Revised Statutes, is repealed.

Sec. 11. Repeal

Sections 49-193, 49-193.02, 49-193.03, 49-193.04 and 49-193.05, Arizona Revised Statutes, are repealed.

Sec. 12. Section 49-1201, Arizona Revised Statutes, is amended to read:

49-1201. Definitions

In this chapter, unless the context otherwise requires:

1. "Authority" means the water infrastructure finance authority of Arizona.

2. "Board" means the WATER INFRASTRUCTURE FINANCE AUTHORITY board ~~of directors of the Arizona finance authority~~ established by ~~title 41, chapter 53, article 2~~ SECTION 49-1206.

3. "Bonds of a political subdivision" means bonds issued by a political subdivision as authorized by law.

4. "Clean water act" means the federal water pollution control act amendments of 1972 (P.L. 92-500; 86 Stat. 816), as amended by the water quality act of 1987 (P.L. 100-4; 101 Stat. 7).

5. "CONCESSION AGREEMENT" MEANS ANY LEASE, GROUND LEASE, FRANCHISE, EASEMENT, PERMIT OR OTHER BINDING AGREEMENT TRANSFERRING RIGHTS FOR THE USE OR CONTROL, IN WHOLE OR IN PART, OF WATER-RELATED FACILITIES BY THE AUTHORITY TO A PRIVATE PARTNER IN ACCORDANCE WITH THIS CHAPTER.

~~5.~~ 6. "Drinking water facility":

(a) Means a community water system or a nonprofit noncommunity water system as defined in the safe drinking water act of 1974 (P.L. 93-523; 88 Stat. 1660; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613) that is located in this state. ~~For purposes of this chapter, drinking water facility~~

(b) Does not include water systems owned by federal agencies.

~~6.~~ 7. "Financial assistance loan repayment agreement" means an agreement to repay a loan provided to design, construct, acquire, rehabilitate or improve water or wastewater infrastructure, related property and appurtenances or a loan provided to finance a water supply development project.

8. "IMPORTED WATER" MEANS ANY WATER THAT ORIGINATES OUTSIDE OF THIS STATE AND THAT IS MADE AVAILABLE TO WATER USERS WITHIN THIS STATE BY CONVEYANCE, EXCHANGE OR OTHERWISE THROUGH PROJECTS THAT ARE FUNDED OR FINANCED IN WHOLE OR IN PART WITH MONIES FROM THE LONG-TERM WATER AUGMENTATION FUND.

9. "IMPORT WATER" MEANS TO MAKE WATER ORIGINATING OUTSIDE OF THIS STATE AVAILABLE TO WATER USERS WITHIN THIS STATE BY CONVEYANCE, EXCHANGE OR OTHERWISE THROUGH PROJECTS THAT ARE FUNDED OR FINANCED IN WHOLE OR IN PART WITH MONIES FROM THE LONG-TERM WATER AUGMENTATION FUND.

~~7.~~ 10. "Indian tribe" means any Indian tribe, band, group or community that is recognized by the United States secretary of the interior and that exercises governmental authority within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.

11. "LONG-TERM WATER AUGMENTATION BONDS" MEANS BONDS THAT ARE ISSUED BY THE AUTHORITY IN ACCORDANCE WITH ARTICLE 4 OF THIS CHAPTER.

12. "LONG-TERM WATER AUGMENTATION FUND" MEANS THE FUND ESTABLISHED BY SECTION 49-1302.

~~8.~~ 13. "Nonpoint source project" means a project designed to implement a certified water quality management plan.

~~9.~~ 14. "Political subdivision" means a county, city, town or special taxing district authorized by law to construct wastewater treatment facilities, drinking water facilities or nonpoint source projects.

15. "PRIVATE PARTNER" MEANS A PERSON, ENTITY OR ORGANIZATION THAT IS NOT THE FEDERAL GOVERNMENT, THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE.

16. "PUBLIC-PRIVATE PARTNERSHIP PROJECT" MEANS ANY WATER SUPPLY DEVELOPMENT PROJECT THAT IS THE SUBJECT OF A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT IN ACCORDANCE WITH THIS CHAPTER.

~~10.~~ 17. "Safe drinking water act" means the federal safe drinking water act of 1974 (P.L. 93-523; 88 Stat. 1660; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613), as amended in 1996.

~~11.~~ 18. "Technical assistance loan repayment agreement" means either of the following:

(a) An agreement to repay a loan provided to develop, plan and design water or wastewater infrastructure, related property and appurtenances. The agreement shall be for a term of not more than three years and the maximum amount that may be borrowed is limited to not more than $500,000.

(b) An agreement to repay a loan provided to develop, plan or design a water supply development project.

~~12.~~ 19. "Wastewater treatment facility" means a treatment works, as defined in section 212 of the clean water act, that is located in this state and that is designed to hold, cleanse or purify or to prevent the discharge of untreated or inadequately treated sewage or other polluted waters for purposes of complying with the clean water act.

~~13.~~ 20. "Water provider" means any of the following:

(a) A municipal water delivery system as defined in section 42-5301.

(b) A county water augmentation authority established under title 45, chapter 11.

(c) A county water authority established under title 45, chapter 13.

(d) An Indian tribe.

(e) A community facilities district as established by title 48, chapter 4.

(f) A public water system as prescribed in section 49-352.

(g) A county with a population of less than three hundred thousand persons.

(h) A natural resource conservation district.

(i) For purposes of funding from the water supply development revolving fund pursuant to article 3 of this chapter only, a county that enters into an intergovernmental agreement or other formal written agreement with a city, town or other water provider regarding a water supply development project.

21. "WATER-RELATED FACILITIES" MEANS ANY FACILITY RELATED TO THE PRODUCTION, DELIVERY, CONSERVATION OR STORAGE OF WATER, INCLUDING ANY CANALS, PIPELINES, DESALINATION PLANTS, PUMPING STATIONS, STORAGE PROJECTS, RECOVERY WELLS, DELIVERY AND RETENTION PROJECTS, WATER AND WASTEWATER TREATMENT PLANTS, AND OTHER EQUIPMENT AND FACILITIES INSTALLED FOR WATER CONSERVATION PURPOSES, TOGETHER WITH ANY LAND, BUILDINGS OR OTHER IMPROVEMENTS AND EQUIPMENT OR PERSONAL PROPERTY RELATED THERETO.

~~14.~~ 22. "Water supply development" means ~~either~~ ANY of the following:

(a) Acquiring water or rights to or contracts for water to augment the water supply of a water provider, including any environmental or other reviews, permits or plans reasonably necessary for that acquisition.

(b) Planning, designing, building or developing WATER-RELATED facilities, including any environmental or other reviews, permits or plans reasonably necessary for those facilities, for ~~any~~ EITHER of the following purposes:

(i) Conveyance~~,~~ OR DELIVERY OF WATER.

(ii) Storage or recovery of water UNDER TITLE 45, CHAPTER 3.1.

~~(iii)~~ (iii) Reclamation and reuse of water.

~~(iiii)~~ (iv) Replenishment of groundwater.

~~(iv)~~ (v) Active or passive stormwater recharge structures that increase water supplies.

(c) CONSERVATION THROUGH REDUCING EXISTING WATER USE OR MORE EFFICIENT USES OF EXISTING WATER SUPPLIES.

Sec. 13. Section 49-1202, Arizona Revised Statutes, is amended to read:

49-1202. Water infrastructure finance authority of Arizona

The water infrastructure finance authority of Arizona is established ~~in the Arizona finance authority~~. The ~~Arizona finance authority~~ board ~~of directors~~ shall govern the ~~water infrastructure finance~~ authority ~~of Arizona~~.

Sec. 14. Section 49-1203, Arizona Revised Statutes, as amended by Laws 2022, chapter 63, article 1, is amended to read:

49-1203. Powers and duties of authority; definition

A. The authority is a corporate and politic body and shall have an official seal that shall be judicially noticed. The authority may sue and be sued, contract and acquire, hold, operate and dispose of property.

NOTWITHSTANDING ANY OTHER LAW AND UNLESS EXPRESSLY WAIVED BY THE AUTHORITY, THE AUTHORITY IS NOT SUBJECT TO ANY STATUTORY REQUIREMENT TO PAY ANOTHER PARTY'S ATTORNEY FEES OR COSTS IN ANY ADMINISTRATIVE OR JUDICIAL PROCEEDING.

B. The authority, through its board, may:

1. Issue negotiable water quality bonds pursuant to section 49-1261 for the following purposes:

(a) To generate the state match required by the clean water act for the clean water revolving fund and to generate the match required by the safe drinking water act for the drinking water revolving fund.

(b) To provide financial assistance to political subdivisions, Indian tribes and eligible drinking water facilities for constructing, acquiring or improving wastewater treatment facilities, drinking water facilities, nonpoint source projects and other related water quality facilities and projects.

2. Issue water supply development bonds for the purpose of providing financial assistance to ~~water providers~~ ELIGIBLE ENTITIES for water supply development purposes pursuant to sections 49-1274 and 49-1275.

3. Provide financial assistance to political subdivisions and Indian tribes from monies in the clean water revolving fund to finance wastewater treatment projects.

4. Provide financial assistance to drinking water facilities from monies in the drinking water revolving fund to finance these facilities.

5. Provide financial assistance ~~to water providers~~ from monies in the water supply development revolving fund to finance water supply development AS PRESCRIBED BY THIS ARTICLE.

6. Guarantee debt obligations of, and provide linked deposit guarantees through third-party lenders to:

(a) Political subdivisions that are issued to finance wastewater treatment projects.

(b) Drinking water facilities that are issued to finance these facilities.

~~(c) Water providers that are issued to finance water supply development projects.~~

7. Provide linked deposit guarantees through third-party lenders to political subdivisions~~,~~ AND drinking water facilities ~~and water providers~~.

8. Apply for, accept and administer grants and other financial assistance from the United States government and from other public and private sources.

9. Enter into capitalization grant agreements with the United States environmental protection agency.

10. Adopt rules pursuant to title 41, chapter 6 governing the application for and awarding OF wastewater treatment facility, drinking

water facility and nonpoint source project financial assistance under this chapter, administering the clean water revolving fund and the drinking water revolving fund and issuing water quality bonds.

11. ~~Subject to title 41, chapter 4, article 4,~~ Hire a director WHO SERVES AT THE PLEASURE OF THE BOARD and WHO SHALL HIRE staff for the authority.

12. Contract for OR EMPLOY the services of outside advisors, attorneys, ENGINEERS, FINANCIAL AND OTHER consultants and aides reasonably necessary or desirable to allow the authority to adequately perform its duties.

13. Contract and incur obligations as reasonably necessary or desirable within the general scope of authority activities and operations to allow the authority to adequately perform its duties.

14. Assess financial assistance origination fees and annual fees to cover the reasonable costs of administering the authority and the monies administered by the authority. Any fees collected pursuant to this paragraph constitute governmental revenue and may be used for any purpose consistent with the mission and objectives of the authority.

15. Perform any function of a fund manager under the CERCLA Brownfields cleanup revolving loan fund program as requested by the department. The board shall perform any action authorized under this article on behalf of the Brownfields cleanup revolving loan fund program established pursuant to chapter 2, article 1.1 of this title at the request of the department. In order to perform these functions, the board shall enter into a written agreement with the department.

16. Provide grants, staff assistance or technical assistance in the form of loan repayment agreements and other professional assistance to political subdivisions, any county with a population of less than five hundred thousand persons, Indian tribes and community water systems in connection with developing or financing wastewater, drinking water, water reclamation or related water infrastructure. Assistance provided under a technical assistance loan repayment agreement shall be in a form and under terms determined by the authority and shall be repaid not more than three years after the date that the monies are advanced to the applicant. Technical assistance provided by the authority does not create any liability for the authority or this state regarding designing, constructing or operating any infrastructure project.

17. Provide grants, staff assistance or technical assistance in the form of loan repayment agreements and other professional assistance ~~to water providers in connection with the planning or design of water supply development projects~~ IN ACCORDANCE WITH SECTION 49-1273. ~~A single grant shall not exceed $250,000.~~ Assistance provided under a technical assistance loan repayment agreement shall be repaid not more than three years after the date that the monies are advanced to the applicant. Technical assistance provided by the authority does not create any

liability for the authority or this state regarding designing, constructing or operating any water supply development project.

C. The authority may adopt rules pursuant to title 41, chapter 6 governing the application for and awarding ~~water supply development fund project financial assistance under this chapter and administering the water supply development revolving fund~~ OF ASSISTANCE UNDER THIS CHAPTER AND THE ADMINISTRATION OF THE FUNDS ESTABLISHED BY THIS CHAPTER.

D. The board shall deposit, pursuant to sections 35-146 and 35-147, any monies received pursuant to subsection B, paragraph 8 of this section in the appropriate fund as prescribed by the grant or other financial assistance agreement.

E. ~~Disbursements of monies by~~ The water infrastructure finance authority ~~pursuant to a financial assistance agreement are~~ OF ARIZONA IS not subject to title 41, chapter 23. IN COORDINATION WITH THE DEPARTMENT OF ADMINISTRATION, THE AUTHORITY SHALL ESTABLISH PROCUREMENT PROCEDURES BY RULE TO ADMINISTER THE LONG-TERM WATER AUGMENTATION FUND.

F. For the purposes of the safe drinking water act and the clean water act, the department is the state agency with primary responsibility for administering this state's public water system supervision program and water pollution control program and, in consultation with other appropriate state agencies as appropriate, is the lead agency in establishing assistance priorities as prescribed by section 49-1224, subsection B, paragraph 3, section 49-1243, subsection A, paragraph 6 and section 49-1244, subsection B, paragraph 3.

G. For the purposes of this section, "CERCLA" has the same meaning prescribed in section 49-201.

Sec. 15. Title 49, chapter 8, article 1, Arizona Revised Statutes, is amended by adding section 49-1203.01, to read:

49-1203.01. Water infrastructure finance authority of Arizona; additional powers and duties

A. THE AUTHORITY, ACTING THROUGH ITS BOARD, SHALL:

1. ADMINISTER THE LONG-TERM WATER AUGMENTATION FUND IN ACCORDANCE WITH ARTICLE 4 OF THIS CHAPTER.

2. USE MONIES FROM THE LONG-TERM WATER AUGMENTATION FUND ESTABLISHED BY SECTION 49-1302 TO INVESTIGATE THE FEASIBILITY OF ENTERING INTO AGREEMENTS WITH PUBLIC OR PRIVATE ENTITIES FOR PROJECTS TO IMPORT WATER INTO THIS STATE. THE AUTHORITY MAY CONSIDER ANY EXISTING STUDIES OR PLANS IT DEEMS RELEVANT FOR THIS PURPOSE.

B. EXCEPT AS LIMITED IN THIS CHAPTER OR BY OTHER LAWS AND AS REASONABLE OR NECESSARY TO ADMINISTER OR CARRY OUT THE PURPOSES OF THE LONG-TERM WATER AUGMENTATION FUND AND WATER SUPPLY DEVELOPMENT REVOLVING FUND ESTABLISHED BY SECTION 49-1271, THE AUTHORITY MAY:

1. ACQUIRE, SELL, LEASE, EXCHANGE OR OTHERWISE DISPOSE OF REAL AND PERSONAL PROPERTY OF EVERY KIND WITHIN THIS STATE.

2. APPLY FOR AND HOLD PERMITS THAT ARE REQUIRED BY LAW TO ENGAGE IN ANY OF THE ACTIVITIES DESCRIBED IN THIS CHAPTER.

3. NEGOTIATE AND ENTER INTO INTERGOVERNMENTAL AGREEMENTS AND AGREEMENTS WITH PRIVATE AND PUBLIC ENTITIES WITHIN AND OUTSIDE OF THIS STATE.

4. CONTRACT FOR OR PERFORM FEASIBILITY STUDIES OF WATER STORAGE, STORAGE FACILITIES AND RECOVERY WELLS.

5. APPLY FOR AND ACCEPT GRANTS, GIFTS OR DONATIONS OF MONIES OR OTHER PROPERTY FROM ANY SOURCE THAT MAY BE SPENT FOR ANY PURPOSE CONSISTENT WITH THIS CHAPTER.

6. CONDUCT ANY OTHER ACTIVITIES THAT ARE REASONABLY NECESSARY AND RELATED TO THE POWERS AND DUTIES DESCRIBED IN THIS CHAPTER.

C. EXCEPT AS LIMITED IN THIS CHAPTER OR BY OTHER LAWS AND AS REASONABLE OR NECESSARY TO ADMINISTER OR CARRY OUT THE PURPOSES OF THE LONG-TERM WATER AUGMENTATION FUND, THE AUTHORITY MAY:

1. ISSUE LONG-TERM WATER AUGMENTATION BONDS IN ACCORDANCE WITH ARTICLE 4 OF THIS CHAPTER. THE LONG-TERM WATER AUGMENTATION BONDS SHALL BE IN THE NAME OF THE AUTHORITY, AND THE AUTHORITY MAY PLEDGE SOURCES FOR SECURITY AND PAYMENT OF SUCH BONDS IN ACCORDANCE WITH ARTICLE 4 OF THIS CHAPTER.

2. ISSUE REFUNDING BONDS IF THE AUTHORITY DEEMS REFUNDING EXPEDIENT.

3. REFUND BY ISSUING NEW BONDS FOR ANY BONDS ISSUED BY THE AUTHORITY IF THESE BONDS ARE SECURED FROM THE SAME SOURCE OF REVENUES AS THE BONDS AUTHORIZED BY THIS CHAPTER WITHOUT REGARD TO WHETHER THE BONDS TO BE REFUNDED HAVE MATURED.

4. TAKE, HOLD AND ENFORCE A SECURITY INTEREST IN WATER-RELATED FACILITIES INSIDE AND OUTSIDE OF THIS STATE IN CONNECTION WITH THE TERMS OF ANY AGREEMENT ENTERED INTO BY THE AUTHORITY IF THE AUTHORITY DETERMINES THAT SUCH A SECURITY INTEREST IS NECESSARY TO ADEQUATELY PROTECT THIS STATE'S INTERESTS.

5. TO THE EXTENT NECESSARY TO FACILITATE AN APPROVED WATER SUPPLY DEVELOPMENT PROJECT:

(a) PLAN, CONSTRUCT, ACQUIRE, OWN, IMPROVE AND EQUIP WATER-RELATED FACILITIES WITHIN THIS STATE TO TRANSPORT OR DELIVER IMPORTED WATER WITHIN THIS STATE.

(b) NEGOTIATE AND EXECUTE AGREEMENTS TO ACQUIRE, SELL, LEASE, EXCHANGE, HOLD, SEVER OR TRANSFER IMPORTED WATER AND RIGHTS TO IMPORTED WATER. THE AUTHORITY MAY ACQUIRE IMPORTED WATER AND RIGHTS TO IMPORTED WATER IN ITS OWN NAME.

(c) ENTER INTO AND CARRY OUT CONTRACTS OR SUBCONTRACTS FOR THE TRANSPORT, TREATMENT AND DELIVERY OF IMPORTED WATER ACQUIRED BY THE AUTHORITY.

(d) STORE IMPORTED WATER AND ACQUIRE, HOLD, ASSIGN OR OTHERWISE DISPOSE OF CREDITS FOR IMPORTED WATER REGISTERED TO STORAGE ACCOUNTS UNDER TITLE 45, CHAPTER 3.1.

(e) NEGOTIATE AND ENTER INTO AGREEMENTS TO USE EXISTING WATER-RELATED FACILITIES.

6. CONDUCT INVESTIGATIONS, INCLUDING PERFORMING ENVIRONMENTAL OR OTHER REVIEWS, IN ASSOCIATION WITH ANY OF THE ACTIVITIES PRESCRIBED BY PARAGRAPHS 4 AND 5 OF THIS SUBSECTION.

7. ASSESS FEES AND CHARGES IN CONNECTION WITH THE AUTHORITY'S DESIGN, CONSTRUCTION, ACQUISITION, IMPROVEMENT, EQUIPPING AND OWNERSHIP OF WATER-RELATED FACILITIES, INCLUDING FOR THE CONVEYANCE OR DELIVERY OF WATER AND IN CONNECTION WITH OPERATION AND MAINTENANCE AGREEMENTS ENTERED INTO BY THE AUTHORITY IN CONNECTION WITH WATER-RELATED FACILITIES. ANY FEES COLLECTED PURSUANT TO THIS PARAGRAPH CONSTITUTE GOVERNMENTAL REVENUE, MAY BE USED FOR ANY PURPOSE CONSISTENT WITH THE PURPOSES OF THE AUTHORITY AND MUST BE DEPOSITED IN THE LONG-TERM WATER AUGMENTATION FUND.

D. THIS CHAPTER DOES NOT REPLACE, SUPPLANT OR DIMINISH THE POWERS AND DUTIES OF THE DIRECTOR OF WATER RESOURCES SET FORTH IN TITLE 45, INCLUDING SECTIONS 45-105 AND 45-107.

Sec. 16. Section 49-193.01, Arizona Revised Statutes, is transferred and renumbered for placement in title 49, chapter 8, article 1, Arizona Revised Statutes, as section 49-1205 and as so renumbered, is amended to read:

49-1205. Water infrastructure finance authority board; legislative intent

~~A. The drought mitigation revolving fund is established to be maintained in perpetuity consisting of:~~

~~1. Monies appropriated by the legislature to the fund.~~

~~2. Monies received for drought mitigation purposes from the United States government.~~

~~3. Monies received as loan repayments, interest and penalties.~~

~~4. Interest and other income received from investing monies in the fund.~~

~~5. Gifts, grants and donations received for drought mitigation purposes from any public or private source.~~

~~B. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.~~

~~C.~~ A. The legislature finds THAT:

1. NOW AND INTO THE FORESEEABLE FUTURE that ~~many~~ regions in this state lack access to ~~sustainable~~ THE NECESSARY water supplies to meet their CURRENT AND long-term water ~~demands and need financial assistance to develop water supply and conservation projects. The legislature intends that the fund established by this section be used to provide financial~~

~~assistance for these projects under the terms set forth in this article~~ NEEDS.

2. PROTECTING CURRENT AND FUTURE RESIDENTS, THE ECONOMY AND THE ENVIRONMENT OF THIS STATE IS BEST ACHIEVED THROUGH A COMPREHENSIVE WATER STRATEGY THAT CONSERVES WATER, IMPROVES THE EFFICIENCY AND REUSE OF EXISTING WATER RESOURCES AND AUGMENTS EXISTING WATER RESOURCES WITH NEW RENEWABLE SUPPLIES OF WATER.

B. THE AUTHORITY IS ESTABLISHED FOR THE BENEFIT OF CURRENT AND FUTURE RESIDENTS, THE ECONOMY AND THE ENVIRONMENT OF THIS STATE.

C. THE AUTHORITY SHALL ACCOMPLISH ITS PURPOSES OF HELPING TO MEET EXISTING AND FUTURE WATER NEEDS OF THIS STATE BY DEVELOPING OR FACILITATING WATER CONSERVATION, REUSE AND AUGMENTATION PROJECTS.

D. THE AUTHORITY MAY ACCOMPLISH ITS PURPOSE INDIVIDUALLY, THROUGH COLLABORATION OR BY PARTNERING WITH PUBLIC OR PRIVATE ENTITIES. IF POSSIBLE, THE AUTHORITY MAY LEVERAGE EXISTING RESOURCES AND INFRASTRUCTURE WHILE NOT INTERFERING WITH ALREADY AVAILABLE USABLE WATER RESOURCES.

Sec. 17. Title 49, chapter 8, article 1, Arizona Revised Statutes, is amended by adding sections 49-1206, 49-1207, 49-1208, 49-1209, 49-1210, 49-1211, 49-1212, 49-1213, 49-1214 and 49-1215, to read:

49-1206. Water infrastructure finance authority board; membership; fingerprinting; conduct of office; definition

A. THE WATER INFRASTRUCTURE FINANCE AUTHORITY BOARD IS ESTABLISHED TO EVALUATE AND APPROVE FUNDING REQUESTS FOR MONIES FROM THE CLEAN WATER REVOLVING FUND, THE SAFE DRINKING WATER REVOLVING FUND, THE WATER SUPPLY DEVELOPMENT REVOLVING FUND, THE LONG-TERM WATER AUGMENTATION FUND AND THE WATER CONSERVATION GRANT FUND AND TO PERFORM OTHER DUTIES AS PRESCRIBED IN THIS CHAPTER.

B. THE BOARD CONSISTS OF THE FOLLOWING MEMBERS:

1. FOUR PERSONS FROM A COUNTY WITH A POPULATION OF FOUR HUNDRED THOUSAND PERSONS OR MORE.

2. FOUR PERSONS FROM A COUNTY WITH A POPULATION OF LESS THAN FOUR HUNDRED THOUSAND PERSONS.

3. ONE PERSON WHO SPECIALIZES IN FINANCE OR STATEWIDE WATER NEEDS.

4. THE FOLLOWING AS ADVISORY MEMBERS WITHOUT THE POWER TO VOTE BUT WHO MAY ATTEND EXECUTIVE SESSIONS OF THE BOARD:

(a) THE PRESIDENT OF THE SENATE OR THE PRESIDENT'S DESIGNEE.

(b) THE SPEAKER OF THE HOUSE OF REPRESENTATIVES OR THE SPEAKER'S DESIGNEE.

(c) THE MINORITY LEADER OF THE SENATE OR THE MINORITY LEADER'S DESIGNEE.

(d) THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES OR THE MINORITY LEADER'S DESIGNEE.

(e) THE DIRECTOR OF WATER RESOURCES OR THE DIRECTOR'S DESIGNEE.

(f) THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR THE DIRECTOR'S DESIGNEE.

(g) THE STATE LAND COMMISSIONER OR THE COMMISSIONER'S DESIGNEE.

(h) THE DIRECTOR OF THE DEPARTMENT OF ADMINISTRATION OR THE DIRECTOR'S DESIGNEE.

(i) THE CHIEF EXECUTIVE OFFICER OF THE ARIZONA COMMERCE AUTHORITY OR THE CHIEF EXECUTIVE OFFICER'S DESIGNEE.

C. THE FOLLOWING APPLY TO THE EIGHT MEMBERS APPOINTED PURSUANT TO SUBSECTION B, PARAGRAPHS 1 AND 2 OF THIS SECTION:

1. NO THREE APPOINTED MEMBERS OF THE BOARD MAY BE RESIDENTS OF THE SAME COUNTY, AND AT LEAST ONE APPOINTED MEMBER OF THE BOARD SHALL BE A RESIDENT OF EACH COUNTY WITH A POPULATION OF FOUR HUNDRED THOUSAND PERSONS OR MORE.

2. MEMBERS MUST HAVE A SUBSTANTIAL KNOWLEDGE OF AND EXPERIENCE WITH WATER OR FINANCE, INCLUDING PUBLIC FINANCE.

D. THE FOLLOWING APPLY TO ALL MEMBERS APPOINTED PURSUANT TO SUBSECTION B, PARAGRAPHS 1 THROUGH 3 OF THIS SECTION:

1. THE GOVERNOR SHALL APPOINT TWO OF THE MEMBERS FROM A COUNTY WITH A POPULATION OF FOUR HUNDRED THOUSAND PERSONS OR MORE, TWO OF THE MEMBERS FROM A COUNTY WITH A POPULATION OF LESS THAN FOUR HUNDRED THOUSAND PERSONS AND SHALL APPOINT THE MEMBER WHO SPECIALIZES IN FINANCE OR STATEWIDE WATER NEEDS FROM THE JOINT LIST OF AT LEAST FIVE QUALIFIED APPLICANTS SUBMITTED BY THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

2. THE PRESIDENT OF THE SENATE AND MINORITY LEADER OF THE SENATE SHALL APPOINT ONE OF THE MEMBERS FROM A COUNTY WITH A POPULATION OF FOUR HUNDRED THOUSAND PERSONS OR MORE AND ONE OF THE MEMBERS FROM A COUNTY WITH A POPULATION OF LESS THAN FOUR HUNDRED THOUSAND PERSONS. THE PRESIDENT OF THE SENATE AND MINORITY LEADER OF THE SENATE SHALL ALTERNATE THE TERMS IN WHICH THESE MEMBERS ARE APPOINTED.

3. THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES SHALL APPOINT ONE OF THE MEMBERS FROM A COUNTY WITH A POPULATION OF FOUR HUNDRED THOUSAND PERSONS OR MORE AND ONE OF THE MEMBERS FROM A COUNTY WITH A POPULATION OF LESS THAN FOUR HUNDRED THOUSAND PERSONS. THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES SHALL ALTERNATE THE TERMS IN WHICH THESE MEMBERS ARE APPOINTED.

4. APPOINTED MEMBERS SERVE FIVE-YEAR TERMS OF OFFICE BEGINNING AND ENDING ON THE THIRD MONDAY IN JANUARY AND ARE ELIGIBLE FOR REAPPOINTMENT. A MEMBER MAY BE REMOVED ONLY FOR CAUSE BY THE PERSON WHO THEN HOLDS THE SAME OFFICE AS THE PERSON WHO APPOINTED THAT MEMBER.

5. MEMBERS SHALL BE RESIDENTS OF THIS STATE FOR AT LEAST TWO YEARS.

6. THE ORDER IN WHICH THE MEMBERS ARE APPOINTED PURSUANT TO SUBSECTION B, PARAGRAPHS 1 AND 2 IS:

(a) FOR THE INITIAL TERM AND EVERY THIRD TERM THEREAFTER, THE PRESIDENT OF THE SENATE AND THE MINORITY LEADER OF THE SENATE SHALL APPOINT FIRST, THE GOVERNOR SHALL APPOINT SECOND AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES SHALL APPOINT THIRD.

(b) FOR THE SECOND TERM AND EVERY THIRD TERM THEREAFTER, THE GOVERNOR SHALL APPOINT FIRST, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES SHALL APPOINT SECOND AND THE PRESIDENT OF THE SENATE AND THE MINORITY LEADER OF THE SENATE SHALL APPOINT THIRD.

(c) FOR THE THIRD TERM AND EVERY THIRD TERM THEREAFTER, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES SHALL APPOINT FIRST, THE PRESIDENT OF THE SENATE AND THE MINORITY LEADER OF THE SENATE SHALL APPOINT SECOND AND THE GOVERNOR SHALL APPOINT THIRD.

E. BEFORE A MEMBER IS APPOINTED TO THE BOARD PURSUANT TO SUBSECTION C OR D OF THIS SECTION, THE PROSPECTIVE MEMBER SHALL SUBMIT A FULL SET OF FINGERPRINTS TO THE GOVERNOR FOR THE PURPOSE OF OBTAINING A STATE AND FEDERAL CRIMINAL RECORDS CHECK PURSUANT TO SECTION 41-1750 AND PUBLIC LAW 92-544. THE GOVERNOR SHALL SUBMIT THE FINGERPRINTS TO THE DEPARTMENT OF PUBLIC SAFETY. THE DEPARTMENT OF PUBLIC SAFETY MAY EXCHANGE THIS FINGERPRINT DATA WITH THE FEDERAL BUREAU OF INVESTIGATION.

F. THE BOARD SHALL ELECT A CHAIRPERSON OF THE BOARD FROM AMONG THE VOTING MEMBERS. THE CHAIRPERSON MAY APPOINT SUBCOMMITTEES AS NECESSARY.

G. THE BOARD MAY REQUEST ASSISTANCE FROM REPRESENTATIVES OF OTHER STATE AGENCIES. THE DEPARTMENT OF WATER RESOURCES SHALL PROVIDE TECHNICAL ASSISTANCE TO THE BOARD.

H. BOARD MEMBERS SERVE WITHOUT COMPENSATION BUT ARE ELIGIBLE FOR REIMBURSEMENT OF EXPENSES PURSUANT TO TITLE 38, CHAPTER 4, ARTICLE 2. A BOARD MEMBER WHO IS OTHERWISE EMPLOYED AS A PUBLIC OFFICER MAY NOT RECEIVE REIMBURSEMENT PURSUANT TO THIS SUBSECTION IF IT IS OTHERWISE PROHIBITED BY LAW.

I. A MAJORITY OF THE VOTING MEMBERS CONSTITUTES A QUORUM FOR THE PURPOSE OF AN OFFICIAL MEETING FOR CONDUCTING BUSINESS. AN AFFIRMATIVE VOTE OF A MAJORITY OF THE VOTING MEMBERS PRESENT AT AN OFFICIAL MEETING IS SUFFICIENT FOR THE BOARD TO TAKE ANY ACTION, EXCEPT THAT APPROVAL OF FUNDING OR OTHER FINANCIAL ASSISTANCE FROM THE WATER CONSERVATION GRANT FUND, THE CLEAN WATER REVOLVING FUND ESTABLISHED BY SECTION 49-1221, THE DRINKING WATER REVOLVING FUND ESTABLISHED BY SECTION 49-1241, THE WATER SUPPLY DEVELOPMENT REVOLVING FUND ESTABLISHED BY SECTION 49-1271 OR THE LONG-TERM WATER AUGMENTATION FUND REQUIRES THE AFFIRMATIVE VOTE OF AT LEAST SIX OF THE VOTING MEMBERS PRESENT AT AN OFFICIAL MEETING OF THE BOARD.

J. THE BOARD SHALL KEEP AND MAINTAIN A COMPLETE AND ACCURATE RECORD OF ALL BOARD PROCEEDINGS.

K. THE BOARD, COMMITTEES AND ANY SUBCOMMITTEES ARE SUBJECT TO TITLE 38, CHAPTER 3, ARTICLE 3.1, RELATING TO PUBLIC MEETINGS, EXCEPT ADVISORY NONVOTING MEMBERS OF THE BOARD MAY ATTEND EXECUTIVE SESSIONS OF THE BOARD.

L. THE BOARD, ITS SUBCOMMITTEES AND THE OFFICERS AND ANY EMPLOYEES OF THE BOARD ARE SUBJECT TO TITLE 38, CHAPTER 3, ARTICLE 8, RELATING TO CONFLICTS OF INTEREST. IN ADDITION TO THE CONFLICT OF INTEREST PROVISIONS IN TITLE 38, CHAPTER 3, ARTICLE 8, AND EXCEPT FOR EMPLOYEES OF THIS STATE OR A POLITICAL SUBDIVISION OF THIS STATE, THE FOLLOWING APPLY:

1. A PERSON IS NOT ELIGIBLE FOR APPOINTMENT TO THE BOARD IF THE PERSON OR THE PERSON'S SPOUSE MEETS ANY OF THE FOLLOWING CRITERIA:

(a) IS EMPLOYED BY OR PARTICIPATES IN THE MANAGEMENT OF A BUSINESS ENTITY OR OTHER ORGANIZATION THAT RECEIVES MONIES FROM THE AUTHORITY.

(b) OWNS, CONTROLS OR HAS, DIRECTLY OR INDIRECTLY, MORE THAN A TEN PERCENT INTEREST IN A BUSINESS ENTITY OR OTHER ORGANIZATION THAT RECEIVES MONIES FROM THE AUTHORITY.

(c) USES OR RECEIVES A SUBSTANTIAL AMOUNT OF TANGIBLE GOODS, SERVICES OR MONIES FROM THE AUTHORITY.

(d) HAS A PERSONAL FINANCIAL INTEREST IN THE AWARD OR EXPENDITURE. THE PERSON OR THE PERSON'S SPOUSE DOES NOT HAVE A PERSONAL FINANCIAL INTEREST IF THE PERSON OR THE PERSON'S SPOUSE IS A MEMBER OF A CLASS OF PERSONS AND IT REASONABLY APPEARS THAT A MAJORITY OF THE TOTAL MEMBERSHIP OF THAT CLASS IS TO BE AFFECTED BY THE ACTION.

2. A PERSON MAY NOT BE A VOTING MEMBER OF THE BOARD OR ACT AS THE GENERAL COUNSEL TO THE BOARD OR AUTHORITY IF THE PERSON IS REQUIRED TO REGISTER AS A LOBBYIST.

3. A PERSON MAY NOT BE A MEMBER OF THE BOARD OR AN EMPLOYEE OF THE AUTHORITY IF THE PERSON OR THE PERSON'S RELATIVE IS AN OFFICER, EMPLOYEE OR PAID CONSULTANT FOR A WATER USERS' ASSOCIATION OR TRADE ASSOCIATION.

M. AN EMPLOYEE OF A POLITICAL SUBDIVISION OF THIS STATE WHO SERVES ON THE BOARD MAY NOT PARTICIPATE IN THE CONSIDERATION OF OR A VOTE CONCERNING ANY AWARD OR EXPENDITURE BY THE AUTHORITY FOR PROJECTS THAT WILL DIRECTLY BENEFIT THE POLITICAL SUBDIVISION.

N. THE BOARD SHALL ADOPT WRITTEN POLICIES, PROCEDURES AND GUIDELINES FOR STANDARDS OF CONDUCT, INCLUDING A GIFT POLICY, FOR MEMBERS OF THE BOARD AND FOR OFFICERS AND EMPLOYEES OF THE BOARD.

O. THE BOARD IS A PUBLIC BODY THAT IS SUBJECT TO TITLE 38, CHAPTER 3, ARTICLE 3. THE BOARD SHALL OPERATE ON THE STATE FISCAL YEAR.

P. ALL STATE AGENCIES SHALL COOPERATE WITH THE BOARD AND MAKE AVAILABLE DATA PERTAINING TO THE FUNCTIONS OF THE BOARD AS REQUESTED BY THE BOARD.

Q. FOR THE PURPOSES OF THIS SECTION, "TRADE ASSOCIATION" MEANS ANY COOPERATIVE, ASSOCIATION OR BUSINESS ORGANIZATION, WHETHER OR NOT INCORPORATED UNDER FEDERAL OR STATE LAW, THAT IS DESIGNED TO ASSIST ITS MEMBERS, INDUSTRY OR PROFESSION IN ADVOCATING FOR OR PROMOTING THEIR COMMON INTEREST.

49-1207. Federal water programs committee; membership; recommendations

A. THE FEDERAL WATER PROGRAMS COMMITTEE IS ESTABLISHED TO ADVISE THE BOARD AND CONSISTS OF THE FOLLOWING VOTING MEMBERS WHO ARE APPOINTED BY THE BOARD:

1. ONE MEMBER WHO REPRESENTS A PUBLIC WATER SYSTEM THAT SERVES FIVE HUNDRED OR MORE CONNECTIONS.

2. ONE MEMBER WHO REPRESENTS A PUBLIC WATER SYSTEM THAT SERVES LESS THAN FIVE HUNDRED CONNECTIONS.

3. ONE MEMBER WHO REPRESENTS A DOMESTIC WATER IMPROVEMENT DISTRICT OR SANITARY DISTRICT IN A COUNTY WITH A POPULATION OF LESS THAN FIVE HUNDRED THOUSAND PERSONS.

4. ONE MEMBER WHO REPRESENTS A DOMESTIC WASTEWATER IMPROVEMENT DISTRICT OR SANITARY DISTRICT IN A COUNTY WITH A POPULATION OF FIVE HUNDRED THOUSAND OR MORE PERSONS.

5. ONE MEMBER WHO REPRESENTS A CITY OR TOWN WITH A POPULATION OF LESS THAN FIFTY THOUSAND PERSONS.

6. ONE MEMBER WHO REPRESENTS A CITY OR TOWN WITH A POPULATION OF FIFTY THOUSAND OR MORE PERSONS.

7. ONE MEMBER WHO REPRESENTS A COUNTY WITH A POPULATION OF FIVE HUNDRED THOUSAND OR MORE PERSONS.

8. THE DIRECTOR OF ENVIRONMENTAL QUALITY OR THE DIRECTOR'S DESIGNEE.

9. THE DIRECTOR OF WATER RESOURCES OR THE DIRECTOR'S DESIGNEE.

10. THE EXECUTIVE DIRECTOR OF THE CORPORATION COMMISSION OR THE EXECUTIVE DIRECTOR'S DESIGNEE.

11. THE CHIEF EXECUTIVE OFFICER OF THE ARIZONA COMMERCE AUTHORITY OR THE CHIEF EXECUTIVE OFFICER'S DESIGNEE.

B. THE FEDERAL WATER PROGRAMS COMMITTEE SHALL REVIEW APPLICATIONS FOR FINANCIAL OR OTHER ASSISTANCE FROM THE CLEAN WATER REVOLVING FUND PROGRAM, THE SAFE DRINKING WATER REVOLVING FUND PROGRAM AND THE HARDSHIP GRANT FUND PROGRAM AND SHALL MAKE RECOMMENDATIONS TO THE BOARD REGARDING THOSE APPLICATIONS FOR ASSISTANCE.

49-1208. Water supply development committee; long-term water augmentation committee; membership; recommendations

A. THE WATER SUPPLY DEVELOPMENT COMMITTEE IS ESTABLISHED CONSISTING OF SEVEN MEMBERS OF THE BOARD, INCLUDING THE FOUR MEMBERS WHO ARE FROM COUNTIES WITH POPULATIONS OF LESS THAN FOUR HUNDRED THOUSAND PERSONS, TWO MEMBERS WHO ARE FROM COUNTIES WITH POPULATIONS OF FOUR HUNDRED THOUSAND PERSONS OR MORE AND WHO ARE SELECTED BY A VOTE OF THE BOARD AND THE MEMBER OF THE BOARD WHO IS APPOINTED BY THE GOVERNOR AND WHO SPECIALIZES IN FINANCE OR STATEWIDE WATER NEEDS. THE WATER SUPPLY DEVELOPMENT COMMITTEE SHALL REVIEW APPLICATIONS FOR FINANCIAL ASSISTANCE FROM THE WATER SUPPLY

DEVELOPMENT REVOLVING FUND AND MAKE RECOMMENDATIONS TO THE BOARD REGARDING THOSE APPLICATIONS FOR ASSISTANCE.

B. THE LONG-TERM WATER AUGMENTATION COMMITTEE IS ESTABLISHED CONSISTING OF SEVEN MEMBERS OF THE BOARD, INCLUDING THE FOUR MEMBERS WHO ARE FROM COUNTIES WITH POPULATIONS OF FOUR HUNDRED THOUSAND PERSONS OR MORE, TWO MEMBERS WHO ARE FROM COUNTIES WITH POPULATIONS OF LESS THAN FOUR HUNDRED THOUSAND PERSONS AND WHO ARE SELECTED BY A VOTE OF THE BOARD AND THE MEMBER OF THE BOARD WHO IS APPOINTED BY THE GOVERNOR AND WHO SPECIALIZES IN FINANCE OR STATEWIDE WATER NEEDS. THE LONG-TERM WATER AUGMENTATION COMMITTEE SHALL REVIEW APPLICATIONS FOR FINANCIAL ASSISTANCE FROM THE LONG-TERM WATER AUGMENTATION FUND AND MAKE RECOMMENDATIONS TO THE BOARD REGARDING THOSE APPLICATIONS FOR ASSISTANCE.

49-1209. Cooperation with governmental entities

A. THE AUTHORITY MAY REQUEST ASSISTANCE FROM REPRESENTATIVES OF OTHER STATE AGENCIES, AND ALL STATE AGENCIES SHALL COOPERATE WITH THE AUTHORITY AND MAKE AVAILABLE DATA PERTAINING TO THE FUNCTIONS OF THE BOARD AS REQUESTED BY THE AUTHORITY.

B. IN THE ACQUISITION, CONSTRUCTION OR DEVELOPMENT OF WATER-RELATED FACILITIES, THE AUTHORITY SHALL COOPERATE WITH ESTABLISHED AND EXISTING STATE AGENCIES AND POLITICAL SUBDIVISIONS OF THIS STATE AND WITH THE UNITED STATES AND OTHER STATES.

C. THE AUTHORITY MAY NOT BEGIN NEGOTIATIONS REGARDING ANY AGREEMENT INVOLVING THE USE, STORAGE OR CONSERVATION OF COLORADO RIVER WATER OUTSIDE THIS STATE WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE DIRECTOR OF WATER RESOURCES AND MAY NOT ENTER INTO ANY AGREEMENT INVOLVING THE USE, STORAGE OR CONSERVATION OF COLORADO RIVER WATER OUTSIDE THIS STATE WITHOUT THE DIRECTOR OF WATER RESOURCES' EXPRESS WRITTEN APPROVAL.

49-1210. Limitations on water activities

A. THE AUTHORITY MAY NOT PURCHASE ANY MAINSTREAM COLORADO RIVER WATER OR RIGHTS TO MAINSTREAM COLORADO RIVER WATER AND MAY NOT PROVIDE FUNDING OR FINANCIAL ASSISTANCE TO TRANSFER, PURCHASE OR LEASE ANY SUCH WATER OR RIGHTS TO SUCH WATER, EXCEPT THAT THIS PROHIBITION DOES NOT APPLY TO ANY WATER OR RIGHTS TO WATER HELD BY A FEDERALLY RECOGNIZED INDIAN TRIBE OR TO PURCHASES MADE WITH MONIES FROM THE CLEAN WATER REVOLVING FUND ESTABLISHED BY SECTION 49-1221 OR THE DRINKING WATER REVOLVING FUND ESTABLISHED BY SECTION 49-1241. FOR PURPOSES OF THIS SUBSECTION, "MAINSTREAM COLORADO RIVER WATER" MEANS COLORADO RIVER WATER THAT IS AVAILABLE TO SATISFY ENTITLEMENTS IN THIS STATE BUT THAT IS NOT DELIVERED THROUGH THE CENTRAL ARIZONA PROJECT.

B. THE AUTHORITY MAY NOT ENTER INTO ANY AGREEMENTS TO CONVEY OR DELIVER WATER TO A WATER USER WITHIN THE INCORPORATED BOUNDARIES OF A CITY OR TOWN, A CITY OR TOWN WATER SERVICE AREA OR WITHIN THE BOUNDARIES OF A CERTIFICATE OF CONVENIENCE AND NECESSITY OF A PRIVATE WATER COMPANY WITHOUT THE WRITTEN CONSENT OF THE CITY, TOWN OR PRIVATE WATER COMPANY.

C. THE AUTHORITY MAY NOT OPERATE OR MAINTAIN ANY WATER-RELATED FACILITIES BUT MAY ENTER INTO AGREEMENTS WITH PUBLIC OR PRIVATE ENTITIES TO OPERATE OR MAINTAIN WATER-RELATED FACILITIES OWNED OR CONSTRUCTED BY THE AUTHORITY.

D. EXCEPT AS PROVIDED IN SECTION 49-1203.01, SUBSECTION C, PARAGRAPH 4, THE AUTHORITY MAY NOT ACQUIRE OR OWN WATER-RELATED FACILITIES THAT ARE EITHER:

1. LOCATED WITHIN THIS STATE AND USED TO CONVEY OR DELIVER WATER THAT IS NOT IMPORTED WATER.

2. LOCATED OUTSIDE THIS STATE.

E. IF THE AUTHORITY ACQUIRES IMPORTED WATER OR LONG-TERM STORAGE CREDITS CREATED FROM IMPORTED WATER IN ITS OWN NAME, THE AUTHORITY MAY NOT SELL OR LEASE THAT WATER OR THOSE LONG-TERM STORAGE CREDITS FOR AMOUNTS GREATER THAN NECESSARY TO COMPLY WITH SECTION 49-1303, SUBSECTION E OR TO REPAY LONG-TERM WATER AUGMENTATION BONDS ISSUED TO FUND ANY PROJECT TO ACQUIRE THE IMPORTED WATER OR LONG-TERM STORAGE CREDITS.

49-1211. Project delivery methods

THE AUTHORITY MAY PROVIDE FOR THE DEVELOPMENT OR OPERATION OF WATER-RELATED FACILITIES USING A VARIETY OF PROJECT DELIVERY METHODS AND FORMS OF AGREEMENT. THE METHODS MAY INCLUDE:

1. PREDEVELOPMENT AGREEMENTS LEADING TO OTHER IMPLEMENTING AGREEMENTS.

2. A DESIGN-BUILD AGREEMENT.

3. A DESIGN-BUILD-MAINTAIN AGREEMENT.

4. A DESIGN-BUILD-FINANCE-OPERATE AGREEMENT.

5. A DESIGN-BUILD-OPERATE-MAINTAIN AGREEMENT.

6. A DESIGN-BUILD-FINANCE-OPERATE-MAINTAIN AGREEMENT.

7. A CONCESSION AGREEMENT PROVIDING FOR THE PRIVATE PARTNER TO DESIGN, BUILD, OPERATE, MAINTAIN, MANAGE OR LEASE A WATER-RELATED FACILITY.

8. ANY OTHER PROJECT DELIVERY METHOD OR AGREEMENT OR COMBINATION OF METHODS OR AGREEMENTS THAT THE AUTHORITY DETERMINES ARE REASONABLE OR NECESSARY TO CARRY OUT THE AUTHORITY'S PURPOSES.

49-1212. Procurement for water-related facilities; insurance; evaluations; deviations

A. THE AUTHORITY MAY PROCURE SERVICES FOR THE DEVELOPMENT, DESIGN, ACQUISITION, CONSTRUCTION, IMPROVEMENT OR EQUIPPING OF WATER-RELATED FACILITIES USING ANY OF THE FOLLOWING:

1. REQUESTS FOR PROJECT PROPOSALS IN WHICH THE AUTHORITY DESCRIBES A CLASS OF WATER-RELATED FACILITIES OR A GEOGRAPHIC AREA IN WHICH ENTITIES ARE INVITED TO SUBMIT PROPOSALS TO DEVELOP WATER-RELATED FACILITIES.

2. SOLICITATIONS USING REQUESTS FOR QUALIFICATIONS, SHORT-LISTING OF QUALIFIED PROPOSERS, REQUESTS FOR PROPOSALS, NEGOTIATIONS, BEST AND FINAL OFFERS OR OTHER PROCUREMENT PROCEDURES.

3. PROCUREMENTS SEEKING DEVELOPMENT AND FINANCE PLANS THAT ARE MOST SUITABLE FOR THE PROJECT.

4. BEST VALUE SELECTION PROCUREMENTS BASED ON PRICE OR FINANCIAL PROPOSALS, OR BOTH, AND ANY OTHER RELEVANT FACTORS.

5. OTHER PROCEDURES THAT THE AUTHORITY DETERMINES MAY FURTHER THE IMPLEMENTATION OF THIS CHAPTER.

B. FOR ANY PROCUREMENT IN WHICH THE AUTHORITY ISSUES A REQUEST FOR QUALIFICATIONS, REQUEST FOR PROPOSALS OR SIMILAR SOLICITATION DOCUMENT, THE REQUEST SHALL SET FORTH GENERALLY THE FACTORS THAT WILL BE EVALUATED AND THE MANNER IN WHICH RESPONSES WILL BE EVALUATED. IF CONTRACTOR INSURANCE IS REQUIRED FOR SERVICES PROCURED PURSUANT TO THIS SECTION, THE INSURANCE SHALL BE PLACED WITH AN INSURER AUTHORIZED TO TRANSACT INSURANCE IN THIS STATE PURSUANT TO TITLE 20, CHAPTER 2, ARTICLE 1 OR A SURPLUS LINES INSURER APPROVED AND IDENTIFIED BY THE DIRECTOR OF THE DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS PURSUANT TO TITLE 20, CHAPTER 2, ARTICLE 5.

C. IN EVALUATING PROPOSALS UNDER THIS SECTION, THE AUTHORITY SHALL CONSIDER THE CRITERIA PRESCRIBED PURSUANT TO SECTION 49-1304.

D. THE AUTHORITY MAY DEVIATE FROM ANY REQUIREMENTS IN THIS SECTION TO THE EXTENT NECESSARY TO MAKE USE OF ANY AVAILABLE FEDERAL FUNDING FOR THE DESIGN, DEVELOPMENT, ACQUISITION, CONSTRUCTION, IMPROVEMENT OR EQUIPPING OF WATER-RELATED FACILITIES.

49-1213. Public-private partnership agreements; private partners; political subdivisions; tax exemptions; prohibition

A. IN ANY PUBLIC-PRIVATE PARTNERSHIP UNDER THIS CHAPTER, THE AUTHORITY MAY INCLUDE PROVISIONS THAT:

1. ALLOW THE AUTHORITY OR THE PRIVATE PARTNER TO ESTABLISH AND COLLECT DELIVERY CHARGES, SERVICE CHARGES, OPERATION AND MAINTENANCE CHARGES OR SIMILAR CHARGES, INCLUDING PROVISIONS THAT:

(a) ESTABLISH CIRCUMSTANCES UNDER WHICH THE AUTHORITY MAY RECEIVE ALL OR A SHARE OF REVENUES FROM SUCH CHARGES.

(b) GOVERN ENFORCEMENT OF COLLECTION OF SUCH CHARGES.

(c) ALLOW THE AUTHORITY TO CONTINUE OR CEASE COLLECTION OF CHARGES AFTER THE END OF THE TERM OF THE AGREEMENT.

2. ALLOW FOR PAYMENTS TO BE MADE BY THIS STATE TO THE PRIVATE PARTNER.

3. ALLOW THE AUTHORITY TO ACCEPT PAYMENTS OF MONIES AND SHARE REVENUES WITH THE PRIVATE PARTNER.

4. ADDRESS HOW THE PARTNERS WILL SHARE MANAGEMENT OF THE RISKS OF THE PUBLIC-PRIVATE PARTNERSHIP PROJECT, INCLUDING ANY RISKS ASSOCIATED WITH PUBLIC-PRIVATE PARTNERSHIP PROJECTS THAT WILL ORIGINATE OUTSIDE OF THIS STATE.

5. SPECIFY HOW THE PARTNERS WILL SHARE THE COSTS OF THE DESIGN, DEVELOPMENT, ACQUISITION, CONSTRUCTION, IMPROVEMENT AND EQUIPPING OF THE PUBLIC-PRIVATE PARTNERSHIP PROJECT.

6. ALLOCATE FINANCIAL RESPONSIBILITY FOR COST OVERRUNS.

7. ESTABLISH THE DAMAGES TO BE ASSESSED FOR NONPERFORMANCE.

8. ESTABLISH PERFORMANCE CRITERIA OR INCENTIVES, OR BOTH.

9. ADDRESS THE ACQUISITION OF RIGHTS-OF-WAY AND OTHER PROPERTY INTERESTS THAT MAY BE REQUIRED.

10. ESTABLISH RECORDKEEPING, ACCOUNTING AND AUDITING STANDARDS TO BE USED FOR THE PUBLIC-PRIVATE PARTNERSHIP PROJECT.

11. FOR A PUBLIC-PRIVATE PARTNERSHIP PROJECT THAT REVERTS TO PUBLIC OWNERSHIP, ADDRESS RESPONSIBILITY FOR RECONSTRUCTION OR RENOVATIONS THAT ARE REQUIRED IN ORDER FOR WATER-RELATED FACILITIES TO MEET ALL APPLICABLE GOVERNMENT STANDARDS ON REVERSION OF THE WATER-RELATED FACILITIES TO THIS STATE.

12. IDENTIFY ANY AUTHORITY SPECIFICATIONS THAT MUST BE SATISFIED, INCLUDING PROVISIONS ALLOWING THE PRIVATE PARTNER TO REQUEST AND RECEIVE AUTHORIZATION TO DEVIATE FROM THE SPECIFICATIONS ON MAKING A SHOWING SATISFACTORY TO THE AUTHORITY.

13. REQUIRE A PRIVATE PARTNER TO PROVIDE PERFORMANCE AND PAYMENT BONDS, PARENT COMPANY GUARANTEES, LETTERS OF CREDIT OR OTHER ACCEPTABLE FORMS OF SECURITY OR A COMBINATION OF ANY OF THESE, THE PENAL SUM OR AMOUNT OF WHICH MAY BE LESS THAN ONE HUNDRED PERCENT OF THE VALUE OF THE CONTRACT INVOLVED BASED ON THE AUTHORITY'S DETERMINATION, MADE ON A PROJECT-BY-PROJECT BASIS, OF WHAT IS REQUIRED TO ADEQUATELY PROTECT THIS STATE.

14. ALLOW THE PRIVATE PARTNER IN ANY CONCESSION AGREEMENT TO ESTABLISH AND COLLECT DELIVERY CHARGES, OPERATION AND MAINTENANCE CHARGES OR SIMILAR CHARGES TO COVER ITS COSTS AND PROVIDE FOR A REASONABLE RATE OF RETURN ON THE PRIVATE PARTNER'S INVESTMENT, INCLUDING ANY OF THE FOLLOWING PROVISIONS:

(a) THE CHARGES MAY BE COLLECTED DIRECTLY BY THE PRIVATE PARTNER OR BY A THIRD PARTY ENGAGED FOR THAT PURPOSE.

(b) A FORMULA FOR THE ADJUSTMENT OF CHARGES DURING THE TERM OF THE AGREEMENT.

(c) FOR AN AGREEMENT THAT DOES NOT INCLUDE A FORMULA DESCRIBED IN SUBDIVISION (b) OF THIS PARAGRAPH, PROVISIONS REGULATING THE PRIVATE PARTNER'S RETURN ON INVESTMENT.

15. SPECIFY REMEDIES AVAILABLE AND DISPUTE RESOLUTION PROCEDURES, INCLUDING FORUM SELECTION AND CHOICE OF LAW PROVISIONS AND THE RIGHT OF THE PARTIES TO INSTITUTE LEGAL PROCEEDINGS TO OBTAIN AN ENFORCEABLE JUDGMENT OR AWARD AND PROCEDURES FOR USE OF DISPUTE REVIEW BOARDS, MEDIATION, FACILITATED NEGOTIATION, ARBITRATION AND OTHER ALTERNATIVE DISPUTE RESOLUTION PROCEDURES.

16. ALLOW THE AUTHORITY TO ACQUIRE REAL PROPERTY THAT IS NEEDED FOR WATER-RELATED FACILITIES, INCLUDING ACQUISITION BY EXCHANGE FOR OTHER REAL PROPERTY THAT IS OWNED BY THE AUTHORITY.

B. THE AUTHORITY MAY APPROVE ANY REQUEST FROM ANOTHER UNIT OF GOVERNMENT TO DEVELOP WATER-RELATED FACILITIES IN A MANNER SIMILAR TO THAT USED BY THE AUTHORITY FOR PUBLIC-PRIVATE PARTNERSHIPS.

C. NOTWITHSTANDING ANY OTHER LAW, AGREEMENTS UNDER THIS CHAPTER THAT ARE PROPERLY DEVELOPED, OPERATED OR HELD BY A PRIVATE PARTNER UNDER A CONCESSION AGREEMENT PURSUANT TO THIS CHAPTER ARE EXEMPT FROM ALL STATE AND LOCAL AD VALOREM AND PROPERTY TAXES THAT OTHERWISE MIGHT BE APPLICABLE.

D. A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT UNDER THIS CHAPTER SHALL CONTAIN A PROVISION BY WHICH THE PRIVATE PARTNER EXPRESSLY AGREES THAT IT IS PROHIBITED FROM SEEKING INJUNCTIVE OR OTHER EQUITABLE RELIEF TO DELAY, PREVENT OR OTHERWISE HINDER THE AUTHORITY OR ANY JURISDICTION FROM DEVELOPING, CONSTRUCTING OR MAINTAINING ANY WATER-RELATED FACILITIES THAT WERE PLANNED AND THAT WOULD OR MIGHT IMPACT THE REVENUE THAT THE PRIVATE PARTNER WOULD OR MIGHT DERIVE FROM THE WATER-RELATED FACILITIES DEVELOPED UNDER THE AGREEMENT, EXCEPT THAT THE AGREEMENT MAY PROVIDE FOR REASONABLE COMPENSATION TO THE PRIVATE PARTNER FOR THE ADVERSE EFFECT ON REVENUES RESULTING FROM DEVELOPMENT, CONSTRUCTION AND MAINTENANCE OF AN UNPLANNED REVENUE IMPACTING WATER-RELATED FACILITIES.

E. A FOREIGN PRIVATE CORPORATION THAT ENTERS INTO AN AGREEMENT WITH THE AUTHORITY PURSUANT TO THIS SECTION MUST PROVIDE SATISFACTORY EVIDENCE TO THE BOARD THAT THE FOREIGN ENTITY IS IN COMPLIANCE WITH THE REQUIREMENTS OF TITLE 10, CHAPTER 38.

49-1214. Attorney general public-private partnership agreement certification

A. THE AUTHORITY SHALL SUBMIT TO THE ATTORNEY GENERAL ANY PUBLIC-PRIVATE PARTNERSHIP AGREEMENT ENTERED INTO BY THE AUTHORITY. ON THE SUBMISSION OF THE AGREEMENT TO THE ATTORNEY GENERAL, THE ATTORNEY GENERAL SHALL INVESTIGATE AND DETERMINE THE VALIDITY OF THE AGREEMENT.

B. IF THE AGREEMENT COMPLIES WITH THIS CHAPTER AND THE ATTORNEY GENERAL DETERMINES THAT THE AGREEMENT WILL CONSTITUTE A BINDING AND LEGAL OBLIGATION OF THE AUTHORITY THAT IS ENFORCEABLE ACCORDING TO THE TERMS OF THE AGREEMENT, THE ATTORNEY GENERAL SHALL CERTIFY, IN SUBSTANCE, THAT THE AGREEMENT HAS BEEN ENTERED INTO IN ACCORDANCE WITH THE CONSTITUTION AND LAWS OF THIS STATE.

49-1215. Joint legislative water committee; membership; duties

A. THE JOINT LEGISLATIVE WATER COMMITTEE IS ESTABLISHED CONSISTING OF THE FOLLOWING MEMBERS:

1. THE PRESIDENT OF THE SENATE OR THE PRESIDENT'S DESIGNEE.

2. THE SPEAKER OF THE HOUSE OF REPRESENTATIVES OR THE SPEAKER'S DESIGNEE.

3. THE MINORITY LEADER OF THE SENATE OR THE MINORITY LEADER'S DESIGNEE.

4. THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES OR THE MINORITY LEADER'S DESIGNEE.

5. THE CHAIRPERSON OF THE SENATE COMMITTEE WITH JURISDICTION OVER WATER ISSUES.

6. THE CHAIRPERSON OF THE HOUSE OF REPRESENTATIVES COMMITTEE WITH JURISDICTION OVER WATER ISSUES.

7. THE RANKING MINORITY PARTY MEMBER OF THE SENATE COMMITTEE WITH JURISDICTION OVER WATER ISSUES.

8. THE RANKING MINORITY PARTY MEMBER OF THE HOUSE OF REPRESENTATIVES COMMITTEE WITH JURISDICTION OVER WATER ISSUES.

9. THE CHAIRPERSON OF THE JOINT LEGISLATIVE BUDGET COMMITTEE.

B. THE JOINT LEGISLATIVE WATER COMMITTEE SHALL REVIEW AWARDS OF $50,000,000 OR MORE FROM THE LONG-TERM WATER AUGMENTATION FUND ESTABLISHED BY SECTION 49-1302 AND THE BOARD SHALL PROVIDE THE JOINT LEGISLATIVE WATER COMMITTEE WITH THE RELEVANT INFORMATION.

Sec. 18. Title 49, chapter 8, article 3, Arizona Revised Statutes, is amended by adding section 49-1270, to read:

49-1270. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ELIGIBLE ENTITY" MEANS ANY OF THE FOLLOWING:

(a) A WATER PROVIDER THAT DISTRIBUTES OR SELLS WATER OUTSIDE OF THE BOUNDARIES OF AN ACTIVE MANAGEMENT AREA LOCATED IN MARICOPA, PIMA OR PINAL COUNTY.

(b) ANY CITY, TOWN, COUNTY, DISTRICT, COMMISSION, AUTHORITY OR OTHER PUBLIC ENTITY THAT IS ORGANIZED AND THAT EXISTS UNDER THE STATUTORY LAW OF THIS STATE OR UNDER A VOTER-APPROVED CHARTER OR INITIATIVE OF THIS STATE THAT IS LOCATED OUTSIDE OF THE BOUNDARIES OF AN ACTIVE MANAGEMENT AREA LOCATED IN MARICOPA, PIMA OR PINAL COUNTY.

2. "LOAN" MEANS LEASES, LOANS OR OTHER EVIDENCE OF INDEBTEDNESS FOR WATER SUPPLY DEVELOPMENT PURPOSES ISSUED FROM THE WATER SUPPLY DEVELOPMENT REVOLVING FUND.

3. "LOAN REPAYMENT AGREEMENT" MEANS AN AGREEMENT TO REPAY A LOAN ISSUED FROM THE WATER SUPPLY DEVELOPMENT REVOLVING FUND ENTERED INTO BY AN ELIGIBLE ENTITY.

4. "WATER SUPPLY DEVELOPMENT REVOLVING FUND" OR "FUND" MEANS THE WATER SUPPLY DEVELOPMENT REVOLVING FUND ESTABLISHED BY SECTION 49-1271.

Sec. 19. Section 49-1271, Arizona Revised Statutes, is amended to read:

49-1271. Water supply development revolving fund

A. The water supply development revolving fund is established ~~to be maintained in perpetuity~~ consisting of ALL OF THE FOLLOWING:

1. Monies received from the issuance and sale of water supply development bonds under section 49-1278.

2. Monies appropriated by the legislature to the water supply development revolving fund.

3. Monies received for water supply development purposes from the United States government.

4. Monies received ~~from water providers~~ as loan repayments, interest and penalties.

5. Interest and other income received from investing monies in the fund.

6. Gifts, grants and donations received for water supply development purposes from any public or private source.

7. ANY OTHER MONIES RECEIVED BY THE AUTHORITY IN CONNECTION WITH THE PURPOSE OF THE WATER SUPPLY DEVELOPMENT REVOLVING FUND.

B. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

~~C. The legislature finds that many water providers in this state, particularly in rural areas, lack access to sufficient water supplies to meet their long-term water demands and need financial assistance to construct water supply projects and obtain additional water supplies. It is the intent of the legislature that the water supply development revolving fund established by this section be used to provide financial assistance to these water providers under the terms set forth in this article.~~

C. ALL MONIES SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE FUND AND SHALL BE HELD IN TRUST. ON NOTICE FROM THE AUTHORITY, THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED IN SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND. THE MONIES IN THE FUND MAY NOT BE APPROPRIATED OR TRANSFERRED BY THE LEGISLATURE TO FUND THE GENERAL OPERATIONS OF THIS STATE OR TO OTHERWISE MEET THE OBLIGATIONS OF THE STATE GENERAL FUND UNLESS APPROVED BY A THREE-FOURTHS VOTE OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE. THIS SUBSECTION DOES NOT APPLY TO ANY TAXES OR OTHER LEVIES THAT ARE IMPOSED PURSUANT TO TITLE 42 OR 43.

D. THE AUTHORITY SHALL ADMINISTER THE FUND. THE AUTHORITY SHALL ESTABLISH AS MANY OTHER ACCOUNTS AND SUBACCOUNTS AS REQUIRED TO ADMINISTER THE FUND. IF ANY BONDS ARE ISSUED UNDER SECTION 49-1278, THE AUTHORITY SHALL ESTABLISH ONE OR MORE BOND PROCEEDS ACCOUNTS AND ONE OR MORE BOND DEBT SERVICE ACCOUNTS AS NECESSARY TO ACCURATELY RECORD AND TRACK BOND PROCEEDS AND DEBT SERVICE REVENUES.

E. MONIES AND OTHER ASSETS IN THE FUND SHALL BE USED SOLELY FOR THE PURPOSES AUTHORIZED BY THIS CHAPTER.

F. MONIES IN THE FUND MAY BE USED TO SECURE WATER SUPPLY DEVELOPMENT BONDS OF THE AUTHORITY.

Sec. 20. Section 49-1273, Arizona Revised Statutes, as amended by Laws 2022, chapter 63, section 2, is amended to read:

49-1273. Water supply development revolving fund; purposes

A. Monies in the water supply development revolving fund may be used for the following purposes:

1. Making ~~water supply development~~ loans to ~~water providers~~ ELIGIBLE ENTITLES in this state under section 49-1274 for water supply development ~~purposes~~ PROJECTS WITHIN THIS STATE. A SINGLE LOAN SHALL NOT EXCEED $3,000,000.

2. Making ~~loans or~~ grants or providing technical assistance to ~~water providers for planning or designing~~ ELIGIBLE ENTITIES FOR water supply development projects IN THIS STATE. A single grant shall not exceed ~~$250,000~~ $2,000,000.

3. Purchasing or refinancing debt obligations of water providers at or below market rate if the debt obligation was issued for a water supply development purpose.

4. Providing financial assistance to water providers with bonding authority to purchase insurance for local bond obligations incurred by them for water supply development purposes.

5. Paying the costs to administer the fund.

~~6. Providing linked deposit guarantees through third-party lenders by depositing monies with the lender on the condition that the lender make a loan on terms approved by the board, at a rate of return on the deposit approved by the board and the state treasurer and by giving the lender recourse against the deposit of loan repayments that are not made when due.~~

7. Conducting water supply studies.

B. If the monies pledged to secure water supply development bonds issued pursuant to section 49-1278 become insufficient to pay the principal and interest on the water supply development bonds guaranteed by the water supply development revolving fund, the authority shall direct the state treasurer to liquidate securities in the fund as may be necessary and shall apply those proceeds to make current all payments then due on the bonds. The state treasurer shall immediately notify the attorney general and auditor general of the insufficiency. The auditor general shall audit the circumstances surrounding the depletion of the fund and report the findings to the attorney general. The attorney general shall conduct an investigation and report those findings to the governor and the legislature.

~~C. Monies in the water supply development revolving fund shall not be used to provide financial assistance to a water provider, other than an Indian tribe, unless one of the following applies:~~

~~1. The board of supervisors of the county in which the water provider is located has adopted the provision authorized by section 11-823, subsection A.~~

~~2. The water provider is located in a city or town and the legislative body of the city or town has enacted the ordinance authorized by section 9-463.01, subsection O.~~

~~3. The water provider is located in an active management area established pursuant to title 45, chapter 2, article 2.~~

~~4. The water provider is located outside of an active management area and either of the following applies:~~

~~(a) The director of water resources has designated the water provider as having an adequate water supply pursuant to section 45-108.~~

~~(b) The water provider will use the financial assistance for a water supply development project and the director of water resources has determined pursuant to section 45-108 that there is an adequate water supply for all subdivided land that will be served by the project and for which a public report was issued after July 24, 2014.~~

~~5. The water provider is located in a county with a population of less than one million five hundred thousand persons.~~

Sec. 21. Section 49-1274, Arizona Revised Statutes, as amended by Laws 2022, chapter 63, section 3, is amended to read:

49-1274. Water supply development revolving fund financial assistance; procedures

A. In compliance with any applicable requirements, ~~a water provider~~ AN ELIGIBLE ENTITY may apply to the authority for and accept and incur indebtedness as a result of a loan or any other financial assistance ~~pursuant to section 49-1273~~ from the water supply development revolving fund for water supply development ~~purposes~~ PROJECTS IN THIS STATE. In compliance with any applicable requirements, ~~a water provider~~ AN ELIGIBLE ENTITY may also apply to the authority for and accept grants, staff assistance or technical assistance for ~~the planning or design of~~ a water supply development project IN THIS STATE. ~~A water provider that applies for and accepts a loan or other financial assistance under this article is not precluded from applying for and accepting a loan or other financial assistance under article 2 of this chapter or under any other law.~~

B. The authority~~, in consultation with the board,~~ shall DO ALL OF THE FOLLOWING:

1. Prescribe a simplified form and procedure to apply for and approve assistance.

2. Establish by rule criteria by which assistance will be awarded, including: ~~requirements for local participation in project costs, if deemed advisable. The criteria shall include determining the following:~~

~~(a) The ability of the applicant to repay a loan according to the terms and conditions established by this section. At the option of the board, the existence of a current investment grade rating on existing debt of the applicant that is secured by the same revenues to be pledged to secure repayment under the loan repayment agreement constitutes evidence regarding ability to repay a loan.~~

~~(b) The applicant's legal capability to enter into a loan repayment agreement.~~

~~(c) The applicant's financial ability to construct, operate and maintain the project if it receives the financial assistance.~~

~~(d) The applicant's ability to manage the project.~~

~~(e) The applicant's ability to meet any applicable environmental requirements imposed by federal or state agencies.~~

~~(f) The applicant's ability to acquire any necessary regulatory permits.~~

(a) FOR ANY ASSISTANCE:

(i) A DETERMINATION OF THE APPLICANT'S FINANCIAL ABILITY TO CONSTRUCT, OPERATE AND MAINTAIN THE PROJECT IF THE APPLICANT RECEIVES THE ASSISTANCE.

(ii) A DETERMINATION OF THE APPLICANT'S ABILITY TO MANAGE THE PROJECT.

(iii) A DETERMINATION OF THE APPLICANT'S ABILITY TO MEET ANY APPLICABLE ENVIRONMENTAL REQUIREMENTS IMPOSED BY FEDERAL OR STATE AGENCIES.

(iv) A DETERMINATION OF THE APPLICANT'S ABILITY TO ACQUIRE ANY NECESSARY REGULATORY PERMITS.

(b) IF THE APPLICANT IS APPLYING FOR A LOAN:

(i) A DETERMINATION OF THE ABILITY OF THE APPLICANT TO REPAY A LOAN ACCORDING TO THE TERMS AND CONDITIONS ESTABLISHED BY THIS SECTION. AT THE OPTION OF THE AUTHORITY, THE EXISTENCE OF A CURRENT INVESTMENT GRADE RATING ON EXISTING DEBT OF THE APPLICANT THAT IS SECURED BY THE SAME REVENUES TO BE PLEDGED TO SECURE REPAYMENT UNDER THE LOAN REPAYMENT AGREEMENT CONSTITUTES EVIDENCE REGARDING ABILITY TO REPAY A LOAN.

(ii) A DETERMINATION OF THE APPLICANT'S LEGAL CAPABILITY TO ENTER INTO A LOAN REPAYMENT AGREEMENT.

3. Determine the order and priority of projects assisted under this section based on the merits of the application with respect to water supply development issues, including the following:

~~(a) Existing, near-term and long-term water demands of the water provider compared to the existing water supplies of the water provider.~~

~~(b) Existing and planned conservation and water management programs of the water provider, including watershed management or protection.~~

~~(c) Benefits of the project.~~

~~(d) The sustainability of the water supply to be developed through the project.~~

~~(e) The water provider's need for financial assistance.~~

~~(f) The cost-effectiveness of the project.~~

(a) THE ABILITY OF THE PROJECT TO PROVIDE MULTIPLE WATER SUPPLY DEVELOPMENT BENEFITS.

(b) THE COST-EFFECTIVENESS OF THE PROJECT.

(c) THE RELIABILITY AND LONG-TERM SECURITY OF THE WATER SUPPLY TO BE DEVELOPED THROUGH THE PROJECT.

(d) THE DEGREE TO WHICH THE PROJECT WILL MAXIMIZE OR LEVERAGE MULTIPLE AVAILABLE FUNDING SOURCES, INCLUDING FEDERAL FUNDING.

(e) THE FEASIBILITY OF THE PROJECT, INCLUDING THE FEASIBILITY OF THE PROPOSED DESIGN AND OPERATION OF ANY PROJECT.

(f) COMMENTS FROM WATER USERS, LOCAL CITIZENS AND AFFECTED JURISDICTIONS.

(g) EXISTING, NEAR-TERM AND LONG-TERM WATER DEMANDS COMPARED TO THE VOLUME AND RELIABILITY OF EXISTING WATER SUPPLIES OF THE PROPOSED RECIPIENTS OF THE WATER SUPPLY.

(h) EXISTING AND PLANNED CONSERVATION, BEST MANAGEMENT PRACTICES AND WATER MANAGEMENT PROGRAMS OF THE APPLICANT OR THE PROPOSED RECIPIENTS OF THE WATER SUPPLY.

(i) THE ABILITY OF THE PROJECT TO PROVIDE WATER SUPPLY DEVELOPMENT BENEFITS TO MULTIPLE JURISDICTIONS WITHIN THE STATE.

(j) OTHER CRITERIA THAT THE AUTHORITY DEEMS APPROPRIATE.

C. THE AUTHORITY SHALL CONDUCT BACKGROUND CHECKS, FINANCIAL CHECKS AND OTHER REVIEWS DEEMED APPROPRIATE FOR INDIVIDUAL APPLICANTS, APPLICANTS' BOARDS OF DIRECTORS AND OTHER PARTNERS OF THE APPLICANTS.

~~C.~~ D. The ~~board~~ AUTHORITY shall review on its merits each application received and shall inform the applicant of the ~~board's~~ AUTHORITY'S determination ~~within ninety days after receipt of a complete and correct application~~. If the application is not approved, the ~~board~~ AUTHORITY shall notify the applicant, stating the reasons. If the application is approved, the ~~board~~ AUTHORITY may condition the approval on assurances the ~~board~~ AUTHORITY deems necessary to ensure that the financial assistance will be used according to law and the terms of the application.

~~D. On approval of an application under this section by the board, the authority shall use monies in the water supply development revolving fund to finance the project.~~

Sec. 22. Section 49-1275, Arizona Revised Statutes, as amended by Laws 2022, chapter 63, section 4, is amended to read:

49-1275. Water supply development revolving fund financial assistance; terms

A. A loan from the water supply development revolving fund shall be evidenced by bonds, if the ~~water provider~~ ELIGIBLE ENTITY has bonding authority, or by a ~~financial assistance~~ LOAN REPAYMENT agreement, delivered to and held by the authority.

B. A loan under this section shall:

~~1. Be repaid not more than forty years after the date incurred.~~

~~2. Require that interest payments begin not later than the next date that either principal or interest must be paid by the authority to the holders of any of the authority's bonds that provided funding for the~~

~~loan. If the loan is for constructing water supply development facilities, the authority may provide that loan interest accruing during construction and one year after completing the construction be capitalized in the loan.~~

~~3.~~ 1. Be conditioned on establishing a dedicated revenue source for repaying the loan.

2. BE REPAID IN A PERIOD AND ON TERMS DETERMINED BY THE AUTHORITY.

C. The authority~~, in consultation with the board,~~ shall prescribe the rate of interest on loans made under this section, but the rate shall not exceed the prevailing market rate for similar types of loans. The authority~~, on recommendations from the board,~~ may adopt rules that provide for flexible interest rates and interest-free loans. All ~~financial assistance~~ LOAN agreements or bonds of ~~a water provider~~ AN ELIGIBLE ENTITY shall clearly specify the amount of principal and interest and any redemption premium that is due on any payment date. THE AUTHORITY MAY NOT UNILATERALLY AMEND A LOAN REPAYMENT AGREEMENT, LOAN OR BOND AFTER ITS EXECUTION OR IMPLEMENT ANY POLICY THAT MODIFIES TERMS AND CONDITIONS OR AFFECTS A PREVIOUSLY EXECUTED LOAN REPAYMENT AGREEMENT, LOAN OR BOND. THE AUTHORITY MAY NOT IMPOSE A REDEMPTION PREMIUM OR AN INTEREST PAYMENT BEYOND THE DATE THE PRINCIPAL IS PAID AS A CONDITION OF REFINANCING OR RECEIVING PREPAYMENT ON A LOAN REPAYMENT AGREEMENT, LOAN OR BOND IF THE LOAN REPAYMENT AGREEMENT, LOAN OR BOND DID NOT ORIGINALLY CONTAIN A REDEMPTION PREMIUM OR INTEREST PAYMENT BEYOND THE DATE THE PRINCIPAL IS PAID.

D. The approval of a loan is conditioned on a written commitment by the ~~water provider~~ ELIGIBLE ENTITY to complete all applicable reviews and approvals and to secure all required permits in a timely manner.

E. A loan made to ~~a water provider under this section~~ AN ELIGIBLE ENTITY THAT IS A POLITICAL SUBDIVISION OF THIS STATE may be secured additionally by an irrevocable pledge of any shared state revenues due to the ~~water provider~~ ELIGIBLE ENTITY for the duration of the loan as prescribed by ~~a resolution of the board. If the board requires an irrevocable pledge of the shared state revenues for financial assistance loan repayment agreements, the authority shall enter into an intercreditor agreement with the greater Arizona development authority to define the allocation of shared state revenues in relation to individual borrowers~~ THE AUTHORITY. AS APPLICABLE TO LOANS ADDITIONALLY SECURED WITH SHARED STATE REVENUES, THE AUTHORITY MAY ENTER INTO AGREEMENTS TO SPECIFY THE ALLOCATION OF SHARED STATE REVENUES IN RELATION TO INDIVIDUAL BORROWERS FROM SUCH AUTHORITIES. If a pledge OF SHARED STATE REVENUES AS ADDITIONAL SECURITY FOR A LOAN is required and ~~a water provider~~ THE ELIGIBLE ENTITY fails to make any payment due to the authority under its loan repayment agreement or THE ELIGIBLE ENTITY'S bonds, the authority shall certify to the state treasurer and notify the governing body of the defaulting ~~water provider~~ ELIGIBLE ENTITY that the ~~water provider~~ ELIGIBLE ENTITY has failed to make the required payment and shall direct a withholding of

~~state~~ shared STATE revenues as prescribed in subsection F of this section. The certificate of default shall be in the form determined by the authority, except that the certificate shall specify the amount required to satisfy the unpaid payment obligation of the ~~water provider~~ ELIGIBLE ENTITY.

F. On receipt of a certificate of default from the authority, the state treasurer, to the extent not expressly prohibited by law, shall withhold any monies due to the defaulting ~~water provider~~ ELIGIBLE ENTITY from the next succeeding distribution of monies pursuant to section 42-5029. In the case of AN ELIGIBLE ENTITY THAT IS a city or town, the state treasurer shall also withhold from the monies due to the defaulting city or town from the next succeeding distribution of monies pursuant to section 43-206 the amount specified in the certificate of default and shall immediately deposit the monies in the water supply development revolving fund. The state treasurer shall continue to withhold and deposit monies until the authority certifies to the state treasurer that the default has been cured. The state treasurer shall not withhold any amount that is necessary to make any required deposits then due for the payment of principal and interest on bonds OR INDEBTEDNESS of the ~~water provider~~ ELIGIBLE ENTITY if so certified by the defaulting ~~water provider~~ ELIGIBLE ENTITY to the state treasurer and the authority. The ~~water provider~~ DEFAULTING ELIGIBLE ENTITY shall not certify deposits as necessary for payment for bonds OR INDEBTEDNESS unless the bonds were issued OR THE INDEBTEDNESS INCURRED before the date of the loan repayment agreement and the bonds ~~were~~ OR INDEBTEDNESS WAS secured by a pledge of ~~distribution~~ DISTRIBUTIONS made pursuant to sections 42-5029 and 43-206.

G. BY RESOLUTION OF THE BOARD, THE AUTHORITY MAY IMPOSE ANY ADDITIONAL REQUIREMENTS IT CONSIDERS NECESSARY TO ENSURE THAT THE LOAN PRINCIPAL AND INTEREST ARE TIMELY PAID.

H. ALL MONIES RECEIVED FROM ELIGIBLE ENTITIES AS LOAN REPAYMENTS, INTEREST AND PENALTIES SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE WATER SUPPLY DEVELOPMENT REVOLVING FUND.

I. FOR AN ELIGIBLE ENTITY THAT IS A POLITICAL SUBDIVISION OF THIS STATE, THE REVENUES OF THE ELIGIBLE ENTITY'S UTILITY SYSTEM OR SYSTEMS MAY BE PLEDGED TO THE PAYMENT OF A LOAN WITHOUT AN ELECTION, IF THE PLEDGE OF REVENUES DOES NOT VIOLATE ANY COVENANT PERTAINING TO THE UTILITY SYSTEM OR SYSTEMS OR THE REVENUES PLEDGED TO SECURE OUTSTANDING BONDS OR OTHER OBLIGATIONS OR INDEBTEDNESS OF THE ELIGIBLE ENTITY.

J. FOR AN ELIGIBLE ENTITY THAT IS A POLITICAL SUBDIVISION OF THIS STATE, IF THE REVENUES FROM A SECONDARY PROPERTY TAX LEVY CONSTITUTE REVENUES PLEDGED BY THE ELIGIBLE ENTITY TO REPAY A LOAN, THE ELIGIBLE ENTITY SHALL SUBMIT THE QUESTION OF ENTERING AND PERFORMING A LOAN REPAYMENT AGREEMENT TO THE QUALIFIED ELECTORS OF THE ELIGIBLE ENTITY AT AN ELECTION HELD ON THE FIRST TUESDAY FOLLOWING THE FIRST MONDAY IN NOVEMBER.

K. AN ELECTION IS NOT REQUIRED IF VOTER APPROVAL HAS PREVIOUSLY BEEN OBTAINED FOR SUBSTANTIALLY THE SAME PROJECT WITH ANOTHER FUNDING SOURCE.

L. PAYMENTS MADE PURSUANT TO A LOAN REPAYMENT AGREEMENT ARE NOT SUBJECT TO SECTION 42-17106.

M. FOR AN ELIGIBLE ENTITY THAT IS A POLITICAL SUBDIVISION OF THIS STATE, A LOAN REPAYMENT AGREEMENT UNDER THIS SECTION DOES NOT CREATE A DEBT OF THE ELIGIBLE ENTITY, AND THE AUTHORITY MAY NOT REQUIRE THAT PAYMENT OF A LOAN REPAYMENT AGREEMENT BE MADE FROM OTHER THAN THE REVENUES PLEDGED BY THE ELIGIBLE ENTITY.

N. AN ELIGIBLE ENTITY MAY EMPLOY ATTORNEYS, ACCOUNTANTS, FINANCIAL CONSULTANTS AND OTHER EXPERTS IN THEIR FIELDS AS DEEMED NECESSARY TO PERFORM SERVICES WITH RESPECT TO A LOAN REPAYMENT AGREEMENT.

O. AT THE DIRECTION OF THE AUTHORITY, AN ELIGIBLE ENTITY SHALL PAY, AND IS AUTHORIZED TO PAY, THE AUTHORITY'S COSTS IN ISSUING WATER SUPPLY DEVELOPMENT BONDS OR OTHERWISE BORROWING TO FUND A LOAN.

Sec. 23. Title 49, chapter 8, Arizona Revised Statutes, is amended by adding articles 4 and 5, to read:

ARTICLE 4. LONG-TERM WATER AUGMENTATION FUND

49-1301. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "ELIGIBLE ENTITY" MEANS ANY OF THE FOLLOWING:

(a) A WATER PROVIDER.

(b) ANY CITY, TOWN, COUNTY, DISTRICT, COMMISSION, AUTHORITY OR OTHER PUBLIC ENTITY THAT IS ORGANIZED AND THAT EXISTS UNDER THE STATUTORY LAW OF THIS STATE OR UNDER A VOTER-APPROVED CHARTER OR INITIATIVE OF THIS STATE.

2. "FINANCIAL ASSISTANCE" MEANS LOANS PROVIDED BY THE AUTHORITY TO ELIGIBLE ENTITIES AND CREDIT ENHANCEMENTS PURCHASED FOR AN ELIGIBLE ENTITY'S BONDS OR OTHER FORMS OF INDEBTEDNESS PURSUANT TO SECTION 49-1307.

3. "LOAN" MEANS A BOND, LEASE, LOAN OR OTHER EVIDENCE OF INDEBTEDNESS PERTAINING TO FINANCIAL ASSISTANCE FOR WATER SUPPLY DEVELOPMENT PROJECTS ISSUED FROM THE LONG-TERM WATER AUGMENTATION FUND.

4. "LOAN REPAYMENT AGREEMENT" MEANS AN AGREEMENT TO REPAY A LOAN THAT IS ISSUED FROM THE LONG-TERM WATER AUGMENTATION FUND AND THAT IS ENTERED INTO BY AN ELIGIBLE ENTITY.

5. "PLEDGED REVENUES" MEANS ANY MONIES TO BE RECEIVED BY AN ELIGIBLE ENTITY, INCLUDING PROPERTY TAXES, OTHER LOCAL TAXES, FEES, ASSESSMENTS, RATES OR CHARGES THAT ARE PLEDGED BY THE ELIGIBLE ENTITY AS A SOURCE OF REPAYMENT FOR A LOAN REPAYMENT AGREEMENT.

49-1302. Long-term water augmentation fund

A. THE LONG-TERM WATER AUGMENTATION FUND IS ESTABLISHED TO BE MAINTAINED IN PERPETUITY CONSISTING OF ALL OF THE FOLLOWING:

1. MONIES RECEIVED FROM THE ISSUANCE AND SALE OF LONG-TERM WATER AUGMENTATION BONDS UNDER SECTION 49-1309.

2. MONIES APPROPRIATED BY THE LEGISLATURE TO THE FUND.

3. MONIES RECEIVED FOR ANY ALLOWABLE PURPOSE OF THE FUND FROM THE UNITED STATES GOVERNMENT.

4. MONIES RECEIVED AS LOAN REPAYMENTS, INTEREST, ADMINISTRATIVE FEES AND PENALTIES.

5. MONIES FROM ANY LAWFUL ACTIVITIES OF THE AUTHORITY, INCLUDING PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS RELATING TO WATER SUPPLY DEVELOPMENT PROJECTS.

6. INTEREST AND OTHER INCOME RECEIVED FROM INVESTING MONIES IN THE FUND.

7. GIFTS, GRANTS AND DONATIONS RECEIVED FOR PURPOSES OF THE FUND FROM ANY PUBLIC OR PRIVATE SOURCE.

B. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED AND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS. ON NOTICE FROM THE AUTHORITY, THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED IN SECTIONS 35-313 AND 35-314.03, AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND.

C. ALL MONIES SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE FUND AND SHALL BE HELD IN TRUST. THE MONIES IN THE FUND MAY NOT BE APPROPRIATED OR TRANSFERRED BY THE LEGISLATURE TO FUND THE GENERAL OPERATIONS OF THIS STATE OR TO OTHERWISE MEET THE OBLIGATIONS OF THE STATE GENERAL FUND UNLESS APPROVED BY A THREE-FOURTHS VOTE OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE.

D. THE AUTHORITY SHALL ADMINISTER THE FUND. THE AUTHORITY SHALL ESTABLISH AS MANY OTHER ACCOUNTS AND SUBACCOUNTS AS REQUIRED TO ADMINISTER THE FUND. IF ANY LONG-TERM WATER AUGMENTATION BONDS ARE ISSUED UNDER SECTION 49-1309, THE AUTHORITY SHALL ESTABLISH ONE OR MORE BOND PROCEEDS ACCOUNTS AND ONE OR MORE BOND DEBT SERVICE ACCOUNTS AS NECESSARY TO ACCURATELY RECORD AND TRACK BOND PROCEEDS AND DEBT SERVICE REVENUES.

E. THE AUTHORITY SHALL USE THE MONIES AND OTHER ASSETS IN THE FUND SOLELY FOR THE PURPOSES AUTHORIZED BY THIS CHAPTER.

F. MONIES IN THE FUND MAY BE USED FOR SECURING LONG-TERM WATER AUGMENTATION BONDS OF THE AUTHORITY.

49-1303. Long-term water augmentation fund; purposes; limitation

A. MONIES AND OTHER ASSETS IN THE LONG-TERM WATER AUGMENTATION FUND MAY BE USED FOR THE FOLLOWING PURPOSES:

1. FUNDING WATER SUPPLY DEVELOPMENT PROJECTS THAT IMPORT WATER FROM OUTSIDE THE BOUNDARIES OF THIS STATE. AT LEAST SEVENTY-FIVE PERCENT OF THE MONIES IN THE FISCAL YEARS 2022-2023, 2023-2024 AND 2024-2025 APPROPRIATIONS TO THE FUND SHALL BE RESERVED FOR ONE OR MORE PROJECTS WITH THIS PURPOSE, AND THOSE MONIES SHALL BE ACCOUNTED FOR SEPARATELY.

2. PURCHASING IMPORTED WATER OR RIGHTS TO IMPORTED WATER.

3. ACQUIRING OR CONSTRUCTING WATER-RELATED FACILITIES IN THIS STATE TO CONVEY OR DELIVER IMPORTED WATER WITHIN THE STATE.

4. CONDUCTING INVESTIGATIONS, INCLUDING PERFORMING ENVIRONMENTAL OR OTHER REVIEWS.

5. CONTRACTING FOR WATER NEEDS ASSESSMENTS.

6. PROVIDING FINANCIAL ASSISTANCE TO ELIGIBLE ENTITIES FOR THE PURPOSES OF FINANCING OR REFINANCING WATER SUPPLY DEVELOPMENT PROJECTS WITHIN THIS STATE, INCLUDING PROJECTS FOR CONSERVATION THROUGH REDUCING EXISTING WATER USE OR MORE EFFICIENT USES OF EXISTING WATER SUPPLIES.

7. GUARANTEEING DEBT OBLIGATIONS OF ELIGIBLE ENTITIES THAT ARE ISSUED OR INCURRED TO FINANCE OR REFINANCE WATER SUPPLY DEVELOPMENT PROJECTS WITHIN THIS STATE OR PROVIDING CREDIT ENHANCEMENTS IN CONNECTION WITH THESE DEBT OBLIGATIONS.

8. PAYING THE COSTS TO ADMINISTER THE FUND.

9. FUNDING NOT MORE THAN TEN FULL-TIME EQUIVALENT POSITIONS OF THE AUTHORITY.

B. IN PROVIDING FINANCIAL ASSISTANCE FROM THE FUND, THE AUTHORITY SHALL COMPLY WITH SECTION 49-1304.

C. MONIES IN THE FUND MAY NOT BE USED TO PURCHASE CONSERVATION OR OTHER SIMILAR EASEMENTS ON REAL PROPERTY.

D. IF THE MONIES PLEDGED TO SECURE LONG-TERM WATER AUGMENTATION BONDS ISSUED PURSUANT TO SECTION 49-1309 BECOME INSUFFICIENT TO PAY THE PRINCIPAL AND INTEREST ON THE LONG-TERM WATER AUGMENTATION BONDS GUARANTEED BY THE FUND, THE AUTHORITY SHALL DIRECT THE STATE TREASURER TO LIQUIDATE SECURITIES IN THE FUND AS MAY BE NECESSARY AND SHALL APPLY THOSE PROCEEDS TO MAKE CURRENT ALL PAYMENTS THEN DUE ON THE LONG-TERM WATER AUGMENTATION BONDS. THE STATE TREASURER SHALL IMMEDIATELY NOTIFY THE ATTORNEY GENERAL AND AUDITOR GENERAL OF THE INSUFFICIENCY. THE AUDITOR GENERAL SHALL AUDIT THE CIRCUMSTANCES SURROUNDING THE DEPLETION OF THE FUND AND REPORT THE FINDINGS TO THE ATTORNEY GENERAL. THE ATTORNEY GENERAL SHALL CONDUCT AN INVESTIGATION AND REPORT THOSE FINDINGS TO THE GOVERNOR AND THE LEGISLATURE.

E. THE AUTHORITY SHALL TAKE NECESSARY ACTIONS TO OBTAIN FULL REPAYMENT FOR MONIES OR FINANCIAL ASSISTANCE PROVIDED FROM THE FUND BY THE RECIPIENTS OF THE FUNDING OR FINANCIAL ASSISTANCE OR THE RECIPIENTS OF ANY WATER SUPPLY DEVELOPMENT PROJECT MADE AVAILABLE FROM MONIES FROM THE FUND THROUGH WATER SUBCONTRACTS, LOAN REPAYMENTS, RATES, FEES, CHARGES OR OTHERWISE, AS APPROPRIATE. THIS SUBSECTION DOES NOT APPLY TO MONIES SPENT BY THE AUTHORITY FOR INVESTIGATIONS AND STUDIES OR MONIES SPENT IN CONNECTION WITH LOAN GUARANTEES OR CREDIT ENHANCEMENT.

49-1304. Evaluation criteria for projects from the long-term water augmentation fund

A. THE AUTHORITY SHALL DETERMINE THE ORDER AND PRIORITY OF WATER SUPPLY DEVELOPMENT PROJECTS PROPOSED TO BE FUNDED IN WHOLE OR IN PART WITH MONIES FROM THE LONG-TERM WATER AUGMENTATION FUND, PARTICIPATION IN

PROJECTS TO IMPORT WATER OR ALLOCATION OF IMPORTED WATER BASED ON THE FOLLOWING, AS APPLICABLE:

1. THE BENEFITS OF THE PROJECT TO CURRENT AND FUTURE RESIDENTS OF THIS STATE, INCLUDING THE ABILITY OF THE PROJECT TO IMPROVE ACCESS TO WATER SUPPLIES FOR USE WITHIN THIS STATE AND PROMOTE ECONOMIC GROWTH, IN RELATION TO THE PROJECTED COST OF THE PROJECT.

2. THE ABILITY OF THE PROJECT TO PROVIDE MULTIPLE WATER SUPPLY DEVELOPMENT BENEFITS.

3. THE PROJECTED COSTS OF THE PROJECT.

4. THE ABILITY OF THE PROJECT TO ADDRESS OR MITIGATE WATER SUPPLY REDUCTIONS TO EXISTING WATER USERS, CONSIDERING THE EXISTENCE, FEASIBILITY AND LONG-TERM RELIABILITY OF MITIGATION MEASURES AVAILABLE TO THE APPLICANT OR PROPOSED BENEFICIARIES, INCLUDING THE AVAILABILITY OF WATER SUPPLIES FROM THE ARIZONA WATER BANKING AUTHORITY.

5. THE COST-EFFECTIVENESS OF THE PROJECT.

6. THE RELIABILITY AND LONG-TERM SECURITY OF THE WATER SUPPLY TO BE DEVELOPED THROUGH THE PROJECT.

7. EXISTING AND PLANNED CONSERVATION, BEST MANAGEMENT PRACTICES AND WATER MANAGEMENT PROGRAMS OF THE APPLICANT OR POTENTIAL APPLICANT.

8. THE DEGREE TO WHICH THE PROJECT WILL MAXIMIZE OR LEVERAGE MULTIPLE AVAILABLE FUNDING SOURCES, INCLUDING FEDERAL FUNDING.

9. THE APPLICANT'S ABILITY TO MEET ANY APPLICABLE ENVIRONMENTAL REQUIREMENTS IMPOSED BY ANY FEDERAL OR STATE AGENCY.

10. THE QUALIFICATIONS, INDUSTRY EXPERIENCE, INCLUDING EXPERIENCE WITH SIMILAR PROJECTS, GENERAL REPUTATION AND FINANCIAL CAPACITY OF THE APPLICANT OR ANY PRIVATE PARTNER, BASED ON APPROPRIATE DUE DILIGENCE.

11. THE FEASIBILITY OF THE PROJECT, INCLUDING THE FEASIBILITY OF THE PROPOSED DESIGN AND OPERATION OF THE PROJECT.

12. COMMENTS FROM WATER USERS, LOCAL CITIZENS AND AFFECTED JURISDICTIONS.

13. FOR PROJECTS INVOLVING THE CONSTRUCTION OR OPERATION OF WATER-RELATED FACILITIES, THE SAFETY RECORD OF ANY PRIVATE PARTNER.

14. EXISTING, NEAR-TERM AND LONG-TERM WATER DEMANDS COMPARED TO THE VOLUME AND RELIABILITY OF EXISTING WATER SUPPLIES OF THE BENEFICIARIES OF THE FUNDING OR PROJECT. IN EVALUATING THIS CRITERION, THE AUTHORITY SHALL CONSIDER INFORMATION CONTAINED IN ANY APPLICABLE WATER SUPPLY AND DEMAND ASSESSMENT THAT HAS BEEN ISSUED BY THE DIRECTOR OF WATER RESOURCES PURSUANT TO SECTION 45-105, SUBSECTION B, PARAGRAPH 14, IN ADDITION TO ANY OTHER INFORMATION SUBMITTED TO EVALUATE THIS CRITERION.

15. POTENTIAL IMPACTS TO RATEPAYERS.

16. THE ABILITY OF THE APPLICANT AND ANY PUBLIC OR PRIVATE PARTNER TO FULLY REPAY ALL FINANCIAL OBLIGATIONS TO THE AUTHORITY.

17. FOR AGREEMENTS ENTERED INTO PURSUANT TO SECTION 49-1203.01, SUBSECTION C, PARAGRAPH 5, THE IMPACT OF ANY SUCH AGREEMENT ON THE ABILITY OF THE AUTHORITY TO COMPLY WITH THE REQUIREMENTS OF SECTION 49-1303, SUBSECTION E.

18. OTHER CRITERIA THAT THE AUTHORITY DEEMS APPROPRIATE.

B. THE BOARD SHALL CONDUCT BACKGROUND CHECKS, FINANCIAL CHECKS AND OTHER REVIEWS DEEMED APPROPRIATE FOR INDIVIDUAL APPLICANTS, APPLICANTS' BOARDS OF DIRECTORS AND OTHER PARTNERS OF THE APPLICANTS.

49-1305. Opportunity for participation by Colorado River water users

FOR ANY WATER SUPPLY DEVELOPMENT PROJECT TO IMPORT WATER THAT IS PROPOSED TO BE FUNDED BY THE AUTHORITY, THE AUTHORITY SHALL PROVIDE WRITTEN NOTICE OF THE PROPOSED PROJECT TO ALL ENTITIES IN THIS STATE WITH AN ENTITLEMENT TO WATER FROM THE COLORADO RIVER, INCLUDING WATER DELIVERED THROUGH THE CENTRAL ARIZONA PROJECT. AN ENTITY THAT RECEIVES A NOTICE PRESCRIBED BY THIS SECTION SHALL SUBMIT TO THE AUTHORITY WITHIN THIRTY DAYS AFTER THE DATE OF THE NOTICE A STATEMENT OF THE ENTITY'S INTEREST IN PARTICIPATING IN THE PROJECT.

49-1306. Taxation exemption

A. THE AUTHORITY IS REGARDED AS PERFORMING A GOVERNMENTAL FUNCTION IN CARRYING OUT THE PURPOSES OF THIS ARTICLE AND IS NOT REQUIRED TO PAY TAXES OR ASSESSMENTS ON ANY OF THE PROPERTY ACQUIRED OR CONSTRUCTED FOR THESE PURPOSES OR ON THE AGREEMENTS OF THE AUTHORITY PERTAINING TO MAINTAINING AND OPERATING WATER-RELATED FACILITIES OR IN THE REVENUES DERIVED FROM THE WATER-RELATED FACILITIES.

B. THE LONG-TERM WATER AUGMENTATION BONDS ISSUED UNDER THIS CHAPTER, THEIR TRANSFER AND THE INCOME THE BONDS PRODUCE ARE AT ALL TIMES EXEMPT FROM TAXATION BY THIS STATE OR BY ANY POLITICAL SUBDIVISION OF THIS STATE.

C. THE AUTHORITY IS AUTHORIZED UNDER THIS CHAPTER AND UNDER TITLE 35, CHAPTER 3, ARTICLE 7 TO TAKE ALL ACTIONS DETERMINED NECESSARY BY THE BOARD TO COMPLY WITH FEDERAL INCOME TAX LAWS, INCLUDING THE PAYMENT OF REBATES TO THE UNITED STATES TREASURY.

49-1307. Financial assistance from the long-term water augmentation fund; terms

A. THE AUTHORITY SHALL CONSIDER APPLICATIONS FOR FINANCIAL ASSISTANCE FROM THE LONG-TERM WATER AUGMENTATION FUND IN ACCORDANCE WITH SECTION 49-1304 AND SHALL CONSIDER THE RECOMMENDATIONS OF THE LONG-TERM WATER AUGMENTATION COMMITTEE ESTABLISHED BY SECTION 49-1208.

B. THE AUTHORITY MAY PROVIDE FINANCIAL ASSISTANCE FROM THE LONG-TERM WATER AUGMENTATION FUND FOR WATER SUPPLY DEVELOPMENT PROJECTS INSIDE OR OUTSIDE THIS STATE. THE FINANCIAL ASSISTANCE MAY INCLUDE:

1. LOANS AS PROVIDED IN THIS SECTION.

2. CREDIT ENHANCEMENTS PURCHASED FOR AN ELIGIBLE ENTITY'S BONDS OR OTHER FORMS OF INDEBTEDNESS.

C. A LOAN SHALL BE EVIDENCED BY A LOAN REPAYMENT AGREEMENT OR LEASE PURCHASE AGREEMENT, OR TO THE EXTENT AN ELIGIBLE ENTITY IS A POLITICAL SUBDIVISION OF THIS STATE AND HAS BONDING AUTHORITY, BONDS OF THE ELIGIBLE ENTITY THAT ARE DELIVERED TO AND HELD BY THE AUTHORITY.

D. A LOAN UNDER THIS SECTION:

1. SHALL BE REPAID DURING A PERIOD APPROVED BY THE AUTHORITY.

2. SHALL REQUIRE THAT INTEREST PAYMENTS BEGIN NOT LATER THAN THE NEXT DATE THAT EITHER PRINCIPAL OR INTEREST MUST BE PAID BY THE AUTHORITY TO HOLDERS OF ANY OF THE AUTHORITY'S LONG-TERM WATER AUGMENTATION BONDS THAT PROVIDED FUNDING FOR THE LOAN. THE AUTHORITY MAY PROVIDE THAT LOAN INTEREST ACCRUING DURING CONSTRUCTION OF THE ELIGIBLE ENTITY'S WATER SUPPLY DEVELOPMENT PROJECT AND UP TO ONE YEAR AFTER COMPLETION OF THE CONSTRUCTION OF THE WATER SUPPLY DEVELOPMENT PROJECT BE CAPITALIZED IN THE LOAN.

3. SHALL CLEARLY SPECIFY THE AMOUNT OF PRINCIPAL, INTEREST AND REDEMPTION PREMIUM, IF ANY, THAT IS DUE ON ANY PAYMENT DATE.

4. SHALL BE CONDITIONED ON THE IDENTIFICATION OF PLEDGED REVENUES FOR REPAYING THE LOAN. IF THE WATER SUPPLY DEVELOPMENT PROJECT FINANCED OR REFINANCED BY THE LOAN IS PART OF A MUNICIPAL UTILITY AND THE CITY OR TOWN PLEDGES REVENUES OF THE UTILITY TO REPAY THE LOAN, THE LOAN MAY BE TREATED UNDER SECTION 9-530, SUBSECTION B AS A LAWFUL LONG-TERM OBLIGATION INCURRED FOR A SPECIFIC PURPOSE.

5. TO THE EXTENT ALLOWED BY LAW, SHALL BE SECURED BY A DEBT SERVICE RESERVE ACCOUNT THAT IS HELD IN TRUST AND THAT IS IN AN AMOUNT, IF ANY, AS DETERMINED BY THE AUTHORITY.

6. SHALL CONTAIN THE COVENANTS AND CONDITIONS PERTAINING TO CONSTRUCTING, ACQUIRING, IMPROVING OR EQUIPPING WATER SUPPLY DEVELOPMENT PROJECTS AND REPAYING THE LOAN AS THE AUTHORITY DEEMS PROPER.

7. MAY PROVIDE FOR PAYING INTEREST ON THE UNPAID PRINCIPAL BALANCE OF THE LOAN AT THE RATES ESTABLISHED IN THE LOAN REPAYMENT AGREEMENT.

8. MAY PROVIDE FOR PAYING THE ELIGIBLE ENTITY'S PROPORTIONATE SHARE OF THE EXPENSES OF ADMINISTERING THE LONG-TERM WATER AUGMENTATION FUND AND MAY PROVIDE THAT THE ELIGIBLE ENTITY PAY FINANCING AND LOAN ADMINISTRATION FEES APPROVED BY THE AUTHORITY. THE COSTS MAY BE INCLUDED IN THE LEVY, ASSESSMENT, RATES OR CHARGES OF THE PLEDGED REVENUES PLEDGED BY THE ELIGIBLE ENTITY TO REPAY THE LOAN.

E. THE AUTHORITY SHALL PRESCRIBE THE RATE OR RATES OF INTEREST ON LOANS MADE UNDER THIS SECTION, BUT THE RATE OR RATES MAY NOT EXCEED THE PREVAILING MARKET RATE FOR SIMILAR TYPES OF LOANS. AN ELIGIBLE ENTITY THAT IS A POLITICAL SUBDIVISION OF THIS STATE MAY NEGOTIATE THE SALE OF ITS BONDS TO, OR A LOAN REPAYMENT AGREEMENT WITH, THE AUTHORITY WITHOUT COMPLYING WITH ANY PUBLIC OR ACCELERATED BIDDING REQUIREMENTS IMPOSED BY ANY OTHER LAW FOR THE SALE OF ITS BONDS.

F. THE APPROVAL OF A LOAN SHALL BE CONDITIONED ON A WRITTEN COMMITMENT BY THE ELIGIBLE ENTITY TO COMPLETE ALL APPLICABLE REVIEWS AND APPROVALS AND TO SECURE ALL REQUIRED PERMITS IN A TIMELY MANNER.

G. BY RESOLUTION OF THE BOARD, THE AUTHORITY MAY IMPOSE ANY ADDITIONAL REQUIREMENTS IT CONSIDERS NECESSARY TO ENSURE THAT THE LOAN PRINCIPAL AND INTEREST ARE TIMELY PAID.

H. ALL MONIES RECEIVED FROM ELIGIBLE ENTITIES AS LOAN REPAYMENTS, INTEREST AND PENALTIES SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE LONG-TERM WATER AUGMENTATION FUND.

I. IF REQUESTED BY THE AUTHORITY, THE ATTORNEY GENERAL SHALL TAKE WHATEVER ACTIONS ARE NECESSARY TO ENFORCE THE LOAN REPAYMENT AGREEMENT AND ACHIEVE REPAYMENT OF LOANS PROVIDED BY THE AUTHORITY PURSUANT TO THIS ARTICLE.

J. FOR ELIGIBLE ENTITIES THAT ARE POLITICAL SUBDIVISIONS OF THIS STATE, THE REVENUES OF THE ELIGIBLE ENTITIES' UTILITY SYSTEM OR SYSTEMS MAY BE PLEDGED TO THE PAYMENT OF A LOAN REPAYMENT AGREEMENT WITHOUT AN ELECTION, IF THE PLEDGE OF REVENUES DOES NOT VIOLATE ANY COVENANT PERTAINING TO THE UTILITY SYSTEM OR SYSTEMS OR THE REVENUES PLEDGED TO SECURE OUTSTANDING BONDS OR OTHER OBLIGATIONS OR INDEBTEDNESS OF THE ELIGIBLE ENTITIES.

K. FOR AN ELIGIBLE ENTITY THAT IS A POLITICAL SUBDIVISION OF THIS STATE, AND NOTWITHSTANDING SECTIONS 9-571 AND 11-671, IF THE REVENUES FROM A SECONDARY PROPERTY TAX LEVY CONSTITUTE PLEDGED REVENUES, THE ELIGIBLE ENTITY IS NOT REQUIRED TO SUBMIT TO A VOTE THE QUESTION OF ENTERING AND PERFORMING A LOAN REPAYMENT AGREEMENT.

L. PAYMENTS MADE PURSUANT TO A LOAN REPAYMENT AGREEMENT ARE NOT SUBJECT TO SECTION 42-17106.

M. FOR ELIGIBLE ENTITIES THAT ARE POLITICAL SUBDIVISIONS OF THIS STATE, A LOAN REPAYMENT AGREEMENT UNDER THIS SECTION DOES NOT CREATE A DEBT OF THE ELIGIBLE ENTITIES, AND THE AUTHORITY MAY NOT REQUIRE THAT PAYMENT OF A LOAN REPAYMENT AGREEMENT BE MADE FROM OTHER THAN THE PLEDGED REVENUES PLEDGED BY THE ELIGIBLE ENTITIES.

N. AN ELIGIBLE ENTITY MAY EMPLOY ATTORNEYS, ACCOUNTANTS, FINANCIAL CONSULTANTS AND OTHER EXPERTS IN THEIR FIELDS AS DEEMED NECESSARY TO PERFORM SERVICES WITH RESPECT TO A LOAN REPAYMENT AGREEMENT.

O. AT THE DIRECTION OF THE AUTHORITY, THE ELIGIBLE ENTITY SHALL PAY, AND IS HEREBY AUTHORIZED TO PAY, THE AUTHORITY'S COSTS IN ISSUING LONG-TERM WATER AUGMENTATION BONDS OR OTHERWISE BORROWING TO FUND A LOAN.

P. A LOAN MADE TO AN ELIGIBLE ENTITY THAT IS A POLITICAL SUBDIVISION OF THIS STATE MAY BE SECURED ADDITIONALLY BY AN IRREVOCABLE PLEDGE OF ANY SHARED STATE REVENUES DUE TO THE ELIGIBLE ENTITY FOR THE DURATION OF THE LOAN AS PRESCRIBED BY THE AUTHORITY. AS APPLICABLE TO LOANS ADDITIONALLY SECURED WITH SHARED STATE REVENUES, THE AUTHORITY MAY ENTER INTO AGREEMENTS TO SPECIFY THE ALLOCATION OF SHARED STATE REVENUES IN RELATION TO INDIVIDUAL BORROWERS FROM SUCH AUTHORITIES. IF A PLEDGE OF

SHARED STATE REVENUES AS ADDITIONAL SECURITY FOR A LOAN IS REQUIRED AND THE ELIGIBLE ENTITY FAILS TO MAKE ANY PAYMENT DUE TO THE AUTHORITY UNDER ITS LOAN REPAYMENT AGREEMENT OR THE ELIGIBLE ENTITY'S BONDS, THE AUTHORITY SHALL CERTIFY TO THE STATE TREASURER AND NOTIFY THE GOVERNING BODY OF THE DEFAULTING ELIGIBLE ENTITY THAT THE ELIGIBLE ENTITY HAS FAILED TO MAKE THE REQUIRED PAYMENT AND SHALL DIRECT A WITHHOLDING OF SHARED STATE REVENUES AS PRESCRIBED IN SUBSECTION Q OF THIS SECTION. THE CERTIFICATE OF DEFAULT SHALL BE IN THE FORM DETERMINED BY THE AUTHORITY, EXCEPT THAT THE CERTIFICATE SHALL SPECIFY THE AMOUNT REQUIRED TO SATISFY THE UNPAID PAYMENT OBLIGATION OF THE ELIGIBLE ENTITY.

Q. ON RECEIPT OF A CERTIFICATE OF DEFAULT FROM THE AUTHORITY, THE STATE TREASURER, TO THE EXTENT NOT EXPRESSLY PROHIBITED BY LAW, SHALL WITHHOLD ANY MONIES DUE TO THE DEFAULTING ELIGIBLE ENTITY FROM THE NEXT SUCCEEDING DISTRIBUTION OF MONIES PURSUANT TO SECTION 42-5029. IN THE CASE OF AN ELIGIBLE ENTITY THAT IS A CITY OR TOWN, THE STATE TREASURER SHALL ALSO WITHHOLD FROM THE MONIES DUE TO THE DEFAULTING CITY OR TOWN FROM THE NEXT SUCCEEDING DISTRIBUTION OF MONIES PURSUANT TO SECTION 43-206 THE AMOUNT SPECIFIED IN THE CERTIFICATE OF DEFAULT AND SHALL IMMEDIATELY DEPOSIT THE MONIES IN THE WATER SUPPLY DEVELOPMENT REVOLVING FUND ESTABLISHED BY SECTION 49-1271. THE STATE TREASURER SHALL CONTINUE TO WITHHOLD AND DEPOSIT MONIES UNTIL THE AUTHORITY CERTIFIES TO THE STATE TREASURER THAT THE DEFAULT HAS BEEN CURED. THE STATE TREASURER MAY NOT WITHHOLD ANY AMOUNT THAT IS NECESSARY TO MAKE ANY REQUIRED DEPOSITS THEN DUE FOR THE PAYMENT OF PRINCIPAL AND INTEREST ON BONDS OR INDEBTEDNESS OF THE ELIGIBLE ENTITY IF SO CERTIFIED BY THE DEFAULTING ELIGIBLE ENTITY TO THE STATE TREASURER AND THE AUTHORITY. THE DEFAULTING ELIGIBLE ENTITY MAY NOT CERTIFY DEPOSITS AS NECESSARY FOR PAYMENT FOR BONDS OR INDEBTEDNESS UNLESS THE BONDS WERE ISSUED OR THE INDEBTEDNESS INCURRED BEFORE THE DATE OF THE LOAN REPAYMENT AGREEMENT AND THE BONDS OR INDEBTEDNESS WAS SECURED BY A PLEDGE OF DISTRIBUTION MADE PURSUANT TO SECTIONS 42-5029 AND 43-206.

49-1308. Long-term water augmentation financial assistance: procedures

A. IN COMPLIANCE WITH ANY APPLICABLE REQUIREMENTS, AN ELIGIBLE ENTITY MAY APPLY TO THE AUTHORITY FOR AND ACCEPT AND INCUR INDEBTEDNESS AS A RESULT OF FINANCIAL ASSISTANCE FROM THE LONG-TERM WATER AUGMENTATION FUND FOR WATER SUPPLY DEVELOPMENT PROJECTS.

B. THE AUTHORITY SHALL:

1. PRESCRIBE A SIMPLIFIED FORM AND PROCEDURE TO APPLY FOR AND APPROVE FINANCIAL ASSISTANCE.

2. ESTABLISH BY RULE CRITERIA BY WHICH FINANCIAL ASSISTANCE WILL BE AWARDED, INCLUDING:

(a) FOR ANY FINANCIAL ASSISTANCE:

(i) A DETERMINATION OF THE APPLICANT'S FINANCIAL ABILITY TO CONSTRUCT, OPERATE AND MAINTAIN THE PROJECT IF IT RECEIVES THE ASSISTANCE.

(ii) A DETERMINATION OF THE APPLICANT'S ABILITY TO MANAGE THE PROJECT.

(iii) A DETERMINATION OF THE APPLICANT'S ABILITY TO MEET ANY APPLICABLE ENVIRONMENTAL REQUIREMENTS IMPOSED BY FEDERAL OR STATE AGENCIES.

(iv) A DETERMINATION OF THE APPLICANT'S ABILITY TO ACQUIRE ANY NECESSARY REGULATORY PERMITS.

(v) REQUIREMENTS FOR LOCAL PARTICIPATION IN PROJECT COSTS, IF DEEMED ADVISABLE BY THE AUTHORITY.

(b) IF THE APPLICANT IS APPLYING FOR A LOAN:

(i) A DETERMINATION OF THE ABILITY OF THE APPLICANT TO REPAY A LOAN ACCORDING TO THE TERMS AND CONDITIONS ESTABLISHED BY THIS CHAPTER. AT THE OPTION OF THE AUTHORITY, THE EXISTENCE OF A CURRENT INVESTMENT GRADE RATING ON EXISTING DEBT OF THE APPLICANT THAT IS SECURED BY THE SAME REVENUES TO BE PLEDGED TO SECURE REPAYMENT UNDER THE LOAN REPAYMENT AGREEMENT CONSTITUTES EVIDENCE REGARDING ABILITY TO REPAY A LOAN.

(ii) A DETERMINATION OF THE APPLICANT'S LEGAL CAPABILITY TO ENTER INTO A LOAN REPAYMENT AGREEMENT.

3. DETERMINE THE ORDER AND PRIORITY OF PROJECTS ASSISTED UNDER THIS ARTICLE BASED ON THE MERITS OF THE APPLICATION WITH RESPECT TO WATER SUPPLY DEVELOPMENT CRITERIA SET FORTH IN SECTION 49-1304.

C. THE AUTHORITY SHALL REVIEW ON ITS MERITS EACH APPLICATION RECEIVED AND SHALL INFORM THE APPLICANT OF THE AUTHORITY'S DETERMINATION. IF THE APPLICATION IS NOT APPROVED, THE AUTHORITY SHALL NOTIFY THE APPLICANT, STATING THE REASONS. IF THE APPLICATION IS APPROVED, THE AUTHORITY MAY CONDITION THE APPROVAL ON ASSURANCES THE AUTHORITY DEEMS NECESSARY TO ENSURE THAT THE FINANCIAL ASSISTANCE WILL BE USED ACCORDING TO LAW AND THE TERMS OF THE APPLICATION.

49-1309. Long-term water augmentation bonds; requirements; authority; exemption from liability

A. THE AUTHORITY, THROUGH THE BOARD, MAY ISSUE NEGOTIABLE LONG-TERM WATER AUGMENTATION BONDS IN A PRINCIPAL AMOUNT THAT, IN ITS OPINION, IS NECESSARY TO DO ALL OF THE FOLLOWING:

1. PROVIDE SUFFICIENT MONIES FOR WATER SUPPLY DEVELOPMENT PROJECTS AND FINANCIAL ASSISTANCE FOR WATER SUPPLY DEVELOPMENT PROJECTS APPROVED UNDER THIS CHAPTER.

2. REFUND LONG-TERM WATER AUGMENTATION BONDS, WHEN THE AUTHORITY DEEMS IT EXPEDIENT TO DO SO.

3. INCREASE THE CAPITALIZATION OF THE LONG-TERM WATER AUGMENTATION FUND.

4. MAINTAIN SUFFICIENT RESERVES IN THE LONG-TERM WATER AUGMENTATION FUND TO SECURE THE LONG-TERM WATER AUGMENTATION BONDS.

5. PAY THE NECESSARY COSTS OF ISSUING, SELLING AND REDEEMING THE LONG-TERM WATER AUGMENTATION BONDS.

6. PAY OTHER EXPENDITURES OF THE AUTHORITY INCIDENTAL TO AND NECESSARY AND CONVENIENT TO CARRY OUT THE PURPOSES OF THIS ARTICLE.

B. THE BOARD SHALL AUTHORIZE LONG-TERM WATER AUGMENTATION BONDS BY RESOLUTION. THE RESOLUTION SHALL PRESCRIBE ALL OF THE FOLLOWING:

1. THE RATE OR RATES OF INTEREST AND THE DENOMINATIONS OF THE LONG-TERM WATER AUGMENTATION BONDS.

2. THE DATE OR DATES AND MATURITY OF THE LONG-TERM WATER AUGMENTATION BONDS.

3. THE COUPON OR REGISTERED FORM OF THE LONG-TERM WATER AUGMENTATION BONDS.

4. THE MANNER OF EXECUTING THE LONG-TERM WATER AUGMENTATION BONDS.

5. THE MEDIUM AND PLACE OF PAYMENT.

6. THE TERMS OF REDEMPTION.

C. THE LONG-TERM WATER AUGMENTATION BONDS SHALL BE SOLD AT PUBLIC OR PRIVATE SALE AT THE PRICE AND ON THE TERMS DETERMINED BY THE BOARD. ALL PROCEEDS FROM THE ISSUANCE OF LONG-TERM WATER AUGMENTATION BONDS, EXCEPT ANY AMOUNTS USED TO PAY COSTS ASSOCIATED WITH THE ISSUANCE AND SALE OF THE LONG-TERM WATER AUGMENTATION BONDS, SHALL BE DEPOSITED IN THE LONG-TERM WATER AUGMENTATION FUND OR A SEPARATELY HELD ACCOUNT AS SPECIFIED IN THE RESOLUTION.

D. TO SECURE ANY LONG-TERM WATER AUGMENTATION BONDS AUTHORIZED BY THIS SECTION, THE BOARD BY RESOLUTION MAY:

1. REQUIRE THAT LONG-TERM WATER AUGMENTATION BONDS ISSUED UNDER THIS SECTION BE SECURED BY A LIEN ON ALL OR A PART OF THE MONIES PAID IN TO THE APPROPRIATE ACCOUNT OR SUBACCOUNT OF THE LONG-TERM WATER AUGMENTATION FUND AND PROVIDE THE PRIORITY OF THE LIEN.

2. PLEDGE OR ASSIGN TO OR IN TRUST TO BE HELD BY THE STATE TREASURER FOR THE BENEFIT OF THE HOLDER OR HOLDERS OF THE LONG-TERM WATER AUGMENTATION BONDS ANY PART OF THE APPROPRIATE ACCOUNT OR SUBACCOUNT OF THE LONG-TERM WATER AUGMENTATION FUND MONIES AS IS NECESSARY TO PAY THE PRINCIPAL AND INTEREST OF THE LONG-TERM WATER AUGMENTATION BONDS AS THE BONDS COME DUE.

3. SET ASIDE, REGULATE AND DISPOSE OF RESERVES AND SINKING FUNDS.

4. REQUIRE THAT SUFFICIENT AMOUNTS OF THE PROCEEDS FROM THE SALE OF THE LONG-TERM WATER AUGMENTATION BONDS BE USED TO FULLY OR PARTLY FUND ANY RESERVES OR SINKING FUNDS ESTABLISHED BY THE BOARD RESOLUTION AUTHORIZING THE LONG-TERM WATER AUGMENTATION BONDS.

5. PRESCRIBE THE PROCEDURE, IF ANY, BY WHICH THE TERMS OF ANY CONTRACT WITH BONDHOLDERS MAY BE AMENDED OR ABROGATED, THE AMOUNT OF LONG-TERM WATER AUGMENTATION BONDS THE HOLDERS OF WHICH MUST CONSENT TO AND THE MANNER IN WHICH CONSENT MAY BE GIVEN.

6. PROVIDE FOR PAYMENT FROM THE PROCEEDS OF THE SALE OF THE LONG-TERM WATER AUGMENTATION BONDS OF ALL LEGAL, FINANCIAL AND OTHER EXPENSES INCURRED BY THE AUTHORITY IN ISSUING, SELLING, DELIVERING AND PAYING THE LONG-TERM WATER AUGMENTATION BONDS.

7. PROVIDE TERMS NECESSARY TO SECURE CREDIT ENHANCEMENT OR OTHER SOURCES OF PAYMENT OR SECURITY.

8. PROVIDE ANY OTHER TERMS AND CONDITIONS THAT IN ANY WAY MAY AFFECT THE SECURITY AND PROTECTION OF THE LONG-TERM WATER AUGMENTATION BONDS.

E. THE PLEDGE OF PLEDGED REVENUES BY AN ELIGIBLE ENTITY, OR THE PLEDGE OF ANY OTHER REVENUES BY THE AUTHORITY, UNDER THIS ARTICLE IS VALID AND BINDING FROM THE TIME THE PLEDGE IS MADE. THE MONIES PLEDGED AND RECEIVED BY THE STATE TREASURER TO BE PLACED IN THE LONG-TERM WATER AUGMENTATION FUND OR IN ANY ACCOUNT OR SUBACCOUNT IN THE LONG-TERM WATER AUGMENTATION FUND ARE IMMEDIATELY SUBJECT TO THE LIEN OF THE PLEDGE WITHOUT ANY FUTURE PHYSICAL DELIVERY OR FURTHER ACT, AND ANY SUCH LIEN OF ANY PLEDGE IS VALID OR BINDING AGAINST ALL PARTIES HAVING CLAIMS OF ANY KIND IN TORT, CONTRACT OR OTHERWISE AGAINST THE BOARD OR THE AUTHORITY REGARDLESS OF WHETHER THE PARTIES HAVE NOTICE OF THE LIEN. THE OFFICIAL RESOLUTION OR TRUST INDENTURE OR ANY INSTRUMENT BY WHICH THIS PLEDGE IS CREATED, WHEN PLACED IN THE BOARD'S RECORDS, IS NOTICE TO ALL CONCERNED OF THE CREATION OF THE PLEDGE, AND THOSE INSTRUMENTS NEED NOT BE RECORDED IN ANY OTHER PLACE.

F. A MEMBER OF THE BOARD OR ANY PERSON EXECUTING THE LONG-TERM WATER AUGMENTATION BONDS IS NOT PERSONALLY LIABLE FOR THE PAYMENT OF THE LONG-TERM WATER AUGMENTATION BONDS. THE LONG-TERM WATER AUGMENTATION BONDS ARE VALID AND BINDING OBLIGATIONS NOTWITHSTANDING THAT BEFORE THE DELIVERY OF THE LONG-TERM WATER AUGMENTATION BONDS ANY OF THE PERSONS WHOSE SIGNATURES APPEAR ON THE LONG-TERM WATER AUGMENTATION BONDS CEASE TO BE MEMBERS OF THE BOARD. FROM AND AFTER THE SALE AND DELIVERY OF THE LONG-TERM WATER AUGMENTATION BONDS, THE BONDS ARE INCONTESTABLE BY THE BOARD.

G. THE BOARD, OUT OF ANY AVAILABLE MONIES, MAY PURCHASE LONG-TERM WATER AUGMENTATION BONDS, WHICH MAY THEN BE CANCELED, AT A PRICE NOT EXCEEDING EITHER OF THE FOLLOWING:

1. IF THE LONG-TERM WATER AUGMENTATION BONDS ARE THEN REDEEMABLE, THE REDEMPTION PRICE THEN APPLICABLE PLUS ACCRUED INTEREST TO THE DATE OF REDEMPTION.

2. IF THE LONG-TERM WATER AUGMENTATION BONDS ARE NOT THEN REDEEMABLE, THE REDEMPTION PRICE APPLICABLE ON THE FIRST DATE AFTER PURCHASE BY THE AUTHORITY ON WHICH THE LONG-TERM WATER AUGMENTATION BONDS BECOME SUBJECT TO REDEMPTION PLUS ACCRUED INTEREST TO THE DATE OF REDEMPTION.

49-1310. Long-term water augmentation bond obligations of the authority

LONG-TERM WATER AUGMENTATION BONDS ISSUED UNDER THIS ARTICLE ARE OBLIGATIONS OF THE AUTHORITY, ARE PAYABLE ONLY ACCORDING TO THEIR TERMS AND ARE NOT GENERAL, SPECIAL OR OTHER OBLIGATIONS OF THIS STATE. THE LONG-TERM WATER AUGMENTATION BONDS DO NOT CONSTITUTE A LEGAL DEBT OF THIS

STATE AND ARE NOT ENFORCEABLE AGAINST THIS STATE. PAYMENT OF THE LONG-TERM WATER AUGMENTATION BONDS IS NOT ENFORCEABLE OUT OF ANY STATE MONIES OTHER THAN THE INCOME AND REVENUE PLEDGE AND ASSIGNED TO, OR IN TRUST FOR THE BENEFIT OF, THE HOLDER OR HOLDERS OF THE LONG-TERM WATER AUGMENTATION BONDS.

49-1311. Certification of long-term water augmentation bonds by attorney general

A. THE BOARD MAY SUBMIT ANY LONG-TERM WATER AUGMENTATION BONDS ISSUED UNDER THIS ARTICLE TO THE ATTORNEY GENERAL AFTER ALL PROCEEDINGS FOR THEIR AUTHORIZATION HAVE BEEN COMPLETED. WITHIN FIFTEEN DAYS AFTER SUBMISSION, THE ATTORNEY GENERAL SHALL EXAMINE AND PASS ON THE VALIDITY OF THE LONG-TERM WATER AUGMENTATION BONDS AND THE REGULARITY OF THE PROCEEDINGS.

B. IF THE PROCEEDINGS COMPLY WITH THIS ARTICLE, AND IF THE ATTORNEY GENERAL DETERMINES THAT, WHEN DELIVERED AND PAID FOR, THE LONG-TERM WATER AUGMENTATION BONDS WILL CONSTITUTE BINDING AND LEGAL OBLIGATIONS OF THE AUTHORITY, THE ATTORNEY GENERAL SHALL CERTIFY ON THE BACK OF EACH LONG-TERM WATER AUGMENTATION BOND, IN SUBSTANCE, THAT IT IS ISSUED ACCORDING TO THE CONSTITUTION AND LAWS OF THIS STATE.

49-1312. Long-term water augmentation bonds as legal investments

LONG-TERM WATER AUGMENTATION BONDS ISSUED UNDER THIS ARTICLE ARE SECURITIES:

1. IN WHICH PUBLIC OFFICERS AND BODIES OF THIS STATE AND OF MUNICIPALITIES AND POLITICAL SUBDIVISIONS OF THIS STATE, ALL COMPANIES, ASSOCIATIONS AND OTHER PERSONS CARRYING ON AN INSURANCE BUSINESS, ALL FINANCIAL INSTITUTIONS, INVESTMENT COMPANIES AND OTHER PERSONS CARRYING ON A BANKING BUSINESS, ALL FIDUCIARIES AND ALL OTHER PERSONS WHO ARE AUTHORIZED TO INVEST IN OBLIGATIONS OF THIS STATE MAY PROPERLY AND LEGALLY INVEST.

2. THAT MAY BE DEPOSITED WITH PUBLIC OFFICERS OR BODIES OF THIS STATE AND MUNICIPALITIES AND POLITICAL SUBDIVISIONS OF THIS STATE FOR PURPOSES THAT REQUIRE THE DEPOSIT OF STATE BONDS OR OBLIGATIONS.

49-1313. Agreement of state

A. THIS STATE PLEDGES TO AND AGREES WITH THE HOLDERS OF THE LONG-TERM WATER AUGMENTATION BONDS THAT THIS STATE WILL NOT LIMIT OR ALTER THE RIGHTS VESTED IN THE AUTHORITY OR ANY SUCCESSOR AGENCY TO COLLECT THE MONIES NECESSARY TO PRODUCE SUFFICIENT REVENUE TO FULFILL THE TERMS OF ANY AGREEMENTS MADE WITH THE HOLDERS OF THE LONG-TERM WATER AUGMENTATION BONDS, OR IN ANY WAY IMPAIR THE RIGHTS AND REMEDIES OF THE BONDHOLDERS, UNTIL ALL LONG-TERM WATER AUGMENTATION BONDS ISSUED UNDER THIS ARTICLE, TOGETHER WITH INTEREST ACCRUED THEREON, AND INCLUDING INTEREST ON ANY UNPAID INSTALLMENTS OF INTEREST, AND ALL COSTS AND EXPENSES IN CONNECTION WITH ANY ACTION OR PROCEEDINGS BY OR ON BEHALF OF THE BONDHOLDERS, ARE FULLY MET AND DISCHARGED.

B. THE BOARD AS AGENT FOR THIS STATE MAY INCLUDE THIS PLEDGE AND UNDERTAKING IN ITS RESOLUTIONS AND INDENTURES SECURING ITS LONG-TERM WATER AUGMENTATION BONDS.

ARTICLE 5. WATER CONSERVATION GRANT FUND

49-1331. Water conservation grant fund; exemption; administration; report

A. THE WATER CONSERVATION GRANT FUND IS ESTABLISHED TO BE MAINTAINED IN PERPETUITY CONSISTING OF ALL THE FOLLOWING:

1. LEGISLATIVE APPROPRIATIONS.

2. MONIES RECEIVED FOR WATER CONSERVATION PURPOSES FROM THE UNITED STATES GOVERNMENT.

3. INTEREST AND OTHER INCOME RECEIVED FROM INVESTING MONIES IN THE FUND.

4. GIFTS, GRANTS AND DONATIONS RECEIVED FOR WATER CONSERVATION PURPOSES FROM ANY PUBLIC OR PRIVATE SOURCE.

5. ANY OTHER MONIES RECEIVED BY THE AUTHORITY IN CONNECTION WITH THE PURPOSE OF THE FUND.

B. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED AND EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS. ON NOTICE FROM THE AUTHORITY, THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND.

C. ALL MONIES DEPOSITED IN THE FUND SHALL BE HELD IN TRUST. THE MONIES IN THE FUND MAY NOT BE APPROPRIATED OR TRANSFERRED BY THE LEGISLATURE TO FUND THE GENERAL OPERATIONS OF THIS STATE OR TO OTHERWISE MEET THE OBLIGATIONS OF THE STATE GENERAL FUND UNLESS APPROVED BY A THREE-FOURTHS VOTE OF THE MEMBERS OF EACH HOUSE OF THE LEGISLATURE. THIS SUBSECTION DOES NOT APPLY TO ANY TAXES OR OTHER LEVIES THAT ARE IMPOSED PURSUANT TO TITLE 42 OR 43.

D. THE AUTHORITY SHALL ADMINISTER THE FUND AND ESTABLISH AS MANY OTHER ACCOUNTS AND SUBACCOUNTS AS REQUIRED TO ADMINISTER THE FUND.

E. MONIES AND OTHER ASSETS IN THE FUND SHALL BE USED SOLELY FOR THE PURPOSES AUTHORIZED BY THIS ARTICLE.

F. THE ANNUAL REPORT REQUIRED BY SECTION 49-1204 SHALL INCLUDE:

1. THE EXPENDITURES MADE FROM THE FUND IN THE PREVIOUS FISCAL YEAR.

2. WHETHER PROGRAMS OR PROJECTS FUNDED BY THE FUND IN THE PREVIOUS FISCAL YEAR DID IN FACT:

(a) RESULT IN LONG-TERM, SUSTAINABLE REDUCTIONS IN WATER USE.

(b) IMPROVE WATER USE EFFICIENCY.

(c) IMPROVE WATER RELIABILITY.

3. THE ENVIRONMENTAL IMPACTS OF PROGRAMS OR PROJECTS FUNDED BY THE FUND IN THE PREVIOUS FISCAL YEAR.

49-1332. Water conservation grant fund; purposes

A. MONIES IN THE WATER CONSERVATION GRANT FUND MUST FACILITATE VOLUNTARY WATER CONSERVATION PROGRAMS OR PROJECTS THAT ARE EXPECTED TO RESULT IN AT LEAST ONE OF THE FOLLOWING:

1. LONG-TERM REDUCTIONS IN WATER USE.

2. IMPROVEMENTS IN WATER USE EFFICIENCY.

3. IMPROVEMENTS IN WATER RELIABILITY.

B. MONIES IN THE WATER CONSERVATION GRANT FUND MAY BE USED FOR THE FOLLOWING:

1. EDUCATION AND RESEARCH PROGRAMS ON HOW TO REDUCE WATER CONSUMPTION, INCREASE WATER EFFICIENCY OR INCREASE WATER REUSE.

2. PROGRAMS AND PROJECTS FOR RAINWATER HARVESTING, GRAY WATER SYSTEMS, EFFICIENCY UPGRADES, INSTALLING DROUGHT-RESISTANT LANDSCAPING, TURF REMOVAL AND OTHER PRACTICES TO REDUCE WATER USE.

3. PROGRAMS OR PROJECTS TO PROMOTE GROUNDWATER RECHARGE AND IMPROVED AQUIFER HEALTH.

4. PROGRAMS OR PROJECTS TO IMPROVE GROUNDWATER CONSERVATION AND SURFACE WATER FLOWS.

5. LANDSCAPE WATERSHED PROTECTION, RESTORATION AND REHABILITATION, INCLUDING THROUGH GREEN INFRASTRUCTURE AND LOW-IMPACT DEVELOPMENT TO CONSERVE OR AUGMENT WATER SUPPLIES.

6. PROJECTS FACILITATING COORDINATED WATER MANAGEMENT, INCLUDING GROUNDWATER STORAGE AND RECOVERY.

7. PROGRAMS OR PROJECTS TO REDUCE STRUCTURAL WATER OVERUSE ISSUES.

8. PROGRAM IMPLEMENTATION AND ADMINISTRATION COSTS FOR ELIGIBLE PROGRAMS.

49-1333. Water conservation grant fund; procedures

A. IN COMPLIANCE WITH ANY APPLICABLE REQUIREMENTS, A CITY, TOWN, COUNTY, DISTRICT, COMMISSION, AUTHORITY OR OTHER PUBLIC ENTITY THAT IS ORGANIZED AND THAT EXISTS UNDER THE STATUTORY LAW OF THIS STATE OR UNDER A VOTER-APPROVED CHARTER OR INITIATIVE OF THIS STATE MAY APPLY TO THE AUTHORITY FOR AND ACCEPT GRANTS FROM THE WATER CONSERVATION GRANT FUND FOR A WATER CONSERVATION PROGRAM OR PROJECT THAT COMPLIES WITH THE REQUIREMENTS OF SECTIONS 49-1332 AND 49-1334. A NONGOVERNMENT ORGANIZATION THAT FOCUSES ON WATER CONSERVATION OR ENVIRONMENTAL PROTECTION MAY APPLY TO THE AUTHORITY FOR AND ACCEPT GRANTS FROM THE WATER CONSERVATION GRANT FUND FOR A WATER CONSERVATION PROGRAM OR PROJECT IF IT PARTNERS WITH A CITY, TOWN, COUNTY, DISTRICT, COMMISSION, AUTHORITY OR OTHER PUBLIC ENTITY THAT IS ORGANIZED AND THAT EXISTS UNDER THE STATUTORY LAW OF THIS STATE OR UNDER A VOTER-APPROVED CHARTER OR INITIATIVE OF THIS STATE.

B. THE AUTHORITY SHALL:

1. PRESCRIBE A SIMPLIFIED FORM AND PROCEDURE TO APPLY FOR AND APPROVE ASSISTANCE.

2. ESTABLISH BY RULE CRITERIA THAT IS CONSISTENT WITH THIS ARTICLE BY WHICH ASSISTANCE WILL BE AWARDED.

3. DETERMINE THE ORDER AND PRIORITY OF WATER CONSERVATION PROGRAMS OR PROJECTS ASSISTED UNDER THIS SECTION BASED ON THE MERITS OF THE APPLICATION WITH RESPECT TO THE REQUIREMENTS OF SECTIONS 49-1332 AND 49-1334.

4. PROVIDE THAT A SINGLE WATER CONSERVATION PROGRAM GRANT MAY NOT EXCEED $3,000,000, A SINGLE WATER CONSERVATION PROJECT GRANT MAY NOT EXCEED $250,000 AND AT LEAST A TWENTY-FIVE PERCENT MATCH IS REQUIRED FOR EACH WATER CONSERVATION PROGRAM OR PROJECT. MONIES FROM ANY OTHER SOURCE MAY SATISFY THE MATCH REQUIREMENT.

49-1334. Evaluation criteria for water conservation programs and projects from the water conservation grant fund; procedures

THE AUTHORITY SHALL DETERMINE THE ORDER AND PRIORITY OF WATER CONSERVATION PROGRAMS AND PROJECTS PROPOSED TO BE FUNDED IN WHOLE OR IN PART WITH MONIES FROM THE WATER CONSERVATION GRANT FUND BASED ON THE FOLLOWING, AS APPLICABLE:

1. THE EXTENT TO WHICH THE WATER CONSERVATION PROGRAM OR PROJECT ACHIEVES ONE OR MORE OF THE RESULTS PRESCRIBED BY SECTION 49-1332, SUBSECTION A.

2. THE COSTS AND BENEFITS OF THE WATER CONSERVATION PROGRAM OR PROJECT, INCLUDING ENVIRONMENTAL COSTS AND BENEFITS.

3. IF THE WATER CONSERVATION PROGRAM OR PROJECT IS ELIGIBLE FOR FUNDING FROM THE LONG-TERM WATER AUGMENTATION FUND ESTABLISHED BY SECTION 49-1302 OR THE WATER SUPPLY DEVELOPMENT REVOLVING FUND ESTABLISHED BY SECTION 49-1271 AND IF THE NATURE OF THE WATER CONSERVATION PROGRAM OR PROJECT MAKES FUNDING FROM THE LONG-TERM WATER AUGMENTATION FUND OR THE WATER SUPPLY DEVELOPMENT REVOLVING FUND IMPRACTICAL.

4. THE ABILITY TO PROVIDE MULTIPLE BENEFITS.

5. THE DEGREE TO WHICH THE WATER CONSERVATION PROGRAM OR PROJECT WILL MAXIMIZE OR LEVERAGE MULTIPLE AVAILABLE FUNDING SOURCES, INCLUDING FEDERAL FUNDING.

6. THE QUALIFICATIONS AND CAPACITY OF AN APPLICANT.

7. THE FEASIBILITY OF THE WATER CONSERVATION PROGRAM OR PROJECT.

8. PUBLIC COMMENTS.

49-1335. Water conservation grant committee; membership; recommendations

A. THE WATER CONSERVATION GRANT COMMITTEE IS ESTABLISHED TO ADVISE THE BOARD AND CONSISTS OF THE FOLLOWING MEMBERS WHO ARE APPOINTED BY THE BOARD:

1. ONE MEMBER WHO REPRESENTS A PUBLIC WATER SYSTEM THAT SERVES FIVE HUNDRED OR MORE CONNECTIONS.

2. ONE MEMBER WHO REPRESENTS A PUBLIC WATER SYSTEM THAT SERVES LESS THAN FIVE HUNDRED CONNECTIONS.

3. ONE MEMBER WHO REPRESENTS A COUNTY WITH A POPULATION OF FIVE HUNDRED THOUSAND OR MORE PERSONS.

4. ONE MEMBER WHO REPRESENTS A COUNTY WITH A POPULATION OF LESS THAN FIVE HUNDRED THOUSAND PERSONS.

5. ONE MEMBER WHO REPRESENTS AN ADVOCACY GROUP WITH A PRIMARY FOCUS ON WATER CONSERVATION.

6. ONE MEMBER WHO REPRESENTS A UNIVERSITY IN THIS STATE AND WHO HAS SIGNIFICANT KNOWLEDGE IN WATER CONSERVATION.

7. ONE MEMBER WHO REPRESENTS A NATURAL RESOURCE CONSERVATION DISTRICT ESTABLISHED PURSUANT TO TITLE 37, CHAPTER 6.

8. THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES OR THE DIRECTOR'S DESIGNEE.

B. THE WATER CONSERVATION GRANT COMMITTEE SHALL REVIEW APPLICATIONS FOR GRANT REQUESTS FROM THE WATER CONSERVATION GRANT FUND AND SHALL MAKE RECOMMENDATIONS TO THE BOARD REGARDING THOSE APPLICATIONS.

C. THE WATER CONSERVATION GRANT COMMITTEE SHALL MEET AT LEAST ONCE A MONTH TO REVIEW GRANT APPLICATIONS, EXCEPT THAT THE COMMITTEE NEED NOT MEET IN ANY MONTH IN WHICH NO APPLICATIONS ARE PENDING BEFORE THE COMMITTEE. THE BOARD MAY REQUIRE THE COMMITTEE TO HOLD ADDITIONAL MEETINGS TO CONSIDER APPLICATIONS THAT ARE OR MAY BECOME TIME SENSITIVE. THE COMMITTEE SHALL ALLOW MEMBERS OF THE PUBLIC TO PROVIDE COMMENT ON AN APPLICATION CONSIDERED BY THE COMMITTEE AT A MEETING.

D. THE WATER CONSERVATION GRANT COMMITTEE IS CONSIDERED A SUBCOMMITTEE OF THE BOARD FOR THE PURPOSES OF SECTION 49-1206.

Sec. 24. Transfer and renumber

Title 49, chapter 9, Arizona Revised Statutes, is transferred and renumbered for placement in title 49, Arizona Revised Statutes, as chapter 11. Title 49, chapter 9, article 1, Arizona Revised Statutes, is transferred and renumbered for placement in title 49, chapter 11, Arizona Revised Statutes, as article 1. The following sections are transferred and renumbered for placement in title 49, chapter 11, article 1:

Former Sections	New Sections
49-1301	49-1501
49-1302	49-1502
49-1303	49-1503

Sec. 25. Laws 2021, chapter 408, section 115 is amended to read:

Sec. 115. Supplemental appropriation; water supply development revolving fund; fiscal year 2020-2021

The sum of $40,000,000 is appropriated from the state general fund in fiscal year 2020-2021 to the water supply development revolving fund established by section 49-1271, Arizona Revised Statutes. These monies shall be allocated for projects:

~~1. That are located throughout all regions of this state and outside of active management areas.~~

~~2. In amounts of not more than $1,000,000 per project~~ AS PRESCRIBED BY TITLE 49, CHAPTER 8, ARTICLE 3, ARIZONA REVISED STATUTES.

Sec. 26. Water and infrastructure finance authority advisory board; transfer to federal water programs committee

Notwithstanding section 41-5356, Arizona Revised Statutes, as amended by this act, all of the members of the water and infrastructure finance authority advisory board serving on the effective date of this act may continue to serve on the federal water programs committee established by section 49-1207, Arizona Revised Statutes, as added by this act, until the expiration of their normal terms. All subsequent appointments shall be as prescribed by statute.

Sec. 27. Drought mitigation revolving fund projects; transfer of monies

On the effective date of this section, all unexpended and unencumbered monies remaining in the drought mitigation revolving fund established by section 49-193.01, Arizona Revised Statutes, as transferred, renumbered and amended by this act, are transferred to the water supply development revolving fund established by section 49-1271, Arizona Revised Statutes, as amended by this act, except that $10,000,000 that is designated by Laws 2021, chapter 408, section 114, subsection B, paragraph 1 to facilitate forbearance of water deliveries that would avoid reductions in this state's Colorado River supplies, is transferred to the Arizona system conservation fund established by section 45-118, Arizona Revised Statutes.

Sec. 28. Initial terms of members of the water infrastructure finance authority board

A. Notwithstanding section 49-1206, Arizona Revised Statutes, as added by this act, the terms of initial appointees to the water infrastructure finance authority board are as follows:

1. The initial terms of the three members from a county with a population of four hundred thousand persons or more end on January 31, 2026.

2. The initial terms of the three members from a county with a population of less than four hundred thousand persons and the one member who specializes in finance or statewide water needs end on January 31, 2028.

B. For the initial term, the president of the senate and the minority leader of the senate shall appoint first, the governor shall appoint second and the speaker of the house of representatives and the minority leader of the house of representatives shall appoint third.

C. All subsequent appointments shall be for five-year terms as prescribed by statute.

Sec. 29. Succession

A. As provided by this act, on the first meeting of the water infrastructure finance authority of Arizona succeeds to the authority, powers, duties and responsibilities of the Arizona finance authority with respect to the clean water revolving fund program, the drinking water revolving fund program, the hardship grant fund financial provisions and the water supply development revolving fund financial provisions, as provided in this act. Until the first meeting of the water infrastructure finance authority board established by section 49-1206, Arizona Revised Statutes, as added by this act, the water infrastructure finance authority of Arizona shall continue to be governed by the Arizona finance authority board with the recommendations of the current water infrastructure finance authority advisory board as composed immediately before the effective date of this act.

B. This act does not alter the effect of any actions that were taken or impair the valid obligations of the Arizona finance authority or the water infrastructure finance authority of Arizona in existence before the effective date of this act.

C. Administrative rules and orders that were adopted by the Arizona finance authority with respect to the clean water revolving fund program, the drinking water revolving fund program, the hardship grant fund financial provisions and the water supply development revolving fund financial provisions continue in effect until superseded by administrative action by the water infrastructure finance authority of Arizona.

D. All administrative matters, contracts and judicial and quasi-judicial actions, whether completed, pending or in process, of the Arizona finance authority with respect to the clean water revolving fund program, the drinking water revolving fund program, the hardship grant fund financial provisions and the water supply development revolving fund financial provisions on the effective date of this act are transferred to and retain the same status with the water infrastructure finance authority of Arizona.

E. All certificates, licenses, registrations, permits and other indicia of qualification and authority that were issued by the Arizona finance authority and the water infrastructure finance authority of Arizona with respect to the water supply development revolving fund financial provisions retain their validity for the duration of their terms of validity as provided by law.

F. All equipment, records, furnishings and other property, all data and investigative findings, all obligations and all appropriated monies that remain unexpended and unencumbered on the effective date of this act of the Arizona finance authority with respect to the water supply development revolving fund financial provisions are retained by the water infrastructure finance authority of Arizona.

Sec. 30. Water infrastructure finance authority of Arizona; purpose

Pursuant to section 41-2955, subsection B, the legislature continues the water infrastructure finance authority of Arizona to provide a source of financial and other assistance for projects relating to water treatment and water supply development that improve current and long-term water supplies.

Sec. 31. Distribution of revenues; long-term water augmentation fund; intent

A. For fiscal year 2022-2023, beginning the month following the general effective date of this act, the state treasurer shall distribute the sum of $334,000,000 proportionately for each month remaining in the fiscal year from the portion of the revenues derived from the tax levied by title 42, chapter 5, articles 1 and 5, Arizona Revised Statutes, that is not designated as the distribution base, to the long-term water augmentation fund established by section 49-1302, Arizona Revised Statutes, as added by this act, for the purposes prescribed by title 49, chapter 8, article 4, Arizona Revised Statutes, as added by this act.

B. The legislature intends that the distributions made in subsection A of this section not impact the portion of transaction privilege tax revenues that cities and counties in this state receive pursuant to section 42-5029, subsection D, Arizona Revised Statutes.

Sec. 32. Appropriation; long-term water augmentation fund; exemption

A. The sum of $333,000,000 is appropriated from the state general fund in fiscal year 2023-2024 to the long-term water augmentation fund established by section 49-1302, Arizona Revised Statutes, as added by this act, for the purposes prescribed by title 49, chapter 8, article 4, Arizona Revised Statutes, as added by this act.

B. The appropriation made in subsection A of this section is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

Sec. 33. Appropriation; long-term water augmentation fund; exemption

A. The sum of $333,000,000 is appropriated from the state general fund in fiscal year 2024-2025 to the long-term water augmentation fund established by section 49-1302, Arizona Revised Statutes, as added by this act, for the purposes prescribed by title 49, chapter 8, article 4, Arizona Revised Statutes, as added by this act.

B. The appropriation made in subsection A of this section is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

Sec. 34. Appropriation; department of water resources; water supply and demand assessment; exemption

A. The sum of $3,500,000 is appropriated from the state general fund in fiscal year 2022-2023 to the department of water resources for the annual water supply and demand assessment prescribed by this act.

B. The appropriation made in subsection A of this section is exempt from the provisions of section 35-190, Arizona Revised Statutes, relating to lapsing of appropriations.

Sec. 35. Severability

If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

APPROVED BY THE GOVERNOR JULY 6, 2022.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 6, 2022.

ATTACHMENT C

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

1. Identification of the Proposed Rule Making

The Water Infrastructure Finance Authority (WIFA) of Arizona is initiating a rule making to reflect its current governing statutes. The Authority proposes to modify the existing rule (A.A.C. Title 18, Chapter 15) so the rule supports and complements recent state statutory changes to A.R.S. Title 49, Chapter 8 and the addition of A.R.S. Title 41, Chapter 53.

On August 6, 2016, Arizona House Bill 2666 (Fifty-second Legislature, Second Regular Session, 2016) became effective, transferring WIFA to the newly established Arizona Finance Authority (AFA). House Bill 2666 (HB 2666) dissolved the WIFA Board of Directors, and WIFA is now governed by the newly created AFA Board of Directors with a new WIFA Advisory Board. The rule making reflects the new governance of the Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF).

The Water Supply Development Revolving Fund (WSDRF) was established during the 2007 legislative session but is, to date, unfunded. Its Committee was struck from statute by HB 2666. References to the now-defunct WSDRF Committee are found throughout WIFA's current rules. The rule making reflects the new governance of the WSDRF. Rules for the WSDRF were promulgated as part of WIFA's 2010 rulemaking, paralleling the rules for the Clean Water and Drinking Water Revolving Fund programs. These programs are federally funded, and their rules are based on federal requirements which do not apply to the WSDRF, a state program. This rule making removes these requirements, thereby reducing the regulatory burden of the rule.

This rule making proposes other minor clarifying edits to improve the comprehension and legal certainty of the rules.

The rule making does not propose new or higher standards or new costs or fees that make it more difficult for communities to apply for and receive financial or technical assistance from WIFA.

2. Identification of the Persons Who Will be Directly Affected by, Bear the Costs of or Directly Benefit from the Proposed Rule Making.

WIFA is a public financing authority; it does not regulate any consumer or business. WIFA manages the CWSRF and DWSRF whose purposes are to provide financial and technical assistance to political subdivisions and Indian tribes for their wastewater, stormwater and nonpoint source projects, and to political subdivisions, Indian tribes, and private water companies for their drinking water projects. A political subdivision is defined by A.R.S. § 49-1201(9) as a county, city, town or special taxing district authorized by law to construct wastewater treatment facilities, drinking water facilities or nonpoint source projects. Private water companies must be regulated by the Arizona Corporation Commission to be eligible for DWSRF funding. Customers of a wastewater system, drinking water system, or water provider receive the ultimate benefit from improved water quality and having an adequate water supply.

In fiscal year 2017, WIFA provided financial assistance to five drinking water systems and three wastewater systems. Through the Drinking Water Revolving Fund, $63 million was lent to communities around the state, while $4.6 million was lent through the Clean Water Revolving Fund.

The average number of loans per year from fiscal year 2013 to fiscal year 2017 was nine drinking water loans and three wastewater loans. In fiscal year 2017, technical assistance was provided to five drinking water systems and four wastewater systems, totaling $121,631 and $134,324 respectively.

In addition to providing assistance under the CWSRF and DWSRF, WIFA is authorized to provide financial and technical assistance to water providers for water supply development projects under the WSDRF. A water provider is defined in A.R.S. § 49-1201(13) as a municipal water delivery system, a county water augmentation authority, a county water authority, an Indian tribe or a community facilities district. At this time, there is no current funding for the WSDRF program, and no applications for assistance will be solicited until funding becomes available.

3. Cost Benefit Analysis

A. The Probable Costs and Benefits to the Implementing Agency and Other Agencies Directly Affected

This rule making primarily impacts WIFA but also impacts the Arizona Corporation Commission (ACC), Arizona Department of Environmental Quality (ADEQ), and Arizona Department of Water Resources (ADWR).

a. WIFA is impacted favorably by this rule making as the amendments restructure the content, reduce redundancy, and provide for a direct presentation of the required actions of applying for, evaluating, and awarding financial and technical assistance. Rule amendments are not expected to increase WIFA's administrative costs of providing financial or technical assistance. No new full-time employees will be necessary to implement and enforce the proposed rule.

b. ACC is minimally affected by this rule making. Privately-owned drinking water facilities must request approval of long-term debt and any associated rate increase from the ACC prior to applying for financial assistance from WIFA. There are no additional costs to the ACC due to the rule amendments.

c. ADEQ is minimally impacted by this rule making. Wastewater and drinking water facilities provided with assistance from WIFA can mitigate outstanding compliance issues with ADEQ. There are no additional costs to ADEQ due to the rule amendments.

d. ADWR is impacted by this rule making. Before HB 2666 became effective, the Director of Water Resources served as Chairperson of the WSDRF Committee. The Committee no longer exists, and the Arizona Finance Authority Board of Directors now oversees the WSDRF. This rulemaking simplifies the process for applying for, evaluating and awarding financial and technical assistance from the WSDRF, by removing the non-applicable federal requirements. At this time, the impact on ADWR is minimal since there is no current funding for the WSDRF program.

B. The Probable Costs and Benefits to Political Subdivisions Directly Affected

This rule making has a beneficial impact to political subdivisions as defined by A.R.S. § 49-1201 by clarifying the rules. No increased costs are associated with this rule making.

Political subdivisions are positively impacted by WIFA's programs in that they can solve infrastructure problems, improve water quality, and ensure public health protection through financial and technical assistance obtained from WIFA. Without the financial and technical assistance available through WIFA, many wastewater and drinking water facilities would otherwise find it difficult, if not impossible, to obtain funding to achieve compliance or correct problems associated with water quality standards. Through the Clean Water and Drinking Water

federal capitalization grants and WIFA's 'AAA' bond rating, WIFA provides subsidization on the interest rates for wastewater and drinking water infrastructure projects. Communities designated as disadvantaged receive additional discounts, and in some cases, forgivable principal. Overall, the net impact upon the political subdivisions is a cost-savings benefit.

WIFA anticipates that when water supply development revolving funds become available, water providers will initiate requests for financial and technical assistance through the WSDF to address water supply needs. As with wastewater and drinking water facilities, water providers may find it difficult, if not impossible, to obtain funding to address their needs without the assistance available from WIFA.

C. The Probable Costs and Benefits to Businesses Directly Affected

This rule making has a beneficial impact to the private water companies eligible to borrow from the Drinking Water State Revolving Fund. The impact for private water companies is the same as for political subdivisions and is described above. This rule making has no anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rule making.

4. Probable Impact on Private and Public Employment in Businesses, Agencies and Political Subdivisions Directly Affected

There is no probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rule making.

5. Probable Impact on Small Businesses.

For the purposes of the CWSRF and DWSRF, WIFA utilizes the Environmental Protection Agency's (EPA) definition of small systems as those serving 10,000 persons or less. In Arizona, many of these small water systems are privately-owned and are, therefore, regulated by the Arizona Corporation Commission. (Privately-owned wastewater companies are not eligible for WIFA funding.)

There is a no impact upon small businesses from this rule making beyond the beneficial impacts described in Section 3. There are no administrative or other costs required for compliance with the proposed rule making. This rule making corrects or clarifies existing rule provisions and definitions to reduce confusion and improve understanding and readability. Additionally, there are no competitive disadvantages to small businesses expected as a result of this rule making.

The methods prescribed in A.R.S. § 41-1035 which an agency may use to reduce the impact on small businesses are listed below. WIFA does not regulate any consumer or business; nor does the rule making establish any reporting requirements, schedules, or deadlines, nor any design or operational standards. Therefore, the methods do not apply to this rule making.

i. Establish less stringent compliance or reporting requirements in the rule for small businesses.
The proposed rule making does not establish any compliance or reporting requirements.

ii. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
The proposed rule making does not establish any compliance or reporting schedules or deadlines.

iii. Consolidate or simplify the rule's compliance and reporting requirements for small businesses.
The proposed rule making does not prescribe compliance or reporting requirements.

iv. Establish performance standards for small businesses to replace design and operational standards.
The proposed rule making does not establish design or operational standards.

v. Exempt small businesses from any or all requirements of the rule.
WIFA does not regulate any consumer or business; thus exemptions are not applicable.

Customers of a wastewater system, drinking water system, or water provider receive the ultimate benefit from improved water quality and having an adequate water supply. Although acceptance of financial assistance from WIFA may trigger an increase in user rates for the consumer, WIFA makes significant efforts to maintain the affordability of its financial assistance, including below-market interest rates, and in some cases, forgivable principal. WIFA offers technical assistance to communities to help with the initial phases of an infrastructure project. In the end, the residents of Arizona benefit from the financial and technical assistance provided by WIFA.

6. Probable Effect on State Revenues.
The rule making will not have an impact on state revenues.

The Clean Water and Drinking Water State Revolving Funds are self-supporting programs which receive monies from federal capitalization grants authorized under the Clean Water Act and Safe Drinking Water Act; the issuance and sale of water quality revenue bonds; and loan repayments, interest and penalties. WIFA pays administrative costs from income received from fees (as collected through the subsidized combined interest and fee rate) on loan repayments or from four percent of each of the Clean Water and Drinking Water federal capitalization grants as authorized by law.

Funds for administering the Water Supply Development Revolving Fund program and providing assistance are authorized to be received from the issuance and sale of water supply development bonds; appropriation approved by the legislature; funds received from the United States government; loan repayments, interest and penalties; interest and other income received from investing monies in the fund; and gifts, grants and donations received from any public or private source. This program is unfunded.

7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making,
The proposed rule making does not impose any intrusive or costly requirements. It does not propose new or higher standards or new costs or fees. The Authority proposes to modify the existing rule so the rule supports and complements recent state statutory changes to A.R.S. Title 49, Chapter 8 and the addition of A.R.S. Title 41, Chapter 53, as well as minor clarifying edits to improve the comprehension and legal certainty of the rules. Because of this, no alternative methods were considered.

8. Description of Data on Which Rule is Based
This rule making was undertaken to reflect the current governing statutes, as a result of HB 2666. The rule making makes the rules consistent with recent statutory changes, and is not based on data.

STATUTORY AUTHORITY

49-1203. Powers and duties of authority; definition

A. The authority is a corporate and politic body and shall have an official seal that shall be judicially noticed. The authority may sue and be sued, contract and acquire, hold, operate and dispose of property. Notwithstanding any other law and unless expressly waived by the authority, the authority is not subject to any statutory requirement to pay another party's attorney fees or costs in any administrative or judicial proceeding. The authority is not a public service corporation subject to regulation by the corporation commission.

B. The authority, through its board, may:

1. Issue negotiable water quality bonds pursuant to section 49-1261 for the following purposes:

(a) To generate the state match required by the clean water act for the clean water revolving fund and to generate the match required by the safe drinking water act for the drinking water revolving fund.

(b) To provide financial assistance to political subdivisions, Indian tribes and eligible drinking water facilities for constructing, acquiring or improving wastewater treatment facilities, drinking water facilities, nonpoint source projects and other related water quality facilities and projects.

2. Issue water supply development bonds for the purpose of providing financial assistance to eligible entities for water supply development purposes pursuant to sections 49-1274 and 49-1275.

3. Provide financial assistance to political subdivisions and Indian tribes from monies in the clean water revolving fund to finance wastewater treatment projects.

4. Provide financial assistance to drinking water facilities from monies in the drinking water revolving fund to finance these facilities.

5. Provide financial assistance from monies in the water supply development revolving fund to finance water supply development as prescribed by this article.

6. Guarantee debt obligations of, and provide linked deposit guarantees through third-party lenders to:

(a) Political subdivisions that are issued to finance wastewater treatment projects.

(b) Drinking water facilities that are issued to finance these facilities.

7. Provide linked deposit guarantees through third-party lenders to political subdivisions and drinking water facilities.

8. Apply for, accept and administer grants and other financial assistance from the United States government and from other public and private sources.

9. Enter into capitalization grant agreements with the United States environmental protection agency.

10. Adopt rules pursuant to title 41, chapter 6 governing the application for and awarding of wastewater treatment facility, drinking water facility and nonpoint source project financial assistance under this

chapter, administering the clean water revolving fund and the drinking water revolving fund and issuing water quality bonds.

11. Hire a director who serves at the pleasure of the board and who shall hire staff for the authority. The board may prescribe the terms and conditions of the director's and staff's employment as necessary to carry out the purposes of the authority. The board shall adopt written policies, procedures and guidelines, similar to those adopted by the department of administration, regarding officer and employee compensation, observed holidays, leave and reimbursement of travel expenses. The officers and employees of the authority may participate in the state retirement system prescribed by title 38, chapter 5, article 2, and the board, consistent with section 38-656, subsection A, may provide that the authority's officers and employees participate in the state employee health, disability and accident insurance prescribed by title 38, chapter 4, article 4. The officers and employees of the authority are exempt from any laws regulating state employment, including the following:

(a) Title 41, chapter 4, article 4, relating to the state personnel system.

(b) Title 41, chapter 4, articles 5 and 6, relating to state service.

12. Contract for or employ the services of outside advisors, attorneys, engineers, financial and other consultants and aides reasonably necessary or desirable to allow the authority to adequately perform its duties.

13. Contract and incur obligations as reasonably necessary or desirable within the general scope of authority activities and operations to allow the authority to adequately perform its duties.

14. Assess financial assistance origination fees and annual fees to cover the reasonable costs of administering the authority and the monies administered by the authority. Any fees collected pursuant to this paragraph constitute governmental revenue and may be used for any purpose consistent with the mission and objectives of the authority.

15. Perform any function of a fund manager under the CERCLA Brownfields cleanup revolving loan fund program as requested by the department. The board shall perform any action authorized under this article on behalf of the Brownfields cleanup revolving loan fund program established pursuant to chapter 2, article 1.1 of this title at the request of the department. In order to perform these functions, the board shall enter into a written agreement with the department.

16. Provide grants, staff assistance or technical assistance in the form of loan repayment agreements and other professional assistance to political subdivisions, any county with a population of less than five hundred thousand persons, Indian tribes and community water systems in connection with developing or financing wastewater, drinking water, water reclamation or related water infrastructure. Assistance provided under a technical assistance loan repayment agreement shall be in a form and under terms determined by the authority and shall be repaid not more than three years after the date that the monies are advanced to the applicant. Technical assistance provided by the authority does not create any liability for the authority or this state regarding designing, constructing or operating any infrastructure project.

17. Provide grants, staff assistance or technical assistance in the form of loan repayment agreements and other professional assistance in accordance with section 49-1273. Assistance provided under a technical

assistance loan repayment agreement shall be repaid not more than three years after the date that the monies are advanced to the applicant. Technical assistance provided by the authority does not create any liability for the authority or this state regarding designing, constructing or operating any water supply development project.

C. The authority may adopt rules pursuant to title 41, chapter 6 governing the application for and awarding of assistance under this chapter and the administration of the funds established by this chapter.

D. The board shall deposit, pursuant to sections 35-146 and 35-147, any monies received pursuant to subsection B, paragraph 8 of this section in the appropriate fund as prescribed by the grant or other financial assistance agreement.

E. The authority is not subject to title 41, chapter 23. In coordination with the department of administration, the authority shall establish procurement procedures by rule to administer the long-term water augmentation fund.

F. For the purposes of the safe drinking water act and the clean water act, the department is the state agency with primary responsibility for administering this state's public water system supervision program and water pollution control program and, in consultation with other appropriate state agencies as appropriate, is the lead agency in establishing assistance priorities as prescribed by section 49-1224, subsection B, paragraph 3, section 49-1243, subsection A, paragraph 6 and section 49-1244, subsection B, paragraph 3.

G. For the purposes of this section, "CERCLA" has the same meaning prescribed in section 49-201.

49-1211. Project delivery methods

The authority may provide for the development or operation of water-related facilities using a variety of project delivery methods and forms of agreement. The methods may include:

1. Predevelopment agreements leading to other implementing agreements.

2. A design-build agreement.

3. A design-build-maintain agreement.

4. A design-build-finance-operate agreement.

5. A design-build-operate-maintain agreement.

6. A design-build-finance-operate-maintain agreement.

7. A concession agreement providing for the private partner to design, build, operate, maintain, manage or lease a water-related facility.

8. Any other project delivery method or agreement or combination of methods or agreements that the authority determines are reasonable or necessary to carry out the authority's purposes.

49-1212. Procurement for water-related facilities; insurance; evaluations; deviations

A. The authority may procure services for the development, design, acquisition, construction, improvement or equipping of water-related facilities using any of the following:

1. Requests for project proposals in which the authority describes a class of water-related facilities or a geographic area in which entities are invited to submit proposals to develop water-related facilities.

2. Solicitations using requests for qualifications, short-listing of qualified proposers, requests for proposals, negotiations, best and final offers or other procurement procedures.

3. Procurements seeking development and finance plans that are most suitable for the project.

4. Best value selection procurements based on price or financial proposals, or both, and any other relevant factors.

5. Other procedures that the authority determines may further the implementation of this chapter.

B. For any procurement in which the authority issues a request for qualifications, request for proposals or similar solicitation document, the request shall set forth generally the factors that will be evaluated and the manner in which responses will be evaluated. If contractor insurance is required for services procured pursuant to this section, the insurance shall be placed with an insurer authorized to transact insurance in this state pursuant to title 20, chapter 2, article 1 or a surplus lines insurer approved and identified by the director of the department of insurance and financial institutions pursuant to title 20, chapter 2, article 5.

C. In evaluating proposals under this section, the authority shall consider the criteria prescribed pursuant to section 49-1304.

D. The authority may deviate from any requirements in this section to the extent necessary to make use of any available federal funding for the design, development, acquisition, construction, improvement or equipping of water-related facilities.

49-1213. Public-private partnership agreements; private partners; political subdivisions; tax exemptions; prohibition

A. In any public-private partnership under this chapter, the authority may include provisions that:

1. Allow the authority or the private partner to establish and collect delivery charges, service charges, operation and maintenance charges or similar charges, including provisions that:

(a) Establish circumstances under which the authority may receive all or a share of revenues from such charges.

(b) Govern enforcement of collection of such charges.

(c) Allow the authority to continue or cease collection of charges after the end of the term of the agreement.

2. Allow for payments to be made by this state to the private partner.

3. Allow the authority to accept payments of monies and share revenues with the private partner.

4. Address how the partners will share management of the risks of the public-private partnership project, including any risks associated with public-private partnership projects that will originate outside of this state.

5. Specify how the partners will share the costs of the design, development, acquisition, construction, improvement and equipping of the public-private partnership project.

6. Allocate financial responsibility for cost overruns.

7. Establish the damages to be assessed for nonperformance.

8. Establish performance criteria or incentives, or both.

9. Address the acquisition of rights-of-way and other property interests that may be required.

10. Establish recordkeeping, accounting and auditing standards to be used for the public-private partnership project.

11. For a public-private partnership project that reverts to public ownership, address responsibility for reconstruction or renovations that are required in order for water-related facilities to meet all applicable government standards on reversion of the water-related facilities to this state.

12. Identify any authority specifications that must be satisfied, including provisions allowing the private partner to request and receive authorization to deviate from the specifications on making a showing satisfactory to the authority.

13. Require a private partner to provide performance and payment bonds, parent company guarantees, letters of credit or other acceptable forms of security or a combination of any of these, the penal sum or amount of which may be less than one hundred percent of the value of the contract involved based on the authority's determination, made on a project-by-project basis, of what is required to adequately protect this state.

14. Allow the private partner in any concession agreement to establish and collect delivery charges, operation and maintenance charges or similar charges to cover its costs and provide for a reasonable rate of return on the private partner's investment, including any of the following provisions:

(a) The charges may be collected directly by the private partner or by a third party engaged for that purpose.

(b) A formula for the adjustment of charges during the term of the agreement.

(c) For an agreement that does not include a formula described in subdivision (b) of this paragraph, provisions regulating the private partner's return on investment.

15. Specify remedies available and dispute resolution procedures, including forum selection and choice of law provisions and the right of the parties to institute legal proceedings to obtain an enforceable judgment or award and procedures for use of dispute review boards, mediation, facilitated negotiation, arbitration and other alternative dispute resolution procedures.

16. Allow the authority to acquire real property that is needed for water-related facilities, including acquisition by exchange for other real property that is owned by the authority.

B. The authority may approve any request from another unit of government to develop water-related facilities in a manner similar to that used by the authority for public-private partnerships.

C. Notwithstanding any other law, agreements under this chapter that are properly developed, operated or held by a private partner under a concession agreement pursuant to this chapter are exempt from all state and local ad valorem and property taxes that otherwise might be applicable.

D. A public-private partnership agreement under this chapter shall contain a provision by which the private partner expressly agrees that it is prohibited from seeking injunctive or other equitable relief to delay, prevent or otherwise hinder the authority or any jurisdiction from developing, constructing or maintaining any water-related facilities that were planned and that would or might impact the revenue that the private partner would or might derive from the water-related facilities developed under the agreement, except that the agreement may provide for reasonable compensation to the private partner for the adverse effect on revenues resulting from development, construction and maintenance of an unplanned revenue impacting water-related facilities.

E. A foreign private corporation that enters into an agreement with the authority pursuant to this section must provide satisfactory evidence to the board that the foreign entity is in compliance with the requirements of title 10, chapter 38.

49-1301. Definitions

In this article, unless the context otherwise requires:

1. "Eligible entity" means any of the following:

(a) A water provider.

(b) Any city, town, county, district, commission, authority or other public entity that is organized and that exists under the statutory law of this state or under a voter-approved charter or initiative of this state.

2. "Financial assistance" means loans provided by the authority to eligible entities and credit enhancements purchased for an eligible entity's bonds or other forms of indebtedness pursuant to section 49-1307.

3. "Loan" means a bond, lease, loan or other evidence of indebtedness pertaining to financial assistance for water supply development projects issued from the long-term water augmentation fund.

4. "Loan repayment agreement" means an agreement to repay a loan that is issued from the long-term water augmentation fund and that is entered into by an eligible entity.

5. "Pledged revenues" means any monies to be received by an eligible entity, including property taxes, other local taxes, fees, assessments, rates or charges that are pledged by the eligible entity as a source of repayment for a loan repayment agreement.

49-1302. Long-term water augmentation fund

A. The long-term water augmentation fund is established to be maintained in perpetuity consisting of all of the following:

1. Monies received from the issuance and sale of long-term water augmentation bonds under section 49-1309.

2. Monies appropriated by the legislature to the fund.

3. Monies received for any allowable purpose of the fund from the United States government.

4. Monies received as loan repayments, interest, administrative fees and penalties.

5. Monies from any lawful activities of the authority, including public-private partnership agreements relating to water supply development projects.

6. Interest and other income received from investing monies in the fund.

7. Gifts, grants and donations received for purposes of the fund from any public or private source.

B. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations. On notice from the authority, the state treasurer shall invest and divest monies in the fund as provided in sections 35-313 and 35-314.03, and monies earned from investment shall be credited to the fund.

C. All monies shall be deposited, pursuant to sections 35-146 and 35-147, in the fund and shall be held in trust. The monies in the fund may not be appropriated or transferred by the legislature to fund the general operations of this state or to otherwise meet the obligations of the state general fund unless approved by a three-fourths vote of the members of each house of the legislature.

D. The authority shall administer the fund. The authority shall establish as many other accounts and subaccounts as required to administer the fund. If any long-term water augmentation bonds are issued under section 49-1309, the authority shall establish one or more bond proceeds accounts and one or more bond debt service accounts as necessary to accurately record and track bond proceeds and debt service revenues.

E. The authority shall use the monies and other assets in the fund solely for the purposes authorized by this chapter.

F. Monies in the fund may be used for securing long-term water augmentation bonds of the authority.

49-1303. Long-term water augmentation fund; purposes; limitation

A. Monies and other assets in the long-term water augmentation fund may be used for the following purposes:

1. Funding water supply development projects that import water from outside the boundaries of this state. At least seventy-five percent of the monies in the fiscal years 2022-2023, 2023-2024 and 2024-

2025 appropriations to the fund shall be reserved for one or more projects with this purpose, and those monies shall be accounted for separately.

2. Purchasing imported water or rights to imported water.

3. Acquiring or constructing water-related facilities in this state to convey or deliver imported water within the state.

4. Conducting investigations, including performing environmental or other reviews.

5. Contracting for water needs assessments.

6. Providing financial assistance to eligible entities for the purposes of financing or refinancing water supply development projects within this state, including projects for conservation through reducing existing water use or more efficient uses of existing water supplies.

7. Guaranteeing debt obligations of eligible entities that are issued or incurred to finance or refinance water supply development projects within this state or providing credit enhancements in connection with these debt obligations.

8. Paying the costs to administer the fund.

9. Funding not more than ten full-time equivalent positions of the authority.

B. In providing financial assistance from the fund, the authority shall comply with section 49-1304.

C. Monies in the fund may not be used to purchase conservation or other similar easements on real property.

D. If the monies pledged to secure long-term water augmentation bonds issued pursuant to section 49-1309 become insufficient to pay the principal and interest on the long-term water augmentation bonds guaranteed by the fund, the authority shall direct the state treasurer to liquidate securities in the fund as may be necessary and shall apply those proceeds to make current all payments then due on the long-term water augmentation bonds. The state treasurer shall immediately notify the attorney general and auditor general of the insufficiency. The auditor general shall audit the circumstances surrounding the depletion of the fund and report the findings to the attorney general. The attorney general shall conduct an investigation and report those findings to the governor and the legislature.

E. The authority shall take necessary actions to obtain full repayment for monies or financial assistance provided from the fund by the recipients of the funding or financial assistance or the recipients of any water supply development project made available from monies from the fund through water subcontracts, loan repayments, rates, fees, charges or otherwise, as appropriate. This subsection does not apply to monies spent by the authority for investigations and studies or monies spent in connection with loan guarantees or credit enhancement.

49-1304. Evaluation criteria for projects from the long-term water augmentation fund

A. The authority shall determine the order and priority of water supply development projects proposed to be funded in whole or in part with monies from the long-term water augmentation fund, participation in projects to import water or allocation of imported water based on the following, as applicable:

1. The benefits of the project to current and future residents of this state, including the ability of the project to improve access to water supplies for use within this state and promote economic growth, in relation to the projected cost of the project.

2. The ability of the project to provide multiple water supply development benefits.

3. The projected costs of the project.

4. The ability of the project to address or mitigate water supply reductions to existing water users, considering the existence, feasibility and long-term reliability of mitigation measures available to the applicant or proposed beneficiaries, including the availability of water supplies from the Arizona water banking authority.

5. The cost-effectiveness of the project.

6. The reliability and long-term security of the water supply to be developed through the project.

7. Existing and planned conservation, best management practices and water management programs of the applicant or potential applicant.

8. The degree to which the project will maximize or leverage multiple available funding sources, including federal funding.

9. The applicant's ability to meet any applicable environmental requirements imposed by any federal or state agency.

10. The qualifications, industry experience, including experience with similar projects, general reputation and financial capacity of the applicant or any private partner, based on appropriate due diligence.

11. The feasibility of the project, including the feasibility of the proposed design and operation of the project.

12. Comments from water users, local citizens and affected jurisdictions.

13. For projects involving the construction or operation of water-related facilities, the safety record of any private partner.

14. Existing, near-term and long-term water demands compared to the volume and reliability of existing water supplies of the beneficiaries of the funding or project. In evaluating this criterion, the authority shall consider information contained in any applicable water supply and demand assessment that has been issued by the director of water resources pursuant to section 45-105, subsection B, paragraph 14, in addition to any other information submitted to evaluate this criterion.

15. Potential impacts to ratepayers.

16. The ability of the applicant and any public or private partner to fully repay all financial obligations to the authority.

17. For agreements entered into pursuant to section 49-1203.01, subsection C, paragraph 5, the impact of any such agreement on the ability of the authority to comply with the requirements of section 49-1303, subsection E.

18. Other criteria that the authority deems appropriate.

B. The board shall conduct background checks, financial checks and other reviews deemed appropriate for individual applicants, applicants' boards of directors and other partners of the applicants.

49-1305. Opportunity for participation by Colorado River water users

For any water supply development project to import water that is proposed to be funded by the authority, the authority shall provide written notice of the proposed project to all entities in this state with an entitlement to water from the Colorado River, including water delivered through the central Arizona project. An entity that receives a notice prescribed by this section shall submit to the authority within thirty days after the date of the notice a statement of the entity's interest in participating in the project.

49-1306. Taxation exemption

A. The authority is regarded as performing a governmental function in carrying out the purposes of this article and is not required to pay taxes or assessments on any of the property acquired or constructed for these purposes or on the agreements of the authority pertaining to maintaining and operating water-related facilities or in the revenues derived from the water-related facilities.

B. The long-term water augmentation bonds issued under this chapter, their transfer and the income the bonds produce are at all times exempt from taxation by this state or by any political subdivision of this state.

C. The authority is authorized under this chapter and under title 35, chapter 3, article 7 to take all actions determined necessary by the board to comply with federal income tax laws, including the payment of rebates to the United States treasury.

49-1307. Financial assistance from the long-term water augmentation fund; terms

A. The authority shall consider applications for financial assistance from the long-term water augmentation fund in accordance with section 49-1304 and shall consider the recommendations of the long-term water augmentation committee established by section 49-1208.

B. The authority may provide financial assistance from the long-term water augmentation fund for water supply development projects inside or outside this state. The financial assistance may include:

1. Loans as provided in this section.

2. Credit enhancements purchased for an eligible entity's bonds or other forms of indebtedness.

C. A loan shall be evidenced by a loan repayment agreement or lease purchase agreement or, to the extent an eligible entity is a political subdivision of this state and has bonding authority, bonds of the eligible entity that are delivered to and held by the authority.

D. A loan under this section:

1. Shall be repaid during a period approved by the authority.

2. Shall require that interest payments begin not later than the next date that either principal or interest must be paid by the authority to holders of any of the authority's long-term water augmentation bonds that provided funding for the loan. The authority may provide that loan interest accruing during construction of the eligible entity's water supply development project and up to one year after completion of the construction of the water supply development project be capitalized in the loan.

3. Shall clearly specify the amount of principal, interest and redemption premium, if any, that is due on any payment date.

4. Shall be conditioned on the identification of pledged revenues for repaying the loan. If the water supply development project financed or refinanced by the loan is part of a municipal utility and the city or town pledges revenues of the utility to repay the loan, the loan may be treated under section 9-530, subsection B as a lawful long-term obligation incurred for a specific purpose.

5. To the extent allowed by law, shall be secured by a debt service reserve account that is held in trust and that is in an amount, if any, as determined by the authority.

6. Shall contain the covenants and conditions pertaining to constructing, acquiring, improving or equipping water supply development projects and repaying the loan as the authority deems proper.

7. May provide for paying interest on the unpaid principal balance of the loan at the rates established in the loan repayment agreement.

8. May provide for paying the eligible entity's proportionate share of the expenses of administering the long-term water augmentation fund and may provide that the eligible entity pay financing and loan administration fees approved by the authority. The costs may be included in the levy, assessment, rates or charges of the pledged revenues pledged by the eligible entity to repay the loan.

E. The authority shall prescribe the rate or rates of interest on loans made under this section, but the rate or rates may not exceed the prevailing market rate for similar types of loans. An eligible entity that is a political subdivision of this state may negotiate the sale of its bonds to, or a loan repayment agreement with, the authority without complying with any public or accelerated bidding requirements imposed by any other law for the sale of its bonds.

F. The approval of a loan shall be conditioned on a written commitment by the eligible entity to complete all applicable reviews and approvals and to secure all required permits in a timely manner.

G. By resolution of the board, the authority may impose any additional requirements it considers necessary to ensure that the loan principal and interest are timely paid.

H. All monies received from eligible entities as loan repayments, interest and penalties shall be deposited, pursuant to sections 35-146 and 35-147, in the long-term water augmentation fund.

I. If requested by the authority, the attorney general shall take whatever actions are necessary to enforce the loan repayment agreement and achieve repayment of loans provided by the authority pursuant to this article.

J. For eligible entities that are political subdivisions of this state, the revenues of the eligible entities' utility system or systems may be pledged to the payment of a loan repayment agreement without an election, if the pledge of revenues does not violate any covenant pertaining to the utility system or systems or the revenues pledged to secure outstanding bonds or other obligations or indebtedness of the eligible entities.

K. For an eligible entity that is a political subdivision of this state, and notwithstanding sections 9-571 and 11-671, if the revenues from a secondary property tax levy constitute pledged revenues, the eligible entity is not required to submit to a vote the question of entering and performing a loan repayment agreement.

L. Payments made pursuant to a loan repayment agreement are not subject to section 42-17106.

M. For eligible entities that are political subdivisions of this state, a loan repayment agreement under this section does not create a debt of the eligible entities, and the authority may not require that payment of a loan repayment agreement be made from other than the pledged revenues pledged by the eligible entities.

N. An eligible entity may employ attorneys, accountants, financial consultants and other experts in their fields as deemed necessary to perform services with respect to a loan repayment agreement.

O. At the direction of the authority, the eligible entity shall pay, and is hereby authorized to pay, the authority's costs in issuing long-term water augmentation bonds or otherwise borrowing to fund a loan.

P. A loan made to an eligible entity that is a political subdivision of this state may be secured additionally by an irrevocable pledge of any shared state revenues due to the eligible entity for the duration of the loan as prescribed by the authority. As applicable to loans additionally secured with shared state revenues, the authority may enter into agreements to specify the allocation of shared state revenues in relation to individual borrowers from such authorities. If a pledge of shared state revenues as additional security for a loan is required and the eligible entity fails to make any payment due to the authority under its loan repayment agreement or the eligible entity's bonds, the authority shall certify to the state treasurer and notify the governing body of the defaulting eligible entity that the eligible entity has failed to make the required payment and shall direct a withholding of shared state revenues as prescribed in subsection Q of this section. The certificate of default shall be in the form determined by the authority, except that the certificate shall specify the amount required to satisfy the unpaid payment obligation of the eligible entity.

Q. On receipt of a certificate of default from the authority, the state treasurer, to the extent not expressly prohibited by law, shall withhold any monies due to the defaulting eligible entity from the next succeeding distribution of monies pursuant to section 42-5029. In the case of an eligible entity that is a city or town, the state treasurer shall also withhold from the monies due to the defaulting city or town

from the next succeeding distribution of monies pursuant to section 43-206 the amount specified in the certificate of default and shall immediately deposit the monies in the long-term water augmentation fund established by section 49-1302. The state treasurer shall continue to withhold and deposit monies until the authority certifies to the state treasurer that the default has been cured. The state treasurer may not withhold any amount that is necessary to make any required deposits then due for the payment of principal and interest on bonds or indebtedness of the eligible entity if so certified by the defaulting eligible entity to the state treasurer and the authority. The defaulting eligible entity may not certify deposits as necessary for payment for bonds or indebtedness unless the bonds were issued or the indebtedness incurred before the date of the loan repayment agreement and the bonds or indebtedness was secured by a pledge of distribution made pursuant to sections 42-5029 and 43-206.

49-1308. Long-term water augmentation financial assistance; procedures

A. In compliance with any applicable requirements, an eligible entity may apply to the authority for and accept and incur indebtedness as a result of financial assistance from the long-term water augmentation fund for water supply development projects.

B. The authority shall:

1. Prescribe a simplified form and procedure to apply for and approve financial assistance.

2. Establish by rule criteria by which financial assistance will be awarded, including:

(a) For any financial assistance:

(i) A determination of the applicant's financial ability to construct, operate and maintain the project if it receives the assistance.

(ii) A determination of the applicant's ability to manage the project.

(iii) A determination of the applicant's ability to meet any applicable environmental requirements imposed by federal or state agencies.

(iv) A determination of the applicant's ability to acquire any necessary regulatory permits.

(v) Requirements for local participation in project costs, if deemed advisable by the authority.

(b) If the applicant is applying for a loan:

(i) A determination of the ability of the applicant to repay a loan according to the terms and conditions established by this chapter. At the option of the authority, the existence of a current investment grade rating on existing debt of the applicant that is secured by the same revenues to be pledged to secure repayment under the loan repayment agreement constitutes evidence regarding ability to repay a loan.

(ii) A determination of the applicant's legal capability to enter into a loan repayment agreement.

3. Determine the order and priority of projects assisted under this article based on the merits of the application with respect to water supply development criteria set forth in section 49-1304.

C. The authority shall review on its merits each application received and shall inform the applicant of the authority's determination. If the application is not approved, the authority shall notify the applicant, stating the reasons. If the application is approved, the authority may condition the approval on assurances the authority deems necessary to ensure that the financial assistance will be used according to law and the terms of the application.

49-1309. Long-term water augmentation bonds; requirements; authority; exemption from liability

A. The authority, through the board, may issue negotiable long-term water augmentation bonds in a principal amount that, in its opinion, is necessary to do all of the following:

1. Provide sufficient monies for water supply development projects and financial assistance for water supply development projects approved under this chapter.

2. Refund long-term water augmentation bonds, when the authority deems it expedient to do so.

3. Increase the capitalization of the long-term water augmentation fund.

4. Maintain sufficient reserves in the long-term water augmentation fund to secure the long-term water augmentation bonds.

5. Pay the necessary costs of issuing, selling and redeeming the long-term water augmentation bonds.

6. Pay other expenditures of the authority incidental to and necessary and convenient to carry out the purposes of this article.

B. The board shall authorize long-term water augmentation bonds by resolution. The resolution shall prescribe all of the following:

1. The rate or rates of interest and the denominations of the long-term water augmentation bonds.

2. The date or dates and maturity of the long-term water augmentation bonds.

3. The coupon or registered form of the long-term water augmentation bonds.

4. The manner of executing the long-term water augmentation bonds.

5. The medium and place of payment.

6. The terms of redemption.

C. The long-term water augmentation bonds shall be sold at public or private sale at the price and on the terms determined by the board. All proceeds from the issuance of long-term water augmentation bonds, except any amounts used to pay costs associated with the issuance and sale of the long-term water augmentation bonds, shall be deposited in the long-term water augmentation fund or a separately held account as specified in the resolution.

D. To secure any long-term water augmentation bonds authorized by this section, the board by resolution may:

1. Require that long-term water augmentation bonds issued under this section be secured by a lien on all or a part of the monies paid into the appropriate account or subaccount of the long-term water augmentation fund and provide the priority of the lien.

2. Pledge or assign to or in trust to be held by the state treasurer for the benefit of the holder or holders of the long-term water augmentation bonds any part of the appropriate account or subaccount of the long-term water augmentation fund monies as is necessary to pay the principal and interest of the long-term water augmentation bonds as the bonds come due.

3. Set aside, regulate and dispose of reserves and sinking funds.

4. Require that sufficient amounts of the proceeds from the sale of the long-term water augmentation bonds be used to fully or partly fund any reserves or sinking funds established by the board resolution authorizing the long-term water augmentation bonds.

5. Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of long-term water augmentation bonds the holders of which must consent to and the manner in which consent may be given.

6. Provide for payment from the proceeds of the sale of the long-term water augmentation bonds of all legal, financial and other expenses incurred by the authority in issuing, selling, delivering and paying the long-term water augmentation bonds.

7. Provide terms necessary to secure credit enhancement or other sources of payment or security.

8. Provide any other terms and conditions that in any way may affect the security and protection of the long-term water augmentation bonds.

E. The pledge of pledged revenues by an eligible entity, or the pledge of any other revenues by the authority or pursuant to a public-private partnership agreement, under this article is valid and binding from the time the pledge is made. The monies pledged and received by the state treasurer to be placed in the long-term water augmentation fund or in any account or subaccount in the long-term water augmentation fund are immediately subject to the lien of the pledge without any future physical delivery or further act, and any such lien of any pledge is valid or binding against all parties having claims of any kind in tort, contract or otherwise against the board or the authority regardless of whether the parties have notice of the lien. The official resolution or trust indenture or any instrument by which this pledge is created, when placed in the board's records, is notice to all concerned of the creation of the pledge, and those instruments need not be recorded in any other place.

F. A member of the board or any person executing the long-term water augmentation bonds is not personally liable for the payment of the long-term water augmentation bonds. The long-term water augmentation bonds are valid and binding obligations notwithstanding that before the delivery of the long-term water augmentation bonds any of the persons whose signatures appear on the long-term water augmentation bonds cease to be members of the board. From and after the sale and delivery of the long-term water augmentation bonds, the bonds are incontestable by the board.

G. The board, out of any available monies, may purchase long-term water augmentation bonds, which may then be canceled, at a price not exceeding either of the following:

1. If the long-term water augmentation bonds are then redeemable, the redemption price then applicable plus accrued interest to the date of redemption.

2. If the long-term water augmentation bonds are not then redeemable, the redemption price applicable on the first date after purchase by the authority on which the long-term water augmentation bonds become subject to redemption plus accrued interest to the date of redemption.

49-1310. Long-term water augmentation bond obligations of the authority

Long-term water augmentation bonds issued under this article are obligations of the authority, are payable only according to their terms and are not general, special or other obligations of this state. The long-term water augmentation bonds do not constitute a legal debt of this state and are not enforceable against this state. Payment of the long-term water augmentation bonds is not enforceable out of any state monies other than the income and revenue pledge and assigned to, or in trust for the benefit of, the holder or holders of the long-term water augmentation bonds.

49-1311. Certification of long-term water augmentation bonds by attorney general

A. The board may submit any long-term water augmentation bonds issued under this article to the attorney general after all proceedings for their authorization have been completed. Within fifteen days after submission, the attorney general shall examine and pass on the validity of the long-term water augmentation bonds and the regularity of the proceedings.

B. If the proceedings comply with this article, and if the attorney general determines that, when delivered and paid for, the long-term water augmentation bonds will constitute binding and legal obligations of the authority, the attorney general shall certify on the back of each long-term water augmentation bond, in substance, that it is issued according to the constitution and laws of this state.

49-1312. Long-term water augmentation bonds as legal investments

Long-term water augmentation bonds issued under this article are securities:

1. In which public officers and bodies of this state and of municipalities and political subdivisions of this state, all companies, associations and other persons carrying on an insurance business, all financial institutions, investment companies and other persons carrying on a banking business, all fiduciaries and all other persons who are authorized to invest in obligations of this state may properly and legally invest.

2. That may be deposited with public officers or bodies of this state and municipalities and political subdivisions of this state for purposes that require the deposit of state bonds or obligations.

49-1313. Agreement of state

A. This state pledges to and agrees with the holders of the long-term water augmentation bonds that this state will not limit or alter the rights vested in the authority or any successor agency to collect the monies necessary to produce sufficient revenue to fulfill the terms of any agreements made with the holders of the long-term water augmentation bonds, or in any way impair the rights and remedies of the bondholders, until all long-term water augmentation bonds issued under this article, together with interest accrued thereon, and including interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceedings by or on behalf of the bondholders, are fully met and discharged.

B. The board as agent for this state may include this pledge and undertaking in its resolutions and indentures securing its long-term water augmentation bonds.

C-2.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 31, Article 11

Amend: R9-31-1101

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: April 2, 2024

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

FROM: Council Staff

DATE: **March 7, 2024**

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 31, Article 11

Amend: R9-31-1101

Summary:

This Expedited Rulemaking from the Arizona Health Care Cost Containment System (Agency) or (AHCCCS) seeks to amend one (1) rule in Title 9, Chapter 31, Article 11 related to Civil Monetary Penalties and Assessments. AHCCCS operates Arizona's Children's Health Insurance Program (Title XXI). The federal government through Title XXI funds and through state matching funds provides funding for the health care of these members. This rule provides a cross-reference to R9-22-Article 11 which relates to grounds for imposing civil monetary penalties and assessments, methods for determining the proper dollar amount, mitigating and aggravating circumstances to consider in making a determination, and notice and hearing requirements and procedure.This rulemaking relates to a 5YRR approved by Council on October 3, 2023.

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). AHCCCS indicates the rules satisfy the criteria for expedited rulemaking under ARS 41-1027 1027(A)(3) and (7) because this rulemaking will clarify language without changing the rule's effect and will implement, without material change, a course of action that is proposed in a five-year review report approved by the council pursuant to § 41-1056 within one hundred eighty days of the date that the agency files the proposed expedited rulemaking with the secretary of state. The 5YRR was approved by Council on October 3, 2023.

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

AHCCCS 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?

AHCCCS indicates that no comments were received in response to this rulemaking.

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

AHCCCS indicates that there were no changes made during the course of this 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?

AHCCCS indicates 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?

AHCCCS indicates that no permit or license is used with this rule.

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?

AHCCCS indicates that no studies were relied upon during the course of this rulemaking.

9. Conclusion

This Expedited Rulemaking from the Arizona Health Care Cost Containment System seeks to amend one rule in Title 9, Chapter 31, Article 11 related to Civil Monetary Penalties and Assessments. As stated above, the Agency is seeking an immediate effective date. 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.

AHCCCS
Arizona Health Care Cost Containment System

Katie Hobbs, Governor
Carmen Heredia, Cabinet Executive Officer
and Executive Deputy Director

February 20, 2024

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

RE: R9-31-1101 Rulemaking

Dear Ms. Sornsin:

1.	The close of record date:	01/02/2024
2.	Does the rulemaking activity relate to a Five Year Review Report:	Yes
a.	If yes, the date the Council approved the Five Year Review Report:	10/03/2023
3.	Does the rule establish a new fee:	No
a.	If yes, what statute authorizes the fee:	N/A
4.	Does the rule contain a fee increase:	No
5.	Is an immediate effective date requested pursuant to A.R.S. 41-1032:	Yes

An expedited rulemaking is appropriate pursuant to A.R.S. § 41-1027(A)(3) and (7) because this rulemaking will clarify language without changing the rule's effect and will implement, without material change, a course of action that is proposed in a five-year review report approved by the council pursuant to § 41-1056 within one hundred eighty days of the date that the agency files the proposed expedited rulemaking with the secretary of state. Five-year review report was approved on October 3, 2023.

AHCCCS certifies that the preamble discloses a reference to any study relevant to the rule that the agency reviewed. AHCCCS certifies that the preamble states that it did not rely on any such study in the agency's evaluation of or justification for the rule.

AHCCCS 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 Expedited Rulemaking, including the preamble, table of contents, and text of each rule;
2. If applicable: An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;
3. If applicable: The written comments received by the agency concerning the proposed rule and a written record, transcript, or minutes of any testimony received if the agency maintains a written record, transcript or minutes;

4. If applicable: Any analysis submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of business in other states;
5. If applicable: Material incorporated by reference;
6. General and specific statutes authorizing the rules, including relevant statutory definitions; and
7. If applicable: If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition.

Sincerely,

Nicole Fries
Deputy General Counsel

Attachments

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - CHILDREN'S HEALTH INSURANCE PROGRAM

ARTICLE 11. CIVIL MONETARY PENALTIES AND ASSESSMENTS

PREAMBLE

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

R9-31-1101 | Amend

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

Authorizing statute: A.R.S. § 36-2918

Implementing statute: A.R.S. § 36-2957

3. The effective date of the rule and the agency's reason it selected the effective date:

Under A.R.S. § 41-1027(H), the rulemaking will be effective April 3, 2024 (*immediately upon filing with the Office of the Secretary of State*). According to A.R.S. § 41-1027(A)(7), AHCCCS requests an immediate effective date.

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

Notice of Rulemaking Docket Opening: 29 A.A.R. 3694, December 1, 2023

Notice of Proposed Rulemaking: 29 A.A.R. 3732, December 8, 2023

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

Name: Sladjana Kuzmanovic

Address: AHCCCS Office of Administrative Legal Services
801 E. Jefferson
Phoenix, AZ 85034

Telephone: (602) 417-4232

Fax: (602) 253-9115

E-mail: AHCCCSRules@azahcccs.gov

Web site: www.azahcccs.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:

This rulemaking is submitted in response to the Five-Year Review Report approved on October 3, 2023, which is intended to clarify the current rules. The rule amendments are proposed to promulgate rules that are clear, concise, and understandable for members of the public. The proposed rules do not impose any additional burdens or costs to regulated persons, and failure to conduct this rulemaking will promote unnecessary utilization of resources, and the incurring of unnecessary costs. An expedited rulemaking is appropriate pursuant to A.R.S. § 41-1027(A)(3) and (7) because this rulemaking will clarify language without changing the rule's effect and will implement, without material change, a course of action that is proposed in a five-year review report approved by the council pursuant to § 41-1056 within one hundred eighty days of the date that the agency files the proposed expedited rulemaking with the secretary of state.

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

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

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

10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):

Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the rulemaking.

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

Not applicable.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:

No other matters have been prescribed.

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

permit is not used:

Not applicable.

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

The rulemaking must be established consistent with 42 CFR § 1003.200. The rule is not more stringent than federal law.

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

No business competitiveness analysis was received by the Administration.

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. Weather the rule was previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:

The rule was not previously made as an emergency rule.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - CHILDREN'S HEALTH INSURANCE PROGRAM

ARTICLE 11. CIVIL MONETARY PENALTIES AND ASSESSMENTS

Section

R9-31-1101. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims

R9-31-1101. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims

AHCCCS shall use the provisions in 9 A.A.C. 22, Article 11 for the determination and collection of ~~penalties, assessments, and~~ penalties and assessments.

36-2918. Prohibited acts; penalties; subpoena power

A. A person may not present or cause to be presented to this state or to a contractor:

1. A claim for a medical or other item or service that the person knows or has reason to know was not provided as claimed.

2. A claim for a medical or other item or service that the person knows or has reason to know is false or fraudulent.

3. A claim for payment that the person knows or has reason to know may not be made by the system because:

(a) The person was terminated or suspended from participation in the program on the date for which the claim is being made.

(b) The item or service claimed is substantially in excess of the needs of the individual or of a quality that fails to meet professionally recognized standards of health care.

(c) The patient was not a member on the date for which the claim is being made.

4. A claim for a physician's service or an item or service incidental to a physician's service, by a person who knows or has reason to know that the individual who furnished or supervised the furnishing of the service:

(a) Was not licensed as a physician.

(b) Obtained the license through a misrepresentation of material fact.

(c) Represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board if the individual was not certified.

5. A request for payment that the person knows or has reason to know is in violation of an agreement between the person and this state or the administration.

B. A person who violates a provision of subsection A of this section is subject, in addition to any other penalties that may be prescribed by federal or state law, to a civil penalty of not to exceed two thousand dollars for each item or service claimed and is subject to an assessment of not to exceed twice the amount claimed for each item or service.

C. The director or the director's designee shall make the determination to assess civil penalties and is responsible for the collection of penalty and assessment amounts. The director shall adopt rules that prescribe procedures for the determination and collection of civil penalties and assessments. Civil penalties and assessments imposed under this section may be compromised by the director or the director's designee in accordance with criteria established in rules. The director or director's designee may make this determination in the same proceeding to exclude the person from system participation.

D. A person who is adversely affected by a determination of the director or the director's designee under this section may appeal that decision in accordance with provider grievance provisions set forth in rule. The final decision is subject to judicial review in accordance with title 12, chapter 7, article 6.

E. Amounts recovered under this section shall be deposited in the state general fund. The amount of such penalty or assessment may be deducted from any amount then or later owing by the administration or this state to the person against whom the penalty or assessment has been imposed.

F. If a civil penalty or assessment imposed pursuant to subsection C of this section is not paid, this state or the administration shall file an action to collect the civil penalty or assessment in the superior court in Maricopa

county. Matters that were raised or could have been raised in a hearing before the director or in an appeal pursuant to title 12, chapter 7, article 6 may not be raised as a defense to the civil action. An action brought pursuant to this subsection shall be initiated within six years after the date the claim was presented, except that the time to file a collection action is tolled either:

1. After any administrative action arising out of or referencing the wrongful acts is commenced and until the action's final resolution, including any legal challenges to the action.

2. While the state and the administration did not know, and with the exercise of reasonable diligence, should not have known, that a claim was false, fraudulent or not provided as claimed.

G. Pursuant to an investigation of prohibited acts or fraud and abuse involving the system, the director, and any person designated by the director in writing, may examine any person under oath and issue a subpoena to any person to compel the attendance of a witness. The administration by subpoena may compel the production of any record in any form necessary to support an investigation or an audit. The administration shall serve the subpoenas in the same manner as subpoenas in a civil action. If the subpoenaed person does not appear or does not produce the record, the director or the director's designee by affidavit may apply to the superior court in the county in which the controversy occurred and the court in that county shall proceed as though the failure to comply with the subpoena had occurred in an action in the court in that county.

36-2957. Prohibited acts; penalties

A. No person may present or cause to be presented to the administration or to a program contractor:

1. A claim for an item or service that the person knows or has reason to know was not provided as claimed.

2. A claim for an item or service that the person knows or has reason to know is false or fraudulent.

3. A claim for payment which the person knows or has reason to know may not be made by the system because:

(a) The person was not a member on the date for which the claim is being made.

(b) The item or service claimed is substantially in excess of the needs of the individual or of a quality that fails to meet professionally recognized standards of care.

4. A claim for a physician's service, or an item or service incidental to a physician's service, by a person who knows or has reason to know that the individual who furnished or supervised the furnishing of the service:

(a) Was not licensed as a physician.

(b) Obtained a license through a misrepresentation of material fact.

(c) Represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board if the person was not certified.

5. A request for payment which the person knows or has reason to know is in violation of an agreement between the person and the administration or the program contractor.

B. A person who violates a provision of subsection A is subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not to exceed two thousand dollars for each item or service claimed and is subject to an assessment of not to exceed twice the amount claimed for each item or service.

C. The director or his designee shall make the determination to assess civil penalties and is responsible for the collection of penalty and assessment amounts. The director shall adopt rules that prescribe procedures for the determination and collection of civil penalties and assessments. Civil penalties and assessments imposed under this section may be compromised by the director or his designee in accordance with criteria established in rules. The director or his designee may make a determination in the same proceeding to exclude the person from system participation.

D. A person adversely affected by a determination of the director or his designee under this section may appeal that decision in accordance with grievance provisions set forth in rule. The final decision is subject to judicial review in accordance with title 12, chapter 7, article 6.

E. Amounts recovered under this section shall be deposited in the Arizona long-term care system fund. The amount of such penalty or assessment may be deducted from any amount then or later owing by the administration to the person against whom the penalty or assessment has been imposed.

F. If a civil penalty or assessment imposed pursuant to subsection C is not paid, this state or the administration shall file an action to collect the civil penalty or assessment in the superior court in Maricopa county. Matters that were raised or could have been raised in a hearing before the director or in an appeal pursuant to title 12, chapter 7, article 6 may not be raised as a defense to the civil action. An action brought pursuant to this subsection shall be initiated within six years after the date the claim was presented.

C-3.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 28, Article 10

Amend: R9-28-1001

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: April 2, 2024

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

FROM: Council Staff

DATE: **March 7, 2024**

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 28, Article 10

Amend: R9-28-1001

Summary:

This Expedited rulemaking from the Arizona Health Care Cost Containment System (Agency) or (AHCCCS) seeks to amend one (1) rule in Title 9, Chapter 28, Article 10 related to Civil Monetary Penalties and Assessments. This rule provides a cross-reference to R9-22-Article 11 which relates to grounds for imposing civil monetary penalties and assessments, methods for determining the proper dollar amount, mitigating and aggravating circumstances to consider in making a determination, and notice and hearing requirements and procedure.This rulemaking relates to a 5YRR approved by Council on October 3, 2023.

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 (A)(7) because this rulemaking will clarify language without changing the rule's effect and will implement, without material

change, a course of action that is proposed in a five-year review report approved by the Council within one hundred eighty days of the date that the agency files the proposed expedited rulemaking with the secretary of state. This rulemaking relates to a 5YRR approved by Council on October 3, 2023.

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

The Agency 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 Agency indicates that there were no comments during the course of this rulemaking.

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

The Agency indicates there were no changes 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 Agency 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 Agency indicates that the rules do not require a permit or license and are therefore not applicable.

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 Agency indicates that no study was relied upon or referenced during the course of this rulemaking.

9. Conclusion

This Expedited rulemaking from the Arizona Health Care Cost Containment System seeks to amend one rule in Title 9, Chapter 28, Article 10 related to Civil Monetary Penalties and Assessments. 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.

AHCCCS
Arizona Health Care Cost Containment System

Katie Hobbs, Governor
Carmen Heredia, Cabinet Executive Officer
and Executive Deputy Director

February 20, 2024

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

RE: R9-28-1001 Rulemaking

Dear Ms. Sornsin:

1.	The close of record date:	01/02/2024
2.	Does the rulemaking activity relate to a Five Year Review Report:	Yes
a.	If yes, the date the Council approved the Five Year Review Report:	10/03/2023
3.	Does the rule establish a new fee:	No
a.	If yes, what statute authorizes the fee:	N/A
4.	Does the rule contain a fee increase:	No
5.	Is an immediate effective date requested pursuant to A.R.S. 41-1032:	Yes

An expedited rulemaking is appropriate pursuant to A.R.S. § 41-1027(A)(3) and (7) because this rulemaking will clarify language without changing the rule's effect and will implement, without material change, a course of action that is proposed in a five-year review report approved by the council pursuant to § 41-1056 within one hundred eighty days of the date that the agency files the proposed expedited rulemaking with the secretary of state.

AHCCCS certifies that the preamble discloses a reference to any study relevant to the rule that the agency reviewed. AHCCCS certifies that the preamble states that it did not rely on any such study in the agency's evaluation of or justification for the rule.

AHCCCS 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 Expedited Rulemaking, including the preamble, table of contents, and text of each rule;
2. If applicable: An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;
3. If applicable: The written comments received by the agency concerning the proposed rule and a written record, transcript, or minutes of any testimony received if the agency maintains a written record, transcript or minutes;

4. If applicable: Any analysis submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of business in other states;
5. If applicable: Material incorporated by reference;
6. General and specific statutes authorizing the rules, including relevant statutory definitions; and
7. If applicable: If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition.

Sincerely,

Nicole Fries
Deputy General Counsel

Attachments

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ARIZONA LONG-TERM CARE SYSTEM

ARTICLE 10. CIVIL MONETARY PENALTIES AND ASSESSMENTS

PREAMBLE

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

R9-28-1001 | Amend

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

Authorizing statute: A.R.S. § 36-2918

Implementing statute: A.R.S. § 36-2957

3. The effective date of the rule and the agency's reason it selected the effective date:

Under A.R.S. § 41-1027(H), the rulemaking will be effective April 3, 2024 (immediately upon filing with the Office of the Secretary of State). According to A.R.S. § 41-1027(A)(7), AHCCCS requests an immediate effective date.

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

Notice of Rulemaking Docket Opening: 29 A.A.R. 3694, December 1, 2023

Notice of Proposed Rulemaking: 29 A.A.R. 3730, December 8, 2023

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

Name: Sladjana Kuzmanovic

Address: AHCCCS Office of Administrative Legal Services
801 E. Jefferson
Phoenix, AZ 85034

Telephone: (602) 417-4232

Fax: (602) 253-9115

E-mail: AHCCCSRules@azahcccs.gov

Web site: www.azahcccs.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:

This rulemaking is submitted in response to the Five-Year Review Report approved on October 3, 2023, which is intended to clarify the current rules. The rule amendments are proposed to promulgate rules that are clear, concise, and understandable for members of the public. The proposed rules do not impose any additional burdens or costs to regulated persons, and failure to conduct this rulemaking will promote unnecessary utilization of resources, and the incurring of unnecessary costs. An expedited rulemaking is appropriate pursuant to A.R.S. § 41-1027(A)(3) and (7) because this rulemaking will clarify language without changing the rule's effect and will implement, without material change, a course of action that is proposed in a five-year review report approved by the council pursuant to § 41-1056 within one hundred eighty days of the date that the agency files the proposed expedited rulemaking with the secretary of state.

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

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

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

10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):

Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the rulemaking.

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

Not applicable.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:

No other matters have been prescribed.

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

permit is not used:

Not applicable.

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

The rulemaking must be established consistent with 42 CFR § 1003.200. The rule is not more stringent than federal law.

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

No business competitiveness analysis was received by the Administration.

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. Weather the rule was previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:

The rule was not previously made as an emergency rule.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ARIZONA LONG-TERM CARE SYSTEM

ARTICLE 10. CIVIL MONETARY PENALTIES AND ASSESSMENTS

Section

R9-22-1001. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims

R9-28-1001. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims

AHCCCS shall use the provisions in 9 A.A.C. 22, Article 11 for the determination and collection of ~~penalties, assessments, and~~ penalties and assessments.

36-2918. Prohibited acts; penalties; subpoena power

A. A person may not present or cause to be presented to this state or to a contractor:

1. A claim for a medical or other item or service that the person knows or has reason to know was not provided as claimed.

2. A claim for a medical or other item or service that the person knows or has reason to know is false or fraudulent.

3. A claim for payment that the person knows or has reason to know may not be made by the system because:

(a) The person was terminated or suspended from participation in the program on the date for which the claim is being made.

(b) The item or service claimed is substantially in excess of the needs of the individual or of a quality that fails to meet professionally recognized standards of health care.

(c) The patient was not a member on the date for which the claim is being made.

4. A claim for a physician's service or an item or service incidental to a physician's service, by a person who knows or has reason to know that the individual who furnished or supervised the furnishing of the service:

(a) Was not licensed as a physician.

(b) Obtained the license through a misrepresentation of material fact.

(c) Represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board if the individual was not certified.

5. A request for payment that the person knows or has reason to know is in violation of an agreement between the person and this state or the administration.

B. A person who violates a provision of subsection A of this section is subject, in addition to any other penalties that may be prescribed by federal or state law, to a civil penalty of not to exceed two thousand dollars for each item or service claimed and is subject to an assessment of not to exceed twice the amount claimed for each item or service.

C. The director or the director's designee shall make the determination to assess civil penalties and is responsible for the collection of penalty and assessment amounts. The director shall adopt rules that prescribe procedures for the determination and collection of civil penalties and assessments. Civil penalties and assessments imposed under this section may be compromised by the director or the director's designee in accordance with criteria established in rules. The director or director's designee may make this determination in the same proceeding to exclude the person from system participation.

D. A person who is adversely affected by a determination of the director or the director's designee under this section may appeal that decision in accordance with provider grievance provisions set forth in rule. The final decision is subject to judicial review in accordance with title 12, chapter 7, article 6.

E. Amounts recovered under this section shall be deposited in the state general fund. The amount of such penalty or assessment may be deducted from any amount then or later owing by the administration or this state to the person against whom the penalty or assessment has been imposed.

F. If a civil penalty or assessment imposed pursuant to subsection C of this section is not paid, this state or the administration shall file an action to collect the civil penalty or assessment in the superior court in Maricopa

county. Matters that were raised or could have been raised in a hearing before the director or in an appeal pursuant to title 12, chapter 7, article 6 may not be raised as a defense to the civil action. An action brought pursuant to this subsection shall be initiated within six years after the date the claim was presented, except that the time to file a collection action is tolled either:

1. After any administrative action arising out of or referencing the wrongful acts is commenced and until the action's final resolution, including any legal challenges to the action.

2. While the state and the administration did not know, and with the exercise of reasonable diligence, should not have known, that a claim was false, fraudulent or not provided as claimed.

G. Pursuant to an investigation of prohibited acts or fraud and abuse involving the system, the director, and any person designated by the director in writing, may examine any person under oath and issue a subpoena to any person to compel the attendance of a witness. The administration by subpoena may compel the production of any record in any form necessary to support an investigation or an audit. The administration shall serve the subpoenas in the same manner as subpoenas in a civil action. If the subpoenaed person does not appear or does not produce the record, the director or the director's designee by affidavit may apply to the superior court in the county in which the controversy occurred and the court in that county shall proceed as though the failure to comply with the subpoena had occurred in an action in the court in that county.

36-2957. Prohibited acts; penalties

A. No person may present or cause to be presented to the administration or to a program contractor:

1. A claim for an item or service that the person knows or has reason to know was not provided as claimed.

2. A claim for an item or service that the person knows or has reason to know is false or fraudulent.

3. A claim for payment which the person knows or has reason to know may not be made by the system because:

(a) The person was not a member on the date for which the claim is being made.

(b) The item or service claimed is substantially in excess of the needs of the individual or of a quality that fails to meet professionally recognized standards of care.

4. A claim for a physician's service, or an item or service incidental to a physician's service, by a person who knows or has reason to know that the individual who furnished or supervised the furnishing of the service:

(a) Was not licensed as a physician.

(b) Obtained a license through a misrepresentation of material fact.

(c) Represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board if the person was not certified.

5. A request for payment which the person knows or has reason to know is in violation of an agreement between the person and the administration or the program contractor.

B. A person who violates a provision of subsection A is subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not to exceed two thousand dollars for each item or service claimed and is subject to an assessment of not to exceed twice the amount claimed for each item or service.

C. The director or his designee shall make the determination to assess civil penalties and is responsible for the collection of penalty and assessment amounts. The director shall adopt rules that prescribe procedures for the determination and collection of civil penalties and assessments. Civil penalties and assessments imposed under this section may be compromised by the director or his designee in accordance with criteria established in rules. The director or his designee may make a determination in the same proceeding to exclude the person from system participation.

D. A person adversely affected by a determination of the director or his designee under this section may appeal that decision in accordance with grievance provisions set forth in rule. The final decision is subject to judicial review in accordance with title 12, chapter 7, article 6.

E. Amounts recovered under this section shall be deposited in the Arizona long-term care system fund. The amount of such penalty or assessment may be deducted from any amount then or later owing by the administration to the person against whom the penalty or assessment has been imposed.

F. If a civil penalty or assessment imposed pursuant to subsection C is not paid, this state or the administration shall file an action to collect the civil penalty or assessment in the superior court in Maricopa county. Matters that were raised or could have been raised in a hearing before the director or in an appeal pursuant to title 12, chapter 7, article 6 may not be raised as a defense to the civil action. An action brought pursuant to this subsection shall be initiated within six years after the date the claim was presented.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 22, Article 11

Amend: R9-22-1104, R9-22-1105, R9-22-1108

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: April 2, 2024

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

FROM: Council Staff

DATE: **March 8, 2024**

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 22, Article 11

Amend: R9-22-1104, R9-22-1105, R9-22-1108

Summary:

This Regular rulemaking from the Arizona Health Care Cost Containment System (Agency) or (AHCCCS) seeks to amend three (3) rules in Title 9, Chapter 22, Article 11 related to Civil Monetary Penalties and Assessments. These rules relate to grounds for imposing civil monetary penalties and assessments, methods for determining the proper dollar amount, mitigating and aggravating circumstances to consider in making a determination, and notice and hearing requirements and procedures.

The Agency has anticipated making these changes since October 2018, but was unable to do so due to an agency hold on rulemakings during the COVID Public Health Emergency.

As specified in A.R.S. § 41-1032(A)(4), the agency requests an immediate effective date to provide a benefit to the public and a penalty is not associated with a violation of the rule.

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

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

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

The Agency states the rules do not establish a new fee or contain a fee increase.

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

The Agency states no study was reviewed or relied upon during the course of this rulemaking.

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

The Administration anticipates minimal economic impact as a result of the rule changes. The rule describes the process and circumstances under which AHCCCS imposes a penalty, assessment, or a penalty and assessment on a person, not only a provider or non-contracting provider. AHCCCS anticipates that these rules will benefit all persons and AHCCCS by more clearly describing the process, circumstances, and timelines under which a penalty, assessment, or penalty and assessment are determined including more clearly describing the process used by all persons. It is anticipated that other "persons" such as members, fiscal agents, small businesses, etc. may be affected by this rulemaking if they meet the definition of "person" and are involved in a prohibited act. There are currently over 1 million members in the AHCCCS program, 10 Acute Care Contractors, 9 ALTCS Care Contractors and their contracted or non-contracted providers in addition to those 54,758 AHCCCS Fee-For-Service (FFS) registered providers and non-contracting providers that provide FFS service that could be affected if they are involved in a prohibited act.

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 Administration believes that the changes to the rules will provide the most cost effective and efficient method of achieving the purpose of the rulemaking.

6. What are the economic impacts on stakeholders?

The Administration anticipates that the probable costs and benefits to businesses affected, which are providers of healthcare, will be approximately $1 million. All providers are required to adhere to AHCCCS regulations and conduct their business in an ethical manner and will not have any impact when doing so.

Since it is taxpayers' money that will be recovered from penalties, the Administration anticipates a benefit of $1 million to private persons and consumers. There is an anticipated impact on state revenues of less than $1 million due to a portion of the recovered money being Federal revenue.

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

The Agency states no changes were made between the proposed and final rulemaking.

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

The Agency states 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 Agency indicates no permit or license are required for these rules.

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 Agency indicates there is no corresponding federal law.

11. Conclusion

This Regular rulemaking from the Arizona Health Care Cost Containment System seeks to amend three rules in Title 9, Chapter 22, Article 11 related to Civil Monetary Penalties and Assessments. The Department is seeking an immediate effective date pursuant to A.R.S. § 41-1032(A)(4). Council staff recommends approval of this rulemaking.

AHCCCS
Arizona Health Care Cost Containment System

Katie Hobbs, Governor
Carmen Heredia, Cabinet Executive Officer
and Executive Deputy Director

February 20, 2024

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

RE: R9-22-1104, R9-22-1105, R9-22-1108 Rulemaking

Dear Ms. Sornsin:

1.	The close of record date:	01/02/2024
2.	Does the rulemaking activity relate to a Five Year Review Report:	Yes
a.	If yes, the date the Council approved the Five Year Review Report:	10/03/2023
3.	Does the rule establish a new fee:	No
a.	If yes, what statute authorizes the fee:	N/A
4.	Does the rule contain a fee increase:	No
5.	Is an immediate effective date requested pursuant to A.R.S. 41-1032:	Yes

AHCCCS certifies that the preamble discloses a reference to any study relevant to the rule that the agency reviewed. AHCCCS certifies that the preamble states that it did not rely on any such study in the agency's evaluation of or justification for the rule.

AHCCCS 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. If applicable: An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055;
3. If applicable: The written comments received by the agency concerning the proposed rule and a written record, transcript, or minutes of any testimony received if the agency maintains a written record, transcript or minutes;
4. If applicable: Any analysis submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of business in other states;
5. If applicable: Material incorporated by reference;
6. General and specific statutes authorizing the rules, including relevant statutory definitions; and

7. If applicable: If a term is defined in the rule by referring to another rule or a statute other than the general and specific statutes authorizing the rule, the statute or other rule referred to in the definition.

Sincerely,

Type text here

Nicole Fries
Deputy General Counsel

Attachments

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 11. CIVIL MONETARY PENALTIES AND ASSESSMENTS

PREAMBLE

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

R9-22-1104	Amend
R9-22-1105	Amend
R9-22-1108	Amend

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

Authorizing statute: A.R.S. § 36-2918

Implementing statute: A.R.S. § 36-2957

3. The effective date of the rule and the agency's reason it selected the effective date:

As specified in A.R.S. § 41-1032(A)(4), the agency requests an immediate effective date to provide a benefit to the public and a penalty is not associated with a violation of the rule.

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. 3693, December 1, 2023

Notice of Proposed Rulemaking: 29 A.A.R. 3671, December 1, 2023

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

Name: Sladjana Kuzmanovic

Address: AHCCCS Office of Administrative Legal Services
801 E. Jefferson
Phoenix, AZ 85034

Telephone: (602) 417-4232

Fax: (602) 253-9115

E-mail: AHCCCSRules@azahcccs.gov

Web site: www.azahcccs.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 proposed rulemaking is submitted in response to the Five-Year Review Report submitted on June 29, 2023, which is intended to clarify the current rules. The rule amendments are proposed to promulgate rules that are clear, concise, and understandable for members of the public. The proposed rules do not impose any additional burdens or costs to regulated persons, and failure to conduct this rulemaking will promote unnecessary utilization of resources, and the incurring of unnecessary costs.

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:

No studies were conducted relevant to the rule.

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

Not applicable.

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

None of the changes proposed in this 5YRR have any effect on the economic impact of this chapter. Substantive and procedural rights of members are not affected, nor are any of the programs of the Administration. These proposed changes are merely clarifying.

10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):

No changes were made between the proposed and final rulemakings.

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

No public comments were made.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:

No other matters have been prescribed.

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

Not applicable.

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

The rulemaking must be established consistent with 42 CFR § 1003.200. The rule is not more stringent than federal law.

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

No analysis was submitted.

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

Not applicable.

14. Weather the rule was previously made, amended, repealed or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:

Not applicable.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 11. CIVIL MONETARY PENALTIES AND ASSESSMENTS

Section

R9-22-1104. Mitigating Circumstances
R9-22-1105. Aggravating Circumstances
R9-22-1108. Request for a Compromise

R9-22-1104. Mitigating Circumstances

AHCCCS shall consider any of the following to be mitigating circumstances when determining the amount of ~~a penalty, assessment, or penalty~~penalties and assessments.

1. ~~Nature and circumstances of a claim.~~ The following are mitigating circumstances:
   a. All the services are of the same type,
   b. All the dates of services occurred within six months or less,
   c. The number of claims submitted is less than 25,
   d. The nature and circumstances do not indicate a pat- tern of inappropriate claims for the services, and
   e. The total amount claimed for the services is less than $1,000.
2. ~~Degree of culpability.~~ The degree of culpability of a person who presents or causes to present a claim is a mitigating circumstance, including but not limited to, if:
   a. Each service is the result of an unintentional and unrecognized error in the process that the person followed in presenting or in causing to present the service,
   b. Corrective steps were taken promptly by the person after the error was discovered, and
   c. The person had a fraud and abuse control plan that was operating effectively at the time each claim was presented or caused to be presented.
3. ~~Financial condition.~~ The financial condition of a person who presents or causes to present a claim is a mitigating circumstance if the imposition of a penalty, assessment, or penalty and assessment without reduction will render the provider incapable to continue providing services. AHCCCS shall consider the resources available to the person when determining the amount of the penalty, assessment, or penalty and assessment.
4. ~~Other matters as justice may require.~~ AHCCCS shall take into account other circumstances of a mitigating nature, if in the interest of justice, the circumstances require a reduction of the penalty, assessment, or penalty and assessment.

R9-22-1105. Aggravating Circumstances

AHCCCS shall consider any of the following to be aggravating circumstances when determining the amount of a penalty, assessment, or penalty and assessment.

1. ~~Nature and circumstances of each claim.~~ The nature and circumstances of each claim and the circumstances under which the claim is presented or caused to be presented are aggravating circumstances if:
   a. ~~A person has forged, altered, recreated, or destroyed records;~~A person has forged, altered, recreated, destroyed, or failed to maintain records;
   b. The person refuses to provide pertinent documentation to AHCCCS for a claim or refuses to cooperate with investigators;
   c. ~~The services are of several types;~~The services are of several billing code types;
   d. ~~All the dates of services did not occur within six months or less;~~All the dates of services occurred within six months or greater;
   e. The number of claims submitted is greater than 25;
   f. The nature and circumstances indicate a pattern of inappropriate claims for the services; and
   g. The total amount claimed for the services is $5,000 or greater.
2. ~~Degree of culpability.~~ The degree of culpability of a person who presents or causes to present each claim is an aggravating circumstance, including but not limited to, if:
   a. The person knows or had reason to know that each service was not provided as claimed,
   b. The person knows or had reason to know that no payment could be made because the person had been excluded from reimbursement by AHCCCS, or
   c. The person knows or had reason to know that the payment would violate the terms of an agreement between the person and AHCCCS system.
   d. The person knows or had reason to know that the payment would violate state or federal law.
3. ~~Prior offenses.~~ The prior offenses of a person who presents or causes to present each claim are an aggravating circumstance if:
   a. At any time before the submittal of the claim the person was held criminally or civilly liable for any act, or

b. The person had received an administrative sanction in connection with:

i. A Medicaid program,

ii. A Medicare program, or

iii. Any other public or private program of reimbursement for medical services.

4. ~~Effect on patient care.~~ The adverse effect on patient care that resulted, or could have resulted, from the failure to provide medically necessary care by a person in connection with a claim.

5. ~~Other matters as justice may require.~~ AHCCCS shall take into account other circumstances of an aggravating nature, if in the interest of justice, the circumstances require an increase of the penalty, assessment, or penalty and assessment.

R9-22-1108. Request for a Compromise

A. To request a compromise, the person shall file a written request with AHCCCS within 30 days from the date of receipt of the Notice of Intent. The written request for compromise shall contain the person's reasons for the reduction or modification of the penalty, assessment, or penalty and assessment.

B. Within 30 days from the date of receipt of the request for compromise from the person, AHCCCS shall send a Notice of Compromise Decision that accepts, denies, or offers a counter proposal to the person's request for compromise. If AHCCCS offers a counter proposal the amount of the counter proposal shall represent the penalty, assessment, or penalty and assessment.

1. If AHCCCS does not withdraw the Notice of Intent under R9-22-1112 or denies the request for compromise the original penalty, assessment, or penalty and assessment is upheld.

2. To dispute the Compromise Decision, the person shall file a request for a State Fair Hearing under R9-22-1110 within 30 days from the date of receipt of the Notice of Compromise Decision. A failure to respond to the Notice of Compromise Decision will lead to the decision being upheld.

36-2918. Prohibited acts; penalties; subpoena power

A. A person may not present or cause to be presented to this state or to a contractor:

1. A claim for a medical or other item or service that the person knows or has reason to know was not provided as claimed.

2. A claim for a medical or other item or service that the person knows or has reason to know is false or fraudulent.

3. A claim for payment that the person knows or has reason to know may not be made by the system because:

(a) The person was terminated or suspended from participation in the program on the date for which the claim is being made.

(b) The item or service claimed is substantially in excess of the needs of the individual or of a quality that fails to meet professionally recognized standards of health care.

(c) The patient was not a member on the date for which the claim is being made.

4. A claim for a physician's service or an item or service incidental to a physician's service, by a person who knows or has reason to know that the individual who furnished or supervised the furnishing of the service:

(a) Was not licensed as a physician.

(b) Obtained the license through a misrepresentation of material fact.

(c) Represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board if the individual was not certified.

5. A request for payment that the person knows or has reason to know is in violation of an agreement between the person and this state or the administration.

B. A person who violates a provision of subsection A of this section is subject, in addition to any other penalties that may be prescribed by federal or state law, to a civil penalty of not to exceed two thousand dollars for each item or service claimed and is subject to an assessment of not to exceed twice the amount claimed for each item or service.

C. The director or the director's designee shall make the determination to assess civil penalties and is responsible for the collection of penalty and assessment amounts. The director shall adopt rules that prescribe procedures for the determination and collection of civil penalties and assessments. Civil penalties and assessments imposed under this section may be compromised by the director or the director's designee in accordance with criteria established in rules. The director or director's designee may make this determination in the same proceeding to exclude the person from system participation.

D. A person who is adversely affected by a determination of the director or the director's designee under this section may appeal that decision in accordance with provider grievance provisions set forth in rule. The final decision is subject to judicial review in accordance with title 12, chapter 7, article 6.

E. Amounts recovered under this section shall be deposited in the state general fund. The amount of such penalty or assessment may be deducted from any amount then or later owing by the administration or this state to the person against whom the penalty or assessment has been imposed.

F. If a civil penalty or assessment imposed pursuant to subsection C of this section is not paid, this state or the administration shall file an action to collect the civil penalty or assessment in the superior court in Maricopa

county. Matters that were raised or could have been raised in a hearing before the director or in an appeal pursuant to title 12, chapter 7, article 6 may not be raised as a defense to the civil action. An action brought pursuant to this subsection shall be initiated within six years after the date the claim was presented, except that the time to file a collection action is tolled either:

1. After any administrative action arising out of or referencing the wrongful acts is commenced and until the action's final resolution, including any legal challenges to the action.

2. While the state and the administration did not know, and with the exercise of reasonable diligence, should not have known, that a claim was false, fraudulent or not provided as claimed.

G. Pursuant to an investigation of prohibited acts or fraud and abuse involving the system, the director, and any person designated by the director in writing, may examine any person under oath and issue a subpoena to any person to compel the attendance of a witness. The administration by subpoena may compel the production of any record in any form necessary to support an investigation or an audit. The administration shall serve the subpoenas in the same manner as subpoenas in a civil action. If the subpoenaed person does not appear or does not produce the record, the director or the director's designee by affidavit may apply to the superior court in the county in which the controversy occurred and the court in that county shall proceed as though the failure to comply with the subpoena had occurred in an action in the court in that county.

36-2957. Prohibited acts; penalties

A. No person may present or cause to be presented to the administration or to a program contractor:

1. A claim for an item or service that the person knows or has reason to know was not provided as claimed.

2. A claim for an item or service that the person knows or has reason to know is false or fraudulent.

3. A claim for payment which the person knows or has reason to know may not be made by the system because:

(a) The person was not a member on the date for which the claim is being made.

(b) The item or service claimed is substantially in excess of the needs of the individual or of a quality that fails to meet professionally recognized standards of care.

4. A claim for a physician's service, or an item or service incidental to a physician's service, by a person who knows or has reason to know that the individual who furnished or supervised the furnishing of the service:

(a) Was not licensed as a physician.

(b) Obtained a license through a misrepresentation of material fact.

(c) Represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board if the person was not certified.

5. A request for payment which the person knows or has reason to know is in violation of an agreement between the person and the administration or the program contractor.

B. A person who violates a provision of subsection A is subject, in addition to any other penalties that may be prescribed by law, to a civil penalty of not to exceed two thousand dollars for each item or service claimed and is subject to an assessment of not to exceed twice the amount claimed for each item or service.

C. The director or his designee shall make the determination to assess civil penalties and is responsible for the collection of penalty and assessment amounts. The director shall adopt rules that prescribe procedures for the determination and collection of civil penalties and assessments. Civil penalties and assessments imposed under this section may be compromised by the director or his designee in accordance with criteria established in rules. The director or his designee may make a determination in the same proceeding to exclude the person from system participation.

D. A person adversely affected by a determination of the director or his designee under this section may appeal that decision in accordance with grievance provisions set forth in rule. The final decision is subject to judicial review in accordance with title 12, chapter 7, article 6.

E. Amounts recovered under this section shall be deposited in the Arizona long-term care system fund. The amount of such penalty or assessment may be deducted from any amount then or later owing by the administration to the person against whom the penalty or assessment has been imposed.

F. If a civil penalty or assessment imposed pursuant to subsection C is not paid, this state or the administration shall file an action to collect the civil penalty or assessment in the superior court in Maricopa county. Matters that were raised or could have been raised in a hearing before the director or in an appeal pursuant to title 12, chapter 7, article 6 may not be raised as a defense to the civil action. An action brought pursuant to this subsection shall be initiated within six years after the date the claim was presented.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 22, Article 7

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

MEETING DATE: April 2, 2024

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

FROM: Council Staff

DATE: **March 8, 2024**

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 22, Article 7

Summary

This One Year Review Report (1YRR) from the Arizona Health Care Cost Containment System (Agency) or (AHCCCS) covers one (1) rule in Title 9, Chapter 22, Article 7 related to the Health Care Investment Fund (HCIF).

Pursuant to 42 CFR § 438.6(c), one of HCIF's primary purposes is to make directed payments—known as Hospital Enhanced Access Leading to Health Improvements Initiative (HEALTHII) payments—to hospitals which supplement the base reimbursement rates hospitals receive for services provided to persons eligible for Title XIX services. The HCIF is also used to increase base reimbursement rates for reimbursed services under the physician fee schedule and dental fee schedule.

As required by Laws 2020, Chapter 46 and in the rulemaking approved by Council on October 3, 3032, AHCCCS amended the rates to ensure that HCIF payments provided the full State Match requirement to fund the dental and physician rate increases.

Pursuant to A.R.S. § 41-1095, "for an agency that the legislature has granted a one-time rulemaking exemption, within one year after a rule has been adopted the agency shall review the rule adopted under the rulemaking exemption to determine whether any rule adopted under the

rulemaking exemption should be amended or repealed." Furthermore, "the agency shall prepare and obtain council approval of a written report summarizing its findings, its supporting reasons and any proposed course of action." *Id.* AHCCCS submits this 1YRR for the Council's consideration in compliance with A.R.S. § 41-1095.

Proposed Action

The Agency has no proposed course of action at this time, but anticipates a similar future exempt rulemaking in October of 2024.

1. Has the agency analyzed whether the rules are authorized by statute?

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Administration will use the amounts collected from the assessment combined with the federal financial participation to fund the cost of health care coverage for an estimated 538,000 persons described in A.R.S. § 36.2901.08(A) through direct payments to health care providers and capitation payments to managed care organizations that, in turn, make payments to health care providers that render care to AHCCCS members. Many of the providers of that medical care are considered small businesses located in Arizona. The Administration still considers this to be the most cost-effective and least burdensome method to fund this assessment.

Stakeholders include the Administration, health care providers, 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 Administration, AHCCCS works through a collaborative process with providers and other stakeholders annually to determine the health care investment fund rates for the upcoming year. Once the rates have been finalized, they are published in a Final Public Notice. This notice outlines the rates and how a hospital will be reimbursed under these rules. Therefore, with extensive input from stakeholders and the hospitals who are the providers receiving these values, AHCCCS believes these rules are the most effective method, incurring the greatest benefit with the least burden on regulated persons.

4. Has the agency received any written criticisms of the rules since the rule was adopted?

The Agency indicates that no comments were received for these/this rules/rule.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Agency states the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Agency states the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Agency states the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Agency 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 Agency indicates that the rules are not more stringent than corresponding federal law.

10. Has the agency completed any additional process required by law?

The Agency was not required to complete any additional processes.

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

The Agency indicates that this rule is not applicable.

12. Conclusion

This One Year Review Report from the Arizona Health Care Cost Containment System covers one rule in Title 9, Chapter 22, Article 7 related to the Health Care Investment Fund. As indicated above, the Department received a one-time exemption from the rulemaking requirements to amend the rates to ensure that HCIF payments provide the full State Match requirement to fund the dental and physician rate increases. Council staff finds that the Department submitted a report that meets the requirements of A.R.S. § 41-1095 and Council staff recommends approval of this report.

AHCCCS
Arizona Health Care Cost Containment System

Katie Hobbs, Governor
Carmen Heredia, Cabinet Executive Officer
and Executive Deputy Director

October 31, 2023

VIA EMAIL: grrc@azdoa.gov

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

RE: AHCCCS Title 9, Chapter 22, Article 7;

Dear Ms. Sornsin:

Please find enclosed AHCCCS's One-Year Review Report for Title 9, Chapter 22, Article 7 due on October 31, 2023.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Sladjana Kuzmanovic at 602-417-4232 or sladjana.kuzmanovic@azahcccs.gov.

Sincerely,

Nicole Fries
Deputy General Counsel

Attachments

www.azahcccs.gov
602-417-4000
801 East Jefferson Street, Phoenix, AZ 85034

Arizona Health Care Cost Containment System (AHCCCS)

1 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 22, Article 7

October 2023

1. **Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. § 36-2901.08; 36-2999.72

Implementing statute: A.R.S. § 36-2901.08; 36-2999.73

2. **The objective of each rule:**

Rule	Objective
R9-22-731	This rule provides the rates for the Health Care Investment Fund

3. **Are the rules effective in achieving their objectives?** **Yes _X__ No __**

4. **Are the rules consistent with other rules and statutes?** **Yes _X__ No __**

5. **Are the rules enforced as written?** **Yes _X__ No __**

6. **Are the rules clear, concise, and understandable?** **Yes _X__ No __**

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes __ No _X_**

8. **Economic, small business, and consumer impact comparison:**

The Administration will use the amounts collected from the assessment combined with the federal financial participation to fund the cost of health care coverage for an estimated 538,000 persons described in A.R.S. § 36.2901.08(A) through direct payments to health care providers and capitation payments to managed care organizations that, in turn, make payments to health care providers that render care to AHCCCS members. Many of the providers of that medical care are considered small businesses located in Arizona. This is still the most cost-effective and least burdensome method to fund this assessment.

9. **Has the agency received any business competitiveness analyses of the rules?** **Yes __ No X**

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Yes _X_ No __

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

Through a collaborative process, AHCCCS works with providers and other stakeholders annually to determine the health care investment fund rates for the upcoming year. Once the rates have been finalized, they are published in a Final Public Notice. This notice outlines the rates and how a hospital will be reimbursed under these rules. Therefore, with extensive input from stakeholders and the hospitals who are the providers receiving these values, AHCCCS believes these rules are the most effective method, incurring the greatest benefit with the least burden on regulated persons.

12. Are the rules more stringent than corresponding federal laws? **Yes ___** **No X**

13. For rules adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Not applicable.

14. Proposed course of action:

There is no proposed course of action. AHCCCS recently submitted a rulemaking which included this section that was effective 10/3/2023.

L. Hospital closures. Hospitals that close shall pay a proportion of the quarterly assessment equal to that portion of the quarter during which the hospital operated.

M. Required information for the inpatient assessment. For any hospital that has not filed a 2019 Medicare Cost report, or if the 2019 Medicare Cost report does not include the reliable information sufficient for the Administration to calculate the inpatient assessment, the Administration shall use data reported on the 2019 Uniform Accounting Report filed by the hospital in place of the 2019 Medicare Cost report to calculate the assessment. If the 2019 Uniform Accounting Report filed by the hospital does not include reliable information sufficient for the Administration to calculate the inpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2019 Medicare Cost report to calculate the assessment.

N. Required information for the outpatient assessment. For any hospital that has not filed a 2019 Uniform Accounting Report, or if the 2019 Uniform Accounting Report does not reconcile to 2019 Audited Financial Statements, the Administration shall use the data reported on 2019 Audited Financial Statements to calculate the outpatient assessment. If the 2019 Audited Financial Statements do not include the reliable information sufficient for the Administration to calculate the outpatient assessment, the Administration all use data reported on the 2019 Medicare Cost report. If the Medicare Cost report does not include reliable information sufficient for the Administration to calculate the outpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2019 Medicare Cost report to calculate the outpatient assessment.

O. The Administration will review and update as necessary rates and peer groups periodically to ensure the assessment is sufficient to fund the state match obligation to cover the cost of the populations as specified in A.R.S. § 36-2901.08.

P. Enforcement. If a hospital does not comply with this Section, the director may suspend or revoke the hospital's provider agreement. If the hospital does not comply within 180 days after the hospital's provider agreement is suspended or revoked, the director shall notify the director of the Department of Health Services who shall suspend or revoke the hospital's license.

Historical Note

New Section R9-22-730 made by exempt rulemaking at 20 A.A.R. 281, effective January 15, 2014 (Supp. 14-1). Amended by exempt rulemaking at 20 A.A.R. 1833, effective July 1, 2014 (Supp. 14-2). Amended by final exempt rulemaking at 21 A.A.R. 637, effective April 15, 2015 (Supp. 15-2). Amended by final exempt rulemaking at 21 A.A.R. 1486, effective July 16, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 22 A.A.R. 2050, effective July 14, 2016 (Supp. 16-4). Amended by final exempt rulemaking at 23 A.A.R. 1945, effective July 1, 2017 (Supp. 17-2). Amended by final exempt rulemaking at 24 A.A.R. 2229, effective July 10, 2018 (Supp. 18-3). Amended by final exempt rulemaking at 25 A.A.R. 1938, effective July 1, 2019 (Supp. 19-3). Amended by final exempt rulemaking at 26 A.A.R. 1702, effective July 1, 2020 (Supp. 20-3). Amended by final exempt rulemaking at 26 A.A.R. 2984, effective October 1, 2020 (Supp. 20-4). Amended by final exempt rulemaking at 27 A.A.R. 2370, effective October 1, 2021 (Supp. 21-3). Amended by final exempt rulemaking 28 A.A.R. 2213 (September 2, 2022), effective October 1, 2022 (Supp. 22-3).

R9-22-731. Health Care Investment Fund - Hospital Assessment

A. For purposes of this Section, terms are the same as defined in A.A.C. R9-22-730 as provided below unless the context specifically requires another meaning.

B. Beginning October 1, 2022, for each Arizona licensed hospital not excluded under subsection (I) shall be subject to an assessment payable on a quarterly basis. The assessment shall be levied against the legal owner of each hospital as of the first day of the quarter, and except as otherwise required by subsections (D), (E) and (F). For the period beginning October 1, 2022, the assessment for each hospital shall be amount equal to the sum of: (1) the number of discharges reported on the hospital's 2019 Medicare Cost Report, excluding discharges reported on the Medicare Cost Report as "Other Long Term Care Discharges," multiplied by the following rates appropriate to the hospital's peer group; and (2) the amount of outpatient net patient revenues multiplied by the following rate appropriate to the hospital's peer group:

1. $211.50 per discharge and 3.5149% of outpatient net patient revenues for hospitals located in a county with a population less than 500,000 that are designated as type: hospital, subtype: short-term.
2. $211.50 per discharge and 1.645% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: critical access hospital.
3. $53.00 per discharge and 1.645% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: long term.
4. $53.00 per discharge and 1.645% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: psychiatric, that reported 2,500 or more discharges on the 2019 Medicare Cost Report.
5. $169.25 per discharge and 3.8078% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short-term with 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2019 Uniform Accounting Report.
6. $190.50 per discharge and 4.3936% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short- term with at least 10% but less than 20% of total licensed beds licensed as pediatric, pediatric intensive care and neonatal intensive care as reported in the hospital's 2019 Uniform Accounting Report.
7. $42.50 per discharge and 1.1716% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: children's.
8. $211.50 per discharge and 5.8581% of outpatient net patient revenues for hospitals designated as type: hospital, subtype: short- term not included in another peer group.

C. Peer groups for the four quarters beginning October 1 of each year are established based on hospital license type and subtype designated in the Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website January 2, 2022.

D. Notwithstanding subsection (B), psychiatric discharges from a hospital that reported having a psychiatric sub-provider in the hospital's 2019 Medicare Cost Report, are assessed a rate of $53.00 for each discharge from the psychiatric sub-provider as reported in the 2019 Medicare Cost Report. All discharges other than those reported as discharges from the psychiatric

sub-provider are assessed at the rate required by subsection (B).

E. Notwithstanding subsection (B), rehabilitative discharges from a hospital that reported having a rehabilitative sub-provider in the hospital's 2019 Medicare Cost Report, are assessed a rate of $0 for each discharge from the rehabilitative sub-provider as reported in the 2019 Medicare Cost Report. All discharges other than those reported as discharges from the rehabilitative sub-provider are assessed at the rate required by subsection (B).

F. Notwithstanding subsection (B), for any hospital that reported more than 24,000 discharges on the hospital's 2019 Medicare Cost Report, discharges in excess of 24,000 are assessed a rate of $21.25 for each discharge in excess of 24,000. The initial 24,000 discharges are assessed at the rate required by subsection (B).

G. Assessment notice. On or before the 10th day of the first month of the quarter or upon CMS approval, whichever is later, the Administration shall send to each hospital a notification that the assessment invoice is available to be viewed on a secure website. The invoice shall include the hospital's peer group assignment and the assessment due for the quarter.

H. Assessment due date. The assessment must be received by the Administration no later than the 10th day of the second month of the quarter.

I. Excluded hospitals. The following hospitals are excluded from the assessment based on the hospital's 2019 Medicare Cost Report and Provider & Facility Database for Arizona Medical Facilities posted by the Arizona Department of Health Services Division of Licensing Services on its website for January 2, 2022:

1. Hospitals owned and operated by the state, the United States, or an Indian tribe.
2. Hospitals designated as type: hospital, subtype: short-term that have a license number beginning "SH".
3. Hospitals designated as type: hospital, subtype: psychiatric that reported fewer than 2,500 discharges on the 2019 Medicare Cost Report.
4. Hospitals designated as type: hospital, subtype; rehabilitation.
5. Hospitals designated as type: med-hospital, subtype: special hospitals.
6. Hospitals designated as type: hospital, subtype: short-term located in a city with a population greater than one million, which on average have at least 15 percent of inpatient days for patients who reside outside of Arizona, and at least 50 percent of discharges as reported on the 2019 Medicare Cost Report are reimbursed by Medicare.
7. Hospitals designated as type: hospital, subtype: short-term that have at least 25 percent Medicare swing beds as percentage of total Medicare days, per the 2019 Medicare Cost Report.
8. Hospitals designated as type: hospital, subtype: short-term that are an urban public acute care hospital.

J. New hospitals. For hospitals that did not file a 2019 Medicare Cost Report because of the date the hospital began operations:

1. If the hospital was open on the January 2 preceding the October assessment start date, the hospital assessment will begin on October 1 following the date the hospital began operating.
2. If the hospital began operating between January 3 and June 30, the assessment will begin on October 1 of the following calendar year.
3. A hospital is not considered a new hospital based on a change in ownership.
4. The assessment will be based on the discharges reported in the hospital's first Medicare Cost Report and Uniform Accounting Report, which includes 12 months-worth of data, except when any of the following apply;
   a. If there is not a complete 12 months-worth of data available, the assessment will be based on the annualized number of discharges from the date hospital operations began through December 31 preceding the October assessment start date. The hospital shall self-report the discharge data and all other data requested by the Administration necessary to determine the appropriate assessment to the Administration no later than January preceding the assessment start date for the new hospitals. "Annualized" means divided by a ratio equal to the number of months of data divided by 12 months.
   b. If more than 12 months of data is available, the assessment will be based on the most recent 12 months of self-reported data, as of December 31;
5. For purposes of calculating subpart 4, if a new hospital shares a Medicare Identification Number with an existing hospital, the assessment amount will be based on self-reported data from the new hospital instead of the Medicare Cost Report. The data shall include the number of discharges and all other data requested by the Administration necessary to determine the appropriate assessment.
6. For hospitals providing self-reported data, described in subpart 4 and 5:
   a. Psychiatric discharges will be annualized to determine if subsections (B)(4) or (I)(3) apply to the assessment amount.
   b. Discharges will be annualized to determine if subsection (F) applies to the assessment amount.

L. Changes of ownership. The parties to a change of ownership shall promptly provide written notice to the Administration of a change of ownership and any agreement regarding the payment of the assessment. The assessed amount will continue at the same amount applied to the prior owner. Assessments are the responsibility of the owner of record as of the first day of the quarter; however, this rule is not intended to prohibit the parties to a change of ownership from entering into an agreement for a new owner to assume the assessment responsibility of the owner of record as of the first day of the prior quarter.

M. Hospital closures. Hospitals that close shall pay a proportion of the quarterly assessment equal to that portion of the quarter during which the hospital operated.

N. Required information for the inpatient assessment. For any hospital that has not filed a 2019 Medicare Cost report, or if the 2019 Medicare Cost report does not include the reliable information sufficient for the Administration to calculate the inpatient assessment, the Administration shall use data reported on the 2019 Uniform Accounting Report filed by the hospital in place of the 2019 Medicare Cost report to calculate the assessment. If the 2019 Uniform Accounting Report filed by the hospital does not include reliable information sufficient for the Administration to calculate the inpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2019 Medicare Cost report to calculate the assessment.

O. Required information for the outpatient assessment. For any hospital that has not filed a 2019 Uniform Accounting Report,

or if the 2019 Uniform Accounting Report does not reconcile to 2019 Audited Financial Statements, the Administration shall use the data reported on 2019 Audited Financial Statements to calculate the outpatient assessment. If the 2019 Audited Financial Statements do not include the reliable information sufficient for the Administration to calculate the outpatient assessment, the Administration all use data reported on the 2019 Medicare Cost report. If the Medicare Cost report does not include reliable information sufficient for the Administration to calculate the outpatient assessment amounts, the hospital shall provide the Administration with data specified by the Administration necessary in place of the 2019 Medicare Cost report to calculate the outpatient assessment.

P. Enforcement. If a hospital does not comply with this Section, the director may suspend or revoke the hospital's provider agreement. If the hospital does not comply within 180 days after the hospital's provider agreement is suspended or revoked, the director shall notify the director of the Department of Health Services who shall suspend or revoke the hospital's license.

Historical Note

New Section made by final exempt rulemaking at 26 A.A.R. 2984, effective October 1, 2020 (Supp. 20-4). Amended by final rulemaking at 27 A.A.R. 2514 (October 29, 2021), with an immediate effective date of October 6, 2021 (Supp. 21-4). Amended by final exempt rulemaking at 28 A.A.R. 3351 (October 21, 2022), effective October 1, 2022 (Supp. 22-3).

ARTICLE 8. REPEALED

Article 8, consisting of R9-22-801 through R9-22-804 and Exhibit A, repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004. The subject matter of Article 8 is now in 9 A.A.C. 34 (Supp. 04-1).

R9-22-801. Repealed

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-801 adopted as an emergency adoption now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-801 repealed, new Section R9-22-801 adopted effective October 29, 1985 (Supp. 85-5). Amended subsections (C), (F), (H), (I), and (K) effective October 1, 1986 (Supp. 86-5). Change of heading only effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (H) effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Section heading amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Amended effective December 13, 1993 (Supp. 93-4). Former Section R9-22-801 repealed, new Section R9-22-801 adopted January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

R9-22-802. Repealed

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-802 adopted as an emergency adoption now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 29, 1985 (Supp. 85-5). Amended subsections (A), (B), (C) and (D) effective October 14, 1988 (Supp. 88-4). Amended effective September 29, 1992 (Supp. 92-3). Amended effective December 13, 1993 (Supp. 93-4). Former Section R9-22-802 repealed, new Section R9-22-802 adopted effective January 14, 1997 (Supp. 97-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

R9-22-803. Repealed

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-803 adopted as an emergency now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-803 repealed, new Section R9-22-803 adopted effective October 1, 1983 (Supp. 83-5). Former Section R9-22-803 renumbered and amended as Section R9-22-804. Adopted effective January 31, 1986 (Supp. 86-1). Amended effective September 29, 1992 (Supp. 92-3). Former Section R9-22-803 repealed, new Section R9-22-803 adopted January 14, 1997 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

R9-22-804. Repealed

Historical Note

Adopted as an emergency effective May 20, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-804 adopted as an emergency adoption now adopted as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1983 (Supp. 83-5). Former Section R9-22-804 repealed, former Section R9-22-803 renumbered and amended as Section R9-22-804 effective October 29, 1985 (Supp. 85-5). Amended effective October 14, 1988 (Supp.88-4). Amended subsections (B) and (C) effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective December 13, 1993 (Supp. 93-4). Former Section R9-22-804 repealed, new Section R9-22-804 adopted effective January 14, 1997 (Supp. 97-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

Exhibit A. Repealed

Historical Note

New Exhibit adopted by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Exhibit repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 314

HOUSE BILL 2863

AN ACT

AMENDING TITLE 36, CHAPTER 21, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-2175; AMENDING SECTIONS 36-2901 AND 36-2907, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 1, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-177; AMENDING TITLE 41, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-703.01; REPEALING SECTION 41-703.01, ARIZONA REVISED STATUTES; AMENDING LAWS 2020, CHAPTER 54, SECTION 2; AMENDING LAWS 2021, CHAPTER 390, SECTIONS 33, 37, 39, 42 AND 43; AMENDING LAWS 2021, CHAPTER 409, SECTION 23; APPROPRIATING MONIES; RELATING TO HEALTH CARE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 36, chapter 21, article 1, Arizona Revised Statutes, is amended by adding section 36-2175, to read:

36-2175. Behavioral health care provider loan repayment program; purpose; eligibility; default; use of monies

A. THE BEHAVIORAL HEALTH CARE PROVIDER LOAN REPAYMENT PROGRAM IS ESTABLISHED IN THE DEPARTMENT TO PAY OFF PORTIONS OF EDUCATIONAL LOANS TAKEN OUT BY BEHAVIORAL HEALTH CARE PROVIDERS AND NURSES, INCLUDING BEHAVIORAL HEALTH TECHNICIANS, BEHAVIORAL HEALTH NURSE PRACTITIONERS, PSYCHIATRIC NURSE PRACTITIONERS AND LICENSED PRACTICAL NURSES, PHYSICIANS, PSYCHIATRISTS, AND PSYCHOLOGISTS WHO SERVE IN BEHAVIORAL HEALTH FACILITIES, INCLUDING THE ARIZONA STATE HOSPITAL, BEHAVIORAL HEALTH RESIDENTIAL FACILITIES AND SECURE BEHAVIORAL HEALTH RESIDENTIAL FACILITIES.

B. THE DEPARTMENT SHALL PRESCRIBE APPLICATION AND ELIGIBILITY REQUIREMENTS. TO BE ELIGIBLE TO PARTICIPATE IN THE BEHAVIORAL HEALTH CARE PROVIDER LOAN REPAYMENT PROGRAM, AN APPLICANT SHALL MEET AT LEAST THE FOLLOWING REQUIREMENTS:

1. HAVE COMPLETED THE FINAL YEAR OF A COURSE OF STUDY OR PROGRAM APPROVED BY RECOGNIZED ACCREDITING AGENCIES FOR HIGHER EDUCATION IN A HEALTH PROFESSION LICENSED PURSUANT TO TITLE 32 OR HOLD AN ACTIVE LICENSE IN A HEALTH PROFESSION LICENSED PURSUANT TO TITLE 32.

2. DEMONSTRATE CURRENT EMPLOYMENT PROVIDING DIRECT PATIENT CARE WITH A PUBLIC OR NONPROFIT ENTITY LOCATED AND PROVIDING SERVICES IN A BEHAVIORAL HEALTH HOSPITAL, A BEHAVIORAL HEALTH RESIDENTIAL FACILITY OR A SECURE BEHAVIORAL HEALTH RESIDENTIAL FACILITY IN THIS STATE.

3. DEMONSTRATE THAT THE CURRENT EMPLOYER IS CONTRACTED WITH THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM TO PROVIDE SERVICES.

4. NOT BE PARTICIPATING IN ANY OTHER LOAN REPAYMENT PROGRAM ESTABLISHED BY THIS ARTICLE.

C. IN ADDITION TO THE REQUIREMENTS OF SUBSECTION B OF THIS SECTION, AN APPLICANT WHO IS A PHYSICIAN SHALL HAVE COMPLETED A PROFESSIONAL RESIDENCY OR CERTIFICATION PROGRAM IN BEHAVIORAL HEALTH CARE.

D. A BEHAVIORAL HEALTH CARE PROVIDER OR NURSE WHO PARTICIPATES IN THE BEHAVIORAL HEALTH CARE PROVIDER LOAN REPAYMENT PROGRAM SHALL INITIALLY CONTRACT WITH THE DEPARTMENT TO PROVIDE SERVICES PURSUANT TO THIS SECTION FOR AT LEAST TWO YEARS.

E. IN MAKING RECOMMENDATIONS FOR THE BEHAVIORAL HEALTH CARE PROVIDER LOAN REPAYMENT PROGRAM, THE DEPARTMENT SHALL GIVE PRIORITY TO APPLICANTS WHO INTEND TO PRACTICE IN THE ARIZONA STATE HOSPITAL, A BEHAVIORAL HEALTH RESIDENTIAL FACILITY OR A SECURE BEHAVIORAL HEALTH RESIDENTIAL FACILITY IN THIS STATE.

F. ALL LOAN REPAYMENT CONTRACT OBLIGATIONS ARE SUBJECT TO THE AVAILABILITY OF MONIES AND LEGISLATIVE APPROPRIATION. THE DEPARTMENT MAY CANCEL OR SUSPEND A LOAN REPAYMENT CONTRACT BASED ON UNAVAILABILITY OF MONIES FOR THE PROGRAM. THE DEPARTMENT IS NOT LIABLE FOR ANY CLAIMS, ACTUAL DAMAGES OR CONSEQUENTIAL DAMAGES ARISING OUT OF A CANCELLATION OR SUSPENSION OF A CONTRACT.

G. THIS SECTION DOES NOT PREVENT THE DEPARTMENT FROM ENCUMBERING AN AMOUNT THAT IS SUFFICIENT TO ENSURE PAYMENT OF EACH BEHAVIORAL HEALTH CARE PROVIDER LOAN FOR THE SERVICES RENDERED DURING A CONTRACT PERIOD.

H. THE DEPARTMENT SHALL ISSUE PROGRAM MONIES TO PAY BEHAVIORAL HEALTH CARE PROVIDER LOANS THAT ARE LIMITED TO THE AMOUNT OF PRINCIPAL, INTEREST AND RELATED EXPENSES OF EDUCATIONAL LOANS, NOT TO EXCEED THE BEHAVIORAL HEALTH CARE PROVIDER'S OR NURSE'S TOTAL STUDENT LOAN INDEBTEDNESS, ACCORDING TO THE FOLLOWING SCHEDULE:

1. FOR THE FIRST TWO YEARS OF SERVICE, A MAXIMUM OF $50,000.

2. FOR SUBSEQUENT YEARS, A MAXIMUM OF $25,000.

I. A PARTICIPANT IN THE BEHAVIORAL HEALTH CARE PROVIDER LOAN REPAYMENT PROGRAM WHO BREACHES THE LOAN REPAYMENT CONTRACT BY FAILING TO BEGIN OR TO COMPLETE THE OBLIGATED SERVICES IS LIABLE FOR LIQUIDATED DAMAGES IN AN AMOUNT EQUIVALENT TO THE AMOUNT THAT WOULD BE OWED FOR DEFAULT AS DETERMINED AND AUTHORIZED BY THE DEPARTMENT. THE DEPARTMENT MAY WAIVE THE LIQUIDATED DAMAGES PROVISIONS OF THIS SUBSECTION IF IT DETERMINES THAT DEATH OR PERMANENT PHYSICAL DISABILITY ACCOUNTED FOR THE FAILURE OF THE PARTICIPANT TO FULFILL THE CONTRACT. THE DEPARTMENT MAY PRESCRIBE ADDITIONAL CONDITIONS FOR DEFAULT, CANCELLATION, WAIVER OR SUSPENSION.

J. NOTWITHSTANDING SECTION 41-192, THE DEPARTMENT MAY RETAIN LEGAL COUNSEL AND COMMENCE ACTIONS THAT ARE NECESSARY TO COLLECT LOAN PAYMENTS AND CHARGES IF THERE IS A DEFAULT OR A BREACH OF A CONTRACT ENTERED INTO PURSUANT TO THIS SECTION.

K. THE DEPARTMENT MAY USE MONIES TO DEVELOP PROGRAMS SUCH AS RESIDENT-TO-SERVICE LOAN REPAYMENT AND EMPLOYER RECRUITMENT ASSISTANCE TO INCREASE PARTICIPATION IN THE BEHAVIORAL HEALTH CARE PROVIDER LOAN REPAYMENT PROGRAM. THE DEPARTMENT MAY USE PRIVATE DONATIONS, GRANTS AND FEDERAL MONIES TO IMPLEMENT, SUPPORT, PROMOTE OR MAINTAIN THE PROGRAM.

Sec. 2. Section 36-2901, Arizona Revised Statutes, is amended to read:

36-2901. Definitions

In this article, unless the context otherwise requires:

1. "Administration" means the Arizona health care cost containment system administration.

2. "Administrator" means the administrator of the Arizona health care cost containment system.

3. "Contractor" means a person or entity that has a prepaid capitated contract with the administration pursuant to section 36-2904 or chapter 34 of this title to provide health care to members under this article or persons under chapter 34 of this title either directly or through subcontracts with providers.

4. "Department" means the department of economic security.

5. "Director" means the director of the Arizona health care cost containment system administration.

6. "Eligible person" means any person who is:

(a) Any of the following:

(i) Defined as mandatorily or optionally eligible pursuant to title XIX of the social security act as authorized by the state plan.

(ii) Defined in title XIX of the social security act as an eligible pregnant woman OR A WOMAN WHO IS LESS THAN ONE YEAR POSTPARTUM with a family income that does not exceed one hundred fifty percent of the federal poverty guidelines, as a child under the age of six years and whose family income does not exceed one hundred thirty-three percent of the federal poverty guidelines or as children who have not attained nineteen years of age and whose family income does not exceed one hundred thirty-three percent of the federal poverty guidelines.

(iii) Under twenty-six years of age and who was in the custody of the department of child safety pursuant to title 8, chapter 4 when the person became eighteen years of age.

(iv) Defined as eligible pursuant to section 36-2901.01.

(v) Defined as eligible pursuant to section 36-2901.04.

(vi) Defined as eligible pursuant to section 36-2901.07.

(b) A full-time officer or employee of this state or of a city, town or school district of this state or other person who is eligible for hospitalization and medical care under title 38, chapter 4, article 4.

(c) A full-time officer or employee of any county in this state or other persons authorized by the county to participate in county medical care and hospitalization programs if the county in which such officer or employee is employed has authorized participation in the system by resolution of the county board of supervisors.

(d) An employee of a business within this state.

(e) A dependent of an officer or employee who is participating in the system.

(f) Not enrolled in the Arizona long-term care system pursuant to article 2 of this chapter.

(g) Defined as eligible pursuant to section 1902(a)(10)(A)(ii)(XV) and (XVI) of title XIX of the social security act and who meets the income requirements of section 36-2929.

7. "Graduate medical education" means a program, including an approved fellowship, that prepares a physician for the independent practice of medicine by providing didactic and clinical education in a

medical discipline to a medical student who has completed a recognized undergraduate medical education program.

8. "Malice" means evil intent and outrageous, oppressive or intolerable conduct that creates a substantial risk of tremendous harm to others.

9. "Member" means an eligible person who enrolls in the system.

10. "Modified adjusted gross income" has the same meaning prescribed in 42 United States Code section 1396a(e)(14).

11. "Noncontracting provider" means a person who provides health care to members pursuant to this article but not pursuant to a subcontract with a contractor.

12. "Physician" means a person WHO IS licensed pursuant to title 32, chapter 13 or 17.

13. "Prepaid capitated" means a mode of payment by which a health care contractor directly delivers health care services for the duration of a contract to a maximum specified number of members based on a fixed rate per member notwithstanding:

(a) The actual number of members who receive care from the contractor.

(b) The amount of health care services provided to any member.

14. "Primary care physician" means a physician who is a family practitioner, general practitioner, pediatrician, general internist, or obstetrician or gynecologist.

15. "Primary care practitioner" means a nurse practitioner OR CERTIFIED NURSE MIDWIFE WHO IS certified pursuant to title 32, chapter 15 or a physician assistant ~~certified~~ WHO IS LICENSED pursuant to title 32, chapter 25. This paragraph does not expand the scope of practice for nurse practitioners OR CERTIFIED NURSE MIDWIVES as defined pursuant to title 32, chapter 15~~,~~ or for physician assistants as defined pursuant to title 32, chapter 25.

16. "Regional behavioral health authority" has the same meaning prescribed in section 36-3401.

17. "Section 1115 waiver" means the research and demonstration waiver granted by the United States department of health and human services.

18. "Special health care district" means a special health care district organized pursuant to title 48, chapter 31.

19. "State plan" has the same meaning prescribed in section 36-2931.

20. "System" means the Arizona health care cost containment system established by this article.

Sec. 3. Section 36-2907, Arizona Revised Statutes, is amended to read:

36-2907. Covered health and medical services; modifications; rules; related delivery of service requirements; definition

A. Subject to the ~~limitations~~ LIMITS and exclusions specified in this section, contractors shall provide the following medically necessary health and medical services:

1. Inpatient hospital services that are ordinarily furnished by a hospital ~~for the~~ TO care and ~~treatment of~~ TREAT inpatients and that are provided under the direction of a physician or a primary care practitioner. For the purposes of this section, inpatient hospital services exclude services in an institution for tuberculosis or mental diseases unless authorized under an approved section 1115 waiver.

2. Outpatient health services that are ordinarily provided in hospitals, clinics, offices and other health care facilities by licensed health care providers. Outpatient health services include services provided by or under the direction of a physician or a primary care practitioner, including occupational therapy.

3. Other laboratory and X-ray services ordered by a physician or a primary care practitioner.

4. Medications that are ordered on prescription by a physician or a dentist WHO IS licensed pursuant to title 32, chapter 11. Persons who are dually eligible for title XVIII and title XIX services must obtain available medications through a medicare licensed or certified medicare advantage prescription drug plan, a medicare prescription drug plan or any other entity authorized by medicare to provide a medicare part D prescription drug benefit.

5. Medical supplies, durable medical equipment, insulin pumps and prosthetic devices ordered by a physician or a primary care practitioner. Suppliers of durable medical equipment shall provide the administration with complete information about the identity of each person who has an ownership or controlling interest in their business and shall comply with federal bonding requirements in a manner prescribed by the administration.

6. For persons who are at least twenty-one years of age, treatment of medical conditions of the eye, excluding eye examinations for prescriptive lenses and the provision of prescriptive lenses.

7. Early and periodic health screening and diagnostic services as required by section 1905(r) of title XIX of the social security act for members who are under twenty-one years of age.

8. Family planning services that do not include abortion or abortion counseling. If a contractor elects not to provide family planning services, this election does not disqualify the contractor from delivering all other covered health and medical services under this chapter. In that event, the administration may contract directly with

another contractor, including an outpatient surgical center or a noncontracting provider, to deliver family planning services to a member who is enrolled with the contractor that elects not to provide family planning services.

9. Podiatry services that are performed by a podiatrist who is licensed pursuant to title 32, chapter 7 and ordered by a primary care physician or primary care practitioner.

10. Nonexperimental transplants approved for title XIX reimbursement.

11. Dental services as follows:

(a) Except as provided in subdivision (b) of this paragraph, for persons who are at least twenty-one years of age, emergency dental care and extractions in an annual amount of not more than $1,000 per member.

(b) Subject to approval by the centers for medicare and medicaid services, for persons treated at an Indian health service or tribal facility, adult dental services that are eligible for a federal medical assistance percentage of one hundred percent and that ~~are in excess of~~ EXCEED the limit prescribed in subdivision (a) of this paragraph.

12. Ambulance and nonambulance transportation, except as provided in subsection G of this section.

13. Hospice care.

14. Orthotics, if all of the following apply:

(a) The use of the orthotic is medically necessary as the preferred treatment option consistent with medicare guidelines.

(b) The orthotic is less expensive than all other treatment options or surgical procedures to treat the same diagnosed condition.

(c) The orthotic is ordered by a physician or primary care practitioner.

15. SUBJECT TO APPROVAL BY THE CENTERS FOR MEDICARE AND MEDICAID SERVICES, MEDICALLY NECESSARY CHIROPRACTIC SERVICES THAT ARE PERFORMED BY A CHIROPRACTOR WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 8 AND THAT ARE ORDERED BY A PRIMARY CARE PHYSICIAN OR PRIMARY CARE PRACTITIONER PURSUANT TO RULES ADOPTED BY THE ADMINISTRATION. THE PRIMARY CARE PHYSICIAN OR PRIMARY CARE PRACTITIONER MAY INITIALLY ORDER UP TO TWENTY VISITS ANNUALLY THAT INCLUDE TREATMENT AND MAY REQUEST AUTHORIZATION FOR ADDITIONAL CHIROPRACTIC SERVICES IN THAT SAME YEAR IF ADDITIONAL CHIROPRACTIC SERVICES ARE MEDICALLY NECESSARY.

B. The ~~limitations~~ LIMITS and exclusions for health and medical services provided under this section are as follows:

1. Circumcision of newborn males is not a covered health and medical service.

2. For eligible persons who are at least twenty-one years of age:

(a) Outpatient health services do not include speech therapy.

(b) Prosthetic devices do not include hearing aids, dentures, bone-anchored hearing aids or cochlear implants. Prosthetic devices, except prosthetic implants, may be limited to $12,500 per contract year.

(c) Percussive vests are not covered health and medical services.

(d) Durable medical equipment is limited to items covered by medicare.

(e) Nonexperimental transplants do not include pancreas-only transplants.

(f) Bariatric surgery procedures, including laparoscopic and open gastric bypass and restrictive procedures, are not covered health and medical services.

C. The system shall pay noncontracting providers only for health and medical services as prescribed in subsection A of this section and as prescribed by rule.

D. The director shall adopt rules necessary to limit, to the extent possible, the scope, duration and amount of services, including maximum ~~limitations~~ LIMITS for inpatient services that are consistent with federal regulations under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)). To the extent possible and practicable, these rules shall provide for the prior approval of medically necessary services provided pursuant to this chapter.

E. The director shall make available home health services in lieu of hospitalization pursuant to contracts awarded under this article. For the purposes of this subsection, "home health services" means the provision of nursing services, home health aide services or medical supplies, equipment and appliances that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on the orders of a physician or a primary care practitioner. Home health agencies shall comply with the federal bonding requirements in a manner prescribed by the administration.

F. The director shall adopt rules for the coverage of behavioral health services for persons who are eligible under section 36-2901, paragraph 6, subdivision (a). The administration acting through the regional behavioral health authorities shall establish a diagnostic and evaluation program to which other state agencies shall refer children who are not already enrolled pursuant to this chapter and who may be in need of behavioral health services. In addition to an evaluation, the administration acting through regional behavioral health authorities shall also identify children who may be eligible under section 36-2901, paragraph 6, subdivision (a) or section 36-2931, paragraph 5 and shall refer the children to the appropriate agency responsible for making the final eligibility determination.

G. The director shall adopt rules providing for transportation services and rules providing for copayment by members for transportation for other than emergency purposes. Subject to approval by the centers for

medicare and medicaid services, nonemergency medical transportation shall not be provided except for stretcher vans and ambulance transportation. Prior authorization is required for transportation by stretcher van and for medically necessary ambulance transportation initiated pursuant to a physician's direction. Prior authorization is not required for medically necessary ambulance transportation services rendered to members or eligible persons initiated by dialing telephone number 911 or other designated emergency response systems.

H. The director may adopt rules to allow the administration, at the director's discretion, to use a second opinion procedure under which surgery may not be eligible for coverage pursuant to this chapter without documentation as to need by at least two physicians or primary care practitioners.

I. If the director does not receive bids within the amounts budgeted or if at any time the amount remaining in the Arizona health care cost containment system fund is insufficient to pay for full contract services for the remainder of the contract term, the administration, on notification to system contractors at least thirty days in advance, may modify the list of services required under subsection A of this section for persons defined as eligible other than those persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). The director may also suspend services or may limit categories of expense for services defined as optional pursuant to title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) for persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). Such reductions or suspensions do not apply to the continuity of care for persons already receiving these services.

J. All health and medical services provided under this article shall be provided in the geographic service area of the member, except:

1. Emergency services and specialty services provided pursuant to section 36-2908.

2. That the director may allow the delivery of health and medical services in other than the geographic service area in this state or in an adjoining state if the director determines that medical practice patterns justify the delivery of services or a net reduction in transportation costs can reasonably be expected. Notwithstanding the definition of physician as prescribed in section 36-2901, if services are procured from a physician or primary care practitioner in an adjoining state, the physician or primary care practitioner shall be licensed to practice in that state pursuant to licensing statutes in that state that are similar to title 32, chapter 13, 15, 17 or 25 and shall complete a provider agreement for this state.

K. Covered outpatient services shall be subcontracted by a primary care physician or primary care practitioner to other licensed health care providers to the extent practicable for purposes including, but not

limited to, making health care services available to underserved areas, reducing costs of providing medical care and reducing transportation costs.

L. The director shall adopt rules that prescribe the coordination of medical care for persons who are eligible for system services. The rules shall include provisions for transferring patients and medical records and initiating medical care.

M. NOTWITHSTANDING SECTION 36-2901.08, MONIES FROM THE HOSPITAL ASSESSMENT FUND ESTABLISHED BY SECTION 36-2901.09 MAY NOT BE USED TO PROVIDE CHIROPRACTIC SERVICES AS PRESCRIBED IN SUBSECTION A, PARAGRAPH 15 OF THIS SECTION.

~~M.~~ N. For the purposes of this section, "ambulance" has the same meaning prescribed in section 36-2201.

Sec. 4. Title 41, chapter 1, article 4, Arizona Revised Statutes, is amended by adding section 41-177, to read:

41-177. Arizona health innovation trust fund; purpose; annual report

A. THE ARIZONA HEALTH INNOVATION TRUST FUND IS ESTABLISHED. THE STATE TREASURER SHALL ADMINISTER THE TRUST FUND AS TRUSTEE.

B. THE TRUST FUND IS A PERMANENT ENDOWMENT FUND THAT CONSISTS OF MONIES APPROPRIATED BY THE LEGISLATURE, EARNINGS FROM THE FUND AND GIFTS OR GRANTS DONATED OR GIVEN TO THE FUND.

C. MONIES IN THE TRUST FUND ARE CONTINUOUSLY APPROPRIATED AND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF APPROPRIATIONS.

D. THE STATE TREASURER SHALL ACCEPT, SEPARATELY ACCOUNT FOR AND HOLD IN TRUST ANY TRUST FUND MONIES DEPOSITED PURSUANT TO THIS SECTION IN THE STATE TREASURY, WHICH ARE CONSIDERED TO BE TRUST MONIES AS DEFINED IN SECTION 35-310 AND WHICH MAY NOT BE COMMINGLED WITH ANY OTHER MONIES IN THE STATE TREASURY EXCEPT FOR INVESTMENT PURPOSES. THE STATE TREASURER SHALL INVEST AND DIVEST, AS PROVIDED BY SECTIONS 35-313 AND 35-314.03, ANY TRUST FUND MONIES DEPOSITED IN THE STATE TREASURY, AND MONIES EARNED FROM INTEREST AND INVESTMENT INCOME SHALL BE CREDITED TO THE TRUST FUND.

E. THE STATE TREASURER SHALL ANNUALLY ALLOCATE FOUR PERCENT OF THE MONIES IN THE TRUST FUND TO AN ENTITY THAT SATISFIES ALL OF THE FOLLOWING REQUIREMENTS:

1. IS A CHARITABLE ORGANIZATION THAT IS QUALIFIED UNDER SECTION 501(c)(3) OF THE UNITED STATES INTERNAL REVENUE CODE FOR FEDERAL INCOME TAX PURPOSES.

2. PROVIDES ENTREPRENEURIAL EDUCATION, MENTORING AND SUPPORT TO PERSONS IN THE HEALTH INNOVATION AND HEALTH CARE DELIVERY SECTORS IN THIS STATE.

3. PROVIDES WORKFORCE DEVELOPMENT PROGRAMS DESIGNED TO SUPPORT THE TALENT REQUIREMENTS OF EMPLOYERS IN THE HEALTH INNOVATION AND HEALTH CARE DELIVERY SECTORS IN THIS STATE.

4. PROVIDES PROGRAMS THAT SUPPORT THE DEVELOPMENT AND COMMERCIALIZATION OF HEALTH INNOVATION BY BUSINESSES THAT ARE BASED IN THIS STATE AND THAT EMPLOY NOT MORE THAN ONE HUNDRED EMPLOYEES.

5. HAS ENTERED INTO AN ENDOWMENT AGREEMENT WITH THE STATE TREASURER THAT INCLUDES INVESTMENT PROCEDURES, MATURITY TIMELINES AND OTHER REQUIREMENTS ESTABLISHED BY THE STATE TREASURER AND ENTITY REPORTING REQUIREMENTS, WHICH MUST INCLUDE HOW DISTRIBUTIONS FROM THE TRUST FUND ARE USED AND THE SOCIAL AND ECONOMIC IMPACT OF THE USE.

F. ON OR BEFORE DECEMBER 31 OF EACH YEAR, THE ENTITY SHALL SUBMIT THE REPORT AS PRESCRIBED BY THE TREASURER TO THE GOVERNOR, THE PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE STATE TREASURER AND SHALL PROVIDE A COPY OF THIS REPORT TO THE SECRETARY OF STATE.

Sec. 5. Title 41, chapter 4, article 1, Arizona Revised Statutes, is amended by adding section 41-703.01, to read:

41-703.01. Competitive grant program; technology solution; patient continuity of care; hospital interconnectivity; annual report; definitions

A. THE DEPARTMENT SHALL ADMINISTER A THREE-YEAR COMPETITIVE GRANT PROGRAM THAT PROVIDES AN INTEROPERABILITY SOFTWARE TECHNOLOGY SOLUTION TO SUPPORT RURAL HOSPITALS, HEALTH CARE PROVIDERS AND URBAN TRAUMA CENTERS TO FURTHER TREATMENT CARE COORDINATION WITH A FOCUS ON REDUCING PUBLIC AND PRIVATE HEALTH CARE COSTS AND UNNECESSARY TRANSPORTATION COSTS. THE DEPARTMENT SHALL AWARD THE FIRST GRANT UNDER THIS PROGRAM NOT LATER THAN DECEMBER 31, 2022.

B. THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM SHALL WORK WITH THE DEPARTMENT TO SUPPLEMENT THE GRANT MONIES BY IDENTIFYING AND APPLYING TO RECEIVE FEDERAL MATCHING MONIES.

C. THE GRANT PROGRAM SHALL ENABLE THE IMPLEMENTATION OF AN INTEROPERABILITY SOFTWARE TECHNOLOGY SOLUTION THAT IS SHARED BY HOSPITALS AND HEALTH CARE PROVIDERS TO BENEFIT PATIENTS BEFORE AND AFTER A PATIENT IS DISCHARGED FROM THE PROVIDER'S CARE.

D. THE SOFTWARE SHALL BE MADE AVAILABLE TO RURAL HOSPITALS, HEALTH CARE PROVIDERS AND URBAN TRAUMA CENTERS THAT WISH TO PARTICIPATE BY ENABLING A HOSPITAL'S ELECTRONIC MEDICAL RECORDS SYSTEM TO INTERFACE WITH OTHER ELECTRONIC MEDICAL RECORDS SYSTEMS AND PROVIDERS TO PROMOTE CONNECTIVITY BETWEEN HOSPITAL SYSTEMS AND FACILITATE INCREASED COMMUNICATION BETWEEN HOSPITAL STAFF AND PROVIDERS THAT USE DIFFERENT OR DISTINCTIVE ONLINE PLATFORMS AND INFORMATION SYSTEMS WHEN TREATING PATIENTS. THE DEPARTMENT SHALL AWARD GRANTS FOR AN INTEROPERABILITY SOFTWARE TECHNOLOGY SOLUTION THAT, AT A MINIMUM:

1. COMPLIES WITH THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT PRIVACY STANDARDS (45 CODE OF FEDERAL REGULATIONS PART 160 AND PART 164, SUBPART E).

2. CAPTURES AND FORWARDS CLINICAL DATA, INCLUDING LABORATORY RESULTS AND IMAGES, AND PROVIDES SYNCHRONOUS PATIENT CLINICAL DATA TO HEALTH CARE PROVIDERS REGARDLESS OF GEOGRAPHIC LOCATION.

3. PROVIDES A SYNCHRONOUS DATA EXCHANGE THAT IS NOT BATCHED OR DELAYED, AT THE POINT THE CLINICAL DATA IS CAPTURED AND AVAILABLE IN THE HOSPITAL'S ELECTRONIC RECORD SYSTEM.

4. IS CAPABLE OF PROVIDING PROACTIVE ALERTS TO HEALTH CARE PROVIDERS.

5. ALLOWS BOTH SYNCHRONOUS AND ASYNCHRONOUS COMMUNICATION.

6. HAS PATIENT-CENTRIC COMMUNICATION AND IS TRACKED WITH DATE AND TIME STAMPING.

7. IS CONNECTED TO THE APPROPRIATE PHYSICIAN RESOURCES.

8. PROVIDES DATA TO UPDATE COST REPORTS TO ENHANCE EMERGENCY TRIAGE AND TO TREAT AND TRANSPORT PATIENTS.

E. EACH GRANT RECIPIENT SHALL DEMONSTRATE PROOF OF VETERAN EMPLOYMENT.

F. FOR EACH YEAR OF THE GRANT PROGRAM, EACH GRANT RECIPIENT SHALL PROVIDE TO THE DEPARTMENT OF ADMINISTRATION A REPORT THAT PROVIDES METRICS AND QUANTIFIES COST AND TIME SAVINGS FOR USING AN INTEROPERABLE SOFTWARE SOLUTION IN HEALTH CARE THAT COMPLIES WITH THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT PRIVACY STANDARDS (45 CODE OF FEDERAL REGULATIONS PART 160 AND PART 164, SUBPART E). ON OR BEFORE JULY 1 OF EACH FISCAL YEAR OF THE GRANT PROGRAM, THE DEPARTMENT OF ADMINISTRATION IN COORDINATION WITH THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM SHALL PROVIDE TO THE PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE CHAIRPERSONS OF THE HEALTH AND HUMAN SERVICES COMMITTEES OF THE SENATE AND THE HOUSE OF REPRESENTATIVES AND THE DIRECTORS OF THE JOINT LEGISLATIVE BUDGET COMMITTEE AND THE GOVERNOR'S OFFICE OF STRATEGIC PLANNING AND BUDGETING A REPORT ON THE ALLOCATION OF GRANT FUNDING AND A COMPILED ANALYSIS OF THE REPORTS PROVIDED BY THE GRANT RECIPIENTS.

G. FOR THE PURPOSES OF THIS SECTION:

1. "RURAL" MEAN A COUNTY WITH A POPULATION OF LESS THAN NINE HUNDRED THOUSAND PERSONS.

2. "VETERAN EMPLOYMENT" MEANS A BUSINESS ORGANIZATION THAT EMPLOYS AN INDIVIDUAL OR HAS A COMPANY OFFICER WHO SERVED AND WHO WAS HONORABLY DISCHARGED FROM OR RELEASED UNDER HONORABLE CONDITIONS FROM SERVICE IN THE ARMED FORCES.

Sec. 6. Delayed repeal

Section 41-703.01, Arizona Revised Statutes, as added by this act, is repealed from and after June 30, 2026.

Sec. 7. Laws 2020, chapter 54, section 2 is amended to read:

Sec. 2. AHCCCS; disproportionate share payments; fiscal year 2020-2021

A. Disproportionate share payments for fiscal year 2020-2021 made pursuant to section 36-2903.01, subsection O, Arizona Revised Statutes, include:

1. $113,818,500 for a qualifying nonstate operated public hospital. The Maricopa county special health care district shall provide a certified public expense form for the amount of qualifying disproportionate share hospital expenditures made on behalf of this state to the Arizona health care cost containment system administration on or before May 1, 2021 for all state plan years as required by the Arizona health care cost containment system ~~section 1115 waiver standard terms and conditions~~ STATE PLAN. The administration shall assist the district in determining the amount of qualifying disproportionate share hospital expenditures. Once the administration files a claim with the federal government and receives federal financial participation based on the amount certified by the Maricopa county special health care district, if the certification is equal to or less than $113,818,500 and the administration determines that the revised amount is correct pursuant to the methodology used by the administration pursuant to section 36-2903.01, Arizona Revised Statutes, the administration shall notify the governor, the president of the senate and the speaker of the house of representatives, shall distribute $4,202,300 to the Maricopa county special health care district and shall deposit the balance of the federal financial participation in the state general fund. If the certification provided is for an amount less than $113,818,500 and the administration determines that the revised amount is not correct pursuant to the methodology used by the administration pursuant to section 36-2903.01, Arizona Revised Statutes, the administration shall notify the governor, the president of the senate and the speaker of the house of representatives and shall deposit the total amount of the federal financial participation in the state general fund. If the certification provided is for an amount greater than $113,818,500, the administration shall distribute $4,202,300 to the Maricopa county special health care district and shall deposit $75,812,100 of the federal financial participation in the state general fund. The administration may make additional disproportionate share hospital payments to the Maricopa county special health care district pursuant to section 36-2903.01, subsection P, Arizona Revised Statutes, and subsection B of this section.

2. $28,474,900 for the Arizona state hospital. The Arizona state hospital shall provide a certified public expense form for the amount of qualifying disproportionate share hospital expenditures made on behalf of this state to the administration on or before March 31, 2021. The administration shall assist the Arizona state hospital in determining the amount of qualifying disproportionate share hospital expenditures. Once

the administration files a claim with the federal government and receives federal financial participation based on the amount certified by the Arizona state hospital, the administration shall deposit the entire amount of federal financial participation in the state general fund. If the certification provided is for an amount less than $28,474,900, the administration shall notify the governor, the president of the senate and the speaker of the house of representatives and shall deposit the entire amount of federal financial participation in the state general fund. The certified public expense form provided by the Arizona state hospital must contain both the total amount of qualifying disproportionate share hospital expenditures and the amount limited by section 1923(g) of the social security act.

3. $884,800 for private qualifying disproportionate share hospitals. The Arizona health care cost containment system administration shall make payments to hospitals consistent with this appropriation and the terms of the ~~section 1115 waiver~~ STATE PLAN, but payments are limited to those hospitals that either:

(a) Meet the mandatory definition of disproportionate share qualifying hospitals under section 1923 of the social security act.

(b) Are located in Yuma county and contain at least three hundred beds.

B. After the distributions made pursuant to subsection A of this section, the allocations of disproportionate share hospital payments made pursuant to section 36-2903.01, subsection P, Arizona Revised Statutes, shall be made available ~~first~~ IN THE FOLLOWING ORDER to qualifying private hospitals ~~located outside the Phoenix metropolitan statistical area and the Tucson metropolitan statistical area before being made available to qualifying hospitals within the Phoenix metropolitan statistical area and the Tucson metropolitan statistical area.~~ THAT ARE:

1. LOCATED IN A COUNTY WITH A POPULATION OF FEWER THAN FOUR HUNDRED THOUSAND PERSONS.

2. LOCATED IN A COUNTY WITH A POPULATION OF AT LEAST FOUR HUNDRED THOUSAND PERSONS BUT FEWER THAN NINE HUNDRED THOUSAND PERSONS.

3. LOCATED IN A COUNTY WITH A POPULATION OF AT LEAST NINE HUNDRED THOUSAND PERSONS.

Sec. 8. Laws 2021, chapter 390, section 33 is amended to read:

Sec. 33. Delayed repeal

Title 31, chapter 4, Arizona Revised Statutes, is repealed from and after ~~June 30, 2023~~ DECEMBER 31, 2022.

Sec. 9. Laws 2021, chapter 390, section 37 is amended to read:

Sec. 37. Delayed repeal

Section 36-220, Arizona Revised Statutes, ~~as added by this act,~~ is repealed from and after ~~June 30, 2023~~ DECEMBER 31, 2022.

Sec. 10. Laws 2021, chapter 390, section 39 is amended to read:

Sec. 39. Delayed repeal

Section 41-3028.11, Arizona Revised Statutes, is repealed from and after ~~June 30, 2023~~ DECEMBER 31, 2022.

Sec. 11. Laws 2021, chapter 390, section 42 is amended to read:

Sec. 42. Transfer of jurisdiction of psychiatric security review board powers and duties

A. Beginning from and after ~~June 30, 2023~~ DECEMBER 31, 2022, the superior court shall have exclusive supervisory jurisdiction over all persons who are under the supervision of the psychiatric security review board on ~~July~~ JANUARY 1, 2023.

B. The superior court is vested with the powers and duties of the psychiatric security review board as they existed before ~~July~~ JANUARY 1, 2023 to carry out the provisions of title 13, chapter 38, article 14.

Sec. 12. Laws 2021, chapter 390, section 43 is amended to read:

Sec. 43. Effective date

The following sections are effective from and after ~~June 30, 2023~~ DECEMBER 31, 2022:

1. Section 12-820.02, Arizona Revised Statutes, as amended by ~~this act~~ LAWS 2021, CHAPTER 390.

2. Section 13-502, Arizona Revised Statutes, as amended by ~~section 5 of this act~~ LAWS 2021, CHAPTER 390.

3. Section 13-3991, Arizona Revised Statutes, as amended by ~~section 10 of this act~~ LAWS 2021, CHAPTER 390.

4. Section 13-3992, Arizona Revised Statutes, as amended by ~~section 12 of this act~~ LAWS 2021, CHAPTER 390.

5. Section 13-3994, Arizona Revised Statutes, as amended by ~~section 15 of this act~~ LAWS 2021, CHAPTER 390.

6. Section 13-3995, Arizona Revised Statutes, as amended by ~~section 17 of this act~~ LAWS 2021, CHAPTER 390.

7. Section 13-3996, Arizona Revised Statutes, as amended by ~~section 19 of this act~~ LAWS 2021, CHAPTER 390.

8. Section 13-3997, Arizona Revised Statutes, as amended by ~~section 21 of this act~~ LAWS 2021, CHAPTER 390.

9. Section 13-3998, Arizona Revised Statutes, as amended by ~~section 23 of this act~~ LAWS 2021, CHAPTER 390.

10. Section 13-3999, Arizona Revised Statutes, as amended by ~~section 25 of this act~~ LAWS 2021, CHAPTER 390.

11. Section 13-4000, Arizona Revised Statutes, as amended by ~~section 27 of this act~~ LAWS 2021, CHAPTER 390.

Sec. 13. Laws 2021, chapter 409, section 23 is amended to read:

Sec. 23. AHCCCS; disproportionate share payments; fiscal year 2021-2022

A. Disproportionate share payments for fiscal year 2021-2022 made pursuant to section 36-2903.01, subsection O, Arizona Revised Statutes, include:

1. $113,818,500 for a qualifying nonstate operated public hospital. The Maricopa county special health care district shall provide a certified public expense form for the amount of qualifying disproportionate share hospital expenditures made on behalf of this state to the Arizona health care cost containment system administration on or before May 1, 2022 for all state plan years as required by the Arizona health care cost containment system state plan ~~standard terms and conditions~~. The administration shall assist the district in determining the amount of qualifying disproportionate share hospital expenditures. Once the administration files a claim with the federal government and receives federal financial participation based on the amount certified by the Maricopa county special health care district, if the certification is equal to or less than $113,818,500 and the administration determines that the revised amount is correct pursuant to the methodology used by the administration pursuant to section 36-2903.01, Arizona Revised Statutes, the administration shall notify the governor, the president of the senate and the speaker of the house of representatives, shall distribute $4,202,300 to the Maricopa county special health care district and shall deposit the balance of the federal financial participation in the state general fund. If the certification provided is for an amount less than $113,818,500 and the administration determines that the revised amount is not correct pursuant to the methodology used by the administration pursuant to section 36-2903.01, Arizona Revised Statutes, the administration shall notify the governor, the president of the senate and the speaker of the house of representatives and shall deposit the total amount of the federal financial participation in the state general fund. If the certification provided is for an amount greater than $113,818,500, the administration shall distribute $4,202,300 to the Maricopa county special health care district and shall deposit $75,482,000 of the federal financial participation in the state general fund. The administration may make additional disproportionate share hospital payments to the Maricopa county special health care district pursuant to section 36-2903.01, subsection P, Arizona Revised Statutes, and subsection B of this section.

2. $28,474,900 for the Arizona state hospital. The Arizona state hospital shall provide a certified public expense form for the amount of qualifying disproportionate share hospital expenditures made on behalf of this state to the administration on or before March 31, 2022. The administration shall assist the Arizona state hospital in determining the amount of qualifying disproportionate share hospital expenditures. Once

the administration files a claim with the federal government and receives federal financial participation based on the amount certified by the Arizona state hospital, the administration shall deposit the entire amount of federal financial participation in the state general fund. If the certification provided is for an amount less than $28,474,900, the administration shall notify the governor, the president of the senate and the speaker of the house of representatives and shall deposit the entire amount of federal financial participation in the state general fund. The certified public expense form provided by the Arizona state hospital must contain both the total amount of qualifying disproportionate share hospital expenditures and the amount limited by section 1923(g) of the social security act.

3. $884,800 for private qualifying disproportionate share hospitals. The Arizona health care cost containment system administration shall make payments to hospitals consistent with this appropriation and the terms of the state plan, but payments are limited to those hospitals that either:

(a) Meet the mandatory definition of disproportionate share qualifying hospitals under section 1923 of the social security act.

(b) Are located in Yuma county and contain at least three hundred beds.

B. After the distributions made pursuant to subsection A of this section, the allocations of disproportionate share hospital payments made pursuant to section 36-2903.01, subsection P, Arizona Revised Statutes, shall be made available ~~first~~ IN THE FOLLOWING ORDER to qualifying private hospitals ~~located outside the Phoenix metropolitan statistical area and the Tucson metropolitan statistical area before being made available to qualifying hospitals within the Phoenix metropolitan statistical area and the Tucson metropolitan statistical area.~~ THAT ARE:

1. LOCATED IN A COUNTY WITH A POPULATION OF FEWER THAN FOUR HUNDRED THOUSAND PERSONS.

2. LOCATED IN A COUNTY WITH A POPULATION OF AT LEAST FOUR HUNDRED THOUSAND PERSONS BUT FEWER THAN NINE HUNDRED THOUSAND PERSONS.

3. LOCATED IN A COUNTY WITH A POPULATION OF AT LEAST NINE HUNDRED THOUSAND PERSONS.

Sec. 14. ALTCS; county contributions; fiscal year 2022-2023

A. Notwithstanding section 11-292, Arizona Revised Statutes, county contributions for the Arizona long-term care system for fiscal year 2022-2023 are as follows:

1.	Apache	$ 860,500
2.	Cochise	$ 6,320,300
3.	Coconino	$ 2,583,200
4.	Gila	$ 2,855,600
5.	Graham	$ 1,258,800
6.	Greenlee	$ 0

7.	La Paz	$ 653,700
8.	Maricopa	$229,265,800
9.	Mohave	$ 10,473,800
10.	Navajo	$ 3,561,400
11.	Pima	$ 54,350,500
12.	Pinal	$ 17,427,100
13.	Santa Cruz	$ 2,775,000
14.	Yavapai	$ 9,429,000
15.	Yuma	$ 10,883,000

B. If the overall cost for the Arizona long-term care system exceeds the amount specified in the general appropriations act for fiscal year 2022-2023, the state treasurer shall collect from the counties the difference between the amount specified in subsection A of this section and the counties' share of the state's actual contribution. The counties' share of the state's contribution must comply with any federal maintenance of effort requirements. The director of the Arizona health care cost containment system administration shall notify the state treasurer of the counties' share of the state's contribution and report the amount to the director of the joint legislative budget committee. The state treasurer shall withhold from any other monies payable to a county from whatever state funding source is available an amount necessary to fulfill that county's requirement specified in this subsection. The state treasurer may not withhold distributions from the Arizona highway user revenue fund pursuant to title 28, chapter 18, article 2, Arizona Revised Statutes. The state treasurer shall deposit the amounts withheld pursuant to this subsection and amounts paid pursuant to subsection A of this section in the long-term care system fund established by section 36-2913, Arizona Revised Statutes.

Sec. 15. AHCCCS; disproportionate share payments; fiscal year 2022-2023

A. Disproportionate share payments for fiscal year 2022-2023 made pursuant to section 36-2903.01, subsection O, Arizona Revised Statutes, include:

1. $113,818,500 for a qualifying nonstate operated public hospital. The Maricopa county special health care district shall provide a certified public expense form for the amount of qualifying disproportionate share hospital expenditures made on behalf of this state to the Arizona health care cost containment system administration on or before May 1, 2023 for all state plan years as required by the Arizona health care cost containment system state plan. The administration shall assist the district in determining the amount of qualifying disproportionate share hospital expenditures. Once the administration files a claim with the federal government and receives federal financial participation based on the amount certified by the Maricopa county special health care district, if the certification is equal to or less than $113,818,500 and the

administration determines that the revised amount is correct pursuant to the methodology used by the administration pursuant to section 36-2903.01, Arizona Revised Statutes, the administration shall notify the governor, the president of the senate and the speaker of the house of representatives, shall distribute $4,202,300 to the Maricopa county special health care district and shall deposit the balance of the federal financial participation in the state general fund. If the certification provided is for an amount less than $113,818,500 and the administration determines that the revised amount is not correct pursuant to the methodology used by the administration pursuant to section 36-2903.01, Arizona Revised Statutes, the administration shall notify the governor, the president of the senate and the speaker of the house of representatives and shall deposit the total amount of the federal financial participation in the state general fund. If the certification provided is for an amount greater than $113,818,500, the administration shall distribute $4,202,300 to the Maricopa county special health care district and shall deposit $74,696,800 of the federal financial participation in the state general fund. The administration may make additional disproportionate share hospital payments to the Maricopa county special health care district pursuant to section 36-2903.01, subsection P, Arizona Revised Statutes, and subsection B of this section.

2. $28,474,900 for the Arizona state hospital. The Arizona state hospital shall provide a certified public expense form for the amount of qualifying disproportionate share hospital expenditures made on behalf of this state to the administration on or before March 31, 2023. The administration shall assist the Arizona state hospital in determining the amount of qualifying disproportionate share hospital expenditures. Once the administration files a claim with the federal government and receives federal financial participation based on the amount certified by the Arizona state hospital, the administration shall deposit the entire amount of federal financial participation in the state general fund. If the certification provided is for an amount less than $28,474,900, the administration shall notify the governor, the president of the senate and the speaker of the house of representatives and shall deposit the entire amount of federal financial participation in the state general fund. The certified public expense form provided by the Arizona state hospital must contain both the total amount of qualifying disproportionate share hospital expenditures and the amount limited by section 1923(g) of the social security act.

3. $884,800 for private qualifying disproportionate share hospitals. The Arizona health care cost containment system administration shall make payments to hospitals consistent with this appropriation and the terms of the state plan, but payments are limited to those hospitals that either:

(a) Meet the mandatory definition of disproportionate share qualifying hospitals under section 1923 of the social security act.

(b) Are located in Yuma county and contain at least three hundred beds.

B. After the distributions made pursuant to subsection A of this section, the allocations of disproportionate share hospital payments made pursuant to section 36-2903.01, subsection P, Arizona Revised Statutes, shall be made available in the following order to qualifying private hospitals that are:

1. Located in a county with a population of fewer than four hundred thousand persons.

2. Located in a county with a population of at least four hundred thousand persons but fewer than nine hundred thousand persons.

3. Located in a county with a population of at least nine hundred thousand persons.

Sec. 16. AHCCCS transfer; counties; federal monies; fiscal year 2022-2023

On or before December 31, 2023, notwithstanding any other law, for fiscal year 2022-2023 the Arizona health care cost containment system administration shall transfer to the counties the portion, if any, as may be necessary to comply with section 10201(c)(6) of the patient protection and affordable care act (P.L. 111-148), regarding the counties' proportional share of this state's contribution.

Sec. 17. County acute care contributions; fiscal year 2022-2023; intent

A. Notwithstanding section 11-292, Arizona Revised Statutes, for fiscal year 2022-2023 for the provision of hospitalization and medical care, the counties shall contribute the following amounts:

1.	Apache	$ 268,800
2.	Cochise	$ 2,214,800
3.	Coconino	$ 742,900
4.	Gila	$ 1,413,200
5.	Graham	$ 536,200
6.	Greenlee	$ 190,700
7.	La Paz	$ 212,100
8.	Maricopa	$16,887,200
9.	Mohave	$ 1,237,700
10.	Navajo	$ 310,800
11.	Pima	$14,951,800
12.	Pinal	$ 2,715,600
13.	Santa Cruz	$ 482,800
14.	Yavapai	$ 1,427,800
15.	Yuma	$ 1,325,100

B. If a county does not provide funding as specified in subsection A of this section, the state treasurer shall subtract the amount owed by the county to the Arizona health care cost containment system fund and the long-term care system fund established by section 36-2913, Arizona Revised Statutes, from any payments required to be made by the state treasurer to that county pursuant to section 42-5029, subsection D, paragraph 2, Arizona Revised Statutes, plus interest on that amount pursuant to section 44-1201, Arizona Revised Statutes, retroactive to the first day the funding was due. If the monies the state treasurer withholds are insufficient to meet that county's funding requirements as specified in subsection A of this section, the state treasurer shall withhold from any other monies payable to that county from whatever state funding source is available an amount necessary to fulfill that county's requirement. The state treasurer may not withhold distributions from the Arizona highway user revenue fund pursuant to title 28, chapter 18, article 2, Arizona Revised Statutes.

C. Payment of an amount equal to one-twelfth of the total amount determined pursuant to subsection A of this section shall be made to the state treasurer on or before the fifth day of each month. On request from the director of the Arizona health care cost containment system administration, the state treasurer shall require that up to three months' payments be made in advance, if necessary.

D. The state treasurer shall deposit the amounts paid pursuant to subsection C of this section and amounts withheld pursuant to subsection B of this section in the Arizona health care cost containment system fund and the long-term care system fund established by section 36-2913, Arizona Revised Statutes.

E. If payments made pursuant to subsection C of this section exceed the amount required to meet the costs incurred by the Arizona health care cost containment system for the hospitalization and medical care of those persons defined as an eligible person pursuant to section 36-2901, paragraph 6, subdivisions (a), (b) and (c), Arizona Revised Statutes, as amended by this act, the director of the Arizona health care cost containment system administration may instruct the state treasurer either to reduce remaining payments to be paid pursuant to this section by a specified amount or to provide to the counties specified amounts from the Arizona health care cost containment system fund and the long-term care system fund established by section 36-2913, Arizona Revised Statutes.

F. The legislature intends that the Maricopa county contribution pursuant to subsection A of this section be reduced in each subsequent year according to the changes in the GDP price deflator. For the purposes of this subsection, "GDP price deflator" has the same meaning prescribed in section 41-563, Arizona Revised Statutes.

Sec. 18. Accelerated nursing programs; distribution; annual report; delayed repeal

A. Of the amount appropriated in the general appropriations act in fiscal year 2022-2023 for accelerated nursing programs, the department of health services shall distribute $6,000,000 to a private university with a health sciences campus located in Phoenix, Arizona that offers a twelve-month accelerated nursing program. Monies distributed to the university shall be used for capital costs associated with adding a new cohort of accelerated nursing students.

B. Of the amount appropriated in the general appropriations act in fiscal year 2022-2023 for accelerated nursing programs, the department of health services shall distribute $44,000,000 to public and private universities and community colleges located in this state that offer accelerated nursing programs for the purpose of expanding program capacity. Priority shall be given to universities and community colleges that offer twelve-month accelerated nursing programs, but accelerated nursing programs up to eighteen months in length are also eligible. Each university that receives monies must demonstrate that all of the following occurs:

1. At least eighty percent of the monies received are used for the costs of providing scholarships and not more than twenty percent of the monies received are used for administrative expenses, including the costs of hiring faculty and purchasing equipment necessary to expand the accelerated nursing program. Monies may not be used for capital expansion costs.

2. Students receiving scholarships are enrolled in an accelerated nursing program that takes not more than eighteen months to complete.

3. Students receiving scholarships are required to enter into a contract to practice nursing in this state for at least four years after completing an accelerated nursing degree. The contract shall stipulate that if a student does not successfully complete an accelerated nursing program in good academic standing or does not fulfill the service commitment outlined in the contract, the student shall reimburse the university for all scholarship costs.

4. Any scholarship reimbursements received by the university will be used to provide scholarship awards to accelerated nursing students enrolled in newly added accelerated nursing program seats.

5. Scholarships awarded to accelerated nursing students are provided after all other financial gifts, aid or grants received by the student and do not exceed the actual cost of tuition and fees.

6. Monies received to provide scholarships do not supplant other institutional financial aid sources.

C. On or before September 1 of each year, each university that receives monies pursuant to subsection B of this section shall submit a report on the number of students who have received a scholarship, the

number of nurses who are currently completing the four-year service commitment and the number of students who have reimbursed the university to the department of health services. On or before October 1 of each year, the department of health services shall compile the information and transmit a report to the joint legislative budget committee and the governor's office of strategic planning and budgeting that includes the total funding distributions by each university.

D. This section is repealed from and after December 31, 2030.

Sec. 19. Proposition 204 administration; exclusion; county expenditure limitations

County contributions for the administrative costs of implementing sections 36-2901.01 and 36-2901.04, Arizona Revised Statutes, that are made pursuant to section 11-292, subsection O, Arizona Revised Statutes, are excluded from the county expenditure limitations.

Sec. 20. Competency restoration; exclusion; county expenditure limitations

County contributions made pursuant to section 13-4512, Arizona Revised Statutes, are excluded from the county expenditure limitations.

Sec. 21. AHCCCS; risk contingency rate setting

Notwithstanding any other law, for the contract year beginning October 1, 2022 and ending September 30, 2023, the Arizona health care cost containment system administration may continue the risk contingency rate setting for all managed care organizations and the funding for all managed care organizations administrative funding levels that were imposed for the contract year beginning October 1, 2010 and ending September 30, 2011.

Sec. 22. Health services lottery monies fund; use; fiscal year 2022-2023

Notwithstanding sections 5-572 and 36-108.01, Arizona Revised Statutes, monies in the health services lottery monies fund established by section 36-108.01, Arizona Revised Statutes, may be used for the purposes specified in the fiscal year 2022-2023 general appropriations act.

Sec. 23. Arizona health care cost containment system administration; rulemaking exemption; hospital assessment

Notwithstanding any other law, for the purposes of implementing the hospital assessment pursuant to section 36-2999.72, Arizona Revised Statutes, the Arizona health care cost containment system administration is exempt from the rulemaking requirements in title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this section, except that the administration must provide notice and an opportunity for public comment at least thirty days before establishing or implementing the administration of the hospital assessment.

Sec. 24. Chiropractic services; AHCCCS; report; delayed repeal

A. Subject to approval by the centers for medicare and medicaid services, the Arizona health care cost containment system administration and its contractors may provide medically necessary chiropractic services authorized by section 36-2907, subsection A, paragraph 15, Arizona Revised Statutes, as added by this act.

B. The Arizona health care cost containment system administration shall:

1. Prescribe the qualifying conditions under which the chiropractic services prescribed in section 36-2907, subsection A, paragraph 15, Arizona Revised Statutes, as added by this act, may be used.

2. Prescribe provider qualifications for chiropractic services.

3. Report on chiropractic service utilization and any identified cost savings.

C. On or before January 21, 2027, the Arizona health care cost containment system administration shall submit a report of its findings regarding the provision of chiropractic services to the governor, the president of the senate and the speaker of the house of representatives and shall provide a copy of the report to the secretary of state.

D. This section is repealed from and after June 30, 2027.

Sec. 25. Department of health services; rulemaking exemption; air ambulance service

Notwithstanding any other law, for the purposes of addressing air ambulance service medical staffing pursuant to title 36, chapter 21.1, article 1, Arizona Revised Statutes, the department of health services is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, for fiscal year 2022-2023.

Sec. 26. Legislative intent; implementation of program

The legislature intends that for fiscal year 2022-2023 the Arizona health care cost containment system administration implement a program within the available appropriation.

Sec. 27. Conditional enactment; notice

A. Section 36-2901, Arizona Revised Statutes, as amended by this act, does not become effective unless on or before July 1, 2023 the centers for medicare and medicaid services authorizes the Arizona health care cost containment system administration to either redetermine the eligibility of members who are less than one year postpartum and are under one hundred thirty-three percent of the federal poverty level or use another methodology that enables the administration to provide coverage for eligible postpartum women pursuant to section 36-2901, Arizona Revised Statutes, as amended by this act, within the existing appropriation.

B. The director of the Arizona health care cost containment system shall notify the director of the Arizona legislative council in writing on or before July 1, 2023 either:

1. Of the date on which the condition was met.

2. That the condition was not met.

APPROVED BY THE GOVERNOR JUNE 28, 2022.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 28, 2022.

36-2901.08. Hospital assessment

(Conditionally Rpld.)

A. The director shall establish, administer and collect an assessment on hospital revenues, discharges or bed days for the purpose of funding the nonfederal share of the costs, except for costs of the services described in section 36-2907, subsection F, that are incurred beginning January 1, 2014 and that are not covered by the proposition 204 protection account established by section 36-778 and the Arizona tobacco litigation settlement fund established by section 36-2901.02 or any other monies appropriated to cover these costs, for all of the following individuals:

1. Persons who are defined as eligible pursuant to section 36-2901.07.

2. Persons who do not meet the eligibility standards described in the state plan or the section 1115 waiver that were in effect immediately before November 27, 2000, but who meet the eligibility standards described in the state plan as effective October 1, 2001.

3. Persons who are defined as eligible pursuant to section 36-2901.01 but who do not meet the eligibility standards in either section 36-2934 or the state plan in effect as of January 1, 2013.

B. The director shall adopt rules regarding the method for determining the assessment, the amount or rate of the assessment, and modifications or exemptions from the assessment. The assessment is subject to approval by the federal government to ensure that the assessment is not established or administered in a manner that causes a reduction in federal financial participation.

C. The director may establish modifications or exemptions to the assessment. In determining the modifications or exemptions, the director may consider factors including the size of the hospital, the specialty services available to patients and the geographic location of the hospital.

D. Before implementing the assessment, and thereafter if the methodology is modified, the director shall present the methodology to the joint legislative budget committee for review.

E. The administration shall not collect an assessment for costs associated with service after the effective date of any reduction of the federal medical assistance percentage established by 42 United States Code section 1396d(y) or 1396d(z) that is applicable to this state to less than eighty per cent.

F. The administration shall deposit the revenues collected pursuant to this section in the hospital assessment fund established by section 36-2901.09.

G. A hospital shall not pass the cost of the assessment on to patients or third-party payors that are liable to pay for care on a patient's behalf. As part of its financial statement submissions pursuant to section 36-125.04, a hospital shall submit to the department of health services an attestation that it has not passed on the cost of the assessment to patients or third-party payors.

H. If a hospital does not comply with this section as prescribed by the director, the director may suspend or revoke the hospital's Arizona health care cost containment system provider agreement registration. If the hospital does not comply within one hundred eighty days after the director suspends or revokes the hospital's provider agreement, the director shall notify the director of the department of health services, who shall suspend or revoke the hospital's license pursuant to section 36-427.

36-2999.72. Hospital assessment; rules; collection; enforcement

(Conditionally Rpld.)

A. In addition to the assessment established pursuant to section 36-2901.08, beginning October 1, 2020, the director shall establish, administer and collect an assessment on hospital revenues, discharges or bed days with respect to inpatient or outpatient services, or both, for the purposes prescribed in section 36-2999.73.

B. The director shall adopt rules regarding the method for determining the assessment, the amount or rate of the assessment and modifications to or exemptions from the assessment. The assessment is subject to approval by the centers for medicare and medicaid services to ensure that the assessment is not established or administered in a manner that causes a reduction in federal financial participation.

C. The director may establish modifications to or exemptions from the assessment. In determining the modifications or exemptions, the director may consider such factors as the size of the hospital, the specialty services available to patients at the hospital and the geographic location of the hospital.

D. The director shall present any change to the hospital assessment methodology to the joint legislative budget committee for review.

E. The administration shall deposit, pursuant to sections 35-146 and 35-147, the monies collected pursuant to this section in the health care investment fund established by section 36-2999.73.

F. A hospital may not pass the cost of the assessment on to patients or third-party payors that are liable to pay for care on a patient's behalf. As part of its financial statement submissions pursuant to section 36-125.04, a hospital shall submit to the department of health services an attestation that it has not passed on the cost of the assessment to patients or third-party payors.

G. If a hospital does not comply with this section as prescribed by the director of the Arizona health care cost containment system, the director of the Arizona health care cost containment system may suspend or revoke the hospital's Arizona health care cost containment system provider agreement registration. If the hospital does not comply within one hundred eighty days after the director of the Arizona health care cost containment system suspends or revokes the hospital's provider agreement, the director of the Arizona health care cost containment system shall notify the director of the department of health services, who shall suspend or revoke the hospital's license pursuant to section 36-427.

36-2999.73. Health care investment fund; purposes; approval

(Conditionally Rpld.)

A. The health care investment fund is established consisting of the following:

1. Monies deposited in the fund pursuant to section 36-2999.72.

2. Interest earned pursuant to this section.

3. Legislative appropriations.

B. The director shall administer the health care investment fund. The director may not use fund monies to pay for the base reimbursement level for hospital services. The director shall use fund monies as necessary only for the purpose of funding the nonfederal share of the cost for the following:

1. To make directed payments to hospitals pursuant to 42 Code of Federal Regulations section 438.6(c) that supplement the base reimbursement level for hospital services to eligible persons as defined in section 36-2901.

2. To increase base reimbursement rates for services reimbursed under the administration's dental fee schedule and physician fee schedule, not including the physician drug fee schedule, to the extent necessary as determined by the administration to restore these providers' rates to the rate levels in existence before fiscal year 2008-2009, if these expenses do not exceed the lesser of $70,500,000 or twenty percent of the total assessment monies deposited pursuant to section 36-2999.72 for the fiscal year.

3. To pay for the nonfederal share of the costs for administrative expenses incurred by the administration or its agents in performing the activities authorized by this section, if these expenses do not exceed one percent of the total assessment monies deposited pursuant to section 36-2999.72 for the fiscal year.

C. The administration shall develop a process to ensure that contractors pass through directed payments to eligible providers in a timely manner. Contractors may not reduce contracted rates as a result of directed payments.

D. Monies in the health care investment fund:

1. Are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

2. Are continuously appropriated.

3. Are to be credited against the total hospital assessment to be collected pursuant to section 36-2999.72 for the subsequent fiscal year if not expended for the purposes authorized under this section within the same fiscal year the monies are deposited in the fund.

4. May not be used to supplant existing and future appropriations to the administration for existing and future programs.

E. The administration may not use the monies in the health care investment fund pursuant to this section until the centers for medicare and medicaid services approves the use of the assessment monies for directed hospital expenditures pursuant to 42 Code of Federal Regulations section 438.6(c) and federal financial participation eligibility for the directed hospital expenditures contemplated under this section.

F. On notice from the administration, the state treasurer shall invest and divest monies in the health care investment fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 20, Chapter 4, Article 1

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 2, 2024

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

FROM: Council Staff

DATE: March 14, 2024

SUBJECT: **DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS**
Title 20, Chapter 4, Article 1

Summary

This Five-Year Review Report (5YRR) from the Department of Insurance and Financial Institutions (Department) relates to seven (7) rules and one (1) table in Title 20, Chapter 4, Article 1 covering general provisions related to financial institutions. Specifically, the rules cover definitions, fingerprinting procedures, acceptance of other forms of identification, procedures to resolve claims against licensees' cash deposits, requirements regarding providing the Department immediate and detailed notice of the filing of any bankruptcy naming the licensee as debtor for certain classes of licensees named in rule, and licensing time-frames.

In the prior report for these rules, approved by the Council in April 2019, the Department indicates it did not propose to amend any rules.

Proposed Action

In the current report, the Department proposes to amend all the Sections and Table A in this Article. The Department indicates it has prepared a Notice of Proposed Rulemaking for Title 20, Chapter 4, Article 1 to replace all references to "Superintendent" with "Director," correct the name of the Department, update some definitions to reflect current industry practices, eliminate unnecessary definitions, repeal R20-4-103 because A.R.S. § 6-123.01 already addresses

fingerprint requirements, correct a statutory reference, and update the Licensing Time-frames rule and Table. The Department indicates it submitted a request to publish the rulemaking to the Governor's Office on October 5, 2023. The Department states, once it receives permission from the Governor's Office, it will publish the Notice. The Department indicates it hopes to move forward with an effective date before March 2024.

1. Has the agency analyzed whether the rules are authorized by statute?

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department states that the last rulemaking on this Article was in 2012 and added definitions to Section R20-4-102 and added new license types to the Licensing Time-frames table (18 A.A.R. 2622, October 19, 2012). The Department indicates that at that time it did not identify any economic impact to licensees from the changes in the Section or table. The Department plans to engage in a rule writing on this Article and will submit an economic, small business, and consumer impact report for the Article.

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 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.

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 mostly consistent with other rules and statutes except for rule R20-4-103 (Fingerprints). The Department indicates this rule is outdated and inconsistent with A.R.S. § 6-123.01. The Department plans to engage in rulemaking on this Article and, at that time, it plans to repeal Section R20-4-103 and simply rely on statute regarding fingerprinting requirements.

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 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?

Not applicable. The Department indicates there are no corresponding federal laws.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The Department indicates all the rules in this Article except Section R20-4-107 and Table A were adopted in 1991. The Department states R20-4-107 (Licensing Time-frames) and its accompanying table (Table A) are 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.

11. Conclusion

This 5YRR from the Department relates to seven (7) rules and one (1) table in Title 20, Chapter 4, Article 1 covering general provisions related to financial institutions. Specifically, the rules cover definitions, fingerprinting procedures, acceptance of other forms of identification, procedures to resolve claims against licensees' cash deposits, requirements regarding providing the Department immediate and detailed notice of the filing of any bankruptcy naming the licensee as debtor for certain classes of licensees named in rule, and licensing time-frames.

The Department proposes to amend all the Sections and Table A in this Article. The Department indicates it has prepared a Notice of Proposed Rulemaking for Title 20, Chapter 4, Article 1 to replace all references to "Superintendent" with "Director," correct the name of the Department, update some definitions to reflect current industry practices, eliminate unnecessary definitions, repeal R20-4-103 because A.R.S. § 6-123.01 already addresses fingerprint requirements, correct a statutory reference, and update the Licensing Time-frames rule and Table. The Department indicates it submitted a request to publish the rulemaking to the Governor's Office on October 5, 2023. The Department states, once it receives permission from the Governor's Office, it will publish the Notice. The Department indicates it hopes to move forward with an effective date before March 2024.

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, Cabinet Executive Officer
Executive Deputy Director

October 26, 2023

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

RE: Arizona Department of Insurance and Financial Institutions – Financial Institutions
Title 20, Chapter 4, Articles 1, 2, 4, and 5
Five-Year Review Report

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 November 30, 2023 for the following Articles in Title 20, Chapter 4:

- Article 1. General
- Article 2. Bank Organization and Regulation
- Article 4. Credit Unions
- Article 5. Consumer Lenders (formerly Small Loans)

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 Richardson, Cabinet Executive Officer,
Executive Deputy Director
Arizona Department of Insurance and Financial Institutions

Department of Insurance and Financial Institutions

Five-Year-Review Report

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 4. Department of Insurance and Financial Institutions –

Financial Institutions

Article 1. General

November 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 6-123

Specific Statutory Authority: A.R.S. §§ 6-121, 6-123(1), (3) and (4), 6-123.01 (Fingerprints); § 41-1073 (Licensing Time-frames)

2. The objective of each rule:

Rule	Objective
R20-4-101	**Scope of Article.** The objective of this Section is to explicitly clarify the scope of Title 20, Chapter 4, Article 1 of the Arizona Administrative Code ("Code"). This will help the public and the regulated communities understand that 1) all the rules in Article 1 apply to all activities of the Department of Insurance and Financial Institutions – Financial Institutions Division ("Department") and the Director of the Department ("Director"), and that 2) the rules in Article 1 are not limited in their application to a specific chapter of the A.R.S. or to a specific article of Chapter 4 of the Code.
R20-4-102	**Definitions.** The objective of this Section is to provide definitions of terms used in the rules that are not defined in the statutes or elsewhere in the rules. This information helps to prevent confusion by providing clarification of referenced definitions and further explanation.
R20-4-103	**Fingerprints.** The objective of this Section is to ensure applicants know how to supply fingerprints in acceptable form and format whenever the Department's rules require those submissions. The rule also clarifies that fingerprints must be supplied at the expense of the applicant or licensee. This rule helps to provide guidance on fingerprinting requirements.
R20-4-104	**Acceptance of Other Forms.** The objective of this Section is to reduce the cost burden imposed on applicants and licensees. This applies to many members of the regulated community that either do business across state lines, or are regulated both by the federal government and one or more state governments. The purpose of this rule is to make one

	set of forms and thus reduce the administrative expenses of preparing multiple sets of forms.
R20-4-105	**Claims Against a Deposit in Place of Bond.** The objective of this Section is to establish a fair and equitable procedure to resolve claims against licensees' cash deposits. This Section establishes guidelines that assist a person filing a claim against a deposit.
R20-4-106	**Bankruptcy.** The objective of this Section is to ensure the classes of licensees named in the rule give the Department immediate and detailed notice of the filing of any bankruptcy naming the licensee as a debtor. This rule provides guidance on when a licensee shall deliver notice of bankruptcy to the Director.
R20-4-107	**Licensing Time-frames.** The objective of this Section is to specify time-frames during which the agency will grant or deny each type of license it issues. This rule provides guidance to licensees and applicants of timeframe requirements.
Table A	**Licensing Time-frames.** The objective of the Table is to efficiently display the specific time-frames in a way that is easily understood. This rule provides guidance to licensees and applicants of timeframe requirements

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_**

Section R20-4-103 (Fingerprints) is outdated and inconsistent with A.R.S. 6-123.01. The Department plans to engage in a rulewriting on this Article in 2023 (See Item 14). At that time, it plans to repeal Section R20-4-103.

5. Are the rules enforced as written? **Yes _X__ No ___**

6. Are the rules clear, concise, and understandable? **Yes _X__ No ___**

7. Has the agency received written criticisms of the rules within the last five years? **Yes ___ No _X_**

8. Economic, small business, and consumer impact comparison:

The Department plans to engage in a rulewriting on this Article in 2023 (See Item 14). At that time, the Department will submit an economic, small business, and consumer impact comparison.

9. Has the agency received any business competitiveness analyses of the rules? **Yes ___ No _X_**

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Previous Course of Action (2018):

The Department did not propose a course of action for this Article in its previous five-year review report.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The 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 _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 R20-4-107 and Table A in 1991. Section R20-4-107 (Licensing Time-frames) and its accompanying table (Table A) 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 amend all the Sections and Table A in this Article. The Department has prepared a Notice of Proposed Rulemaking for Title 20, Chapter 4, Article 1 to replace all references to "Superintendent" with "Director," correct the name of the Department, update some definitions to reflect current industry practices, eliminate unnecessary definitions, repeal R20-4-103 because A.R.S. § 6-123.01 already addresses fingerprint requirements, correct a statutory reference, and update the Licensing Time-frames rule and Table. The Department submitted a request to publish the rulemaking to the Governor's Office on October 5, 2023. 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 March 2024.

ARTICLE 1. GENERAL

R20-4-101. Scope of Article

The rules in this Article apply to all activities of the Superintendent and to the interpretation of all Arizona statutes and rules administered by the Superintendent.

Historical Note

Former Rule 1. Former R4-4-101 repealed, new R4-4-101 adopted effective August 16, 1991 (Supp. 91-3). R20-4-101 recodified from R4-4-101 (Supp. 95-1).

R20-4-102. Definitions

In this Chapter, unless otherwise specified:

1. "Active management" means directing a licensee's activities by a responsible individual, who:
   a. Is knowledgeable about the licensee's Arizona activities;
   b. Supervises compliance with:
      i. The laws enforced by the Department of Financial Institutions as they relate to the licensee, and
      ii. Other applicable laws and rules; and
   c. Has sufficient authority to ensure compliance.
2. "Affiliate" has the meaning stated at A.R.S. § 6-901.
3. "Attorney General" means the Attorney General or an assistant Attorney General of the state of Arizona.
4. "Branch office" means any location within or outside Arizona, including a personal residence, but not including a licensee's principal place of business in Arizona, where the licensee holds out to the public that the licensee acts as a licensee.
5. "Business of a savings and loan association or savings bank" means receiving money on deposit subject to payment by check or any other form of order or request or on presentation of a certificate of deposit or other evidence of debt.
6. "Compensation" means, in applying that term's definition in A.R.S. §§ 6-901, 6-941, and 6-971, anything received in advance, after repayment, or at any time during a loan's life. This subsection expressly excludes the following items from those definitions of compensation:
   a. Charges or fees customarily received after a loan's closing including prepayment penalties, termination fees, reinvestment fees, late fees, default interest, transfer fees, impound account interest and fees, extension fees, and modification fees. However, extension fees and modification fees are compensation if the lender advances additional funds or increases the credit limit on an open-end mortgage as part of the extension or modification;
   b. Out-of-pocket expenses paid to independent third parties including appraisal fees, credit report fees, legal fees, document preparation fees, title insurance premiums, recording, filing, and statutory fees, collection fees, servicing fees, escrow fees, and trustee's fees;
   c. Insurance commissions;
   d. Contingent or additional interest, including interest based on net operating income; or
   e. Equity participation.
7. "Commercial finance transaction," as that term is used in this Section's definitions of the terms "Engaged in the business of making mortgage loans" and "Engaged in the business of making mortgage loans or mortgage banking loans," means a loan made primarily for other than personal, family, or household purposes.
8. "Control of a licensee," as used in A.R.S. §§ 6-903, 6-944, or 6-978, does not include acquiring additional fractional equity interests in a licensee by any person who already has the power to vote 51% or more of the licensee's outstanding voting equity interests.
9. "Correspondent contract," as that term is used in A.R.S. §§ 6-941, 6-943, 6-971, or 6-973, means an agreement between a lender and a funding source under which the funding source may fund, or is required to fund, loans originated by the lender.
10. "Cushion," as that term is used in R20-4-1811 or R20-4-1908, means funds that a servicer or lender may require a borrower to pay into an escrow or impound account before the borrower's periodic payments are available in the account to cover unanticipated disbursements.
11. "Directly or indirectly makes, negotiates, or offers to make or negotiate" and "Directly or indirectly making, negotiating, or offering to make or negotiate," as those phrases are used in A.R.S. §§ 6-901, 6-941, or 6-971, mean:
    a. Providing consulting or advisory services in connection with a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage loan transaction;
       i. To an investor, concerning the location or identity of potential borrowers, regardless of whether the person providing consulting or advisory services directly contacts any potential borrowers; or
       ii. To a borrower, concerning the location or identity of potential investors or lenders; or
    b. Providing assistance in preparing an application for a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage banking loan transaction, regardless of whether the person providing assistance directly contacts any potential investor or lender; and
    c. Processing a loan; but
    d. "Directly or indirectly makes, negotiates, or offers to make or negotiate" and "Directly or indirectly making, negotiating, or offering to make or negotiate" do not include:
       i. Providing clerical, mechanical, or word processing services to prepare papers or documents associated with a mortgage loan transaction, mortgage banking loan transaction, or commercial mortgage banking loan transaction;
       ii. Purchasing, selling, negotiating to purchase or sell, or offering to purchase or sell a mortgage loan, mortgage banking loan, or commercial mortgage banking loan already funded;
       iii. Making, negotiating, or offering to make additional advances on an existing open-ended mortgage loan, mortgage banking loan, or commercial mortgage loan including revolving credit lines;
       iv. Modifying, renewing, or replacing a mortgage loan, a mortgage banking loan, or a commercial mortgage loan already funded, if the parties to and security for the loan are the same as the original loan immediately before the modifica-

tion, renewal, or replacement, and if no additional funds are advanced and no increase is made in the credit limit on an open-ended loan. Replacing a loan means making a new loan simultaneously with terminating an existing loan.

12. "Electronic record" has the meaning stated at A.R.S. § 44-7002(7).
13. "Employee" means a natural person who has an employment relationship with a licensee that is acknowledged by both the person and the licensee, and:
    a. The person is entitled to payment, or is paid, by the licensee;
    b. The licensee withholds and remits, or is liable for withholding and remitting, payroll deductions for all applicable federal and state payroll taxes;
    c. The licensee has the right to hire and fire the employee and the employee's assistants;
    d. The licensee directs the methods and procedures for performing the employee's job;
    e. The licensee supervises the employee's business conduct and the employee's compliance with applicable laws and rules; and
    f. The rights and duties under subsections (13)(a) through (e) belong to the licensee regardless of whether another person also shares those rights and duties.
14. "Engaged in the business of making mortgage loans," as that phrase is used in A.R.S. § 6-902, and "engaged in the business of making mortgage loans or mortgage banking loans," as that phrase is used in A.R.S. § 6-942, mean the direct or indirect making of a total of more than five mortgage banking loans or mortgage loans, or both in a calendar year. Each loan counts only once as of its closing date. A person is not "engaged in the business of making mortgage loans or mortgage banking loans" if the person makes loans solely in commercial finance transactions in which no more than 35% of the aggregate value of all security taken by the investor on the closing date is a lien, or liens, on real property.
15. "Exclusive contract," as that term is used in A.R.S. §§ 6-912 and 6-991.02, means a written agreement in which a loan originator agrees to perform services as a loan originator subject to supervision and control by a person holding a certificate of exemption issued under A.R.S. § 6-912 on an exclusive basis. The agreement provides that the loan originator is expressly prohibited from performing loan origination or modification services for any other person during the time the agreement is in effect.
16. "Generally accepted accounting principles" has the meaning used by the Financial Accounting Standards Board or the American Institute of Certified Public Accountants.
17. "Holds out to the public," as used in this Section's definition of "branch office," means advertising or otherwise informing the public that mortgage banking loans, commercial mortgage loans, or mortgage loans are made or negotiated at a location. "Holds out to the public" includes listing a location on business cards, stationery, brochures, rate lists, or other promotional items. "Holds out to the public" does not include a clearly identified home or mobile telephone number on a business card or stationery.
18. "Loan," as that term is used in A.R.S. §§ 6-126(C)(6) and (8), means all loans negotiated or closed, without regard to the location of the real property collateral or type of loan.
19. "Loan Processing" means obtaining a loan application's supporting documents for use in underwriting.
20. "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.
21. "Property insurance," as that term is used in A.R.S. §§ 6-909 and 6-947, does not include flood insurance as that term is used in the Flood Disaster Protection Act of 1973, as modified by the National Flood Insurance Reform Act of 1994. 42 U.S.C. 4001, et seq.
22. "Reasonable investigation of the background," as that term is used in A.R.S. §§ 6-903, 6-943, or 6-976 means a licensee, at a minimum:
    a. Collects and reviews all the documents authorized by the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324a;
    b. Obtains a completed Employment Eligibility Verification (Form I-9);
    c. Obtains a completed and signed employment application;
    d. Obtains a signed statement attesting to all of an applicant's felony convictions, including detailed information regarding each conviction;
    e. Consults with the applicant's most recent or next most recent employer, if any;
    f. Inquiries regarding the applicant's qualifications and competence for the position;
    g. If for a loan officer, loan originator, loan processor, branch manager, supervisor, or similar position, obtains a current credit report from a credit reporting agency; and
    h. Investigates further if any information received in the above inquiries raises questions as to the applicant's honesty, truthfulness, integrity, or competence. An inquiry is sufficient after two attempts to contact a person, including at least one written inquiry.
23. "Record" has the meaning stated at A.R.S. § 44-7002(13).
24. "Registered to do business in this state" means:
    a. If an Arizona corporation, it is incorporated under A.R.S. Title 10, Chapter 2, Article 1;
    b. If a foreign corporation, it either transfers its domicile under A.R.S. Title 10, Chapter 2, Article 2, or obtains authority to transact business in Arizona under A.R.S. Title 10, Chapter 15, Article 1;
    c. If a business trust, it obtains authority to transact business in Arizona under A.R.S. Title 10, Chapter 18, Article 4;
    d. If an estate, it acts through a personal representative duly appointed by this state's Superior Court, under the provisions of A.R.S. Title 14, Chapter 3 or 4;
    e. If a trust, it delivers to the Superintendent an executed copy of the trust instrument creating the trust together with:

        All the current amendments, or

A true copy of the trust instrument certified accurate and complete by a trustee of the trust before a notary public;

f. If a general partnership, limited partnership, limited liability company, limited liability partnership, or limited liability limited partnership, it is organized under A.R.S. Title 29;

g. If a foreign general partnership, limited partnership, limited liability company, limited liability partnership, or limited liability limited partnership, it is registered with the Arizona Secretary of State's office under A.R.S. Title 29;

h. If a joint venture, association, or any entity not specified in this subsection, it is organized and conducts its business in compliance with Arizona law; or

i. The entity is exempt from registration.

25. "Registered Exempt Person" means a person who is exempt from licensure pursuant to A.R.S. § 6-912 and A.R.S. Title 6, Chapter 9, Articles 1, 2 and 3 as a federally chartered savings bank that is registered with the nationwide mortgage licensing system and registry and holds a certificate of exemption.

26. "Resident of this state" means a natural person domiciled in Arizona.

27. "Responsible individual" or "responsible person", as those terms are used in A.R.S. §§ 6-903, 6-943, 6-973, and 6-976, means a resident of this state who:

a. Lives in Arizona during the entire period of designation as the responsible individual on a license;

b. Is in active management of a licensee's affairs;

c. Meets the qualifications listed in A.R.S. §§ 6-903, 6-943, or 6-973; and

d. Is an officer, director, member, partner, employee, or trustee of a licensed entity.

Historical Note

Former Rule 2. Former R4-4-102 repealed, new R4-4-102 adopted effective August 16, 1991 (Supp. 91-3). R20-4-102 recodified from R4-4-102 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 2094, effective June 10 (Supp. 99-2). Amended by final rulemaking at 7 A.A.R. 668, effective January 10, 2001 (Supp. 01-1). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4). Amended by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

R20-4-103. Fingerprints

A. A licensee or applicant shall deliver fingerprints requested or required by the Superintendent on fingerprint cards provided by the Superintendent.

B. A licensee or applicant shall bear any costs incurred in obtaining or submitting fingerprints.

C. A licensee or applicant shall arrange to have fingerprints taken, signed, and dated by:

1. A municipal police department,
2. A local sheriff's office, or
3. Another law enforcement authority recognized by the Superintendent.

Historical Note

Former Rule 3. Former R4-4-103 repealed, new R4-4-103 adopted effective August 16, 1991 (Supp. 91-3). R20-4-103 recodified from R4-4-103 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4670, effective November 14, 2000 (Supp. 00-4).

R20-4-104. Acceptance of Other Forms

If another entity's applications and forms provide all the information required by Arizona law, the Superintendent has the discretion to accept them, even if another provision of this Chapter requires use of a specific Department of Financial Institutions form. The Superintendent's exercise of the discretion to accept alternative forms does not limit the Superintendent's power to require additional information necessary to complete an application or other form.

Historical Note

Former Rule 4. Former R4-4-104 repealed, new R4-4-104 adopted effective August 16, 1991 (Supp. 91-3). R20-4-104 recodified from R4-4-104 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4670, effective November 14, 2000 (Supp. 00-4).

R20-4-105. Claims Against a Deposit in Place of Bond

A. As used in this Section:

1. "Deposit" means cash or alternatives to cash deposited by a licensee with the Superintendent in place of a bond.
2. "Depositor" means licensee or an employee of the licensee who makes a deposit with the Superintendent.
3. "Verified claim" means a claim filed with the Superintendent under subsection (B).
4. "Award" means an amount of money granted under subsection (F).

B. A person may file a claim against a deposit by delivering documentation of the claim to the Superintendent. The claim shall be based on a final judgment in favor of the claimant, entered by a court of competent jurisdiction. To support a claim, the judgment shall be:

1. Against a depositor;
2. For injury caused by the depositor's wrongful act, default, fraud, or misrepresentation committed in the course of the depositor's licensed business activity; and
3. Documented by:
   a. A certified copy of the complaint in the action;
   b. A certified copy of the judgment in the action;
   c. A statement that execution of the judgment has not been stayed, or an explanation of the terms and reason for any stay;
   d. A statement of any amounts recovered on the judgment; and
   e. A sworn and notarized statement that the claim is true and correct to the best of the claimant's knowledge and belief.

C. A claimant shall file a claim with the Superintendent, and all required supporting documentation, not more than six months after entry of the judgment asserted in the claim. However, if execution of the asserted judgment is stayed during the first six months after its entry, the claimant may file a verified claim only during the six months after the stay is lifted. The Department shall process a timely-filed verified claim as a request for hearing under R20-4-1208.

D. The claimant shall notify the depositor of the filing of a verified claim under this Section, and make the depositor a party to all proceedings on the claim. To do so, the claimant shall send the depositor a copy of all documents filed under subsection (B). The claimant shall make this delivery no more than 10 days after the original filing with the Superintendent under subsection (B). The Department considers a proceeding on a

verified claim to be a contested case, governed by the provisions of 20 A.A.C. 4, Article 12.

E. The Superintendent shall, after a hearing, deny a verified claim if the hearing produces evidence of any of the following circumstances:
1. The judgment is not for an injury caused by the depositor and described in subsection (B)(2);
2. The judgment was awarded by default, stipulation, or consent, and no showing is made in the hearing of an injury caused by the depositor and described in subsection (B)(2);
3. The judgment's execution has been stayed for any reason;
4. The judgment was procured through fraud or collusion;
5. The judgment has been satisfied from other sources; or
6. The action that produced the judgment was barred by the applicable statute of limitations at the time it was commenced.

F. If the Superintendent grants a verified claim, the Superintendent shall do so in the amount of the compensatory damages awarded against the depositor in the judgment, exclusive of:
1. Attorney's fees, and
2. Amounts previously paid on the judgment.

G. A person injured by a depositor shall give the Superintendent written notice at the time of filing a civil action if the claims alleged could be made as a verified claim under this Section. The written notice shall include a statement of the amount of compensatory damages sought against the depositor. The injured person shall provide further information about the civil action to the Superintendent upon request.

H. If the Superintendent grants a verified claim under subsection (F), the Superintendent shall authorize the State Treasurer, in writing, to release the deposit to the claimant in the amount stated in subsection (F) if the Superintendent has not received notice of another pending civil action under subsection (G).

I. If given notice under subsection (G), the Superintendent shall determine whether the deposit is sufficient to satisfy all claims under subsection (F). The Superintendent shall determine award amounts for each claim of which the Superintendent has notice, and authorize payment, as follows:
1. If the deposit is sufficient to satisfy all claims under subsection (F), the Superintendent shall authorize its release as described in subsection (H).
2. If the deposit is not sufficient to satisfy all claims under subsection (F), the Superintendent shall calculate the award on each claim as follows:
   a. Each granted claim shall receive a pro rata share of the total deposit.
   b. Each pro rata share shall be a dollar amount calculated by multiplying the total deposit by a fraction.
      i. The numerator of the fraction is the amount of the Superintendent's award for the verified claim.
      ii. The denominator of the fraction is the sum of the amount of the Superintendent's award for the verified claim plus the total compensatory damages sought in all other civil actions against the same depositor disclosed to the Superintendent under subsection (G).
   c. The Superintendent shall authorize the State Treasurer to release the pro rata portion of the deposit calculated for each verified claim.

J. A depositor or former licensee may request return of its deposit if it substitutes a bond for the deposit, or if its license is surrendered, revoked, or expired, and if all statutory conditions for release of the deposit have been satisfied. The Superintendent shall not release any part of a deposit to a depositor or former licensee until the Superintendent determines whether there are any awards on verified claims unsatisfied because of an apportionment under subsection (I). The Superintendent shall use the deposit amount to pay any unsatisfied portion of those awards. If the deposit amount is not sufficient to pay in full all unsatisfied awards, the Superintendent shall pay the remaining amount of the deposit to claimants in the ratio their awards bear to the total of all awards granted against the deposit.

K. The court supervising a licensee in receivership may order the release of a deposit to persons injured by conduct described in subsection (B). In that event, the receiver shall deliver a certified copy of the court's order to the Superintendent. The copy may be uncertified if the receiver is the Superintendent or any other officer or agency of the state of Arizona. The Superintendent shall then authorize the State Treasurer, in writing, to release the deposit to the receiver. The receiver shall distribute the deposit as ordered by the receivership court, rather than under this Section.

Historical Note
Adopted effective August 16, 1991 (Supp. 91-3). R20-4-105 recodified from R4-4-105 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4670, effective November 14, 2000 (Supp. 00-4).

R20-4-106. Bankruptcy

An enterprise licensee or consumer lender licensee shall immediately deliver written notice to the Superintendent if it files a voluntary bankruptcy petition, or if its creditors name the licensee a debtor in an involuntary bankruptcy petition. On the date of each of the following documents' filing with the bankruptcy court, the licensee shall deliver to the Superintendent a copy of the:
1. Petition for relief,
2. Schedule of assets and liabilities,
3. Statement of financial affairs,
4. List of creditors, and
5. Plan of reorganization.

Historical Note
Adopted effective August 16, 1991 (Supp. 91-3). R20-4-106 recodified from R4-4-106 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4).

R20-4-107. Licensing Time-frames

A. As used in this Section, "application" means a document specified or described in this Title, or in any statute enforced by the Department, requesting any permit, certificate, approval, registration, charter, or similar permission described in Table A, together with all supporting documentation required by statute or rule.

B. The time-frames in Table A apply solely to applications received by the Department after the effective date of this Section. Each overall time-frame consists of an administrative completeness review time-frame, and a substantive review time-frame. The administrative completeness review time-frame begins to run upon receipt of an application by the Department.
1. Within the administrative completeness review time-frame in Table A, the Department shall notify the applicant in writing whether the application is complete. If the application is incomplete, the notice shall specify the missing information or component.

2. An applicant whose application is incomplete shall supply the missing information within 60 days after the date of the notice. If an applicant shows good cause in writing before the expiration of the 60 day time limit, the Superintendent shall extend the period for administrative completion of an application. The administrative completeness review time-frame stops running on the postmark 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 shall reject the application and close the file. An applicant may reapply.
3. The substantive review time-frame begins to run on the postmark date of the Department's written notice that the application is administratively complete.
4. Within the overall time-frame set forth in Table A the Department shall send the applicant written notice of its decision to approve, conditionally approve, or deny a license, unless the time-frame is extended by mutual agreement under A.R.S. § 41-1075. If the Department denies an application, it shall provide written justification for the denial and a written explanation of the applicant's right to a hearing or appeal in the form required by A.R.S. § 41-1076.
5. The Department shall calculate time limits prescribed in this Section under R2-19-107.

C. The time-frames in this Section apply solely to actions taken by the Department. Nothing in this Section relieves a licensee or applicant of a duty to fulfill any other legal or regulatory requirement that is a condition of its power and authority to engage in business.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3).
Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4).

Table A. Licensing Time-frames

No.	License Type	Legal Authority	Administrative Completeness Review (Days)	Substantive Review (Days)	Overall Time-Frame (Days)
1	Bank	A.R.S. § 6-203, et seq.			
	Initial Application	R20-4-211	45	45	90
2	Bank Trust Dept.	A.R.S. § 6-381			
	Initial Application	A.R.S. § 6-203, A.R.S. § 6-204(C)	45	45	90
3	Savings & Loan	A.R.S. § 6-401, et seq.			
	Initial Application	A.R.S. § 6-408, R20-4-327	75	75	150
4	Credit Union	A.R.S. § 6-501, et seq.			
	Initial Application	A.R.S. § 6-506(A)	60	60	120
5	Trust Company	A.R.S. § 6-851, et seq.			
	Initial Application	A.R.S. § 6-854(A)	75	75	150
6	Consumer Lender	A.R.S. § 6-601, et seq.			
	Initial Application	A.R.S. § 6-603(C)	60	60	120
7	Debt Management	A.R.S. § 6-701, et seq.			
	Initial Application	A.R.S. § 6-704(A), R20-4-602(A)	30	30	60
8	Escrow Agent	A.R.S. § 6-801, et seq.			
	Initial Application	A.R.S. § 6-814	60	60	120
9	Mortgage Broker or Commercial Mortgage Broker	A.R.S. § 6-901, et seq.			
	Initial Application	A.R.S. § 6-903(C) & (D)	60	60	120
10	Mortgage Banker	A.R.S. § 6-941, et seq.			
	Initial Application	A.R.S. § 6-943(D)	60	60	120
11	Commercial Mortgage Banker	A.R.S. § 6-971, et seq.			
	Initial Application	A.R.S. § 6-974(A)	60	60	120

12	Acquisition of Control of Financial Institution	R20-4-1602, R20-4-1702			
	Initial Application	A.R.S. 6-1104	30	30	60
13	Money Transmitter	A.R.S. § 6-1201, et seq.			
	Initial Application	A.R.S. § 6-1204(A)	60	60	120
14	Advance Fee Loan Broker	A.R.S. § 6-1301, et seq.			
	Initial Application	A.R.S. § 6-1303(A)	30	30	60
15	Premium Finance Co.	A.R.S. § 6-1401, et seq.			
	Initial Application	A.R.S. § 6-1402(C)	60	60	120
16	Collection Agency	A.R.S. § 32-1001, et seq.			
	Initial Application	A.R.S. § 32-1021, R20-4-1502	30	15	45
17	Motor Vehicle Dealer	A.R.S. § 44-281, et seq.			
	Initial Application	A.R.S. § 44-282(B)	30	15	45
18	Sales Finance Co.	A.R.S. § 44-281, et seq.			
	Initial Application	A.R.S. § 44-282(B)	30	15	45
19	Certificate of Exemption	A.R.S. § 6-912			
	Initial Application	A.R.S. § 6-912(B)	45	45	90
20	Loan Originators	A.R.S. § 6-991, et seq.			
	Initial Application	A.R.S. § 6-991.04(A)	60	60	120

Historical Note
Table A adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 8 A.A.R. 145, effective December 10, 2001 (Supp. 01-4). Amended by final rulemaking at 18 A.A.R. 2622, effective December 2, 2012 (Supp. 12-4).

ARTICLE 2. BANK ORGANIZATION AND REGULATION

R20-4-201. Articles of Incorporation
A licensee shall deliver to the Director a copy of each amendment to the licensee's articles of incorporation within 30 days after the amendment is filed with the Arizona Corporation Commission. Before delivery to the Director, an officer of the licensee shall certify the copy delivered in compliance with this Section, in writing, signed by the certifying officer, attesting to the completeness, accuracy, and authenticity of the certified copy.

Historical Note
Former Rule 1. R20-4-201 recodified from R4-4-201 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 811, effective January 10, 2001 (Supp. 01-1). Amended by final rulemaking at 29 A.A.R. 1919 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-202. Bylaws
A licensee shall deliver to the Director a copy of each amendment to the licensee's bylaws within 30 days after the amendment is adopted. An officer of the licensee shall certify the copy delivered in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.

Historical Note
Former Rule 2. R20-4-202 recodified from R4-4-202 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 811, effective January 10, 2001 (Supp. 01-1). Amended by final rulemaking at 29 A.A.R. 1919 (September 1, 2023), effective October 8, 2023 (Supp. 23-3).

R20-4-203. Repealed

Historical Note
Former Rule 3; Amended subsection (C) effective September 4, 1981 (Supp. 81-5). R20-4-203 recodified from R4-4-203 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-204. Repealed

Historical Note
Former Rule 4. R20-4-204 recodified from R4-4-204 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-205. Repealed

Historical Note
Former Rule 5. R20-4-205 recodified from R4-4-205 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3).

R20-4-206. Bankers Blanket Bond Coverage - A.R.S. § 6-188
A. Each bank shall carry at least the following basic blanket bond coverage listed in Table B.
B. Each bank shall supplement the bankers blanket bond coverage with at least a $2,000,000 excess fidelity bond.

Historical Note
Former Rule 6. R20-4-206 recodified from R4-4-206 (Supp. 95-1). Amended by final rulemaking at 29 A.A.R.

6-123. Deputy director; powers

In addition to the other powers, express or implied, the deputy director may:

1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises.

2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises.

3. Require appropriate records, documents, information and reports from any financial institution or enterprise.

4. Submit to the department of public safety, or the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor, the name and fingerprints of any applicant, licensee, active manager or responsible individual or the name and fingerprints of any organizer, director or officer of any corporate applicant or licensee for:

(a) A banking permit.

(b) Permission to organize a savings and loan association or credit union.

(c) Any license.

(d) Any certificate.

(e) Authority to engage in interstate banking and branching in this state.

The department of public safety shall report the criminal record, if any, of such applicant, licensee or organizer, director or officer of such corporate applicant or licensee within ninety days after receiving the deputy director's request.

5. Employ appraisers to appraise any property that is owned or held as security by any financial institution or enterprise. The reasonable expenses and compensation of such appraisers shall be paid by the financial institution or enterprise.

6. Hold membership in, pay dues to and attend the convention of the national and regional organizations of state officials occupying like offices or performing similar functions.

7. Cooperate with other regulatory agencies and professional associations to promote the efficient, safe and sound operation and regulation of interstate banking and branching activities, including the formulation of interstate examination policies and procedures and the drafting of model rules and agreements.

8. Participate in the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116), or its successor, and use the system for all aspects of licensure pursuant to this title, title 32, chapter 9 and title 44, chapter 2.1. The deputy director may allow the system to collect licensing fees on behalf of the deputy director, to collect a processing fee for the services of the system directly from each applicant for a license or licensee and to process and maintain records on behalf of the deputy director, including information collected pursuant to this section and section 6-123.01. This paragraph does not affect the records disclosure requirements and limitations prescribed in section 6-129.01.

6-121. Examination; supervision

All financial institutions and enterprises shall be subject to examination and supervision by the department.

6-123.01. Fingerprint requirements; fees

A. Before receiving and holding a license, permit, certificate or permission to organize a bank, savings and loan association or credit union, the deputy director may require an applicant, licensee, active manager or responsible individual, an organizer, director or officer of any corporate applicant or licensee, any individual in control of a licensee or applicant, any individual who seeks to acquire control of a licensee or each key individual to submit a full set of fingerprints and fees to the department. The department of insurance and financial institutions shall submit the fingerprints and fees to the department of public safety, or the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor, for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

B. The fees that the department collects under subsection A of this section shall be credited pursuant to section 35-148.

C. The applicant is responsible for providing the department with readable fingerprints. The applicant shall pay any costs that are attributable to refingerprinting due to the unreadability of any fingerprints and any fees that are required for the resubmission of fingerprints.

D. The department may issue a temporary license or certificate or grant temporary permission to organize to an original applicant before the department receives the results of a criminal records check if there is not evidence or reasonable suspicion that the applicant has a criminal history background that would be cause for denial of a license, certificate or permission to organize. The department may terminate the temporary license or certificate or permission to organize if a fingerprint card is returned as unreadable and the applicant fails to submit new fingerprints within ten days after being notified by the department that the original card was unreadable or if the results of the criminal records check reveal grounds for the denial of the license or certificate or permission to organize. The temporary license or certificate or permission to organize shall not be effective longer than one hundred eighty days.

E. The deputy director may require a current licensee, organizer, director, active manager, responsible individual or officer of any corporate licensee to submit a full set of fingerprints to the department. The department of insurance and financial institutions shall submit the fingerprints and fees 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.

F. This section does not affect the department's authority to otherwise issue, deny, cancel, terminate, suspend or revoke a license.

41-1073. Time frames; exception

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.

2. The resources of the agency granting or denying the license.

3. The economic impact of delay on the regulated community.

4. The impact of the licensing decision on public health and safety.

5. The possible use of volunteers with expertise in the subject matter area.

6. The possible increased use of general licenses for similar types of licensed businesses or facilities.

7. The possible increased cooperation between the agency and the regulated community.

8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.

2. Within seven days after receipt of initial application.

3. By a lottery method.

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 20, Chapter 4, Article 2

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 2, 2024

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

FROM: Council Staff

DATE: **March 11, 2024**

SUBJECT: **DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS**
Title 20, Chapter 4, Article 2

Summary

This Five Year Review Report from the Department of Insurance and Financial Institutions (Department) covers eight (8) rules in Title 20, Chapter 4, Article 2 related to Bank Organization and Regulation. This Article applies to an entity that holds a banking permit issued by the Department. Specifically, the purpose of these rules are to ensure the Directors have accurate information regarding bylaws, articles of incorporation, and permit applications; to protect banks from embezzlement, forgery, theft; specifies documentation required for the issuance of capital obligations by state-chartered banks and regulates the substance of the contractual rights of investors in capital obligations; to specify the notice requirements; to provide a detailed retention schedule; and to standardize rules for trust businesses.

Proposed Action

The Department did not have a proposed course of action in its prior 5YRR as the Department was newly created on July 1, 2020. This is the first 5YRR for this Article since its enactment. The Department does not have a proposed course of action as the Department recently conducted a rulemaking for this Article that was approved by Council on August 1, 2023.

1. **Has the agency analyzed whether the rules are authorized by statute?**

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department states that the last rulemaking on this Article was in 2023 which became effective on October 8, 2023 (29 A.A.R. 1919, September 1, 2023). The statutory sections governing bank organizations and regulation, according to the Department, are found in A.R.S. Title 6, Chapter 2 (A.R.S. §§ 6-181 through 6-395.15). The changes the Department proposed reflected the structural changes to the former Department of Financial Institutions which merged with the Department of Insurance to form the Department of Insurance and Financial Institutions, on July 1, 2020. When reviewing the rules the Department states it endeavored to modernize the rules since the most recent rulemaking for the Article was in 2001.

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 current rulemaking offers the least intrusive and least costly alternative method to achieve the purpose of the regulation of banks holding a banking permit in Arizona.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department states it has not received any written criticisms in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department states the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Department states the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department states the rules are effective in achieving the objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Department states the rules are currently enforced as written.

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

The Department states the rules are not more stringent than corresponding federal law.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department states a general permit does not apply as pursuant to A.R.S. § 6-201(A), no person can engage in banking business in Arizona without a banking permit issued by the Department.

11. **Conclusion**

This Five Year Review Report from the Department of Insurance and Financial Institutions covers eight rules in Title 20, Chapter 4, Article 2 related to Bank Organization and Regulation. As indicated above, the rules are clear, concise, and understandable and consistent with other rules and statutes. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

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, Cabinet Executive Officer
Executive Deputy Director

October 26, 2023

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

RE: Arizona Department of Insurance and Financial Institutions – Financial Institutions
Title 20, Chapter 4, Articles 1, 2, 4, and 5
Five-Year Review Report

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 November 30, 2023 for the following Articles in Title 20, Chapter 4:

- Article 1. General
- Article 2. Bank Organization and Regulation
- Article 4. Credit Unions
- Article 5. Consumer Lenders (formerly Small Loans)

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 Richardson, Cabinet Executive Officer,
Executive Deputy Director
Arizona Department of Insurance and Financial Institutions

Department of Insurance and Financial Institutions

Five-Year-Review Report

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 4. Department of Insurance and Financial Institutions –

Financial Institutions

Article 2. Bank Organization and Regulation

November 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 6-123

Specific Statutory Authority: A.R.S. §§ 6-181(9), 6-188, 6-189, 6-190(D), 6-203, 6-242, and 6-381

2. The objective of each rule:

Rule	Objective
R20-4-201	**Articles of Incorporation.** The objective of this Section is to ensure the Director has timely and accurate information on the current text of each bank licensee's articles of incorporation. This rule provides guidance of how and when a licensee shall provide articles of incorporation to the Director.
R20-4-202	**Bylaws.** The objective of this Section is to ensure the Director has timely and accurate information on the current text of each bank licensee's bylaws. This rule provides guidance of how and when a licensee shall provide bylaws to the Director.
R20-4-206	**Bankers Blanket Bond Coverage – A.R.S. 6-188.** The objective of this Section is to ensure protection for licensee banks, for their shareholders, and for their depositors against the risks of losses caused by embezzlement, forgery, theft, and other similar and foreseeable injuries. This rule provides guidance on the levels of blanket bond coverage required for each bank based on deposits.
R20-4-207	**Capital Options.** The objective of this Section is twofold. First, it specifies documentation required in support of a request for the Director's approval for the issuance of capital obligations by state-chartered banks. Second, it regulates the substance of the contractual rights of investors in capital obligations. This rule provides guidance to the bank on documentation and reporting requirements to the Director on capital obligations.
R20-4-209	**Notice of Permanent Closing of Banking Office.** The objective of this Section is to specify the notice requirements imposed by the Director and to inform the regulated community of the licensure consequences of closure. This rule provides guidance on notification of permanent closing of a banking office to the Director.

R20-4-211	**Application for a Banking Permit.** The objective of this Section is to provide the Director with information in support of the required application, in a standardized format, and in sufficient detail to permit a rational decision on whether to issue or amend the subject permit. This rule provides guidance to an individual, group, or representative(s) about the procedures for applying for a bank permit.
R20-4-214	**Preservation of Records.** The objective of this Section is to comply with A.R.S. § 6-242, and to provide detailed record retention schedules for banks licensed by the Department. The rule provides guidance to banks on bank records retention and preservation requirements.
R20-4-215	**Trust Business.** The objective this Section is to subject banks engaged in the trust business to the same substantive administrative rules as other licensees engaged in trust business. This rule provides guidance to banks that are engaged in trust business that they are subject to the same administrative rules as licensees engaged in trust business.

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 2023, the Department engaged in a rulewriting for this Article which became effective on October 8, 2023. (29 A.A.R. 1919, September 1, 2023). At that time, the Department submitted an EIS for Article 2.

9. **Has the agency received any business competitiveness analyses of the rules?** **Yes ___** **No _X_**

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Previous Course of Action (2018):

The Department did not propose a course of action for this Article in its previous five-year review report.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The 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 _X_

Section R20-4-214 (Preservation of Records) yields to a pre-emptive law or regulation even if the federal law requires a shorter or longer retention period than required by the Arizona rule. Section R20-4-214 is not more stringent than corresponding federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Not applicable. Pursuant to A.R.S. § 6-201(A), no person can engage in banking business in Arizona without a banking permit issued by the Department. A general permit is not applicable to banking business.

14. Proposed course of action

The Department does not propose any course of action for this Article. In 2023, the Department engaged in a rulewriting for all the Sections of this Article which became effective on October 8, 2023. (29 A.A.R. 1919, September 1, 2023).

§ R20-4-201. Articles of Incorporation

A licensee shall deliver to the Director a copy of each amendment to the licensee's articles of incorporation within 30 days after the amendment is filed with the Arizona Corporation Commission. Before delivery to the Director, an officer of the licensee shall certify the copy delivered in compliance with this Section, in writing, signed by the certifying officer, attesting to the completeness, accuracy, and authenticity of the certified copy.

History:

Former Rule 1. R20-4-201recodified from R4-4-201 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 811, effective January 10, 2001 (Supp. 01-1). Amended by final rulemaking at 29 A.A.R. 1919, effective 10/8/2023.

§ R20-4-202. Bylaws

A licensee shall deliver to the Director a copy of each amendment to the licensee's bylaws within 30 days after the amendment is adopted. An officer of the licensee shall certify the copy delivered in compliance with this Section, in writing, attesting to the completeness, accuracy, and authenticity of the certified copy.

History:

Former Rule 2. R20-4-202recodified from R4-4-202 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 811, effective January 10, 2001 (Supp. 01-1). Amended by final rulemaking at 29 A.A.R. 1919, effective 10/8/2023.

§ R20-4-203. [Repealed]

History:

Former Rule 3; Amended subsection (C) effective September 4, 1981 (Supp. 81-5). R20-4-203 recodified from R4-4-203 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

§ R20-4-204. [Repealed]

History:

Former Rule 4. R20-4-204 recodified from R4-4-204 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

§ R20-4-205. [Repealed]

History:

Former Rule 5. R20-4-205 recodified from R4-4-205 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3).

§ R20-4-206. Bankers Blanket Bond Coverage - A.R.S. Section 6-188

A. Each bank shall carry at least the following basic blanket bond coverage:

Banks with Deposits of:		Amounts:	
Less than $25,000,000		$300,000	
25,000,000	to	35,000,000	350,000
35,000,000	to	50,000,000	450,000
50,000,000	to	75,000,000	550,000
75,000,000	to	100,000,000	700,000
100,000,000	to	150,000,000	850,000
150,000,000	to	250,000,000	1,200,000
250,000,000	to	500,000,000	1,700,000
500,000,000	to	1,000,000,000	2,500,000
1,000,000,000	to	2,000,000,000	4,000,000
2,000,000,000	to	5,000,000,000	6,000,000
5,000,000,000	to	20,000,000,000	9,000,000
Over 20,000,000,000			10,000,000

B. Each bank shall supplement the bankers blanket bond coverage with at least a $2,000,000 excess fidelity bond.

History:

Former Rule 6. R20-4-206recodified from R4-4-206 (Supp. 95-1). Amended by final rulemaking at 29 A.A.R. 1919, effective 10/8/2023.

§ R20-4-207. Capital Obligations

A. An applicant for a Director's order of approval to issue a capital obligation shall submit the following documents to the Director and shall not issue any capital obligation before the Director issues the order of approval. The required documents are:

1. A certified copy of the resolution adopted by the Board of Directors, or a certified copy of the unanimous written consent of the Board of Directors, authorizing the sale of the capital obligation;

2. A copy of the agreement underlying the capital obligation;

3. A copy of the note or debenture intended to represent the capital obligation; and

4. A copy of the prospectus, if any, proposed for use in the sale of the capital obligation.

B. Each document evidencing a capital obligation shall:

1. Bear on its face, in bold face type, the following: This obligation is not a deposit and is not insured by the Federal Deposit Insurance Corporation.

2. Have a maturity provision that either:

a. Gives the obligation a maturity of at least five years, or

b. In the case of an obligation or issue that provides for scheduled repayments of principal, gives an average maturity of at least five years. The restriction on maturity stated in this subsection does not apply to any obligation that otherwise meets all the requirements of this rule if the Director determines that exigent circumstances require the issuance of the obligation without regard to any restriction on maturity. The provisions of this subsection do not apply to mandatory convertible debt obligations or issues.

3. State expressly on its face that the obligation:

a. Is subordinated and junior in right of payment to the issuing bank's obligations to its depositors and to the bank's other obligations to its general and secured creditors, and

b. Is ineligible as collateral for a loan by the issuing bank, except as provided in A.R.S. §6-354.

4. Be unsecured.

5. State expressly on its face that the issuing bank may not retire any part of its capital obligation without the Director's prior written order of approval, and the prior written consent of the Federal Deposit Insurance Corporation.

6. Include, if the obligation is issued to a depository institution, a specific waiver of the right of offset by the lending depository institution.

7. State that, in the event of liquidation, all depositors and other creditors of the bank are to be paid in full before any payment of principal or interest is made on a capital obligation.

C. No payment shall be made under an optional right of payment reserved to the bank without the separate authorization of the Director. The Director may grant that authority in the initial order of approval or in a later order of approval.

History:

Former Rule 7. R20-4-207recodified from R4-4-207 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 2155, effective May 4, 2001 (Supp. 01-2). Amended by final rulemaking at 29 A.A.R. 1919, effective 10/8/2023.

§ R20-4-208. [Repealed]

History:

Former Rule 8. R20-4-208 recodified from R4-4-208 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3).

§ R20-4-209. Notice of Permanent Closing of Banking Office

A bank may close fewer than all of its banking offices. Before closing any office, a bank shall deliver a letter to the Director specifying the banking office it plans to close and the closing date. The bank shall ensure that the Director receives the letter at least 10 days before the closing date. Closing the banking office shall terminate the bank's authority to maintain that banking office on the date of the actual closure.

History:

Former Rule 9. R20-4-209recodified from R4-4-209 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 5388, effective November 9, 2001 (Supp. 01-4). Amended by final rulemaking at 29 A.A.R. 1919, effective 10/8/2023.

§ R20-4-210. [Repealed]

History:

Former Rule 10. R20-4-210 recodified from R4-4-210 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3).

§ R20-4-211. Application for a Banking Permit

A. Before an application is filed, the representatives of the potential applicant shall meet with the Director to discuss capitalization, location, and management of the proposed bank.

B. After the meeting required by subsection (A), persons who wish to proceed with the application process shall submit an application in the form the Director prescribes. The applicant shall support the application with sufficient information to enable the Director to make a determination.

History:

Former Rule 11. R20-4-211recodified from R4-4-211 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 3188, effective August 3, 2000 (Supp. 00-3). Amended by final rulemaking at 29 A.A.R. 1919, effective 10/8/2023.

§ R20-4-212. [Repealed]

History:

Former Rule 12. Amended effective September 4, 1981 (Supp. 81-4). R20-4-212 recodified from R4-4-212 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

§ R20-4-213. [Repealed]

History:

Former Rule 13. Repealed effective September 13, 1981 (Supp. 81-5). R20-4-213 recodified from R4-4-213 (Supp. 95-1).

§ R20-4-214. Preservation of Records

A. Every bank shall keep its corporate and business records as originals or as copies of the originals made by reproduction methods that accurately and permanently preserve the records. Copies complying with this subsection, when satisfactorily identified, have the same evidentiary status as an original. A bank may keep its records as electronic records if the bank can generate all information and copies required by this Section within the timeframe set by the Department for examination or other purposes.

B. A bank shall keep its corporate and business records for the period required by this Section. These periods are measured from the date of the last entry or final action date. A bank shall have and comply with its own record retention schedule that is consistent with this Section. A bank may comply with this Section by complying with a preemptive federal regulation, even if the federal regulation requires a shorter retention period than is listed in this Section. This Section does not prohibit record retention for longer periods than these state-required minimums for any reason, including a retention period established by preemptive federal law or regulation. Likewise, this Section does not prohibit a bank from keeping any type of record not required in subsection (D).

C. Beginning on the effective date of this Section, corporate and business records of a bank operating in the state of Arizona are classified, and their retention periods are prescribed, according to the schedule in subsection (D). Retention periods are listed in subsection (D) using the notations, acronyms, and abbreviations listed in this subsection (C).

1. A numerical designation refers to a period of years unless a shorter period of time is specified in the schedule.

2. "AC" means after closure.

3. "ACH" means automated clearing house.

4. "AE" means after expiration.

5. "ALC" means after last contact.

6. "AP" means after paid.

7. "ATD" means after termination date.

8. "CTR" means a cash transaction report required by the Federal Bank Secrecy Act.

9. "FDIC" means the Federal Deposit Insurance Corporation.

10. "FHA" means the Federal Housing Administration.

11. "FHLMC" means the Federal Home Loan Mortgage Corporation.

12. "FNMA" means the Federal National Mortgage Association.

13. "GNMA" means the Government National Mortgage Association.

14. "IRS" means the United States Department of the Treasury's Internal Revenue Service.

15. "M" means months.

16. "P" means the bank shall keep the record permanently.

17. "PMI" means private mortgage insurance.

18. "SAR" means a suspicious activity report required by the Federal Bank Secrecy Act.

19. "TTL" means a treasury, tax, and loan account maintained by a bank.

20. "UCC" means the Uniform Commercial Code as it is in effect in Arizona.

D. Retention Schedule

1. Accounting and Auditing

a.	Accrual and bond amortization	3
b.	Audit report	6
c.	Audit work papers	3
d.	Bank call, income and dividend report	5
e.	Bill, statement, or invoice - paid	7
f.	Budget work papers	2
g.	Collateral vault " in-and-out" ticket	1

h.	Daily reserve computation	1
i.	Earnings report	7
j.	Expense voucher or invoice	7
k.	Financial statement	7
l.	Interoffice reconciliation	1
m.	Interoffice transaction	1
n.	Periodic statement for account owned by bank	2
o.	Reconcilement of deposits - due to bank	2
p.	Reconcilement register - due from bank	2
q.	Return and cash item register	1
r.	Service contract	2
s.	Treasury tax and loan account	2
t.	Unclaimed property record	5

2. Administration

a.	Articles of incorporation or association, bylaws or other record of organization	P
b.	Bankers blanket bond-record showing compliance	5AE
c.	Bank examiner's report	7
d.	Capital note issuance and transfer record	P
e.	Depreciation record - office equipment	3
f.	Dividend check and register	7

g.	Dividend check - outstanding	P
h.	Expired policy insuring the bank	3 AE
i.	FDIC assessment base, record	5
j.	FDIC certificate	P
k.	Insurance policy number, record of premium paid and amount recovered	3 AE
l.	Legal proceedings when completed	5
m.	Minute book of:	
i.	Meetings of the board of directors	P
ii.	Meeting of committees of the board of directors	P
iii.	Shareholders' meetings	P
n.	Postage meter record book (from date of final entry)	1
o.	Real estate documentation	5 ATD
p.	Report to directors	3
q.	Stock issuance and transfer record	P
r.	Required report to supervisory agency	3
s.	Tax controversy or proceeding when completed	7
t.	Tax record not material to any controversy	7
u.	Voting list and proxies	3

3. Collections

a.	Collection payment record	1

b.	Collection receipt - carbon	1
c.	Collection register	1
d.	Coupon cash letter - outgoing	1
e.	Coupon envelope	1
f.	Customer file copy	1
g.	Incoming collection letter	1
h.	Incoming contract or note letter	1

4. Customer service

a.	Broker account holder - identification	5
b.	Broker's confirmation	3
c.	Broker's invoice	3
d.	Broker's statement	3
e.	E-Bond application	2
f.	E-Bond sold or redeemed - record	2
g.	E-Bond transmittal letter	2
h.	Lock box daily receipts	1
i.	Night depository agreement	1 AC
j.	Night depository daily record	1
k.	Safekeeping record and receipt	5
l.	Securities buy order and sell order	3

5. Data processing (management information systems)

a.	Back-up data (for reconstruction) daily, end of month, quarter, or year	1
b.	Disaster recovery program	P
c.	Film copy of every IRS financial reporting form	6
d.	Program change	P
e.	System, program and procedure manual	P

6. Deposits

a.	Account opened and account closed	1
b.	Certificate of deposit purchase record	7
c.	Check paid, withdrawal slip, and other debits to account	7
d.	Club account check register	1
e.	Club account coupon	1
f.	SAR - for suspicious transaction under $10,000	5
g.	CTR - for transaction exceeding $10,000	5
h.	Customer authorization, resolution, and signature card	6 AC
i.	Deposit account record needed to reconstruct	7
j.	Deposit and other credits	7
k.	Dormant account - after closed or escheated	7 ALC
l.	Form 1096 and 1099 reports to IRS	7

m.	Individual retirement account record		7
n.	Interest check or other record of interest payment and reports		7
o.	Internal management reports:		
i.	Large balance	1	
ii.	Overdraft	1	
iii.	Public funds	1	
iv.	Service charges	1	
v.	Stop payment	1	
vi.	Uncollected funds	1	
vii.	Unposted item	1	
viii.	Zero balance	1	
p.	Ledger card		5 AC
q.	Power of attorney document		7 ATD
r.	Receipt for statement held at customer's request		1
s.	Record showing compliance with the following federal regulations. The state retention period applies unless, and until, it is preempted by federal law:		
i.	Regulation CC, Expedited Funds Availability Act	2	
ii.	Regulation DD, Truth in Savings Act	2	
iii.	Regulation E, Electronic Funds Transfer Act	2	
t.	Returned statement and cancelled checks		6

u.	Statement	6
v.	Stop payment order	6 AE
w.	Document used to request and receive Tax Identification N umber	6
x.	Transaction journal	6
y.	Trial balance	6

7. Due from banks

a.	Advice from correspondent bank	1
b.	Bank statement	1
c.	Draft - original	7
d.	Draft register or copy	1 AP
e.	Duplicate check - information and documentation pertaining to issuance	7
f.	Reconcilement register	1

8. Due to banks

a.	Account opened and account closed - reports	1
b.	Advice - copy	1
c.	Incoming cash letter memo for credit	1
d.	Incoming cash letter for remittance	1
e.	Reconcilement register (TTL)	2
f.	Reconcilement verification	1

g.	Resolution	2 AC
h.	Signature card	6 AC
i.	Trial balance (fiche)	7
j.	Undelivered statement, reconstruction available from bank records	1
k.	Undelivered statement, reconstruction not possible	7

9. General

a.	Address change order	1
b.	Affidavit from customer including affidavit of loss, forgery, or non-use of cashier's check	1
c.	Writ of attachment or garnishment	5
d.	Attachment, release	5
e.	Armored car receipt	1
f.	Check book order	1
g.	Check book - receipt	1
h.	Court order memorandum record	5
i.	Notice of Protest	1
j.	Vault record - opening and closing	1
k.	Wire transfer debit entry and credit entry	7

10. General ledger

a.	Daily statement of condition	3
b.	General journal - if byproduct of posting the general ledger	3
c.	General journal - if used as book of original entry with description	3
d.	General ledger	5
e.	General ledger ticket - debit and credit	2

11. International department

a.	Broker account holder - identification	5
b.	Cable copy	7
c.	Cable requisition	7
d.	Collection paid	1
e.	Correspondence	2
f.	Draft	7
g.	Foreign collection register	6
h.	Foreign draft application	6
i.	Foreign draft - carbon	2 ATD
j.	Foreign exchange remittance sheet or book	6
k.	Foreign financial account - record	7
l.	Foreign mail transfer application	6
m.	Foreign mail transfer - carbon	2 ATD

n.	Foreign outstanding cash	2
o.	Foreign payment - incoming	2
p.	Letter of credit application	2
q.	Letter of credit ledger sheet	7
r.	Transfer outside of the United States in excess of $10,000 - record	5

12. Investments

a.	Bonds	
i.	Amortization record	6
ii.	Confirmation	3
iii.	Safekeeping receipt	2
b.	Broker's securities	
i.	Broker's invoice	3
ii.	Broker's statement	3
iii.	Report of lost or stolen securities	3
iv.	Safekeeping advice	2
v.	Taxpayer identification number	5
c.	Commercial paper	
i.	Broker's advice	2
ii.	Purchase order	2
iii.	Remittance advice	2

d.	Mortgage-backed securities	
i.	Buy-and-sell agreement	3
ii.	Commitment letter	7
iii.	FHLMC and FNMA loan file	7
iv.	GNMA certificate	7
v.	Interest accrual record	7
vi.	Monthly remittance report	7

13. Loans. A bank shall keep each loan record listed for the period required by this subsection. These periods are measured from the date of final activity. A bank shall have and comply with its own record retention schedule that is consistent with this subsection. A bank may comply with this subsection by complying with a preemptive federal regulation, even if the federal regulation requires a shorter retention period than is listed in this subsection. This subsection does not prohibit record retention for longer periods than these state-required minimums for any reason, including a retention period established by preemptive federal law or regulation. Likewise, this Section does not prohibit a bank from keeping any type of record not required by this subsection.

a.	All loans - general	
i.	Application for loan approval	6
ii.	Appraisal	6
iii.	Borrower's financial statement	6
iv.	Charge-off record	10
v.	Charged off note	10
vi.	Collateral file	6

vii.	Correspondence	6
viii.	Credit file- all documentation	6
ix.	Credit report	6
x.	Daily proof and record	6
xi.	Loan committee minutes	P
xii.	Miscellaneous loan reports including new loan journal, paid loan journal, past due report, and transaction journal as original entry	6
xiii.	Other documentation for reconstruction of loan	2
b.	Commercial loans	
i.	Application for loan denied	12 M
ii.	Bill of sale	6
iii.	Borrowing resolution	3
iv.	Business annual report (fiscal or year end) - after date of report	3
v.	Business cash-flow analysis report - after date of report	3
vi.	Business tax return - after date of return	6
vii.	Commitment letter	6
viii.	Copy of mortgage note or deed of trust	6
ix.	Evidence of insurance	6
x.	Guaranty	6
xi.	Letter of credit	6
xii.	Participation agreement	6

xiii.	Promissory note	6
xiv.	Purchase and sale agreement	6
xv.	Security agreement	6
xvi.	Title documentation	6
xvii.	UCC filing	6
c.	Consumer loans	
i.	Application for loan denied, including adverse action notice	25 M
ii.	Collateral record	6
iii.	Hazard insurance record	6
iv.	Invoice	6
v.	Life and disability insurance record	6
vi.	Overdraft loan agreement	6
vii.	Promissory note and modification agreement - copy	6
viii.	Title documentation	6
ix.	UCC filing - copy	6
d.	Real estate loans	
i.	Assignment of escrow	6
ii.	Assumption	6
iii.	Commitment letter	6
iv.	Copy of deed of trust or mortgage note, as it may have been modified	6

v.	Escrow analysis record	6
vi.	Evidence of any FHA or PMI insurance required	6
vii.	Hazard insurance	life of loan
viii.	Proof of insurance excluding hazard	6
ix.	Sales contract	6
x.	Settlement sheet	6
xi.	Survey	6
xii.	Title documentation	6
e.	Construction loans. In addition to the documents specified in subsection (d), a bank shall keep a record for a construction loan as specified in this subsection:	
i. Certificate of occupancy		6
ii. Construction progress report		6
iii. Contractor's cost breakdown		6
iv. Disbursement documentation		6
v. Inspection report		6
vi. Residential construction specifications and material list		6

14. Official checks and drafts

a.	Affidavit, bond, indemnity agreement, other documentation supporting the issuance of a duplicate check or draft	7
b.	Bank draft	3

c.	Cashier's check - cancelled	7
d.	Cashier's check register - copy	7
e.	Expense check - cancelled	7
f.	Expense check register - copy	7
g.	Expense voucher or invoice	7
h.	Money order - bank or personal	7
i.	Money order register - copy	7
j.	Official check outstanding	P

15. Personnel Records

a.	Attendance record, and time card	3
b.	Authorization for payroll deduction	2
c.	Department of labor report	5
d.	Disability record	5
e.	Employee record and personnel folder	5
f.	Employment application	3 AT
g.	Insurance record	2
h.	Payroll check	2
i.	Pension fund record	10
j.	Profit sharing fund record	10
k.	Rejected employee application	2

l.	Salary ledger or electronic data processing printout	4
m.	Salary receipt	2
n.	W -3 reconciliation of income tax withheld from wages	3
o.	W -4 withholding exemption certificate	3
p.	Wage and tax statement record (W -2)	7
q.	Wage differential documentation (Fair Labor Standards Act)	3

16. Registered mail

a.	Marine insurance book	3
b.	Record of incoming and outgoing registered mail	1
c.	Return receipt card	3

17. Safe deposit vault

a.	Access ticket or card	6
b.	Court order and correspondence	6
c.	Delivery of will, burial plot deed, insurance policy - receipt	6
d.	Forced entry record	6
e.	Lease or contract - closed account	2 AC
f.	Ledger record of account	1
g.	Opened box contents - record and report	7
h.	Rent receipt - copy	1
i.	Sale to satisfy lien - record	7

j.	Signature card, authorization, and resolution	6 AC

18. Tellers

a.	Mail teller envelope	3 M
b.	Teller's balancing recap or recap book	1
c.	Teller's cash ticket - original and carbons	1
d.	Teller's cash shipment record	1
e.	Teller's exchange ticket	1
f.	Teller's machine tape	1

19. Transit, proof, and clearing

a.	ACH entry	6
b.	Advice of correction to deposit	2
c.	Clearinghouse settlement sheet - recapitulation of checks delivered to the clearinghouse or federal reserve	2
d.	Record of items processed	6
e.	Proof machine tape or other record	2
f.	Receipt for transit letter	1
g.	Return item letter	5

20. Trust department administration

a.	Appraisal of real or personal property held as a trust asset	3 AC
b.	Correspondence	3

		AC
c.	Decree or receipt and release	3 AC
d.	Fee record and supporting data	3 AC
e.	Intermediate and final account	3 AC
f.	Legal documentation including judgment, court order, and legal opinion	3 AC
g.	Paid bill	3 AP
h.	Real estate insurance policy	1 AE
i.	Real estate and mortgage document	3 AC
j.	Receipt for asset received or delivered	3 AC
k.	Record of asset tax cost	3 AC
l.	Summary card, original instrument, agreement and amendment, and letters of appointment	3 AC
m.	Synopsis sheet	3 AC

21. Corporate trust

a.	Bond registration journal	3 AC

b.	Bond - cancelled	7
c.	Indemnity bond	P
d.	Certification	2
e.	Coupon envelope	6 M
f.	Coupon - cancelled	6 M
g.	Customer receipt	7
h.	Dividend and coupon record	3 AC
i.	Dividend and interest disbursement check and list	3 AC
j.	General ledger ticket	2
k.	Legal paper	P
l.	Copy of cancelled stock certificate, original returned to customer	1
m.	Stock registration journal	3 AC
n.	Stock transfer memo	1
o.	Stock transfer receipt	1
p.	Tax return	3 AC
q.	Transfer - supporting papers	3 AC
r.	Transfer journal	3 AC

s.	Transfer tax waiver	3 AC
t.	Trust ledger - corporate	7

22. Personal trust

a.	Record of previously discharged fiduciary		
i.	Accounting	3 AC	
ii.	Decree	3 AC	
iii.	Receipt and release	3 AC	
b.	Accounting - recorded		3 AC
c.	Advice of payment - securities department regarding bond and coupon collection		3 AC
d.	Appraisal		
i.	Real property	3 AC	
ii.	Personal property	3 AC	
e.	Asset delivery receipt		3 AC
f.	Authorization		
i.	By co-fiduciary	P	
ii.	By consultant	P	
g.	Approval		5
i.	By co-fiduciary	P	
ii.	By consultant	P	

h.	Broker's statement		7
i.	Buy and sell order		7
j.	Cash documentation		
i.	Customer cash and asset statement	7	
ii.	Cash and security journal	7	
iii.	Cash trial balance	1	
k.	Common trust fund annual report		10
l.	Correspondence		
i. Transfer letter		3 AC	
ii.	Claim letter	3 AC	
m.	Coupon collection letter		7
n.	Court accounting and petition		7
o.	Daily transaction journal		6 M
p.	Debits and credits - daily		1
q.	Documentation necessary to support account decision		3 AC
r.	Tax Documentation		
i.	Federal estate tax return	10	
ii.	State estate tax return	10	
iii.	Tax-related work papers	10	
iv.	Federal gift tax return	10	

s.	Fee calculations and supporting data		1
t.	Income tax return		
i.	Federal	3 AC	
ii.	State	3 AC	
u.	Inventory		3 AC
v.	Investment review and related material		3 AC
w.	Minutes		
i.	Investment committee	P	
ii.	Trust committee	P	

23. Other personal trust records

a.	Legal opinion	3 AC
b.	Correspondence related to legal opinion	3 AC
c.	Paid bill	7
d.	Review and recommendation	3 AC
e.	Safekeeping record and receipt	3 AC
f.	Security ledger sheet	P
g.	Trust check	10
h.	Trust entry - original	3 AC
i.	Trust or agency agreement - original	3 AC
j.	Vault withdrawal and deposit ticket	7

k.	Will - certified copy	P
l.	Work papers supporting tax return	7

24. Trust Investments

a.	Annual report		
i.	Common trust fund	10	
ii.	Pooled fund	10	
b.	Valuation		
i.	Common trust fund	10	
ii.	Pooled fund	10	
c.	Minutes		
i. Investment committee	P		
ii. Administrative committee	P		
d.	Investment order and broker's confirmation		3 AC
e.	Investment review and related material		3 AC
f.	Correspondence		3 AC
g.	Summary of annual account activity		3 AC

25. Wire transfer

a.	Incoming wire log	1
b.	Outgoing wire log	1
c.	Transmission record	7

d.	Wire transfer request	7

History:

Former Rule 14. R20-4-214recodified from R4-4-214 (Supp. 95-1). Amended by final rulemaking at 7 A.A.R. 4142, effective September 12, 2001 (Supp. 01-3). Amended by final rulemaking at 29 A.A.R. 1023, effective 10/8/2023.

§ R20-4-215. Trust Business

Each bank authorized to conduct trust business under their banking permit shall comply with the applicable requirements of R20-4-808 through R20-4-816.

History:

Adopted effective June 30, 1977 (Supp. 77-3). R20-4-215recodified from R4-4-215 (Supp. 95-1). Amended by final rulemaking at 29 A.A.R. 1919, effective 10/8/2023.

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE

CHAPTER 4. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS – FINANCIAL INSTITUTIONS

ARTICLE 2. BANK ORGANIZATION AND REGULATION

Authorizing Statute: A.R.S. § 6-123(2)

6-123. Deputy director; powers

In addition to the other powers, express or implied, the deputy director may:

1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises.

2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises.

3. Require appropriate records, documents, information and reports from any financial institution or enterprise.

4. Submit to the department of public safety, or the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor, the name and fingerprints of any applicant, licensee, active manager or responsible individual or the name and fingerprints of any organizer, director or officer of any corporate applicant or licensee for:

(a) A banking permit.

(b) Permission to organize a savings and loan association or credit union.

(c) Any license.

(d) Any certificate.

(e) Authority to engage in interstate banking and branching in this state.

The department of public safety shall report the criminal record, if any, of such applicant, licensee or organizer, director or officer of such corporate applicant or licensee within ninety days after receipt of the deputy director's request.

5. Employ appraisers to appraise any property that is owned or held as security by any financial institution or enterprise. The reasonable expenses and compensation of such appraisers shall be paid by the financial institution or enterprise.

6. Hold membership in, pay dues to and attend the convention of the national and regional organizations of state officials occupying like offices or performing similar functions.

7. Cooperate with other regulatory agencies and professional associations to promote the efficient, safe and sound operation and regulation of interstate banking and branching activities, including the formulation of interstate examination policies and procedures and the drafting of model rules and agreements.

8. Participate in the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor. The deputy director may allow the system to collect licensing fees on behalf of the deputy director, to collect a processing fee for the services of the system directly from each applicant for a license or licensee and to process and maintain records on behalf of the deputy director, including information collected pursuant to this section and section 6-123.01. This paragraph does not affect the records disclosure requirements and limitations prescribed in section 6-129.01.

Implementing Statutes: A.R.S. § 6-181(9)

6-181. Declaration of purposes

The purposes of this chapter, which shall govern judicial and administrative interpretation and application of the provisions of this chapter, are to provide for:

1. Safe and sound conduct of banks.

2. Conservation of bank assets.

3. Maintenance of public confidence in banks.

4. Protection of the interests of depositors and fiduciary beneficiaries and of the interest of the public in the soundness and preservation of the banking system.

5. Opportunity for banks to remain competitive with each other, with financial institutions existing under other laws of this state and with banking and financial institutions existing under the laws of other states, the United States and foreign countries.

6. Opportunity for banks to serve effectively the convenience and needs of their depositors, borrowers and other customers, to participate in and promote the economic progress of this state and the United States and to improve and expand their services and facilities for those purposes.

7. Opportunity for management of banks to exercise business judgment in conducting banking affairs subject to this chapter.

8. Simplification and modernization of the law governing banking and governing the exercise of fiduciary and other representative powers by banks.

9. Implementation and execution of this chapter by the full utilization of the rulemaking and administrative discretions of the deputy director.

E-3.

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 20, Chapter 4, Article 4

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 2, 2024

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

FROM: Council Staff

DATE: **March 11, 2024**

SUBJECT: **DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS**
Title 20, Chapter 4, Article 4

Summary

This Five Year Review Report (5YRR) from the Department of Insurance and Financial Institutions (Department) covers one (1) rule in Title 20, Chapter 4, Article 4 related to Credit Unions. This article applies to corporate non-profit associations holding a certificate of approval issued by the Director to operate as a credit union under A.R.S. § 6-507.Specifically, the rule in this article provides guidance on fidelity bond coverage.

Proposed Action

The Department did not have a proposed course of action in its prior 5YRR as the Department was newly created on July 1, 2020. This is the first 5YRR for this Article since its enactment. The Department does not have a proposed course of action as the Department recently conducted a rulemaking for this Article that was approved by Council on August 1, 2023.

1. **Has the agency analyzed whether the rules are authorized by statute?**

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department states that the last rulemaking on this Article was in 2023 which became effective on October 2, 2023 (29 A.A.R. 1937, September 1, 2023). The Department states that the rule provides guidance on fidelity bond coverage as prescribed in statutes. The Department indicates that the rule in this Article is necessary because the National Credit Union Association ("NCUA") depends on state law and rules to impose bond coverage. The rule covers regulations regarding Credit Unions in Arizona. The changes the Department proposed reflected the structural changes to the former Department of Financial Institutions which merged with the Department of Insurance to form the Department of Insurance and Financial Institutions, on July 1, 2020. When reviewing the rules the Department states it endeavored to modernize the rules since the most recent rulemaking for Article 4 was in 2004.

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 rule's benefits outweigh, withing this State, the cost 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.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department states it has not received any written criticisms in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department states the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Department states the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department states the rules are effective in achieving the objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Department states the rules are currently enforced as written.

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

The Department states the rules are not more stringent than corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Department indicates that this section does not apply as the rules were originally adopted in 1995.

11. Conclusion

This Five Year Review Report from the Department of Insurance and Financial Institutions covers one rule in Title 20, Chapter 4, Article 4 related to Credit Unions. As indicated above, the rules are clear, concise, and understandable and consistent with other rules and statutes. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

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, Cabinet Executive Officer
Executive Deputy Director

October 26, 2023

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

RE: Arizona Department of Insurance and Financial Institutions – Financial Institutions
Title 20, Chapter 4, Articles 1, 2, 4, and 5
Five-Year Review Report

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 November 30, 2023 for the following Articles in Title 20, Chapter 4:

- Article 1. General
- Article 2. Bank Organization and Regulation
- Article 4. Credit Unions
- Article 5. Consumer Lenders (formerly Small Loans)

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 Richardson, Cabinet Executive Officer,
Executive Deputy Director
Arizona Department of Insurance and Financial Institutions

Department of Insurance and Financial Institutions

Five-Year-Review Report

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 4. Department of Insurance and Financial Institutions – Financial Institutions

Article 4. Credit Unions

November 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 6-123

Specific Statutory Authority: A.R.S. § 6-558

2. The objective of each rule:

Rule	Objective
R20-4-401	**Fidelity Bond Coverage.** The objective of this Section is to provide a set of specific criteria for the guidance of the licensees' directors in the conduct of their duties specified in the enabling statutes. The rule provides guidance on fidelity bond coverage as prescribed in statute. The rule in this Article is necessary because the National Credit Union Association ("NCUA") depends on state laws and rules to impose bond coverage.

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 ___**

In 2023, the Department engaged in a rulewriting which amended the rule in this Article (29 A.A.R. 1937, September 1, 2023). Although the Arizona Administrative Code has not been updated, the Department has enforced the rule, as amended, since they became effective on October 2, 2023.

6. Are the rules clear, concise, and understandable? **Yes _X__** **No ___**

7. Has the agency received written criticisms of the rules within the last five years? **Yes ___** **No _X_**

8. Economic, small business, and consumer impact comparison:

The Department has not identified any economic impact that is significantly different from that projected in the economic impact statement for the rulemaking it recently promulgated (29 A.A.R. 1937, September 1, 2023).

9. Has the agency received any business competitiveness analyses of the rules? Yes ___ No _X_

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Previous Course of Action (2018):

The Department did not propose a course of action for this Article in its previous five-year review report.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The 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 _X_

The rule in this Article is necessary because the National Credit Union Association ("NCUA") depends on state laws and rules to impose bond coverage. The rule is not more stringent than a federal requirement.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Not applicable. The Department adopted the single rule in this Article (R20-4-401) in 1995.

14. Proposed course of action

The Department does not propose any course of action for this Article. In 2023, the Department engaged in a rulewriting for this Article which became effective on October 2, 2023. (29 A.A.R. 1937, September 1, 2023). The only change was made to R20-4-401(C) to correct the title of the agency head.

§ R20-4-401. Fidelity Bond Coverage

A. A credit union shall have a fidelity bond in the form and in the amount required to maintain federal insurance on its accounts.

B. A fidelity bond purchased by a credit union to comply with this Section shall include faithful-performance-of-duty coverage.

C. A credit union shall purchase its fidelity bond from an insurer that holds a certificate of authority from the Director to transact surety business in Arizona.

History:

Former Rule 1. R20-4-401recodified from R4-4-401 (Supp. 95-1). Amended effective April 21, 1995 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 2229, effective May 3, 2001 (Supp. 01-2). Amended by final rulemaking at 29 A.A.R. 1937, effective 10/2/2023.

§ R20-4-402. [Repealed]

History:

Former Rule 2. R20-4-402 recodified from R4-4-402 (Supp. 95-1). Repealed effective April 21, 1995 (Supp. 95-2).

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE

CHAPTER 4. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS – FINANCIAL INSTITUTIONS

ARTICLE 4. CREDIT UNIONS
ARTICLE 10. SAFE DEPOSIT AND SAFEKEEPING CODE
ARTICLE 11. PUBLIC DEPOSITORIES FOR PUBLIC MONIES
ARTICLE 16. ACQUIRING CONTROL OF FINANCIAL INSTITUTIONS
ARTICLE 17. ARIZONA INTERSTATE BANK AND SAVINGS AND LOAN ASSOCIATION ACT

Authorizing Statute: A.R.S. § 6-123(2)

6-123. Deputy director; powers

In addition to the other powers, express or implied, the deputy director may:

1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises.

2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises.

3. Require appropriate records, documents, information and reports from any financial institution or enterprise.

4. Submit to the department of public safety, or the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor, the name and fingerprints of any applicant, licensee, active manager or responsible individual or the name and fingerprints of any organizer, director or officer of any corporate applicant or licensee for:

(a) A banking permit.

(b) Permission to organize a savings and loan association or credit union.

(c) Any license.

(d) Any certificate.

(e) Authority to engage in interstate banking and branching in this state.

The department of public safety shall report the criminal record, if any, of such applicant, licensee or organizer, director or officer of such corporate applicant or licensee within ninety days after receipt of the deputy director's request.

5. Employ appraisers to appraise any property that is owned or held as security by any financial institution or enterprise. The reasonable expenses and compensation of such appraisers shall be paid by the financial institution or enterprise.

6. Hold membership in, pay dues to and attend the convention of the national and regional organizations of state officials occupying like offices or performing similar functions.

7. Cooperate with other regulatory agencies and professional associations to promote the efficient, safe and sound operation and regulation of interstate banking and branching activities, including the formulation of interstate examination policies and procedures and the drafting of model rules and agreements.

8. Participate in the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor. The deputy director may allow the system to collect licensing fees on behalf of the deputy director, to collect a processing fee for the services of the system directly from each applicant for a license or licensee and to process and maintain records on behalf of the deputy director, including information collected pursuant to this section and section 6-123.01. This paragraph does not affect the records disclosure requirements and limitations prescribed in section 6-129.01.

Implementing Statutes: Article 4: A.R.S. §§ 6-537(A)(1), and 6-537(C)

6-537. Certain duties of directors; insurance

A. In addition to the duties prescribed in this chapter, the board of directors shall:

1. Purchase adequate fidelity coverage for the credit union covering the president and other officials and employees handling or having custody of monies or property of the credit union.

2. Authorize the employment and compensation of the president, who may hire other persons as are necessary to carry out the business of the credit union.

3. Approve an operating budget for the credit union.

4. Authorize the conveyance of property.

5. Borrow or lend money to carry on the functions of the credit union.

6. Appoint special committees.

B. The board of directors shall perform other duties as the members from time to time may direct and perform or authorize any action not inconsistent with law or not specifically reserved by the bylaws to the members.

C. The board of directors shall purchase and maintain insurance for the credit union on behalf of a person who is or was a director, officer, employee or agent of the credit union, or who is or was serving at the request of the credit union as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against the person and incurred by the person in any such capacity or arising out of the person's status as such, whether or not the credit union would have the power to indemnify the person against the liability.

Implementing Statutes: Article 10: A.R.S. § 6-1003

6-1003. Change of location of repositories

A lessor may, during the term of any lease, move its repositories and the contents to another location on giving notice to the lessees in the manner and time required by such regulations as the deputy director may adopt.

Implementing Statutes: Article 11: A.R.S. §§ 35-312, 35-321(3) and (5)

35-312. Eligible depositories; collateral

A. Any eligible depository that receives an investment or any deposit of treasury monies of more than the amount insured by an instrumentality of the United States shall collateralize those deposits with any of the following:

1. Securities listed in section 35-313, subsection A, paragraphs 1 and 3.

2. State treasurer's warrant notes.

3. The safekeeping receipt of a federal reserve bank or any bank located in a reserve city, or any bank authorized to do business in this state, whose combined capital, surplus and outstanding capital notes and debentures on the date of the safekeeping receipt are $100,000,000 or more, evidencing the deposit therein of any securities or instruments described in this section. A safekeeping receipt does not qualify as security if issued by a bank to secure its own public deposits unless issued directly through its trust department. The safekeeping receipt shall show on its face that it is issued for the account of the state treasurer and shall be delivered to the state treasurer.

4. Letters of credit issued by a federal home loan bank if:

(a) The letter of credit has been delivered pursuant to this section or chapter 10, article 1 of this title to the statewide collateral pool administrator.

(b) The letter of credit meets the required conditions of:

(i) Being irrevocable.

(ii) Being issued, presentable and payable at a federal home loan bank in United States dollars. Presentation may be made by the beneficiary submitting the original letter of credit, including any amendments, and the demand in writing, by overnight delivery.

(iii) If the letter of credit is for purposes of chapter 10, article 1 of this title, containing a statement that identifies the statewide collateral pool administrator as the beneficiary.

(iv) Containing an issue date and a date of expiration.

(c) For the purposes of chapter 10, article 1 of this title, the eligible depository, if notified by the statewide collateral pool administrator, may not use new letters of credit issued by a federal home loan bank if that federal home loan bank fails to pay a draw request as provided for in the letters of credit or fails to properly complete a confirmation of the letters of credit.

B. The securities, warrants or safekeeping receipt for those items shall be accepted at market value equal to one hundred two percent of the deposit liability to the state treasurer, and, if at any

time their market value becomes less than one hundred two percent of the deposit liability to the state treasurer, additional items required to guarantee deposits shall be deposited immediately with the state treasurer by the eligible depository. When items pledged as collateral mature or are called for redemption, the cash received for the item shall be held in place of the items until the eligible depository has obtained a written release or provided substitute securities, instruments or warrants.

C. The deposit of securities, warrants or a safekeeping receipt must be such that the eligible depository will promptly pay to the state treasurer monies in its custody on lawful demand and will, when required by law, pay the monies to the state treasurer.

D. The securities, warrants or safekeeping receipt of an eligible depository shall be deposited with the state treasurer, and the state treasurer is the custodian of those items. The state treasurer may then deposit with the eligible depository monies then in the state treasurer's possession in accordance with this article.

E. Eligible depositories shall report to the state treasurer monthly and on demand the par and market value of any pledged collateral and the total deposits of the state treasurer.

35-321. Definitions

In this article, unless the context otherwise requires:

1. "Agency pool participant" means a subdivision or an entity of a subdivision that has monies maintained by the treasurer and that has the authority to draw negotiable instruments on the treasurer or make other disbursements from monies that the treasurer holds for the subdivision or entity.

2. "Board of deposit" means, in the case of a county, the board of supervisors, and in the case of a city or town, the common council.

3. "Capital structure" means the amount of the capital of the eligible depository shown by the latest call statement of condition as defined by rule of the department of insurance and financial institutions for the purpose of administration of this article.

4. "Collecting entity" means the entity from which the treasurer receives general funding including the county for collections performed by a county treasurer, the city for collections performed by a city treasurer or the district for collections performed by a district treasurer.

5. "Eligible depository" means any:

(a) Commercial or savings bank or savings and loan association that has either a branch in this state or its principal place of business in this state and that is insured by the federal deposit insurance corporation or its successor or any other insuring instrumentality of the United States according to the applicable federal law.

(b) Credit union that is insured by the national credit union administration or its successor.

6. "Involuntary pool participant" means a subdivision that only receives the principal ratio of the monies collected, for which the principal monies are mandated to be distributed on a specific date and for which the interest earned on the monies between the time of collection and other statutory requirements reverts to the general fund of the collecting entity.

7. "Permissible rate of interest" means a rate of interest that an eligible financial institution is permitted to pay by state or federal law or valid state rules or federal regulations.

8. "Public deposit" means public monies deposited in an eligible depository pursuant to this article.

9. "Public monies" includes subdivision monies.

10. "State monies" means all monies in the treasury of this state or coming lawfully into the possession or custody of the state treasurer.

11. "Subdivision" means any county, noncharter city or town. Cities governed by charter have the option of operating under this article.

12. "Subdivision monies" means all monies in the treasury of a subdivision or coming lawfully into the possession or custody of the treasurer.

13. "Treasurer" includes the treasurer or officer exercising the functions of treasurer of any subdivision but excludes the state treasurer.

14. "Trust funds" means those monies entrusted to a public body or official for preservation and investment, as prescribed by the instrument establishing such funds.

Implementing Statutes: Article 16: A.R.S. §§ 6-141, and 6-145

6-141. Definitions

In this article, unless the context otherwise requires:

1. "Acquisition of control" means any transaction whereby a person obtains, directly or indirectly, control of a bank, trust company, savings and loan association or controlling person.

2. "Control" means direct or indirect ownership of or power to vote twenty-five percent or more of the outstanding voting securities of a bank, trust company, savings and loan association or controlling person or to control in any manner the election of a majority of the directors of a bank, trust company, savings and loan association or controlling person. 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 such person the voting securities of any other person directly or indirectly controlling, controlled by or under common control with such other person or by any officer, partner, employee or agent of such person, or by any spouse, parent or child of such person.

3. "Controlling person" means any person directly or indirectly in control of a bank, trust company or savings and loan association.

4. "Person" means an individual, corporation, partnership, association, trust or agency or any similar entity.

5. "Voting security" means any security presently entitling the owner or holder of such security to vote for the election of directors of a bank, trust company, savings and loan association or controlling person, excluding, in the case of a savings and loan association, votes attributable to savings accounts. A specified percentage of outstanding voting securities means such amount of the outstanding voting securities as entitles the holder or holders of such securities to cast that specified percentage of the aggregate votes that the holders of all the outstanding voting securities are entitled to cast.

6-145. Application for approval

A. An application for approval of the deputy director shall be in writing in such form as the deputy director may prescribe and shall be accompanied by such information, data and records as the deputy director may require. For such purpose the deputy director shall adopt rules prescribing the form and the information, data or records that may be required.

B. On receipt of any initial application for approval or any amendment or supplement to the application, the deputy director shall cause copies of the application, amendment or supplement to be given to the bank, trust company or savings and loan association concerned within three business days.

Implementing Statutes: Article 17: A.R.S. § 6-327(G)

6-327. Applicable laws and rules; cooperative agreements; contracting exemption

A. Any bank, savings and loan association, out-of-state financial institution or holding company doing business as such in this state is subject to the applicable laws of this state and all the rules adopted pursuant to such laws, including examination and supervision by the deputy director.

B. In the case of an acquisition to create a branch in this state, the acquisition is prohibited unless the home state of the out-of-state financial institution allows reciprocal acquisitions for the same purposes.

C. An out-of-state financial institution that acquires an in-state financial institution or an out-of-state financial institution that is the result of a merger with an in-state financial institution may do either of the following subject to applicable state and federal laws:

1. Continue to operate the in-state financial institution.

2. Convert any existing principal banking office or any or all branches in this state into a branch of the out-of-state financial institution.

D. An in-state branch of an out-of-state financial institution shall comply with the laws of the institution's home state, or shall comply with federal law in the case of a federally chartered institution. The laws of the institution's home state apply, except as follows:

1. The laws of this state apply if necessary to preserve the safety and sound operation of a branch in this state or to otherwise protect the citizens of this state.

2. Any laws of this state regarding community reinvestment, consumer protection, fair lending and intrastate branching apply to a branch in this state of an out-of-state financial institution to the same extent that those laws apply to an in-state financial institution.

3. An out-of-state financial institution that is authorized to operate a branch in this state may engage in activity only to the extent the activity is allowed for an in-state financial institution.

E. Subsection D of this section does not limit the jurisdiction or authority of the deputy director to examine, supervise and regulate an out-of-state financial institution that is operating or seeking to operate a branch in this state or to take any action or issue any order with respect to that branch.

F. An out-of-state bank that operates a branch in this state shall do both of the following:

1. Obtain a grant of authority to transact business in this state and comply with all other applicable filing requirements prescribed by title 10 to the same extent as any other entity transacting business in this state.

2. Provide written notice to the deputy director of the out-of-state bank's grant of authority to transact business in this state.

G. The deputy director may adopt rules, including the imposition of reasonable application and examination fees, to implement and administer this article.

H. The deputy director may do any of the following:

1. Examine, supervise and regulate a branch operated in this state by an out-of-state bank and take any action or issue any order with respect to that branch.

2. Examine, supervise and regulate a branch operated in another state by a bank and take any action or issue any order with respect to that branch.

3. Coordinate these activities with any other state or federal agency that shares jurisdiction over that financial institution.

4. Coordinate the examination, supervision and regulation of any in-state financial institution with the examination, supervision and regulation of a branch or affiliated financial institution that is operating in another state by doing any of the following:

(a) Contracting with an agency that shares jurisdiction over the financial institution to retain its examiners at a reasonable rate of compensation.

(b) Offering the services of the department's examiners at a reasonable rate of compensation to an agency that shares jurisdiction over the financial institution.

(c) Collecting fees on behalf of or receiving payment of fees through an agency that has jurisdiction over the financial institution.

5. Enter into cooperative agreements with federal and state regulatory authorities for the examination and supervision of any acquired or de novo entry bank, savings and loan association or holding company and may accept reports of examination and other records from those authorities instead of conducting an examination.

I. The department is exempt from title 41, chapter 23 in contracting for examiners pursuant to subsection H, paragraph 4, subdivision (a) of this section.

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 20, Chapter 4, Articles 5

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 2, 2024

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

FROM: Council Staff

DATE: March 14, 2024

SUBJECT: **DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS**
Title 20, Chapter 4, Article 5

Summary

This Five-Year Review Report (5YRR) from the Department of Insurance and Financial Institutions (Department) relates to six (6) rules in Title 20, Chapter 4, Article 5 regarding consumer lending transactions.

In the prior 5YRR for these rules, which was approved by the Council in April 2019, the Department indicates it did not propose to amend any rules.

Proposed Action

In the current report, the Department does not propose any course of action for these rules at this time. The Department indicates it recently completed a rulemaking for the rules in this Article which became effective on October 7, 2023.

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 has not identified any economic impact that is significantly different from that projected in the economic impact statement for the rulemaking it recently promulgated (29 A.A.R. 1942, September 1, 2023).

Stakeholders include the Department and licensees of the Department who advertise, hold themselves out, or make or procure consumer lender loans to consumers in this state.

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

According to the Department, 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.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates it received no written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department indicates the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates that the rules are enforced as written.

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

The Department indicates the statutes governing consumer lending transactions work in conjunction with the federal Consumer Credit Protection Act (15 U.S.C. 1601 through 1666j) and the Alternative Mortgage Transactions Act (12 U.S.C. 3801 through 3806). In addition, the

federal Truth in Lending regulations (12 CFR 3801 through 3806) apply to consumer lender transactions.

However, the Department indicates the specific rules in this Article do not reference these federal laws or regulations directly.

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 rulemaking does not address the licensing requirements for consumer lenders. Instead, the Department indicates the statutory sections require any person who seeks to be a consumer lender to obtain a license from the Department to advertise, hold themselves out, or to make or procure consumer lender loans to consumers in this state. *See* A.R.S. § 6-603.

11. Conclusion

This 5YRR from the Department relates to six (6) rules in Title 20, Chapter 4, Article 5 regarding consumer lending transactions. The Department does not propose any course of action for these rules at this time. The Department indicates it recently completed a rulemaking for the rules in this Article which became effective on October 7, 2023.

Council staff recommends approval of this report.

Arizona Department of Insurance and Financial Institutions
100 N 15th Avenue, Suite 261, Phoenix, Arizona 85007
(602) 364-3100 | difi.az.gov

Katie M. Hobbs, Governor
Barbara D. Richardson, Cabinet Executive Officer
Executive Deputy Director

October 26, 2023

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

RE: Arizona Department of Insurance and Financial Institutions – Financial Institutions
Title 20, Chapter 4, Articles 1, 2, 4, and 5
Five-Year Review Report

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 November 30, 2023 for the following Articles in Title 20, Chapter 4:

- Article 1. General
- Article 2. Bank Organization and Regulation
- Article 4. Credit Unions
- Article 5. Consumer Lenders (formerly Small Loans)

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 Richardson, Cabinet Executive Officer,
Executive Deputy Director
Arizona Department of Insurance and Financial Institutions

Department of Insurance and Financial Institutions

Five-Year-Review Report

Title 20. Commerce, Financial Institutions, and Insurance

Chapter 4. Department of Insurance and Financial Institutions –

Financial Institutions

Article 5. Consumer Lenders[1]

November 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 6-123

Specific Statutory Authority: A.R.S. § 6-607, 6-612, 6-634, 6-635, and 6-636

2. The objective of each rule:

Rule	Objective
R20-4-503	**Adjustments in Precomputed Charges.** The objective of this Section is to provide a list of alternative ways to account for, and collect, adjustments in the total precomputed charges made necessary by the timing of the first installment. The rule provides guidance to a licensee on adjustments in precomputed charges.
R20-4-508	**Cut-off Date for Computing Refunds upon Early Repayment in Full.** The objective of this Section is to provide dates for the licensees' use in calculating refunds or credits when loans are prepaid in full. This rule provides guidance to a licensee on calculating loans if a payoff is received on or before the 15th of a month or if received on or after the 16th of the month.
R20-4-518	**Deferral Fee.** The objective of this Section is to provide regulations for the collection and application of deferral fees. The rule provides guidance to a licensee on collecting a deferral fee and for calculating a payoff that is large enough to pay in full a delinquent installment.
R20-4-519	**Deferment Statement.** The objective of this Section is to provide regulation of the documentation and record keeping required when a licensee agrees to extend the due date of unpaid installments under the authority of the statute. The rule provides guidance to the licensee on requirements to give the borrower a statement at the time a deferment is made.

[1] This Article was previously titled as "Small Loans." However, the Department amended that title to "Consumer Lenders" in 2023 to better align with the title of the corresponding statutory sections (29 A.A.R. 1942, September 1, 2023). As of the date of this report, the Arizona Administrative Code has not been updated with the Article's new title.

R20-4-524	**Books, Accounts, and Records.** The objective of this Section is to require separate books and records for the licensee's consumer loan business. The rule provides guidance on the requirements on books, accounts, and records.
R20-4-534	**Insurance.** The objective of this Section is to specify required documentation evidencing compliance with A.R.S. § 6-636. The rule further describes how a licensee shall obtain written evidence of the borrower's voluntary election to purchase insurance.

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 statutes governing consumer lending transactions work in conjunction with the federal Consumer Credit Protection Act (15 U.S.C. 1601 through 1666j) and the Alternative Mortgage Transactions Act (12 U.S.C. 3801 through 3806). In addition, the federal Truth in Lending regulations (12 CFR 3801 through 3806) apply to consumer lender transactions.
The specific rules in this Article do not reference these federal laws or regulations directly.

5. **Are the rules enforced as written?** **Yes _X__ No ___**

In 2023, the Department engaged in a rulewriting which amended the title and all the rules in this Article (29 A.A.R. 1942, September 1, 2023). Although the Arizona Administrative Code has not been updated, the Department has enforced the rules, as amended, since they became effective on October 7, 2023.

6. **Are the rules clear, concise, and understandable?** **Yes _X__ No ___**

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes ___ No _X_**

8. **Economic, small business, and consumer impact comparison:**

The Department has not identified any economic impact that is significantly different from that projected in the economic impact statement for the rulemaking it recently promulgated (29 A.A.R. 1942, September 1, 2023).

9. **Has the agency received any business competitiveness analyses of the rules?** **Yes ___ No _X_**

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**
Previous Course of Action (2018):

The Department did not propose a course of action for this Article in its previous five-year review report.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The 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 _X_

The statutes governing consumer lending transactions work in conjunction with the federal Consumer Credit Protection Act (15 U.S.C. 1601 through 1666j) and the Alternative Mortgage Transactions Act (12 U.S.C. 3801 through 3806). In addition, the federal Truth in Lending regulations (12 CFR 3801 through 3806) apply to consumer lender transactions.
The specific rules in this Article do not reference these federal laws or regulations directly.

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 rulemaking does not address the licensing requirements for consumer lenders. Instead, the statutory sections require any person who seeks to be a consumer lender to obtain a license from the Department to advertise, hold themselves out, or to make or procure consumer lender loans to consumers in this state. A.R.S. § 6-603.

14. Proposed course of action

The Department does not propose any course of action for this Article at this time. In 2023, the Department engaged in a rulewriting for this Article which became effective on October 7, 2023. (29 A.A.R. 1942, September 1, 2023).

Former Rule 17; Repealed effective January 19, 1984 (Supp. 84-1). R20-4-317 recodified from R4-4-317 (Supp. 95-1).

R20-4-318. Expired

Historical Note
Former Rule 18. R20-4-318 recodified from R4-4-318 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-319. Repealed

Historical Note
Former Rule 19. R20-4-319 recodified from R4-4-319 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-320. Repealed

Historical Note
Former Rule 20. R20-4-320 recodified from R4-4-320 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-321. Repealed

Historical Note
Former Rule 21. R20-4-321 recodified from R4-4-321 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-322. Repealed

Historical Note
Former Rule 22; Repealed effective January 19, 1984 (Supp. 84-1). R20-4-322 recodified from R4-4-322 (Supp. 95-1).

R20-4-323. Repealed

Historical Note
Former Rule 23. R20-4-323 recodified from R4-4-323 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-324. Expired

Historical Note
Former Rule 24. R20-4-324 recodified from R4-4-324 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-325. Expired

Historical Note
Former Rule 25. R20-4-325 recodified from R4-4-325 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-326. Expired

Historical Note
Former Rule 26. R20-4-326 recodified from R4-4-326 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-327. Expired

Historical Note
Former Rule 27. R20-4-327 recodified from R4-4-327 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-328. Expired

Historical Note
Former Rule 28. R20-4-328 recodified from R4-4-328 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-329. Repealed

Historical Note
Former Rule 29. R20-4-329 recodified from R4-4-329 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-330. Expired

Historical Note
Original Rule. R20-4-330 recodified from R4-4-330 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 841, effective March 14, 2017 (Supp. 17-1).

R20-4-331. Repealed

Historical Note
Original Rule. R20-4-331 recodified from R4-4-331 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

ARTICLE 4. CREDIT UNIONS

R20-4-401. Fidelity Bond Coverage

A. A credit union shall have a fidelity bond in the form and in the amount required to maintain federal insurance on its accounts.

B. A fidelity bond purchased by a credit union to comply with this Section shall include faithful-performance-of-duty coverage.

C. A credit union shall purchase its fidelity bond from an insurer that holds a certificate of authority from the Director to transact surety business in Arizona.

Historical Note
Former Rule 1. R20-4-401 recodified from R4-4-401 (Supp. 95-1). Amended effective April 21, 1995 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 2229, effective May 3, 2001 (Supp. 01-2). Amended by final rulemaking at 29 A.A.R. 1937 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-402. Repealed

Historical Note
Former Rule 2. R20-4-402 recodified from R4-4-402 (Supp. 95-1). Repealed effective April 21, 1995 (Supp. 95-2).

ARTICLE 5. CONSUMER LENDERS

R20-4-501. Repealed

Historical Note
Former Rule 1. R20-4-501 recodified from R4-4-501 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-502. Repealed

Historical Note

Former Rule 2. R20-4-502 recodified from R4-4-502 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-503. Adjustments in Precomputed Charges

A licensee shall adjust the total precomputed charges if the first installment period is more or less than one month in duration. The licensee's records shall reflect the adjustment's collection in one of three ways.

1. In the first installment payment,
2. Amortized over the life of the contract, or
3. As part of the final payment.

Historical Note

Former Rule 3. R20-4-503 recodified from R4-4-503 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1942 (September 1, 2023), effective October 7, 2023 (Supp. 23-3).

R20-4-504. Repealed

Historical Note

Former Rule 4. R20-4-504 recodified from R4-4-504 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-505. Repealed

Historical Note

Former Rule 5. R20-4-505 recodified from R4-4-505 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-506. Repealed

Historical Note

Former Rule 6. R20-4-506 recodified from R4-4-506 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-507. Repealed

Historical Note

Former Rule 7. R20-4-507 recodified from R4-4-507 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-508. Cut-off Date for Computing Refunds upon Early Repayment in Full

If a borrower repays a loan before the due date of the final installment, the licensee shall calculate any refund or credit due on the precomputed loan using the following rules:

1. A licensee shall credit any full repayment, made on or before the 15th day following an installment date, as if received on the last previous installment date.
2. A licensee shall credit any full repayment, made on or after the 16th day following an installment date, as if received on the next installment date.

Historical Note

Former Rule 8. R20-4-508 recodified from R4-4-508 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1942 (September 1, 2023), effective October 7, 2023 (Supp. 23-3).

R20-4-509. Repealed

Historical Note

Former Rule 9. R20-4-509 recodified from R4-4-509 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-510. Repealed

Historical Note

Former Rule 10. R20-4-510 recodified from R4-4-510 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-511. Repealed

Historical Note

Former Rule 11. R20-4-511 recodified from R4-4-511 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-512. Reserved

R20-4-513. Repealed

Historical Note

Former Rule 13. R20-4-513 recodified from R4-4-513 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-514. Repealed

Historical Note

Former Rule 14. R20-4-514 recodified from R4-4-514 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-515. Repealed

Historical Note

Former Rule 15. R20-4-515 recodified from R4-4-515 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-516. Repealed

Historical Note

Former Rule 16. R20-4-516 recodified from R4-4-516 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-517. Repealed

Historical Note

Former Rule 17. R20-4-517 recodified from R4-4-517 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-518. Deferral Fee

A. A licensee may collect a deferral fee at the time it agrees to a deferment or at any time after the assessment of a deferral fee. If a licensee receives a payment after it agrees to a deferment, it may apply the payment first to the deferral fee. Any remainder of the payment shall be applied to the balance of the loan.

B. If a licensee receives a payment that is large enough to pay in full a delinquent installment and all allowable delinquency fees, the licensee shall apply the payment first to the delinquent installment and fees. The licensee shall not show the paid installment as deferred, and shall not collect a deferral fee.

Historical Note

Former Rule 18. R20-4-518 recodified from R4-4-518 (Supp. 95-1). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 4605, effective November

14, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1942 (September 1, 2023), effective October 7, 2023 (Supp. 23-3).

R20-4-519. Deferment Statement

A licensee shall give the borrower a statement at the time it agrees to a deferment and shall retain a copy of the statement in the borrower's credit file. The statement shall contain the following information:

1. The amount of the deferral fee,
2. The date of the borrower's next scheduled payment,
3. The amount of the borrower's next scheduled payment, and
4. The extended maturity date of the loan.

Historical Note

Former Rule 19. R20-4-519 recodified from R4-4-519 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1942 (September 1, 2023), effective October 7, 2023 (Supp. 23-3).

R20-4-520. Repealed

Historical Note

Former Rule 20. R20-4-520 recodified from R4-4-520 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-521. Repealed

Historical Note

Former Rule 21. R20-4-521 recodified from R4-4-521 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-522. Repealed

Historical Note

Former Rule 22. R20-4-522 recodified from R4-4-522 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-523. Repealed

Historical Note

Former Rule 23. R20-4-523 recodified from R4-4-523 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-524. Books, Accounts, and Records

A. A licensee may keep its books, accounts, and records as electronic records if the licensee can generate all information and copies required by this Section within the timeframe set by the Department for examination or other purposes.

B. A licensee authorized under A.R.S. Title 6, Chapter 5 shall:

1. Keep its books, accounts, and records of operations separate from the books, accounts, and records of its other business activities; and
2. In addition to any statutory requirements, the books, accounts, and records of operations shall include the following:
   a. A file containing a record of all legal actions brought during the fiscal year which the licensee shall keep until the Department conducts its examination of the licensee;
   b. An itemized record of disbursement of the proceeds of each loan which shall also include, if the licensee makes precomputed loans, the amount of refund on each loan that is renewed or refinanced;
   c. A record of the receipt of all allowable fees;
   d. A record for each borrower and each loan that contains documentary evidence of filing or recording each instrument of record for the loan; and
   e. A record of the borrower's voluntary election to purchase any insurance in connection with a loan if that insurance is sold by the licensee.

Historical Note

Former Rule 24. R20-4-524 recodified from R4-4-524 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1942 (September 1, 2023), effective October 7, 2023 (Supp. 23-3).

R20-4-525. Repealed

Historical Note

Former Rule 25. R20-4-525 recodified from R4-4-525 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-526. Repealed

Historical Note

Former Rule 26. R20-4-526 recodified from R4-4-526 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-527. Repealed

Historical Note

Former Rule 27. R20-4-527 recodified from R4-4-527 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-528. Repealed

Historical Note

Former Rule 28. R20-4-528 recodified from R4-4-528 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-529. Repealed

Historical Note

Former Rule 29. R20-4-529 recodified from R4-4-529 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-530. Repealed

Historical Note

Former Rule 30. R20-4-530 recodified from R4-4-530 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4).

R20-4-531. Repealed

Historical Note

Former Rule 31. R20-4-531 recodified from R4-4-531 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-532. Repealed

Historical Note

Former Rule 32. R20-4-532 recodified from R4-4-532 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

R20-4-533. Reserved

R20-4-534. Insurance

A. A licensee shall obtain written evidence of the borrower's voluntary election to purchase insurance in connection with a loan if the licensee's sale of insurance to the borrower is intended to secure repayment of a loan. The licensee shall retain this evidence of voluntary election in its records as required by statute. A document sufficient to comply with this Section shall read substantially as follows:

TO SECURE REPAYMENT OF MY LOAN, I ELECT TO PURCHASE INSURANCE IN THE AMOUNT OF
$ _____.
I UNDERSTAND THAT MY TOTAL LOAN OBLIGATION IS THE SUM OF $ _____.

B. A licensee shall obtain written evidence of the borrower's voluntary election to purchase property insurance in connection with a loan if the licensee's sale of property insurance to the borrower is intended to secure repayment of a loan. The licensee shall retain this evidence of voluntary election in its records as required by statute. A document sufficient to comply with this Section shall read substantially as follows:

TO SECURE REPAYMENT OF MY LOAN, I ELECT TO PURCHASE PROPERTY INSURANCE IN THE AMOUNT OF
$ _____.
I UNDERSTAND THAT MY TOTAL LOAN OBLIGATION IS THE SUM OF $ _____.
I ATTEST THAT THE VALUE OF MY PROPERTY INSURED IN CONNECTION WITH THIS LOAN IS THE SUM OF
$ _____.

Historical Note
Former Rule 34. R20-4-534 recodified from R4-4-534 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 4605, effective November 14, 2000 (Supp. 00-4). Amended by final rulemaking at 29 A.A.R. 1942 (September 1, 2023), effective October 7, 2023 (Supp. 23-3).

R20-4-535. Reserved

R20-4-536. Repealed

Historical Note
Former Rule 36. R20-4-536 recodified from R4-4-536 (Supp. 95-1). Section repealed by final rulemaking at 6 A.A.R. 3380, effective August 3, 2000 (Supp. 00-3).

ARTICLE 6. DEBT MANAGEMENT COMPANIES

Article 6, consisting of Sections R4-4-601 through R4-4-620, adopted effective October 26, 1978, except that Sections R4-4-603, R4-4-604 and R4-4-607 shall become effective January 1, 1979. R20-4-601 through R20-4-620 recodified from R4-4-601 through R4-4-620 (Supp. 95-1).

Former Article 6 consisting of Section R4-4-601 repealed effective October 26, 1978. R20-4-601 recodified from R4-4-601 (Supp. 95-1).

R20-4-601. Repealed

Historical Note
Former Rule 1; Former Section R4-4-601 repealed, new Section R4-4-601 adopted effective October 26, 1978 (Supp. 78-5). R20-4-601 recodified from R4-4-601 (Supp. 95-1). Repealed effective September 19, 1996 (Supp. 96-3).

R20-4-602. Applications

A. An applicant for a debt management company license shall send the Department an application on the form required by the Director. If the Director determines that a credit report is required as authorized under A.R.S. § 6-704(A), the applicant shall order a credit report from a credit reporting agency disclosing the credit history of the applicant's principals or managing agents and submit the credit report to the Department. A complete application shall include the credit report required by this Section and all of the following:

1. The surety bond required by A.R.S. § 6-704(B);
2. Fidelity bonds if required by the Director under A.R.S. § 6-704(D);
3. The nonrefundable application fee specified in A.R.S. § 6-126(A)(14);
4. An original license fee described in A.R.S. §§ 6-126(B), 6-126(D)(2), and 6-706;
5. A sample of the contract intended to be used by the applicant required by A.R.S. § 6-704(E):
6. Current financial statements as described in R20-4-604(A)(5);
7. A copy of the current articles of incorporation, by-laws, partnership agreement or other organizing documents used to form the applicant business entity;
8. The name and address information required under A.R.S. § 6-704(A); and
9. A background check, on the form required by the Department, for each of the applicant's principals, principal officers, trustees, partners, and managing agents.

B. A debt management company applying to operate a branch office or use an agency shall send the Department an application on the form required by the Director.

C. A debt management company applying to renew a license shall deliver, on or before June 15 of each year, an application to the Department on the form required by the Director. A debt management company shall apply separately to renew each authorized business location. With each application for renewal, a debt management company shall include the renewal fee described in A.R.S. § 6-706 and specified in A.R.S. § 6-126(D)(2).

D. The Department may require additional information the Director considers necessary in connection with an application under this Section.

Historical Note
Adopted effective October 26, 1978 (Supp. 78-5). R20-4-602 recodified from R4-4-602 (Supp. 95-1). Amended by final rulemaking at 8 A.A.R. 2708, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 29 A.A.R. 1945 (September 1, 2023), effective October 2, 2023 (Supp. 23-3).

R20-4-603. Reports

A. Each debt management company and each nonprofit corporation or association exempt from licensure under A.R.S. § 6-702(4) and (5), shall send the Department an annual report of its business and operations for each place of business during the previous year beginning July 1 and ending June 30, using the form required by the Director. A debt management company shall deliver its report to the Department on or before August 15.

B. Each debt management company shall notify the Department of any change in its ownership or in the names of its officers,

6-123. Deputy director; powers

In addition to the other powers, express or implied, the deputy director may:

1. Exercise all powers that are necessary for the administration and enforcement of the laws and rules relating to financial institutions and enterprises.

2. In accordance with title 41, chapter 6, adopt rules that are necessary or appropriate to administer, enforce and accomplish the purposes of this title and adopt rules and issue orders that limit transactions between financial institutions or enterprises and the directors, officers or employees of the financial institutions or enterprises.

3. Require appropriate records, documents, information and reports from any financial institution or enterprise.

4. Submit to the department of public safety, or the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116) or its successor, the name and fingerprints of any applicant, licensee, active manager or responsible individual or the name and fingerprints of any organizer, director or officer of any corporate applicant or licensee for:

(a) A banking permit.

(b) Permission to organize a savings and loan association or credit union.

(c) Any license.

(d) Any certificate.

(e) Authority to engage in interstate banking and branching in this state.

The department of public safety shall report the criminal record, if any, of such applicant, licensee or organizer, director or officer of such corporate applicant or licensee within ninety days after receiving the deputy director's request.

5. Employ appraisers to appraise any property that is owned or held as security by any financial institution or enterprise. The reasonable expenses and compensation of such appraisers shall be paid by the financial institution or enterprise.

6. Hold membership in, pay dues to and attend the convention of the national and regional organizations of state officials occupying like offices or performing similar functions.

7. Cooperate with other regulatory agencies and professional associations to promote the efficient, safe and sound operation and regulation of interstate banking and branching activities, including the formulation of interstate examination policies and procedures and the drafting of model rules and agreements.

8. Participate in the nationwide mortgage licensing system and registry established by the secure and fair enforcement for mortgage licensing act of 2008 (P.L. 110-289; 122 Stat. 2810; 12 United States Code sections 5101 through 5116), or its successor, and use the system for all aspects of licensure pursuant to this title, title 32, chapter 9 and title 44, chapter 2.1. The deputy director may allow the system to collect licensing fees on behalf of the deputy director, to collect a processing fee for the services of the system directly from each applicant for a license or licensee and to process and maintain records on behalf of the deputy director, including information collected pursuant to this section and section 6-123.01. This paragraph does not affect the records disclosure requirements and limitations prescribed in section 6-129.01.

6-607. Books; accounts; records; access

A. A licensee shall maintain books, accounts and records that enable the deputy director to determine whether the licensee is in compliance with this chapter.

B. A licensee shall preserve its books, accounts and records of consumer lender loans for at least two years after making the final entry for any consumer lender loan. A licensee that uses an electronic record keeping system is not required to keep a written copy of the accounts and records if the licensee is able to generate all of the information required by this section in a timely manner for examination or other purposes.

C. Every licensee shall observe generally accepted accounting principles and practices.

D. A licensee shall make any books, accounts and records that are kept outside of this state available to the deputy director in this state not more than three business days after demand is made by the deputy director, or the deputy director may choose to perform the examination or investigation at the office of the licensee located outside this state.

E. For the purposes of this chapter, the deputy director or the deputy director's duly authorized representatives shall have access during normal business hours to the offices and places of business, files, safes and vaults of all licensees regarding that business or the subject matter of any examination, investigation or hearing.

6-612. Rules

The deputy director may adopt rules that are necessary to regulate the proper conduct of a licensee.

6-634. Precomputation of consumer loan

A. A precomputed consumer loan shall require repayment in substantially equal consecutive monthly installments of principal and finance charges combined. The first installment of a precomputed consumer loan is due not less than fifteen days but not more than forty-five days after the precomputed consumer loan is made. The licensee may precompute finance charges at the agreed consumer loan rate on scheduled unpaid principal balances and add those charges to the principal amount of the precomputed consumer loan. The licensee shall calculate the finance charges on precomputed loans on an annual basis of twelve months of thirty days per month. All computations are based on the assumption that all payments are made as scheduled. The licensee may round the consumer loan rate to the nearest one-quarter of one per cent.

B. If a precomputed consumer loan is prepaid in full, the licensee shall provide the consumer with a refund or credit of the precomputed finance charges that apply to all of the fully unexpired months of the precomputed consumer loan as originally scheduled, or if deferred, as deferred, and that follow the installment date nearest to the date of the prepayment. For this purpose the applicable finance charge is the total of those finance charges that would have been made for each unexpired month by applying scheduled payments to unpaid balances of principal according to the actuarial method at that single consumer loan rate that would result in the original amount of precomputed finance charges on the consumer loan, assuming finance charges had not been precomputed at the agreed to consumer loan rate but had been computed by the actuarial method at the agreed to single consumer loan rate from the inception of the consumer loan.

C. The licensee may agree to defer payment of all wholly unpaid installments for one or more full months and extend the due date of each installment and the maturity of the precomputed consumer loan for the same amount of time. The deferment period is the month or months in which the consumer makes no scheduled payment or in which no payment is required by reason of the deferment. If a deferment is made, the licensee may charge and collect a deferral fee that is not more than the agreed to consumer loan rate applied to the amount or amounts deferred for the period of deferral without regard to differences in the lengths of months, but applied proportionately for a part of a month by counting each day as one-thirtieth of a month. The licensee may collect a deferral fee at the time the licensee assesses the deferral fee or at any time after the assessment. No rebate of deferral fees is required unless prepayment occurs before the due date of the first deferred installment.

D. If the maturity of a precomputed consumer loan is accelerated, the licensee shall reduce the outstanding balance of that precomputed consumer loan by the refund or credit of precomputed finance charges that the consumer would be entitled to receive pursuant to subsection B on prepayment in full on the date of acceleration. After application of that refund or credit, the licensee may charge and receive finance charges at the agreed to consumer loan rate computed on the unpaid balances of the consumer loan for the actual time outstanding from the installment date nearest the date of acceleration until paid in full.

E. The note or agreement evidencing a precomputed consumer loan may provide that the licensee, with or without accelerating maturity, may recompute the entire consumer loan on a per cent per month basis or may reduce the outstanding balance as of any installment date by the refund or credit of precomputed finance charges that the consumer would be entitled to receive pursuant to subsection B on prepayment in full on the installment date. After recomputing the loan or applying the refund or credit of precomputed finance charges, the licensee may charge and receive finance charges at the agreed to consumer loan rate computed on unpaid balances of the consumer loan for the actual time outstanding from the installment date until the consumer loan is paid in full.

6-635. Other allowable fees; annual reporting

A. In addition to the finance charges authorized by section 6-632, a licensee may contract for and receive, and collect finance charges on, the following fees:

1. A delinquency charge in an amount equal to five percent of the amount of any installment not paid in full within seven days after its due date.

2. The actual costs of charges that are paid to a third party who is not an employee of the licensee and that are incurred in making consumer lender loans secured in whole or in part by real property, including the charges for a preliminary title search, title examination and report, title insurance premiums, property survey and appraisal fees.

3. Lawful fees for the acknowledging, filing and recording, continuing or releasing in any public office of any instrument or financing statement evidencing or perfecting a lien or security interest in real or personal property securing a consumer lender loan or the premiums paid for insurance in lieu of filing or recording that shall not exceed the filing or recording fee.

4. A loan origination fee of not more than five percent of a closed end consumer loan or the agreed credit limit of a consumer revolving loan but in no event in an amount that is more than $150. A licensee shall not charge a loan origination fee:

(a) For the refinancing of a closed end consumer loan or the renegotiating of an agreed credit limit of a consumer revolving loan if the refinancing or renegotiating occurs within one year of the collection of a prior loan origination fee.

(b) If the licensee charges prepaid finance charges pursuant to section 6-632, subsection E, paragraph 1.

5. Deferral fees authorized in section 6-634 for precomputed consumer loans.

6. Insurance premiums as provided in section 6-636.

7. Court costs.

8. Reasonable attorney fees if the consumer lender loan is referred for collection to an attorney other than a salaried employee of the licensee.

9. Costs, expenses and fees authorized in section 33-813, subsection B for reinstatement of a deed of trust encumbering real property that secures a consumer lender loan.

10. Costs and expenses of exercising the power of sale in a deed of trust encumbering real property that secures a consumer lender loan and costs and expenses of a sale that are included in a credit bid or that are applied from the proceeds of a trustee's sale pursuant to section 33-812, including the payment of trustee fees and reasonable attorney fees actually incurred.

11. Costs and expenses of retaking, holding, preparing for sale and selling any personal property in accordance with title 47, chapter 9, article 6.

B. If a licensee receives a check, draft, negotiable order of withdrawal or similar instrument drawn on a depository institution that is offered by a consumer in full or partial payment on a consumer lender loan and the instrument is not paid or is dishonored by the depository institution, the licensee may charge and collect from the consumer a dishonored check service fee pursuant to section 44-6852.

C. In addition to the finance charges and fees provided in this article, the licensee shall not directly or indirectly charge, contract for or receive any further or other amount in connection with a consumer lender loan.

D. In conjunction with the reporting requirements prescribed in section 6-609, on or before October 1 each year, a licensee shall report to the deputy director the number of closed end consumer loans and consumer revolving loans under $1,000 made in the prior two years.

6-636. Insurance securing loan; cancellation; notice

A. The following types of insurance may be sold to the consumer in connection with a consumer lender loan and the consumer may contract for:

1. Property insurance covering any property securing a consumer lender loan.

2. Life insurance insuring the life of one or more consumers obligated on a consumer lender loan.

3. Credit disability insurance that provides indemnity for payments due on a consumer lender loan while any covered consumer has a disability.

4. Credit involuntary unemployment insurance that provides indemnity for payments due on a consumer lender loan while one or more consumers are involuntarily unemployed.

5. Accidental death and dismemberment insurance providing a benefit if death occurs as a result of an accident or if dismemberment occurs.

6. Disability income protection insurance providing a benefit if a total disability occurs during the term of insurance.

B. Any insurance purchased by a consumer from or through a licensee, except insurance on property securing a consumer lender loan, is optional, and a licensee shall not refuse to make a consumer lender loan based on the consumer's refusal to purchase the insurance. The consumer may cancel any insurance purchased in connection with a consumer lender loan for any reason at any time within thirty days after the consumer lender loan is made and shall mail or deliver a written notice of the cancellation to the licensee's place of business. If the consumer cancels the insurance pursuant to this subsection, the consumer is entitled to a full refund of any premiums paid for the insurance. Before executing the note or agreement evidencing a consumer lender loan that includes a premium for insurance, the licensee shall give the consumer the disclosures required to exclude those insurance premiums from the finance charge in accordance with the truth in lending act.

C. At the time the insurance is sold the licensee shall mail or deliver a written receipt or binder to the consumer. Within thirty days after mailing or delivering the written receipt or binder, the licensee shall deliver to the consumer, or if more than one, to any one of them, a policy or certificate of insurance covering any insurance purchased by or through the licensee or any employee or affiliate of the licensee in connection with the consumer lender loan that sets forth the amount of any premium that the consumer has paid or is obligated to pay, the amount of insurance, the term of insurance and a description of the coverage. The policy or certificate may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

D. All property insurance sold pursuant to this section shall bear a reasonable bona fide relation to the existing hazard or risk of loss and shall be written by an agent licensed in this state and by an insurance company authorized to conduct property insurance business in this state. A licensee shall not require the purchase of property insurance from the licensee or any employee, affiliate or associate of the licensee as a condition precedent to the making of a consumer lender loan. The licensee may otherwise designate the company in which the insurance shall be placed as long as the insurance company is authorized to conduct business in this state.

E. Property insurance, if sold by a licensee in connection with a consumer loan, is at the option of the consumer in an amount not exceeding the greater of the reasonable value of the property insured as designated in writing by the consumer or the approximate amount of the consumer loan and shall be for a term not exceeding the approximate term of the consumer loan. However, the amount of this property insurance may not exceed the designated value of the property insured.

F. If a licensee sells property insurance in connection with a consumer revolving loan or a home equity revolving loan, the amount of the property insurance shall not exceed the greater of the reasonable value of the property insured as designated in writing by the consumer or the agreed on credit limit. However, the amount of property

insurance shall not exceed the designated value of the insured property. The licensee may sell property insurance for renewable terms of not more than two years. Alternatively, the amount of property insurance may be equal to the balance outstanding on a consumer revolving loan or a home equity revolving loan from time to time with the premiums calculated on the basis of the actual daily unpaid balance or the average daily balance of the account during each billing cycle period. Premiums for property insurance may be charged as an advance on a consumer revolving loan or a home equity revolving loan.

G. If the licensee sells the consumer property insurance for a renewable term, the licensee shall mail a notice to the consumer at least thirty days before the renewal date that states all of the following:

1. The consumer's property insurance is about to expire.

2. The consumer may obtain property insurance from any source chosen by the consumer subject to the licensee's right to reasonably reject the insurer chosen by the consumer by providing written notice to the consumer of those reasons for rejection.

3. The term, coverage and premium for the renewal of property insurance.

4. The property insurance will be renewed on expiration unless the consumer provides the licensee before the expiration date with evidence that the consumer has obtained other property insurance.

H. Notwithstanding any other provision of this chapter, any advantage, commission, dividend, gain or identifiable charge for insurance authorized by this section, or otherwise, to the licensee or any employee or affiliate of the licensee from that insurance or its sale is not an additional finance charge or other allowed fee in connection with the consumer lender loan. If the licensee provides a new consumer lender loan or renews a contract of a consumer lender loan and the licensee sells the consumer new insurance, the licensee shall apply the insurance provided for in this section to the new loan or renewal, or the licensee shall cancel the prior insurance and provide the consumer with a refund or credit of the unearned premium or identifiable charge before selling the new insurance to the consumer.

I. The licensee shall determine the refund of unearned premiums for credit life insurance and credit disability insurance on prepayment in full according to title 20, chapter 6, article 10.

J. Except as otherwise specifically provided in this chapter, insurance transactions pursuant to this chapter are subject in all respects to the applicable laws pertaining to that insurance pursuant to title 20 and to the applicable rules adopted pursuant to title 20.

CONSTABLE ETHICS, STANDARDS, AND TRAINING BOARD
Title 13, Chapter 14

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 2, 2024

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

FROM: Council Staff

DATE: March 14, 2024

SUBJECT: **CONSTABLE ETHICS, STANDARDS, AND TRAINING BOARD**
Title 13, Chapter 14

Summary

This Five-Year Review Report (5YRR) from the Constable Ethics, Standards, and Training Board (Board) relates to ten (10) rules in Title 13, Chapter 14, Articles 1-3 regarding the code of conduct for constables, the processes for filing a complaint against constables and hearings before the Board, disciplinary action taken by the Board, review or rehearing of Board decisions, and processes for requests and evaluation of grant applications.

This is the first 5YRR for these rules which were adopted by a rulemaking which became effective in June 2018.

Proposed Action

The Board is proposing to amend rules in Article 2, titled Complaints; Hearings; Disciplinary Action, to make them more effective, as outlined in more detail below. The Board anticipates submitting a rulemaking to amend the rules in Article 2 by December 2024.

1. Has the agency analyzed whether the rules are authorized by statute?

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Board has reviewed the rules and has no update to the 2018 EIS that expected the economic impact of the rules to be minimal. The Board indicates there are currently 78 elected or appointed constables and deputy constables in Arizona. During the last year, the Board received 54 complaints against constables and deputy constables. The Board states that there were multiple complaints against 12 constables and deputy constables. The Board took disciplinary action against 15 of those against whom complaints were made. The Board received no requests for a review or rehearing of a decision. Stakeholders include the Board, constables, deputy constables and those who have interactions with the constables or deputy constables.

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

The Board has determined the benefit of the rules, providing due process to constables against whom complaints are made, outweigh the costs, and imposes the least burden and cost on constables. The Board states that it is possible for a constable to avoid incurring any costs of defending against a complaint by complying fully with A.R.S. § 22-131 and R13-14-103. A constable against whom a complaint is made may incur the cost of hiring legal counsel and will incur the cost of submitting a written response to the complaint. The constable may incur the cost of preparing for and attending an administrative hearing regarding the complaint and being disciplined by the Board.

The Board states that a constable who wishes to receive a grant for training and support and equipment incurs the cost of preparing and submitting a grant application but receives the benefit of grant monies to support the training and equipment needs.

4. Has the agency received any written criticisms of the rules over the last five years?

The Board 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 Board indicates the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Board indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Board indicates the rules are mostly effective in achieving their objectives. However, the Board indicates the rules in Article 2 could be made more effective by providing

additional detail about Board actions including processing complaints, conducting hearings, and taking disciplinary action . The Board indicates it is concerned about protecting the privacy of persons that make complaints against a constable and protecting constables from repetitive complaints.

8. Has the agency analyzed the current enforcement status of the rules?

The Board indicates the rules are currently enforced as written.

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

Not applicable. The Board indicates there is no corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The rules do not require issuance of a permit, license, or agency authorization.

11. Conclusion

This Five-Year Review Report (5YRR) from the Constable, Ethics, Standards, and Training Board (Board) relates to ten (10) rules in Title 13, Chapter 14, Articles 1-3 regarding the code of conduct for constables, the processes for filing a complaint against constables and hearings before the Board, disciplinary action taken by the Board, review or rehearing of Board decisions, and processes for requests and evaluation of grant applications. This is the first 5YRR for these rules.

The Board indicates the rules are mostly effective in achieving their objectives. However, the Board indicates the rules in Article 2 could be made more effective by providing additional detail about Board actions including processing complaints, conducting hearings, and taking disciplinary action . The Board indicates it is concerned about protecting the privacy of persons that make complaints against a constable and protecting constables from repetitive complaints. The Board anticipates submitting a rulemaking to amend the rules in Article 2 by December 2024.

Council staff recommends approval of this report.

October 2, 2023

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

RE: Constable Ethics, Standards, and Training Board
Five-year-review Report
13 A.A.C. 14

Dear Ms. Sornsin:

The Board submits the referenced report for Council's review and approval. It is due under an extension at the end of October 2023.

The Board complies with A.R.S. § 41-1091.

For questions about this report, please contact Mahogany Kennedy, who is a constable and member of the Board. You can reach her at mahogany.kennedy@maricopa.gov or 602-525-3319.

Sincerely,

Mahogany Kennedy
Constable

Five-year-review Report
A.A.C. Title 13. Public Safety
Chapter 14. Constable Ethics, Standards and Training Board

INTRODUCTION

Statute that generally authorizes the agency to make rules: A.R.S. § 22-137(A)(1)

1. Specific statute authorizing the rule:

   R13-14-101. Definitions: A.R.S. § 22-137(A)(1)

   R13-14-102. Conduct of the Board: A.R.S. § 22-136

   R13-14-103. Constable Code of Conduct: A.R.S. § 22-137(A)(2)

   R13-14-201. Filing a Complaint; Jurisdiction: A.R.S. § 22-137(A)(1)

   R13-14-202. Complaint Processing: A.R.S. § 22-137(A)(4)

   R13-14-203. Hearing Procedures: A.R.S. § 22-137(A)(3)

   R13-14-204. Disciplinary Action: A.R.S. § 22-137(A)(5)

   R13-14-205. Review or Rehearing of Decision: A.R.S. §§ 22-137(A)(3) and 41-1092.09

   R13-14-301. Request for Grant Applications: A.R.S. § 22-138

   R13-14-302. Evaluation of Grant Applications: A.R.S. § 22-138

2. Objective of the rules:

   R13-14-101. Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition.

   R13-14-102. Conduct of the Board: The objective of the rule is to inform the public or requirements regarding conduct of Board members.

   R13-14-103. Constable Code of Conduct: The objective of the rule is to specify conduct that a constable shall and shall not do.

   R13-14-201. Filing a Complaint; Jurisdiction: The objective of the rule is to provide information about how to submit a complaint regarding a constable; the standards for a complaint being within the Board's jurisdiction; and the statute of limitations for a complaint.

R13-14-202. Complaint Processing: The objective of the rule is to specify the manner in which the Board processes a complaint against a constable.

R13-14-203. Hearing Procedures: The objective of the rule is to indicate the procedures used to conduct a hearing regarding a complaint.

R13-14-204. Disciplinary Action: The objective of the rule is to list the factors the Board considers when deciding on the appropriate discipline for a constable.

R13-14-205. Review or Rehearing of Decision: The objective of the rule is to provide guidance for an aggrieved party to seek judicial review or review or rehearing of a Board order or decision.

R13-14-301. Request for Grant Applications: The objective of the rule is to provide notice of when and how the Board solicits applications for grants for constable training and support and equipment.

R13-14-302. Evaluation of Grant Applications: The objective of the rule is to provide notice of the manner in which the Board makes decisions regarding grant applications.

3. Are the rules effective in achieving their objectives? Mostly yes

   Although the Board is able to process complaints, conduct hearings, and take disciplinary action, the Board believes it would be helpful to amend the Article 2 rules to provide additional detail about these Board actions. The Board is concerned about protecting the privacy of persons that make complaints against a constable and protecting constables from repetitive complaints.

4. Are the rules consistent with other rules and statutes? Yes

   The rules are consistent with A.R.S. Title 41, Chapter 6, Article 10 and A.R.S. Title 41, Chapter 24, Article 1.

5. Are the rules enforced as written? Yes

6. Are the rules clear, concise, and understandable? Yes

7. Has the agency received written criticisms of the rules within the last five years? No

8. Economic, small business, and consumer impact comparison:

All of the rules were initially made in 2018 (See 24 A.A.R. 1518). The EIS prepared with that rulemaking was available for review. The Board expected the economic impact of the rules to be minimal. A constable can avoid the expense of defending against a complaint by complying fully with A.R.S. § 22-131 and R13-14-103.

There are currently 78 elected or appointed constables and deputy constables in Arizona. During the last year, the Board received 54 against constables and deputy constables. There were multiple complaints against 12 constables and deputy constables. Twenty of the complaints were dismissed for lack of jurisdiction. An additional eight were dismissed following a preliminary investigation. One complaint was referred to the presiding judge or county attorney. The remaining 25 complaints were heard by the Board. The Board took disciplinary action against 15 of those against whom complaints were made. The disciplinary actions taken included written letters of reprimand, written warning letters, recommending the Board of Supervisors suspend the constable or deputy constable, and written request for resignation. The Board received no requests for a review or rehearing of a decision.

During the last year, the Board approved 18 grants for constable training and support and equipment. The grants were used primarily for training. Supplies such as bullet-proof vests, ammunition, and communication devices were purchased with grant funds.

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:

This is the Board's first 5YRR.

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 benefit of the rules, providing due process to constables against whom complaints are made, outweighs the costs and imposes the least burden and cost on constables. It is possible for a constable to avoid incurring any costs of defending against a complaint by complying fully with A.R.S. § 22-131 and R13-14-103. A constable against whom a complaint is made may incur the cost of hiring legal counsel and will incur the cost of submitting a written response to the complaint. The constable may incur the cost of preparing for and attending an administrative hearing regarding the complaint and being disciplined by the Board.

A constable who wishes to receive a grant for training and support and equipment incurs the cost of preparing and submitting a grant application but receives the benefit of grant monies to support the training and equipment needs.

12. Are the rules more stringent than corresponding federal laws? No

There are no corresponding federal laws.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

All the rules were made after July 29, 2010. The Board does not issue regulatory permits, licenses, or other authorizations.

14. Proposed course of action:

The Board intends to amend the rules in Article 2. It will submit the rulemaking to Council by December 2024.

UNOFFICIAL VERSION OF 13 A.A.C. 14

Supplement 18-2

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of April 1, through June 30, 2018.

TITLE 13. PUBLIC SAFETY

CHAPTER 14. CONSTABLE ETHICS, STANDARDS AND TRAINING BOARD

This Chapter in supplement 18-2 is new.

Questions about these rules? Contact:

Name:	Tracy Unmacht
Address:	818 N. First St. Phoenix, AZ 85004 and P.O. Box 13116 Phoenix, AZ 85002
Telephone:	(602) 343-6280
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TITLE 13. PUBLIC SAFETY

CHAPTER 14. CONSTABLE ETHICS, STANDARDS AND TRAINING BOARD

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R13-14-101 through R13-14-103, made by final rulemaking effective June 30, 2018 (Supp. 18-1).

Section
R13-14-101. Definitions 2
R13-14-102. Conduct of the Board 2
R13-14-103. Constable Code of Conduct 2

ARTICLE 2. COMPLAINTS; HEARINGS; DISCIPLINARY ACTION

Article 2, consisting of Sections R13-14-201 through R13-14-205, made by final rulemaking effective June 30, 2018 (Supp. 18-1).

Section
R13-14-201. Filing a Complaint; Jurisdiction 2
R13-14-202. Complaint Processing 3
R13-14-203. Hearing Procedures 3
R13-14-204. Disciplinary Action 3
R13-14-205. Review or Rehearing of Decision 3

ARTICLE 3. TRAINING AND EQUIPMENT PROGRAM GRANTS

Article 3, consisting of Sections R13-14-301 and R13-14-302, made by final rulemaking effective June 30, 2018 (Supp. 18-1).

Section
R13-14-301. Request for Grant Applications 4
R13-14-302. Evaluation of Grant Applications 4

ARTICLE 1. GENERAL PROVISIONS

R13-14-101. Definitions

In this Chapter, unless the context requires otherwise:

"Board" means the Constable Ethics, Standards, and Training Board established under A.R.S. § 22-136(A).

"Complainant" means a person, other than the Board, that files a complaint regarding a constable.

"Constable" means an individual elected under A.R.S. § 22-102 and any deputy constable appointed, employed, or authorized by th county board of supervisors.

"Party" has the meaning specified at A.R.S. § 41-1001.

"Person" has the meaning specified at A.R.S. § 1-215.

"Respondent" means a constable against whom a complaint is filed.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 1518, effective June 30, 2018 (Supp. 18-2).

R13-14-102. Conduct of the Board

A. Board members shall elect the officers specified under A.R.S. § 22-136(B) annually. An individual elected as an officer may serve successive terms without limit.

B. The Board shall comply with A.R.S. Title 38, Chapter 3, Article 3.1 regarding open meetings. A person that wishes to have an item placed on the agenda of the Board for discussion and action shall submit the item in writing to the Board at least 48 hours before the Board meeting.

C. A Board member present at a Board meeting in real time by telephone or other electronic means is present for the purpose of determining a quorum.

D. Board members shall comply with A.R.S. Title 38, Chapter 3, Article 8 regarding conflicts of interest.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 1518, effective June 30, 2018 (Supp. 18-2).

R13-14-103. Constable Code of Conduct

A. A constable shall:

1. Comply with all federal, state, and local law;
2. Act in a manner that promotes public confidence in the constable's office;
3. Be honest and conscientious in all professional and personal interactions;
4. Avoid a conflict of interest, including the appearance of a conflict of interest, in the performance of constable duties;
5. Perform constable duties without:
   a. Bias or prejudice; and
   b. Regard for kinship, social or economic status, political interests, public opinion, or fear of criticism or reprisal;
6. Maintain accurate public information regarding the performance of the constable's duties including the daily activity log required under A.R.S. § 11-445;
7. Provide complete and accurate answers to questions regarding court and other procedures available to an individual who comes in contact with the constable's office;
8. Act at all times in a manner appropriate for an elected public official;
9. Be courteous, patient, and respectful toward all individuals who come in contact with the constable's office;
10. Inform an individual who asks for legal advice that as a matter of law, a constable is not allowed to give legal advice while performing the constable's official duties; and
11. Comply with all training requirements relating to being a constable.

B. A constable shall not:

1. Use or attempt to use the constable position to obtain a privilege or exemption for the constable or any other person;
2. Use public funds, property, or other resources for a private or personal purpose;
3. Solicit or accept a gift or favor from any person known to do business with an Arizona justice court;
4. Solicit or accept payment other than mandated compensation for providing assistance that is part of an official duty;
5. Use words or engage in other conduct that a reasonable person would believe reflects bias or prejudice based on race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status;
6. Disclose confidential information received in the course of performing an official duty unless disclosure is required by law; or
7. Use information received in the course of performing an official duty for personal gain or advantage.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 1518, effective June 30, 2018 (Supp. 18-2).

ARTICLE 2. COMPLAINTS; HEARINGS; DISCIPLINARY ACTION

R13-14-201. Filing a Complaint; Jurisdiction

A. A person may submit to the Board a written complaint regarding a constable using the complaint form on the Board's website. A written complaint may be submitted in person at the Board office or by U.S. Postal Service or e-mail. The complainant shall include in the complaint facts that allege the constable failed to comply fully with A.R.S. § 22-131 or R13-14-103 within the last four years. The complainant may attach to the complaint form any documents or other evidence relevant to the complaint.

B. At the monthly Board meeting following receipt of a written complaint under subsection (A), the Board shall review the complaint to determine whether the complaint is within the Board's jurisdiction.

1. The Board shall find a complaint is within the Board's jurisdiction if the complaint meets the standards in subsection (A). If the Board determines the complaint is within the Board's jurisdiction, the Board shall process the complaint as described in R13-14-202.
2. The Board shall find a complaint is not within the Board's jurisdiction if the complaint does not meet the standards in subsection (A). Following the meeting at which the Board determines the complaint is not within the Board's jurisdiction, the Board shall provide notice to the person that submitted the complaint and the constable who was the subject of the complaint.

C. If the Board obtains information the Board believes may indicate a constable failed to comply fully with A.R.S. § 22-131 or R13-14-103 within the last four years, the Board may initiate a complaint against the constable. If the Board initiates a complaint against a constable, the Board shall process the complaint as described in R13-14-202.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 1518, effective June 30, 2018 (Supp. 18-2).

R13-14-202. Complaint Processing

A. Following the meeting at which the Board determines a complaint is within the Board's jurisdiction, as described under R13-14-201, the Board shall send notice to the respondent and:
1. A copy of the complaint received, including any documents or other evidence attached to the complaint form; and
2. A request that the respondent submit a written response to the allegations in the complaint within 45 days after the date on the notice.

B. After receiving the written response or 45 days after providing notice under subsection (A), the Board shall review the respondent's written response and conduct any investigation the Board determines is necessary.

C. The Board shall schedule the complaint for hearing at the Board's second meeting following the meeting referenced in subsection (A).

D. Before allowing review of the complaint investigative file, the Board may redact confidential information.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 1518, effective June 30, 2018 (Supp. 18-2).

R13-14-203. Hearing Procedures

A. Except as modified by this Chapter, the Board shall conduct a hearing regarding a complaint according to the procedures at A.R.S. Title 41, Chapter 6, Article 10 and the rules of the Office of Administrative Hearings at 2 A.A.C. 19.

B. If the Board finds after a hearing that a complainant is a vexatious litigant, as defined at A.R.S. § 12-3201, the Board may take the same action with regard to the complainant as the Superior Court would be allowed to take under A.R.S. § 12-3201.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 1518, effective June 30, 2018 (Supp. 18-2).

R13-14-204. Disciplinary Action

If the Board determines disciplinary action under A.R.S. § 22-137(A)(5) is warranted, the Board shall consider factors including, but not limited to, the following when determining the appropriate discipline:
1. Prior disciplinary offenses;
2. Dishonest or self-serving motive;
3. Pattern and frequency of misconduct;
4. Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the Board;
5. Submission of false evidence, false statements, or other deceptive practices during the investigative or disciplinary process;
6. Refusal to acknowledge wrongful nature of conduct; and
7. Harm caused to a member of the public.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 1518, effective June 30, 2018 (Supp. 18-2).

R13-14-205. Review or Rehearing of Decision

A. A party aggrieved by a Board order or decision may:
1. Seek judicial review of the order or decision under A.R.S. § 12-904; or
2. Except as provided in subsection (G), file a written motion for review or rehearing with the Board not later than 30 days after service of the order or decision. For purposes of this subsection, service is complete on personal service or five days after the date the Board order or decision was mailed to the party's last known address.

B. A motion for rehearing or review may be amended at any time before it is ruled on by the Board. A party may file a response within 15 days after service of the motion or amended motion by any other party. The Board may require written briefs regarding the issues raised in the motion and may provide for oral argument.

C. The Board may grant rehearing or review of a Board order or decision for any of the following causes materially affecting the moving party's rights:
1. An irregularity in the administrative proceedings of the Board or the prevailing party or any order or abuse of discretion that caused the moving party to be deprived of a fair hearing;
2. Misconduct of the Board or the prevailing party;
3. An accident or surprise that could not be prevented by ordinary prudence;
4. Newly discovered material evidence that could not with reasonable diligence be discovered and produced at the original hearing;
5. An error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the case; or
6. The order or decision is not justified by the evidence or is contrary to law.

D. The Board may affirm or modify a Board order or decision or grant a rehearing or review to all or any of the parties, on all or part of the issues, for any of the reasons specified in subsection (C). An order granting a rehearing or review shall specify the grounds on which the rehearing or review is granted, and the rehearing or review shall cover only the matters specified.

E. Not later than 30 days after a Board order or decision is rendered, the Board may on its own initiative order a rehearing or review of its order or decision for any reason specified in subsection (C). After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion.

F. When a motion for rehearing or review is based on affidavits, the party shall serve the affidavits with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. The Board for good cause or by written agreement of all parties may extend the period for service of opposing affidavits to a total of 20 days. Reply affidavits are permitted.

G. If the Board finds that the immediate effectiveness of a Board order or decision is necessary to preserve public peace, health, or safety and that a rehearing or review of the Board order or decision is impracticable, unnecessary, or contrary to the public interest, the Board order or decision may be issued as a final order or decision without an opportunity for a rehearing or review. If a Board order or decision is issued as a final order or decision without an opportunity for rehearing or review, any application for judicial review of the order or decision shall be made within the time permitted for final orders or decisions.

H. A complainant:

1. Is not a party to:
   a. A Board administrative action, decision, or proceeding; or
   b. A court proceeding for judicial review of a Board decision under A.R.S. §§ 12-901 through 12-914; and
2. Is not entitled to seek rehearing or review of a Board action or decision under this Section.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 1518, effective June 30, 2018 (Supp. 18-2).

ARTICLE 3. TRAINING AND EQUIPMENT PROGRAM GRANTS

R13-14-301. Request for Grant Applications

A. As required under A.R.S. § 22-138, the Board makes grants for constable training and support and equipment.

B. The Board shall issue requests for grant applications that meet the standards required under A.R.S. § 41-2702.

C. The Board shall post the requests for grant applications on the Board's website at least six weeks before grant applications are due. The Board shall send written notice of the online availability of the requests for grant applications to all constables and any person that has submitted a written request to receive the notice.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 1518, effective June 30, 2018 (Supp. 18-2).

R13-14-302. Evaluation of Grant Applications

A. Members of the Board shall review and evaluate each grant application in a manner consistent with A.R.S. § 41-2702. The Board shall base the Board's decision regarding an application only on the criteria specified in the request for grant applications.

B. The Board shall vote on each application and award grants at a public meeting.

Historical Note

New Section made by final rulemaking at 24 A.A.R. 1518, effective June 30, 2018 (Supp. 18-2).

22-131. Constables; powers and duties; prohibited acts

A. Constables shall attend the courts of justices of the peace within their precincts when required, and within their counties shall execute, serve and return all processes, warrants and notices directed or delivered to them by a justice of the peace of the county or by competent authority. In addition to any other provision of law these duties may be enforced by the presiding judge of the superior court in the county, including the use of the power of contempt.

B. Constables shall attend the training prescribed in section 22-137.

C. Constables, with the consent of and at salaries fixed by the board of supervisors, may appoint deputies who are certified pursuant to section 41-1822, subsection A, paragraph 3, stenographers, clerks and assistants necessary to conduct the affairs of their offices. The appointments shall be in writing.

D. The provisions of law relating to sheriffs, as far as applicable, shall govern the powers, duties and liabilities of constables.

E. A constable who is duly elected or who is appointed by the board of supervisors has the authority of a peace officer only in the performance of the constable's official duties.

F. A constable may execute, serve and return processes and notices as prescribed in subsection A of this section within any precinct in another county if that precinct adjoins the precinct in which the constable was elected or appointed.

G. A constable is prohibited from engaging in any act as a private process server outside of the constable's elected or appointed duties. A constable shall not own an interest in any entity that operates a private process serving business.

22-132. Expenses

Constables shall be allowed by the board of supervisors, as a county charge, the actual and necessary expenses incurred in training as required by section 22-137, pursuing defendants, transacting business relating to civil and criminal matters and serving notices and processes, except that the allowable expenses for service of process in civil actions shall be as provided in section 11-445.

22-133. Failure to disburse fine or forfeiture received; classification

A constable who receives a fine or forfeiture and knowingly fails or refuses to pay or disburse it according to law within thirty days after receipt thereof, is guilty of a class 2 misdemeanor.

22-134. Purchase of judgment; violation; classification

A constable who knowingly purchases or offers directly or indirectly to purchase any judgment or part of a judgment is guilty of a class 2 misdemeanor.

22-135. Forfeiture of and disqualification from office on conviction of certain crimes

In addition to the punishment prescribed by the crime, a constable who is convicted of any of the following crimes shall forfeit the office and is forever disqualified from holding office in this state:

1. Asking, receiving or agreeing to receive a bribe on an agreement or understanding that his vote, opinion or decision on any matter or question that is or may be brought before him for decision shall be influenced thereby.

2. Asking or receiving any emolument, gratuity or reward or any promise thereof, except as authorized by law, for doing any official act.

3. Purchasing or holding an interest in the purchase of any judgment or part of a judgment.

22-136. Constable ethics standards and training board

A. A constable ethics standards and training board is established consisting of the following voting members:

1. One constable who is from a county with a population of less than one million persons and who is appointed by a statewide constables association established prior to January 1, 2010.

2. One constable who is from a county with a population of one million or more persons and who is appointed by a statewide constables association established prior to January 1, 2010.

3. One justice of the peace who is appointed by the chief justice of the supreme court.

4. One county administrator or designee who is appointed by the county supervisors association.

5. The director of the Arizona peace officer standards and training board or the director's designee.

6. One member of the public who is appointed by the governor.

7. One member who is a board member of the Arizona multihousing association at the time of appointment and who is appointed by the governor.

B. The board shall annually elect a chairperson, vice-chairperson and secretary from among its members. The chairperson may establish committees to assist and advise the board in carrying out its responsibilities. A majority of the board constitutes a quorum and a majority vote of the quorum is necessary for the board to take any action.

C. Terms of the board members are four years. If a member ceases to hold the position that qualified the member for the appointment, the member's membership terminates and the appointing authority pursuant to subsection A fills the vacancy for the unexpired term.

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

22-137. Constable ethics standards and training board; powers and duties; judicial review; constable training; definition

A. The constable ethics standards and training board shall:

1. Adopt rules for the administration and conduct of the board, including meeting times, meeting places and matters to be placed on the agenda of each meeting, and for the distribution of monies in the constable ethics standards and training fund pursuant to section 22-138.

2. Adopt a code of conduct for constables and adopt rules to enforce the code of conduct.

3. Establish procedures for conducting confidential investigations and holding hearings.

4. Hear and investigate written complaints from any person involving a constable's ethical conduct.

5. Remedy a constable's inappropriate behavior by:

(a) Mediating.

(b) Issuing warnings, reprimands or admonishments.

(c) Instructing constables to take a particular action or to take educational classes.

(d) Urging a constable to resign from office.

(e) Placing a constable on probation for up to thirty days, except that after the initial thirty days of probation if the constable is making progress on probation but the constable's behavior is not yet compliant, the board may extend probation in additional thirty-day increments up to a total length of probation of one hundred eighty days.

(f) Recommending to the board of supervisors that a constable who has previously been placed on probation be suspended from performing the constable's duties without pay for any specified length of time not to exceed the remainder of the constable's term.

6. Adopt a standardized daily activity log for constables that is approved by the director of the Arizona peace officer standards and training board and that complies with section 11-445, subsections I and J.

B. The board may:

1. Employ an executive director and other staff necessary to fulfill the powers and duties of the board.

2. Enter into contracts and interagency agreements to carry out its powers and duties.

3. Certify organizations to provide training and support programs for constables.

4. Provide support grants to constables for local or statewide training programs.

5. Take and hear evidence, administer oaths and affirmations and compel by subpoena the attendance of witnesses, including constables, and the production of books, papers, records, documents and other information relating to any investigation or hearing.

C. If the board determines that a constable has committed a criminal act, the board shall refer the investigation to the county attorney's office in the county in which the conduct at issue occurred. The board shall submit the investigation's findings to the county attorney. If the county attorney determines that a crime has not occurred or does not file a criminal complaint against the constable, the board shall adjudicate the complaint pursuant to subsection A, paragraph 5 of this section.

D. A constable may seek judicial review of a final order that is issued by the board of supervisors suspending the constable in the superior court in the county in which the constable is elected or appointed. Judicial review shall be conducted pursuant to title 12, chapter 7, article 6. Judicial review must be commenced pursuant to section 12-904.

E. The Arizona peace officer standards and training board shall approve a mandatory basic training course for newly elected constables covering topics including civil and criminal process, conflict resolution and firearm safety. Constables must attend the mandatory training course within six months after election. In subsequent years, constables must annually attend at least sixteen hours of additional training approved by the Arizona peace officer standards and training board. The constable ethics standards and training board may approve additional training courses for constables. The constable ethics standards and training fund established by section 22-138 may be used for constable training. Copies of certificates of completion of the constable training shall be forwarded to the constable ethics standards and training board within thirty days after completion.

F. This section does not:

1. Create a cause of action or a right to bring an action against the board.

2. Preclude a prosecuting agency from filing charges against a constable.

G. The board of supervisors may accept or modify a recommendation to suspend a constable from performing the constable's duties without pay pursuant to subsection A, paragraph 5 of this section. The board of supervisor's determination is final unless a constable seeks judicial review pursuant to subsection D of this section.

H. For the purposes of this section, "constable" includes a deputy constable who is appointed, employed or authorized by the county board of supervisors.

22-138. Constable ethics standards and training fund; budget

A. A constable ethics standards and training fund is established consisting of monies received from writ fees collected pursuant to section 11-445, subsection A, paragraph 17. The constable ethics standards and training board shall administer the fund. On notice from the board, the state treasurer shall invest and divest monies in the fund pursuant to section 35-313, and monies earned from investment shall be credited to the fund. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations and are continuously appropriated to the board for the purposes of this section.

B. The constable ethics standards and training board shall use:

1. Eighty per cent of the monies appropriated from the fund for constable training, equipment and related grants.

2. Twenty per cent of the monies appropriated from the fund for operating expenses of the board.

C. On or before July 1 of each year, the board shall adopt a budget. The budget is effective on the approval of the board.

11-445. Fees chargeable in civil actions by sheriffs and constables; constables' standardized daily activity logs

A. The sheriff shall receive the following fees in civil actions:

1. For serving each true copy of the original summons in a civil suit, sixteen dollars, except that the sheriff shall not charge a fee for service of any document pursuant to section 13-3602 or any injunction against harassment pursuant to section 12-1809 if the court indicates the injunction arises out of a dating relationship.

2. For summoning each witness, sixteen dollars.

3. For levying and returning each writ of attachment or claim and delivery, forty-eight dollars.

4. For taking and approving each bond and returning it to the proper court when necessary, twelve dollars.

5. For endorsing the forfeiture of any bond required to be endorsed by the sheriff, twelve dollars.

6. For levying each execution, twenty-four dollars.

7. For returning each execution, sixteen dollars.

8. For executing and returning each writ of possession or restitution, forty-eight dollars plus a rate of forty dollars per hour per deputy or constable for the actual time spent in excess of three hours.

9. For posting the advertisement for sale under execution, or any order of sale, twelve dollars.

10. For posting or serving any notice, process, writ, order, pleading or paper required or permitted by law, not otherwise provided for, sixteen dollars except that posting for a writ of restitution shall not exceed ten dollars.

11. For executing a deed to each purchaser of real property under execution or order of sale, twenty-four dollars.

12. For executing a bill of sale to each purchaser of real and personal property under an execution or order of sale, when demanded by the purchaser, sixteen dollars.

13. For services in designating a homestead or other exempt property, twelve dollars.

14. For receiving and paying money on redemption and issuing a certificate of redemption, twenty-four dollars.

15. For serving and returning each writ of garnishment and related papers, forty dollars.

16. For the preparation, including notarization, of each affidavit of service or other document pertaining to service, eight dollars.

17. For every writ served on behalf of a justice of the peace, a fee established by the board of supervisors not to exceed five dollars per writ. Monies collected from the writ fees shall be deposited in the constable ethics standards and training fund established by section 22-138.

B. The sheriff shall also collect the appropriate recording fees if applicable and other appropriate disbursements.

C. The sheriff may charge:

1. Fifty-six dollars plus disbursements for any skip tracing services performed.

2. A reasonable fee for executing a civil arrest warrant ordered pursuant to court rule by a judge or justice of the peace. The fee shall only be charged to the party requesting the issuance of the civil arrest warrant.

3. A reasonable fee for storing personal property levied on pursuant to title 12, chapter 9.

D. For traveling to serve or on each attempt to serve civil process, writs, orders, pleadings or papers, the sheriff shall receive two dollars forty cents for each mile actually and necessarily traveled but not to exceed two hundred miles, nor to be less than sixteen dollars. Mileage shall be charged one way only. For service made or attempted at the same time and place, regardless of the number of parties or the number of papers so served or attempted, only one charge for travel fees shall be made for such service or attempted service.

E. For collecting money on an execution when it is made by sale, the sheriff and the constable shall receive eight dollars for each one hundred dollars or major portion thereof not to exceed a total of two thousand dollars, but when money is collected by the sheriff without a sale, only one-half of such fee shall be allowed. When satisfaction or partial satisfaction of a judgment is received by the judgment creditor after the sheriff or constable has received an execution on the judgment, the commission is due the sheriff or constable and is established by an affidavit of the judgment creditor filed with the officer. If the affidavit is not lodged with the officer within thirty days of the request, the commission shall be based on the total amount of judgment due as billed by the officer and may be collected as any other debt by that officer.

F. The sheriff shall be allowed for all process issued from the supreme court and served by the sheriff the same fees as are allowed the sheriff for similar services on process issued from the superior court.

G. The constable shall receive the same fees as the sheriff for performing the same services in civil actions, except that mileage shall be computed from the office of the justice of the peace originating the civil action to the place of service.

H. Notwithstanding subsection G of this section, in a county with a population of more than three million persons, if an office of a justice of the peace is located outside of the precinct boundaries, the mileage for a constable shall be calculated pursuant to subsection D of this section, except that the distance between the precinct boundaries and the office of the justice of the peace, as determined by the county and certified by the board of supervisors of that county, shall be subtracted from the mileage calculation. This certified mileage calculation shall be transmitted to the justice courts and the clerks of those courts shall calculate the mileage between the office of the justice of the peace and the location where the civil process, writ, order, pleading or paper was served and reduce the mileage used to calculate the mileage fee according to the certified mileage calculation for that respective jurisdiction.

I. Constables shall maintain a standardized daily activity log of work related activities, including a listing of all processes served and the number of processes attempted to be served by case number, the names of the plaintiffs and defendants, the names and addresses of the persons to be served except as otherwise precluded by law, the date of process and the daily mileage.

J. The standardized daily activity log maintained in subsection I of this section is a public record and shall be made available by the constable at the constable's office during regular office hours. The standardized daily log shall be filed monthly by the tenth day of the following month with the clerk of the board of supervisors. The board of supervisors shall determine the method for filing the standardized daily log.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 10, Article 12

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 2, 2024

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

FROM: Council Staff

DATE: **March 11, 2024**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 10, Article 12

Summary

This Five Year Review Report (5YRR) from the Department of Health Services (Department) covers eleven (11) rules in Title 9, Chapter 10, Article 12 related to Home Health Agencies. The Department is required to adopt rules for health care institutions to reduce monetary or regulatory costs on a person or individuals and facilitate licensing of "integrated health programs that provide both behavioral and physical health services." The rules in 9 A.A.C. 10, Article 12 were made new in 2013 as part of an exempt rulemaking of 9 A.A.C. 10 and 9 A.A.C. 20 to comply with Laws 2011, Ch. 96 and amended through expedited rulemaking in 2019, at 25 A.A.R. 3391.

Proposed Action

The Department plans to submit a Notice of Final Rulemaking to Council by September 2024 to amend some of the rules in Article 12.

1. **Has the agency analyzed whether the rules are authorized by statute?**

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The rules in 9 A.A.C. 10, Article 12 were made new in 2013 as part of an exempt rulemaking of 9 A.A.C. 10 and 9 A.A.C. 20 to comply with Laws 2011, Ch 96 that required the Department to adopt rules for health care institutions to reduce monetary or regulatory costs on a person or individuals and facilitate licensing of "integrated health programs that provide both behavioral and physical health services." The rules were last revised through expedited rulemaking, at 25 A.A.R. 3391 with an immediate effective date of November 6, 2019. No economic, small business and consumer impact statements were prepared as a part of the exempt and expedited rulemakings.

Overall, the Department believes these changes significantly benefited home health agencies and all affected persons by having updated rules with clearer and more consistent requirements. The Department estimates that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the costs and benefits considered in developing the rules.

The Department identifies stakeholders as the Department, home health agencies, patients and their families, and the general public.

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

The Department has determined that the rules in 9 A.A.C. 10, Article 12 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 has not received written criticism over the rules in the past five years, however did receive a public comment to add Physicians Assistants to home health.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department states the rules are clear, concise, and understandable with the exception of minor grammatical errors.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Department states the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department states the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Department states it enforces the rules 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 the rules are not more stringent than corresponding federal law.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department states a general permit is not applicable 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 eleven rules in Title 9, Chapter 10, Article 12 related to Home Health Agencies. As indicated above, the Department states the rules are generally clear, concise, and understandable, consistent with other rules and statutes, and enforced as written. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

October 16, 2023

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 10, Article 12, Five-Year-Review Report for Health Care Institutions: Licensing – Home Health Agencies

Dear Ms. Sornsin:

Please find enclosed the Five-Year Review Report (Report) from the Arizona Department of Health Services (Department) for 9 A.A.C. 10, Article 12, Home Health Agencies, which is due on November 30, 2023.

The Department reviewed the rules in 9 A.A.C. 10, Article 12, with the intention that the rules do not expire pursuant to A.R.S. § 41-1056(J).

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact me at (602) 542-1020.

Sincerely,

Stacie Gravito
Director's Designee

SG:lf

Enclosures

ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 10. Department of Health Services -

Health Care Institutions: Licensing

Article 12. Home Health Agencies

October 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-132(A)(1) and (A)(17) and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 36-151 through 36-160, 36-405, 36-406, and 36-411

2. The objective of each rule:

Rule	Objective
R9-10-1201	The objective of the rule is to define terms used in the Article to enable readers to better understand the requirements and allow for consistent interpretation of the terms.
R9-10-1202	The objective of the rule is to provide additional application requirements specific to a home health agency.
R9-10-1203	The objective of the rule is to establish minimum requirements for a home health agency governing authority and administrator, including specific administrative policies and procedures to protect the health and safety of a resident.
R9-10-1204	The objective of the rule is to establish minimum requirements for a home health agency quality management program.
R9-10-1205	The objective of the rule is to establish minimum requirements for a person who contracts with the licensee to provide a home health agency services.
R9-10-1206	The objective of the rule is to establish minimum standards for home health agency personnel members and personnel records for personnel members, employees, or volunteers.
R9-10-1207	The objective of the rule is to establish requirements for patient care plans.
R9-10-1208	The objective of the rule is to establish minimum standards for patient rights.
R9-10-1209	The objective of the rule is to establish minimum requirements for patient medical records.
R9-10-1210	The objective of the rule is to establish minimum requirements for home health services provided in a home health agency.
R9-10-1211	The objective of the rule is to establish minimum requirements for supportive services provided in a home health agency.

3. Are the rules effective in achieving their objectives? **Yes _X_** **No __**

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation

4. Are the rules consistent with other rules and statutes? **Yes _X_ No __**

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation

5. Are the rules enforced as written? **Yes _X_ No __**

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

6. Are the rules clear, concise, and understandable? **Yes _X__ No __**

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
R9-10-1209	The rule is clear, concise, and understandable, but could be improved by correcting minor grammatical errors.

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
R9-10-1210	The Department received a comment requesting to add Physicians Assistants to order home health. The Centers for Medicare & Medicaid Services has amended their regulation and the industry is asking us to do the same.

8. Economic, small business, and consumer impact comparison:

The rules in 9 A.A.C. 10, Article 12 were made new in 2013 as part of an exempt rulemaking of 9 A.A.C. 10 and 9 A.A.C. 20 to comply with Laws 2011, Ch. 96 that required the Department to adopt rules for health care institutions to reduce monetary or regulatory costs on a person or individuals and facilitate licensing of "integrated health programs that provide both behavioral and physical health services." The rules were last revised through expedited rulemaking, at 25 A.A.R. 3391 with an immediate effective date of November 6, 2019. No economic, small business and consumer impact statements were prepared as a part of the exempt and expedited rulemakings. The Department believes persons who are directly affected by, bear the costs of, or directly benefit from the rules include the Department, home health agencies, patients and their families, and the general public. Annual costs and revenues are designated as minimal when more than $0 and less than $5,000, moderate when $5,000 and less than $10,000, and substantial when $10,000 or greater. A cost or benefit is designated as significant when meaningful or important but not readily subject to quantification.

As of October 2023, the Department reported that 232 licensed home health agencies were operating in the state and 3 home health agencies elected to close in the calendar year 2022. Additionally, during the 2022 calendar year, 44 initial applications were received and 206 perpetual licenses were processed. No amended applications were received, and no other applications were denied. The Department completed 16 initial inspections, 62 compliance surveys and 16 complaint investigations surveys. The Department also completed 11 enforcement actions of which 5 were related to compliance and complaint investigations surveys and 6 were related to late renewal applications. And as a result of the enforcement actions, the Department collected $2,250 in civil money penalties.

In the expedited rulemaking at 25 A.A.R. 3391, effective November 6, 2019, two Sections of the rules in Article 12 were amended to be more clear, concise, and understandable. R9-10-1203 was amended to add a citation to the A.R.S. § 36-1901.01, to which speech-language pathologists are licensed according to. Also, in R9-10-1203, language was amended to clarify that medical social services do not require a license under A.R.S. Title 32, Chapter 33, Article 5, however, the statute provides licensing requirements for social workers. Lastly, in R9-10-1203, the rule was amended to allow a licensed practical nurse to provide respiratory care services. In addition, R9-10-1206 was amended in the 2019 expedited rulemaking to correct a grammatical error. The Department believes these changes provided a benefit to home health agencies regulated under the rules without increasing the cost of regulatory compliance or reducing the procedural rights of a regulated person.

Overall, the Department believes these changes significantly benefit home health agencies and all affected persons by having updated rules with clearer and more consistent requirements. On the basis of the information described above, the Department estimates that the actual costs and benefits experienced by persons affected by the rules are generally consistent with the costs and benefits considered in developing the rules.

9. Has the agency received any business competitiveness analyses of the rules? Yes ___ No _X_

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

Yes, the Department completed this course of action through expedited rulemaking, at 25 A.A.R. 3391 with an immediate effective date of November 6, 2019.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The Department has determined that the rules in 9 A.A.C. 10, Article 12 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)?

The rules are not more stringent than the related federal laws, 42 CFR 441.15 – requirements for home health services.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The rules require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-405, so a general permit is not applicable.

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Department plans to amend some of the rules in 9 A.A.C. 10, Article 12 to address the matters identified in this five-year review report through a rulemaking. The amended rules will not increase the cost of regulatory compliance, increase a fee, or reduce the procedural rights of persons regulated. The Department plans to submit a Notice of Final Rulemaking to the Council by September 2024.

Gmail Emily Carey <emily.carey@azdhs.gov>

Fwd: Arizona Home Health Policy Question

3 messages

Odette Colburn <odette.colburn@azdhs.gov> Fri, Mar 17, 2023 at 9:25 AM
To: Emily Carey <emily.carey@azdhs.gov>, Lucinda Feeley <lucinda.feeley@azdhs.gov>

There is an ask from the industry to add Physicians Assistants to R9-10-1210. CMS has amended their regulation and the industry is asking us to do the same.

---------- Forwarded message ---------
From: **Nadia Kinsel** <nadia.kinsel@azdhs.gov>
Date: Thu, Mar 16, 2023 at 3:33 PM
Subject: Fwd: Arizona Home Health Policy Question
To: Odette Colburn <odette.colburn@azdhs.gov>, Katrina Trinchera <katrina.trinchera@azdhs.gov>

Can y'all help me answer this question?

---------- Forwarded message ---------
From: **Melissa Cereceres** <MCereceres@dependablehealth.com>
Date: Thu, Mar 16, 2023 at 2:49 PM
Subject: Arizona Home Health Policy Question
To: nadia.kinsel@azdhs.gov <nadia.kinsel@azdhs.gov>

Hello Nadia, could you tell me if Arizona is also moving toward allowing NPs and PAs order home health post-pandemic? I received an email from our board in Nevada so I am wondering if this will happen in AZ as well?

Thank you!

Melissa Cereceres, RN, BSN, MA

Chief Nursing Officer / Vice President

Dependable Health Services

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mcereceres@dependablehealth.com

From: Carol Eastburg <ceastburg@health.nv.gov>
Sent: Wednesday, March 1, 2023 6:45 PM
To: putley@comforthospicecare.com; admin@communityhomehc.com; jakapulo@yahoo.com; compassionhh@gmail.com; dencabo@chsvisit.com; michaelc@connollycare.com; zona0386@yahoo.com; skuewa09@yahoo.com; corinthiansofnevada@yahoo.com; jennifer@creekviewhh.com; criticalcarensa@gmail.com; Melissa Cereceres; hasmik.koshkaryan@desertgracehealth.com; ron@dynamichomecare1.com; eaglehhealthinc@yahoo.com; ebonyhha@yahoo.com; mmagboo@eden-health.com; faith.mora@eden-health.com; monica.ortiz@eden-health.com; elitecarelv@yahoo.com; elitehomehealthcarellc@gmail.com; emeraldhhc@gmail.com; geneva.perez@encompasshealth.com; excellhomehealth@msn.com; excellenttouchhh@gmail.com; melo.llc2015@gmail.com; florashomehealth@gmail.com; faithhhc@gmail.com; azizmd@hotmail.com; familyhhcinc@gmail.com; fidelity.hhs.vegas@gmail.com; mf_pua@yahoo.com; firstaccess_hcpro@yahoo.com; mariel.go7@yahoo.com; firstcare_hhi@yahoo.com; fchcinc2016@gmail.com; mb.firstratehealthcare@gmail.com
Subject: UPDATE - GREAT NEWS!

Good afternoon, HHA Administrators,

Unbeknownst to me, NAC 449.800 was recently approved to allow a physician, physician assistant or advanced practice registered nurse to order home health. Specifics begin in Section 58 on Page 63 of the attached (EXPLANATION – Matter in ***italics*** is new; matter in brackets [omitted material] is material to be omitted.).

Please accept my apologies for any confusion caused by my earlier email today.

Thank you.

Carol Eastburg, RN

RAI/MDS/OASIS Education Coordinator | Health Care Quality and Compliance

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988 is a confidential, free hotline that connects those experiencing a mental health, substance use, or suicidal crisis with trained crisis counselors 24/7/365. **Call, text, or chat 988lifeline.org.**

Need help with anything else? Nevada **211** can connect you with information and referrals to local health and human services agencies. It is free, confidential, and available 24/7/365. **Call 211, text 898211, or visit www.nevada211.org**.

Please take our customer satisfaction survey by clicking **here**.

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Nadia Kinsel
Healthcare Compliance Officer Supervisor, Medical Facilities Licensing
Arizona Department of Health Services

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Health and Wellness for all Arizonans

Our Vision: *Health and Wellness for all Arizonans*
Our Mission: *To promote, protect, and improve the health and wellness of individuals and communities in Arizona*

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381K

Emily Carey <emily.carey@azdhs.gov> Fri, Mar 17, 2023 at 9:29 AM
To: Odette Colburn <odette.colburn@azdhs.gov>
Cc: Lucinda Feeley <lucinda.feeley@azdhs.gov>

Article 12's five year review report is due this November, so this can be added to the recommended changes to the article.

Emily Carey, M.S.
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Arizona Department of Health Services
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Health and Wellness for all Arizonans

[Quoted text hidden]

Odette Colburn <odette.colburn@azdhs.gov> Fri, Mar 17, 2023 at 9:31 AM
To: Emily Carey <emily.carey@azdhs.gov>
Cc: Lucinda Feeley <lucinda.feeley@azdhs.gov>

Great, thank you!
[Quoted text hidden]

9 A.A.C. 10

TITLE 9. HEALTH SERVICES

CHAPTER 10. DEPARTMENT OF HEALTH SERVICES - HEALTH CARE INSTITUTIONS: LICENSING

Authority: A.R.S. §§ 36-132(A)(1), 36-136(G)

ARTICLE 12. HOME HEALTH AGENCIES

Section

R9-10-1201. Definitions
R9-10-1202. Supplemental Application Requirements
R9-10-1203. Administration
R9-10-1204. Quality Management
R9-10-1205. Contracted Services
R9-10-1206. Personnel
R9-10-1207. Care Plan
R9-10-1208. Patient Rights
R9-10-1209. Medical Records
R9-10-1210. Home Health Services
R9-10-1211. Supportive Services

ARTICLE 12. HOME HEALTH AGENCIES

R9-10-1201. Definitions

In addition to the definitions in A.R.S. § 36-401 and R9-10-101, the following apply in this Article, unless otherwise specified:

1. "Branch office" means a location other than a home health agency's main administrative office that:
   a. Operates under the license of the home health agency, and
   b. Is under the control of the home health agency's administrator.
2. "Home health services director" means an individual who provides direction for the home health services provided by or through a home health agency.
3. "Medical social services" means activities that assist a patient to cope with concerns about the patient's illness or injury, and may include helping to find resources to address the patient's concerns.

R9-10-1202. Supplemental Application Requirements

In addition to the license application requirements in A.R.S. § 36-422 and R9-10-105, an applicant for a license as a home health agency shall:

1. Include on the application:
   a. The name and address of each proposed branch office, if applicable; and
   b. The geographic region to be served by:
      i. The proposed home health agency's administrative office, and
      ii. Each proposed branch office; and
2. Submit to the Department a copy of a valid fingerprint clearance card issued according to A.R.S. Title 41, Chapter 12, Article 3.1 for:
   a. The applicant, if the applicant is an individual; or
   b. Each individual with a 10% or greater ownership of the business organization, if the applicant is a business organization.

R9-10-1203. Administration

A. A governing authority shall:

1. Consist of one or more individuals responsible for the organization, operation, and administration of the home health agency;
2. Establish, in writing:
   a. A home health agency's scope of services, and
   b. Qualifications for an administrator;
3. Designate, in writing, an administrator who has the qualifications established in subsection (A)(2)(b);
4. Adopt a quality management program according to R9-10-1204;
5. Review and evaluate the effectiveness of the quality management program at least once every 12 months;
6. Designate, in writing, an acting administrator who has the qualifications established in subsection (A)(2)(b) if the administrator is:
   a. Expected not to be present in a home health agency's administrative office for more than 30 calendar days, or
   b. Not present in a home health agency's administrative office for more than 30 calendar days;
7. Except as provided in subsection (A)(6), notify the Department according to A.R.S. § 36-425(I) when there is a change in the administrator and identify the name and qualifications of the new administrator;

8. Appoint, according to A.R.S. § 36-151(5)(b), an advisory group that consists of four or more members that include:
   a. A physician;
   b. A registered nurse who has at least one year of experience as a registered nurse providing home health services; and
   c. Two or more individuals who represent a medical, nursing, or health-related profession; and
9. Ensure that the advisory group appointed according to subsection (A)(8):
   a. Meets at least once every 12 months,
   b. Documents meetings, and
   c. Assists in establishing and evaluating policies and procedures for the home health agency.

B. An administrator:
1. Is directly accountable to the governing authority of a home health agency for all services provided by the home health agency;
2. Has the authority and responsibility to manage the home health agency;
3. Except as provided in subsection (A)(6), designates, in writing, an individual who is present at the home health agency's administrative office and accountable for services provided by the home health agency when the administrator is not present at the home health agency's administrative office; and
4. Ensures compliance with A.R.S. § 36-411.

C. An administrator shall:
1. Ensure that policies and procedures are established, documented, and implemented to protect the health and safety of a patient that:
   a. Cover job descriptions, duties, and qualifications, including required skills, knowledge, education, and experience for personnel members, employees, and volunteers;
   b. Cover orientation and in-service education for personnel members, employees, and volunteers;
   c. Cover how a personnel member may submit a complaint relating to patient care;
   d. Cover the requirements in A.R.S. Title 36, Chapter 4, Article 11;
   e. Include a method to identify a patient to ensure the patient receives the appropriate services;
   f. Cover patient rights, including assisting a patient who does not speak English or who has a disability to become aware of patient rights;
   g. Cover specific steps for:
      i. A patient to file a complaint, and
      ii. The home health agency to respond to a patient complaint;
   h. Cover health care directives;
   i. Cover medical records, including electronic medical records;
   j. Cover a quality management program, including incident reports and supporting documentation;
   k. Cover contracted services; and
   l. Cover and designate which personnel members or employees are required to have current certification in cardiopulmonary resuscitation and first aid training;
2. Ensure that policies and procedures for services provided by a home health agency are established, documented, and implemented to protect the health and safety of a patient that:
   a. Cover patient admission, discharge planning, and discharge;
   b. Cover the provision of home health services and, if applicable, specific types of supportive services and medical social services;
   c. Include when general consent and informed consent are required;
   d. Cover how personnel members will respond to a patient's sudden, intense, or out-of-control behavior to prevent harm to the patient or another individual;
   e. Cover medication procurement, if applicable, and administration; and
   f. Cover infection control;
3. Ensure that policies and procedures are:
   a. Available to personnel members, employees, and volunteers, and
   b. Reviewed at least once every three years and updated as needed;
4. Ensure that records of advisory group meetings are maintained for at least 24 months after the date of the meeting;
5. Designate, in writing, a home health services director who is:
   a. A physician with at least 24 months of experience working for or with a home health agency; or
   b. A registered nurse with at least three years of nursing experience, including at least 24 months of experience as a registered nurse providing home health services;
6. Ensure that:
   a. Speech therapy or speech-language pathology services are provided by a speech-language pathologist according to A.R.S. § 36-1940.01 or speech-language pathologist assistant licensed according to A.R.S. § 36-1940.04;
   b. Nutritional services are provided by a registered dietitian;
   c. Occupational therapy services are provided by an occupational therapist or occupational therapy assistant;
   d. Physical therapy services are provided by a physical therapist or a physical therapist assistant;
   e. Respiratory care services are provided by a respiratory therapist, respiratory therapy technician licensed according to A.R.S. Title 32, Chapter 35, or a practical nurse or registered nurse licensed according to A.R.S. Title 32, Chapter 15;
   f. Pharmacy services are provided by a pharmacist; and
   g. Medical social services are provided:

i. By a personnel member qualified according to policies and procedures that coordinates medical social services; and
ii. For medical social services, related to the practice of social work in A.R.S. § 32-3251, by a personnel member licensed under A.R.S. Title 32, Chapter 33, Article 5;

7. Ensure that the services specified in subsection (C)(6) are provided to a patient only under an order by the patient's physician, registered nurse practitioner, or podiatrist, as applicable; and
8. Unless otherwise stated, ensure that:
   a. Documentation required by this Article is provided to the Department within two hours after a Department request; and
   b. When documentation or information is required by this Chapter to be submitted on behalf of a home health agency, the documentation or information is provided to the unit in the Department that is responsible for licensing and monitoring the home health agency.

R9-10-1204. Quality Management

An administrator shall ensure that:

1. A plan for a quality management program for the home health agency is established, documented, and implemented that includes:
   a. A method to identify, document, and evaluate incidents;
   b. A method to collect data to evaluate the provision of services, including oversight of personnel members;
   c. A method to evaluate the data collected to identify a concern about the provision of services;
   d. A method to make changes or take action as a result of the identification of a concern about the provision of services;
   e. A method to determine whether actions taken improved the provision of services; and
   f. The frequency of submitting the documented report required in subsection (2) to the governing authority;
2. A documented report is submitted to the governing authority that includes:
   a. Each identified concern about the delivery of services related to patient care, and
   b. Any change made or action taken as a result of the identification of a concern about the delivery of services related to patient care; and
3. The report in subsection (2) and the supporting documentation for the report are maintained for at least 12 months after the date the report is submitted to the governing authority .

R9-10-1205. Contracted Services

An administrator shall ensure that:

1. Contracted services are provided according to the requirements in this Article, and
2. Documentation of current contracted services is maintained that includes a description of the contracted services provided.

R9-10-1206. Personnel

A. An administrator shall ensure that:

1. The qualifications, skills, and knowledge required for each type of personnel member:
   a. Are based on:
      i. The type of services expected to be provided by the personnel member according to the established job description, and
      ii. The acuity of the patients receiving services from the personnel member according to the established job description; and
   b. Include:
      i. The specific skills and knowledge necessary for the personnel member to provide the expected services listed in the established job description,
      ii. The type and duration of education that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected services listed in the established job description, and
      iii. The type and duration of experience that may allow the personnel member to have acquired the specific skills and knowledge for the personnel member to provide the expected services listed in the established job description;
2. A personnel member's skills and knowledge are verified and documented:
   a. Before the personnel member provides physical health services, and
   b. According to policies and procedures;
3. Sufficient personnel members are available with the qualifications, skills, and knowledge necessary to:
   a. Provide the services in the home health agency's scope of services,
   b. Meet the needs of a patient, and
   c. Ensure the health and safety of a patient; and
4. A personnel member, an employee, a volunteer, or a student who has or is expected to have direct interaction with a patient, provides evidence of freedom from infectious tuberculosis:
   a. On or before the date the individual begins providing services at or on behalf of the home health agency, and
   b. As specified in R9-10-113.

B. An administrator shall ensure that a personnel record for each personnel member, employee, or volunteer:

1. Includes:
   a. The individual's name, date of birth, and contact telephone number;
   b. The individual's starting date of employment or volunteer service, and if applicable, ending date; and
   c. Documentation of:
      i. The individual's qualifications, including skills and knowledge applicable to the individual's job duties;
      ii. The individual's education and experience applicable to the individual's job duties;

iii. The individual's completed orientation and in-service education as required by policies and procedures;
iv. The individual's license or certification, if the individual is required to be licensed or certified in this Article or policies and procedures;
v. The individual's compliance with the requirements in A.R.S. § 36-411;
vi. Cardiopulmonary resuscitation training, if required for the individual according to this Article and policies and procedures;
vii. First aid training, if required for the individual according to this Article and policies and procedures; and
viii. Evidence of freedom from infectious tuberculosis, if required according to subsection (A)(4);

2. Is maintained:
   a. Throughout the individual's period of providing services in or for the home health agency; and
   b. For at least 24 months after the last date the individual provided services in or for the home health agency; and
3. For a personnel member who has not provided services for the home health agency during the previous 12 months, provided to the Department within 72 hours after the Department's request.

R9-10-1207. Care Plan

A. An administrator shall ensure that a care plan is developed for each patient:
1. Based on an assessment of the patient as required in R9-10-1210(D)(1) or (F)(2)(e)(i);
2. With participation from:
   a. The patient's physician, registered nurse practitioner, or podiatrist, as applicable; and
   b. A registered nurse; and
3. That includes:
   a. The patient's diagnosis;
   b. Surgery dates relevant to home health services, if applicable;
   c. The patient's cognitive awareness of self, location, and time;
   d. Functional abilities and limitations;
   e. Goals for functional rehabilitation, if applicable;
   f. The type, duration, and frequency of each service to be provided;
   g. Treatments the patient is receiving from a source other than the home health agency;
   h. Medications and herbal supplements reported by the patient or the patient's representative as being used by the patient, and the dose, route of administration, and schedule for administration of each medication or herbal supplement;
   i. Any known drug allergies;
   j. Nutritional requirements and preferences;
   k. Specific measures to improve the patient's safety and protect the patient against injury; and
   l. A discharge plan for the patient including, if applicable, a plan for assessing the accomplishment of treatment or therapy goals for the patient.

B. An administrator shall ensure that:
1. Home health services are provided to a patient by the home health agency according to the patient's care plan;
2. The patient's care plan is reviewed and updated:
   a. Whenever there is a change in the patient's condition that indicates a need for a change in the type, duration, or frequency of the services being provided;
   b. If the patient's physician, registered nurse practitioner, or podiatrist, as applicable, orders a change in the care plan; and
   c. At least every 60 calendar days; and
3. The patient's physician, registered nurse practitioner, or podiatrist, as applicable, authenticates the care plan with a signature within 30 calendar days after the care plan is initially developed and whenever the care plan is reviewed or updated.

R9-10-1208. Patient Rights

A. An administrator shall ensure that:
1. The requirements in subsection (B) and the patient rights in subsection (C) are conspicuously posted at the home health agency's administrative office;
2. At the time of admission, a patient or the patient's representative receives a written copy of the requirements in subsection (B) and the patient rights in subsection (C); and
3. Policies and procedures include:
   a. How and when a patient or the patient's representative is informed of patient rights in subsection (C); and
   b. Where patient rights are posted as required in subsection (A)(1).

B. An administrator shall ensure that:
1. A patient is treated with dignity, respect, and consideration;
2. A patient is not subjected to:
   a. Abuse;
   b. Neglect;
   c. Exploitation;
   d. Coercion;
   e. Manipulation;
   f. Sexual abuse;

g. Sexual assault;
h. Seclusion;
i. Restraint;
j. Retaliation for submitting a complaint to the Department or another entity; or
k. Misappropriation of personal and private property by a home health agency's personnel members, employees, or volunteers; and

3. A patient or the patient's representative:
a. Except in an emergency, either consents to or refuses treatment;
b. May refuse or withdraw consent for treatment before treatment is initiated;
c. Except in an emergency, is informed of proposed alternatives to a psychotropic medication and the associated risks and possible complications of a psychotropic medication;
d. Is informed of the following:
i. The home health agency's policy on health care directives;
ii. The patient complaint process;
iii Home health services provided by or through the home health agency; and
iv. The rates and charges for services before the services are initiated and before a change in rates, charges, or services;
e. Consents to photographs of the patient before the patient is photographed, except that a patient may be photographed when admitted to a home health agency for identification and administrative purposes; and
f. Except as otherwise permitted by law, provides written consent to the release of information in the patient's:
i. Medical record, or
ii. Financial records.

C. A patient has the following rights:
1. Not to be discriminated against based on race, national origin, religion, gender, sexual orientation, age, disability, marital status, or diagnosis;
2. To receive treatment that supports and respects the patient's individuality, choices, strengths, and abilities;
3. To receive privacy in treatment and care for personal needs;
4. To review, upon written request, the patient's own medical record according to A.R.S. §§ 12-2293, 12-2294, and 12-2294.01;
5. To receive a referral to another health care institution if the home health agency is not authorized or not able to provide physical health services needed by the patient;
6. To participate or have the patient's representative participate in the development of a care plan or decisions concerning treatment;
7. To participate or refuse to participate in research or experimental treatment; and
8. To receive assistance from a family member, the patient's representative, or other individual in understanding, protecting, or exercising the patient's rights.

R9-10-1209. Medical Records

A. An administrator shall ensure that:
1. A medical record is established and maintained for each patient according to A.R.S. Title 12, Chapter 13, Article 7.1;
2. An entry in a patient's medical record is:
a. Recorded only by an individual authorized by a policies and procedures to make the entry;
b. Dated, legible, and authenticated; and
c. Not changed to make the initial entry illegible;
3. An order is:
a. Dated when the order is entered in the patient's medical record and includes the time of the order;
b. Authenticated by a physician, registered nurse practitioner, or podiatrist according to policies and procedures; and
c. If the order is a verbal order, authenticated by the physician, registered nurse practitioner, or podiatrist issuing the order;
4. If a rubber-stamp signature or an electronic signature is used to authenticate an order, the individual whose signature the rubber-stamp signature or electronic signature represents is accountable for the use of the rubber-stamp signature or electronic signature;
5. A patient's medical record is available to personnel members, physicians, registered nurse practitioners, or podiatrists authorized by policies and procedures to access the patient's medical record;
6. Information in a patient's medical record is disclosed to an individual not authorized under subsection (A)(5) only with the written consent of a patient or the patient's representative or as permitted by law; and
7. A patient's medical record is protected from loss, damage, or unauthorized use.

B. If a home health agency maintains patients' medical records electronically, an administrator shall ensure that:
1. Safeguards exist to prevent unauthorized access, and
2. The date and time of an entry in a patient's medical record is recorded by the computer's internal clock.

C. An administrator shall ensure that a patient's medical record contains:
1. Patient information that includes:
a. The patient's name;
b. The patient's address and telephone number;
c. The patient's date of birth; and
d. Any known allergies, including medication allergies;

2. The date the patient began receiving services from the home health agency and, if applicable, the date the patient stopped receiving services from the home health agency;
3. The name and telephone of the patient's physician or registered nurse practitioner;
4. The name and telephone number of patient's podiatrist, if applicable;
5. Documentation of general consent and, if applicable, informed consent;
6. Documentation of medical history and current diagnoses;
7. A copy of patient's health care directive, if applicable;
8. If applicable, the name and contact information of the patient's representative and:
   a. If the patient is 18 years of age or older or an emancipated minor, the document signed by the patient consenting for the patient's representative to act on the patient's behalf; or
   b. If the patient's representative;
      i. Is a legal guardian, a copy of the court order establishing guardianship; or
      ii. Has a health care power of attorney established under A.R.S. § 36-3221 or a mental health care power of attorney executed under A.R.S. § 36-3282, a copy of the health care power of attorney or mental health care power of attorney;
9. Orders;
10. Assessments;
11. Care plan;
12. Progress notes;
13. If applicable, documentation of any actions taken to control the patient's sudden, intense or out-of-control behavior to prevent harm to the patient or another individual;
14. Documentation of meetings with the patient to assess the home health services and supportive services provided to the patient;
15. The disposition of the patient upon discharge;
16. The discharge plan;
17. Discharge instructions and discharge summary, if applicable;
18. If applicable:
    a. Laboratory reports,
    b. Radiologic reports,
    c. Diagnostic reports, and
    d. Consultation reports;
19. Documentation of a medication administered to the patient that includes:
    a. The date and time of administration;
    b. The name, strength, dosage, and route of administration;
    c. For a medication administered for pain:
       i. An assessment of the patient's pain before administering the medication, and
       ii. The effect of the medication administered;
    d. For a psychotropic medication:
       i. An assessment of the patient's behavior before administering the psychotropic medication, and
       ii. The effect of the psychotropic medication administered;
    e. The identification, signature, and professional designation of the individual administering or observing the self-administration of the medication; and
    f. Any adverse reaction a patient has to the medication;
20. Documentation of tasks assigned to a home health aide or other personnel member;
21. Documentation of coordination of patient care;
22. Copies of patient summary reports sent to the patient's physician, registered nurse practitioner, or podiatrist, as applicable; and
23. Documentation of contacts with the patient's physician, registered nurse practitioner, or podiatrist, as applicable, by a personnel member or the patient.

R9-10-1210. Home Health Services

A. An administrator shall ensure that an individual admitted to the home health agency has an order from a physician, registered nurse practitioner, or podiatrist for home health services.

B. An administrator shall ensure that the home health services director provides direction for home health services provided by or through the home health agency.

C. A home health services director shall ensure that nursing services are provided by a registered nurse or practical nurse, according to policies and procedures.

D. A home health services director shall ensure that a registered nurse:
1. Unless a patient's physician or registered nurse practitioner orders only speech therapy, occupational therapy, or physical therapy for the patient, within 48 hours after the patient begins receiving home health services provided by or through the home health agency, conducts an initial assessment of the patient to determine:
   a. The needs of the patient;
   b. Resources available to address the patient's needs;
   c. The patient's home and family environment;
   d. Goals for patient care;

e. Medications used by the patient, including non-compliance, drug interactions, side effects, and contraindications; and
f. Medical supplies or equipment needed by the patient;
2. Reviews a patient's health care directives at the time of the initial assessment;
3. Implements a patient's care plan, developed as specified in R9-10-1207;
4. Coordinates patient care with other individuals providing home health services or other services to the patient;
5. Immediately informs the patient's physician or registered nurse practitioner of a change in a patient's condition that requires medical services; and
6. At least every 60 calendar days until a patient is discharged:
a. Reassesses the patient based on the patient's care plan, needs, and medical condition; and
b. Summarizes the patient's condition and needs for the patient's physician, registered nurse practitioner, or podiatrist, as applicable.

E. A home health services director shall ensure that:
1. A patient's condition and the services provided to the patient are documented in the patient's medical record after each patient contact; and
2. Verbal orders from a patient's physician, registered nurse practitioner, or podiatrist, as applicable, are:
a. Except as specified in subsection (F)(2)(d), received by a registered nurse and documented by the registered nurse in the patient's medical record; and
b. Authenticated by the patient's physician, registered nurse practitioner, or podiatrist, as applicable, with a signature, within 30 calendar days.

F. A home health services director shall ensure that:
1. A registered nurse:
a. Except as specified in subsection (F)(2)(b)(i) and (ii):
i. Assigns tasks in writing to a home health aide who is providing home health services to a patient; and
ii. Verifies the competency of the home health aide in performing assigned tasks;
b. Except as specified in subsection (F)(2)(b)(iii), provides direction for the home health aide services provided to a patient; and
c. Except as specified in subsection (F)(2)(e)(ii), meets with a patient who is receiving home health aide services to assess the home health services provided by the home health aide:
i. At least every two weeks when the patient is also receiving nursing services or therapy services, and
ii. At least every 60 calendar days when the patient is only receiving home health aide services;
2. When a patient's physician or registered nurse practitioner orders speech therapy, occupational therapy, or physical therapy for the patient, an individual specified in R9-10-1203(C)(6)(a), (c), or (d), as applicable:
a. Provides the applicable therapy service to the patient according to the patient's care plan;
b. If a home health aide is assigned to assist the patient in performing activities related to the therapy service:
i. Assigns tasks in writing to the home health aide who is assisting the patient;
ii. Verifies the competency of the home health aide in performing assigned tasks; and
iii. Provides direction to the home health aide in performing the assigned tasks related to the therapy service;
c. Coordinates the provision of the therapy service to the patient with the registered nurse providing direction for other home health services for the patient;
d. Documents in the patient's medical record any orders by the patient's physician or registered nurse practitioner received concerning the therapy service; and
e. If the only home health services ordered for the patient are speech therapy, occupational therapy, or physical therapy:
i. Within 48 hours after the patient begins receiving home health services provided by or through the home health agency, conducts an initial assessment of the patient as specified in subsections (D)(1)(a) through (f); and
ii. Meets with a patient who is receiving home health services from a home health aide every two weeks to assess the home health services provided by the home health aide; and
3. A home health aide:
a. Is only assigned to provide services the home health aide can competently perform; and
b. Only performs tasks assigned to the home health aide in writing by a registered nurse or as specified in subsection (F)(2)(b)(i).

R9-10-1211. Supportive Services

A. A governing authority may include supportive services, including personal care services, in the scope of services for a home health agency.

B. An administrator:
1. May allow:
a. Supportive services to be provided to a patient without an order from a physician, registered nurse practitioner, or podiatrist; and
b. A personnel member who is not a home health aide to perform personal care services; and
2. Shall ensure that:
a. Supportive services are provided to a patient according to policies and procedures;
b. A registered nurse:
i. Assesses a patient's need for supportive services,
ii. Assigns specific tasks in writing to a home health aide providing supportive services other than personal care services,

iii. Assigns specific tasks in writing to a personnel member providing personal care services,
iv. Provides direction for supportive services, and
v. Includes supportive services in the reassessment of a patient required in R9-10-1210(D)(6); and

c. Supportive services are documented in a patient's medical record.

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.

36-151. Definitions

In this article, unless the context otherwise requires:

1. "County department" means a county department of health.

2. "Department" means the department of health services.

3. "Home health services" means the items and services enumerated in this paragraph and furnished to a person who is under the care of a physician and surgeon, not including the services of a physician and surgeon. Such items and services may be furnished by a home health agency or by

others under arrangements made by such agency, under a plan established and periodically reviewed by such physician and surgeon. Such items and services, except as provided in subdivision (b) of this paragraph, shall be furnished on a visiting basis in a place of residence used as such person's home and shall consist of:

(a) Part-time or intermittent nursing care provided by or under the supervision of a registered professional nurse and either physical, occupational or speech therapy, or, to the extent permitted in department regulations, part-time or intermittent services of a home health aide, and such items and services may further consist of any or all of the following:

(i) Medical social services under the direct supervision of a physician and surgeon.

(ii) Medical supplies, other than drugs and biologicals, and the use of medical appliances, while under such a plan.

(iii) In the case of a home health agency which is affiliated or under common control with a hospital, medical services provided by an intern or resident-in-training of such hospital, under a teaching program of such hospital approved as provided in paragraph 4 of this section.

(b) Any of the items and services enumerated in subdivision (a) of this paragraph, which are provided on an outpatient basis, under arrangements made by the home health agency, at a hospital or extended care facility, or at a rehabilitation center which meets such standards as may be prescribed in regulations, and under one of the following conditions:

(i) The furnishing of such items and services involves the use of equipment of such a nature that the items and services cannot readily be made available to such person in such place of residence.

(ii) Such items and services are furnished at such facility while he is there to receive any such item or service described in item (i) of this subdivision, but not including transportation of such person in connection with any such item or service. Any item or service, if it would not be included under paragraph 4 of this section if furnished to an inpatient of a hospital, shall be excluded.

4. "Inpatient hospital services" means the following items and services, furnished to an inpatient of a hospital and, except as provided in subdivision (c) of this paragraph, by the hospital:

(a) Bed and board.

(b) Such nursing services and other related services, such use of hospital facilities, and such medical social services as are ordinarily furnished by the hospital for the care and treatment of inpatients, and such drugs, biologicals, supplies, appliances, and equipment, for use in the hospital, as are ordinarily furnished by such hospital for the care and treatment of inpatients.

(c) Such other diagnostic or therapeutic items or services, furnished by the hospital or by others under arrangements with them made by the hospital, as are ordinarily furnished to inpatients either by such hospital or by others under such arrangements, excluding the following:

(i) Medical or surgical services provided by a physician and surgeon, resident or intern.

(ii) The services of a private duty nurse or other private duty attendant. Item (i) of this subdivision shall not apply to services provided in the hospital by an intern or a resident-in-training under a

teaching program approved by the council on medical education of the American medical association or, in the case of an osteopathic hospital, approved by the committee on hospitals of the bureau of professional education of the American osteopathic association, or, in the case of services in a hospital or osteopathic hospital by an intern or resident-in-training in the field of dentistry, approved by the council on dental education of the American dental association.

5. "Home health agency" means an agency or organization, or a subdivision of such an agency or organization, which meets all of the following requirements:

(a) Is primarily engaged in providing skilled nursing services and other therapeutic services.

(b) Has policies, established by a group of professional personnel, associated with the agency or organization, including one or more physicians and one or more registered professional nurses, to govern the services referred to in subdivision (a), which it provides, and provides for supervision of such services by a physician or registered professional nurse.

(c) Maintains clinical records on all patients.

6. "Supportive services" or "related supportive services" means services other than home health services which may reasonably be expected to help maintain an individual in his home as an alternative to institutionalization. Such services may include, but not limited to, nutrition counseling, meals services, homemaker services, general maintenance services and transportation services.

36-152. Authority to provide services; fees

The department may provide home health services to persons living in areas of the state in which adequate home nursing care is not otherwise available. For such services the department shall charge fees to be paid by persons to whom the department renders such services, or to be paid by any governmental agency purchasing such services for persons, except when such services are provided for demonstration and public health program activities.

36-153. Authority to contract for services and fees

The department may enter into contracts with any governmental or private agency, or with any person, whereby the department agrees to render such home health services to or for such agency or person in exchange for a fee to cover the cost of rendering such services.

36-154. Limitation of authority regarding services and fees

The authority granted by this article is limited to services voluntarily rendered and voluntarily received, and shall not apply to services required by statute, regulation, or ordinance to be rendered or received. Fees authorized by this article to be charged shall not exceed the cost to the department or county departments of rendering the services.

36-155. Personnel and equipment

The department may employ the necessary personnel, including nursing and supervisory personnel, and purchase equipment and materials necessary to maintain an effective program of home health services and to render such services.

36-156. Home health services and related supportive services; coordination and development; consultation; powers and duties of director

A. The director may act to coordinate the activities of the department with the activities of the department of economic security which relate, directly or indirectly, to home health services or related supportive services.

B. The director may act to coordinate the activities of existing home health agencies and other agencies or associations which supply, directly or indirectly, home health services or related supportive services.

C. Upon the request of any agency or organization, the director may provide consultation and assistance for:

1. The development and implementation of home health services programs to be carried out by such agency or association.

2. The coordination and integration of home health services provided by or planned by such agency or association with other existing or planned home health services programs or related supportive services programs.

3. The development and acquisition of funding sources for home health services.

D. In order to carry out the provisions of subsection C the director may enter into contracts or agreements with agencies or organizations specifying the type of consultation and assistance to be provided.

36-157. County authority to provide services; fees

County departments shall have the same authority as granted to the department, under the provisions of this article, to provide home health services within their county, enter into contracts therefor, charge fees for such services, and expend monies, employ personnel and to purchase equipment and materials.

36-158. Authority to receive funds; disbursement

The department and county departments may receive monies from any source for home health services. All such monies the department and county departments receive for such services shall be deposited in special accounts by the respective state and county treasurers. All such monies are appropriated to the department and county departments that receive them and shall be used to carry out the provisions of this article.

36-159. Authorized court action to collect fees

The department and county departments may maintain legal action through the attorney general or county attorney for the collection of fees charged for home health services which have been rendered to any person or agency.

36-160. Confidentiality of records; unauthorized disclosures unlawful; classification

A. Clinical records, medical reports and laboratory statements or reports, maintained as a result of services authorized by this article, and the information contained therein, shall be confidential and shall not be divulged to or open to inspection by any person other than attending physicians and surgeons, and persons authorized by them, the home health agency involved and state or local health officers. The director may, by regulation, authorize other persons or groups of persons to inspect or otherwise use such records and information.

B. A person who knowingly divulges such information or opens to inspection such clinical records, medical reports or laboratory statements or reports, without authority, to any person not by law or regulation entitled to such is guilty of a class 2 misdemeanor.

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.

36-411. Residential care institutions; nursing care institutions; home health agencies; fingerprinting requirements; exemptions; definitions

A. Except as provided in subsection F of this section, as a condition of licensure or continued licensure of a residential care institution, a nursing care institution or a home health agency and as a condition of employment in a residential care institution, a nursing care institution or a home health agency, employees and owners of residential care institutions, nursing care institutions or home health agencies, contracted persons of residential care institutions, nursing care institutions or home health agencies or volunteers of residential care institutions, nursing care institutions or home health agencies who provide medical services, nursing services, behavioral health services, health-related services, home health services or direct supportive services and who have not been subject to the fingerprinting requirements of a health professional's regulatory board pursuant to title 32 shall have valid fingerprint clearance cards that are issued pursuant to title 41, chapter 12, article 3.1 or shall apply for a fingerprint clearance card within twenty working days of employment or beginning volunteer work or contracted work.

B. A health professional who has complied with the fingerprinting requirements of the health professional's regulatory board as a condition of licensure or certification pursuant to title 32 is not required to submit an additional set of fingerprints to the department of public safety pursuant to this section.

C. Owners shall make documented, good faith efforts to:

1. Contact previous employers to obtain information or recommendations that may be relevant to a person's fitness to work in a residential care institution, nursing care institution or home health agency.

2. Verify the current status of a person's fingerprint clearance card.

D. An employee, an owner, a contracted person or a volunteer or a facility on behalf of the employee, the owner, the contracted person or the volunteer shall submit a completed application that is provided by the department of public safety within twenty days after the date the person begins work or volunteer service.

E. Except as provided in subsection F of this section, a residential care institution, nursing care institution or home health agency shall not allow an employee to continue employment or a volunteer or contracted person to continue to provide medical services, nursing services, behavioral health services, health-related services, home health services or direct supportive services if the person has been denied a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1, has been denied approval pursuant to this section before May 7, 2001 or has had a fingerprint clearance card suspended or revoked.

F. An employee, volunteer or contractor of a residential care institution, nursing care institution or home health agency who is eligible pursuant to section 41-1758.07, subsection C to petition the board of fingerprinting for a good cause exception and who provides documentation of having applied for a good cause exception pursuant to section 41-619.55 but who has not yet received a decision is exempt from the fingerprinting requirements of this section if the person provides medical services, nursing services, behavioral health services, health-related services, home health services or direct supportive services to residents or patients while under the direct visual supervision of an owner or employee who has a valid fingerprint clearance card.

G. If a person's employment record contains a six-month or longer time frame during which the person was not employed by any employer, a completed application with a new set of fingerprints shall be submitted to the department of public safety.

H. For the purposes of this section:

1. "Direct supportive services":

(a) Means services other than home health services that provide direct individual care and that are not provided in a common area of a health care institution, including:

(i) Assistance with ambulating, bathing, toileting, grooming, eating and getting in and out of a bed or chair.

(ii) Assistance with self-administration of medication.

(iii) Janitorial, maintenance, housekeeping or other services provided in a resident's room.

(iv) Transportation services, including van services.

(b) Does not include services provided by persons contracted directly by a resident or the resident's family in a health care institution.

2. "Direct visual supervision" means continuous visual oversight of the supervised person that does not require the supervisor to be in a superior organizational role to the person being supervised.

3. "Home health services" has the same meaning prescribed in section 36-151.

DEPARTMENT OF ECONOMIC SECURITY
Title 6, Chapter 1

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 2, 2024

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

FROM: Council Staff

DATE: March 14, 2024

SUBJECT: **DEPARTMENT OF ECONOMIC SECURITY**
Title 6, Chapter 1

Summary

This Five-Year Review Report (5YRR) from the Department of Economic Security (Department) relates to eleven (11) rules in Title 6, Chapter 1, Articles 1, 2 and 5. These Articles cover the following:

- Article 1 - Public Participation in Rulemaking
- Article 2 - Debt Setoff
- Article 5 - Civil Rights

The Department indicates it did not review Article 4 related to Fingerprinting with the intention that those rules expire pursuant to A.R.S. § 41-1056(J). Specifically, the Department has determined the rules contained in Article 4 are antiquated, redundant, and no longer necessary to prescribe fingerprinting requirements for Department service providers. The Department indicates, since the adoption of Title 6, Chapter 1, Article 4 in 1992, significant changes have occurred in the regulatory structure surrounding fingerprint-based background checks. For example, the fingerprint clearance card system was established in 1998. *See* 1998 Ariz. Sess. Laws Ch. 270 (HB 2585), titled "State Facilities or Programs Providing Direct Services to Juveniles or Developmentally Disabled Adults – Fingerprinting Personnel"). As a result, DES indicates it no longer operates as a "certifying" agency for service providers required

to obtain a fingerprint-based background check. Prospective service providers apply for a fingerprint clearance card through the Department of Public Safety (DPS). DPS reviews criminal history information and makes a determination regarding eligibility for a fingerprint clearance card in accordance with A.R.S. § 41-1758.07.

In the prior report for these rules, which was approved by the Council in September 2018, the Department stated a plan to request a moratorium exception from the Governor's Office to amend Article 5 by September 2018 and to submit a Notice of Final Rulemaking to the Council by December 2019. The Department received approval from the Governor's Office to proceed with rulemaking on September 24, 2018, and provided a copy of a Notice of Proposed Rulemaking to the Governor's Office on March 8, 2021. However, the Department did not then receive approval from the Governor's Office to advance the Notice of Proposed Rulemaking.

Proposed Action

In the current report, the Department proposes to amend rule R6-1-501 as outlined in more detail below. The Department anticipates filing a Notice of Proposed Rulemaking (NPR) in March 2024 and submitting a Notice of Final Rulemaking (NFR) to the Council by July 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:

These rules govern public participation in rulemaking, how a debtor can obtain a debt setoff, fingerprinting requirements, and civil rights; they are designed to assist and inform the public. As a result of this five-year review, the Department has determined that there were no additional costs imposed on businesses or members of the public because of Article 1 (which outlines how the public can participate in a rulemaking) and Article 2 (which outlines rules involving debtors). Article 4 (which outlines fingerprinting requirements) did not have an initial economic impact statement with which to compare; however, the Department anticipates that the proposed changes to Article 4 will have minimal economic impact because the rules are only being modified to conform to current practices and statutes. The Department has determined that Article 5 (which relates to non-discrimination laws, regulations, and rules) has no associated fees or costs and will have no economic impact because the Department is already in compliance with state and federal requirements.

Stakeholders are identified as the Department, debtors, those needing fingerprinting services, and the public.

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

The Department has determined that the benefits of the rules outweigh any costs. Additionally, the Department states that there are no fees or costs imposed on small businesses or consumers associated with these rules.

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, consistency with other rules and statutes, effectiveness, and enforcement status?

The Department indicates one rules is not clear, concise, understandable, consistent with other rules and statutes, effective, and currently enforced as written:

- **R6-1-501:** This rule does not specify age, disability, and genetic information in the list of biases that prohibit discrimination, making this rule inconsistent with the standards of the federal Age Discrimination in Employment Act of 1967, as amended; Age Discrimination Act of 1975; Titles I, II, and V of the Americans with Disabilities Act (ADA) of 1990; sections 501, 503, and 504 of the Rehabilitation Act of 1973, as amended; and Genetic Information Nondiscrimination Act of 2008. The Department proposes to amend this rule to be more concise and include language regarding adherence to applicable federal and state non-discrimination laws, regulations, and rules under specific Chapters in Title 6 of the Arizona Administrative Code. The Department also proposes to update the rule to be consistent with current Department procedures.

Additionally, as outlined above, the Department has not reviewed Article 4 related to Fingerprinting with the intention that those rules expire pursuant to A.R.S. § 41-1056(J). Specifically, the Department has determined the rules contained in Article 4 are antiquated, redundant, and no longer necessary to prescribe fingerprinting requirements for Department service providers.

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 the rules are not more stringent than corresponding federal law.

7. 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 do not require the issuance of a permit, license, or agency authorization.

8. Conclusion

This 5YRR from the Department relates to eleven (11) rules in Title 6, Chapter 1, Articles 1, 2 and 5. These Articles cover Public Participation in Rulemaking, Debt Setoff, and Civil Rights, respectively. The Department indicates it did not review Article 4 related to Fingerprinting with the intention that those rules expire pursuant to A.R.S. § 41-1056(J). Specifically, the Department has determined the rules contained in Article 4 are antiquated, redundant, and no longer necessary to prescribe fingerprinting requirements for Department service providers.

Furthermore, the Department proposes to amend rule R6-1-501 as this rule does not specify age, disability, and genetic information in the list of biases that prohibit discrimination, making this rule inconsistent with the standards of the federal Age Discrimination in Employment Act of 1967, as amended; Age Discrimination Act of 1975; Titles I, II, and V of the Americans with Disabilities Act (ADA) of 1990; sections 501, 503, and 504 of the Rehabilitation Act of 1973, as amended; and Genetic Information Nondiscrimination Act of 2008. The Department proposes to amend this rule to be more concise and include language regarding adherence to applicable federal and state non-discrimination laws, regulations, and rules under specific Chapters in Title 6 of the Arizona Administrative Code. The Department also proposes to update the rule to be consistent with current Department procedures. The Department anticipates filing a Notice of Proposed Rulemaking (NPR) in March 2024 and submitting a Notice of Final Rulemaking (NFR) to the Council by July 2024.

Council staff recommends approval of this report.

DEPARTMENT OF ECONOMIC SECURITY
Your Partner For A Stronger Arizona

Katie Hobbs
Governor

Vacant
Director

October 26, 2023

Ms. Nicole Sornsin
Council Chair
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 302
Phoenix, Arizona 85007

Dear Ms. Sornsin:

Attached is the Arizona Department of Economic Security (Department) Five-Year Review Report for Arizona Administrative Code (A.A.C.) Title 6, Chapter 1, Department of Economic Security.

Pursuant to A.R.S. § 41-1056(A) and A.A.C. R1-6-301(C)(4), the Department certifies that it is in compliance with A.R.S. § 41-1091.

Thank you for your attention to this report. The Department will be present at the Council meetings to respond to any questions the Council members may have about the report.

If you have any questions, please contact Kirk Stephens, Deputy Rules Administrator, Governance and Innovation Administration, at (480) 793-2274.

Sincerely,

Nicole Davis
Office of General Counsel

Attachment

Department of Economic Security

Title 6, Chapter 1

Five-Year Review Report

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. §§ 41-1954(A)(3) and 46-134(A)(10)

Specific Statutory Authority: A.R.S. §§ 5-575, 41-1003, and 42-1122

2. Analysis of rules:

Rule	Analysis	
R6-1-101	Title:	Rulemaking Docket and Record
	Objective:	The objectives of this rule are to describe how and where the Department maintains an official rulemaking docket and records, and the procedures a person shall follow to review a rulemaking docket or records.

- Is this rule effective in meeting the objective? **Yes X** **No☐**
- Is this rule consistent with other rules and statutes? **Yes X** **No☐**
- Is this rule enforced as written? **Yes X** **No☐**
- Is this rule clear, concise, and understandable? **Yes X** **No☐**

Rule	Analysis	
R6-1-102	Title:	Manner of Submission
	Objective:	The objectives of this rule are to describe how the Department accepts petitions, requests, submissions, criticisms, and other material related to the rulemaking process.

- Is this rule effective in meeting the objective? **Yes X** **No☐**
- Is this rule consistent with other rules and statutes? **Yes X** **No☐**
- Is this rule enforced as written? **Yes X** **No☐**
- Is this rule clear, concise, and understandable? **Yes X** **No☐**

Rule	Analysis	
R6-1-103	Title:	Petition to Make, Amend, or Repeal a Rule
	Objective:	The objective of this rule is to describe how a person may

petition the Department to make, amend, or repeal a rule and the required information that shall be included in a petition.

- Is this rule effective in meeting the objective? **Yes X** **No☐**
- Is this rule consistent with other rules and statutes? **Yes X** **No☐**
- Is this rule enforced as written? **Yes X** **No☐**
- Is this rule clear, concise, and understandable? **Yes X** **No☐**

Rule **Analysis**

R6-1-104 Title: Request for Rulemaking Notices

Objective: The objectives of this rule are to describe how a person may request to be notified by the Department of a rulemaking docket and how the Department maintains the distribution list for such requests.

- Is this rule effective in meeting the objective? **Yes X** **No☐**
- Is this rule consistent with other rules and statutes? **Yes X** **No☐**
- Is this rule enforced as written? **Yes X** **No☐**
- Is this rule clear, concise, and understandable? **Yes X** **No☐**

Rule **Analysis**

R6-1-105 Title: Oral Proceedings; Request for; Nature of

Objective: The objectives of this rule are to describe how a person may request an oral proceeding be held by the Department for a Notice of Proposed Rulemaking that has been filed with the Secretary of State and the manner in which the Department shall conduct an oral proceeding.

- Is this rule effective in meeting the objective? **Yes X** **No☐**
- Is this rule consistent with other rules and statutes? **Yes X** **No☐**
- Is this rule enforced as written? **Yes X** **No☐**
- Is this rule clear, concise, and understandable? **Yes X** **No☐**

Rule **Analysis**

R6-1-106 Title: Petition for Delayed Effective Date

Objective: The objectives of this rule are to describe how a person may petition the Department for a delayed effective date of a rule and the obligation of the Department in response to such a petition.

- Is this rule effective in meeting the objective? **Yes X** **No☐**
- Is this rule consistent with other rules and statutes? **Yes X** **No☐**
- Is this rule enforced as written? **Yes X** **No☐**
- Is this rule clear, concise, and understandable? **Yes X** **No☐**

Rule **Analysis**

R6-1-107 Title: Written Criticisms of Existing Rules

Objective: The objective of this rule is to describe the Department's requirement to retain written criticisms of existing rules for consideration when compiling a Five-Year Review Report of such rules.

- Is this rule effective in meeting the objective? **Yes X** **No☐**
- Is this rule consistent with other rules and statutes? **Yes X** **No☐**
- Is this rule enforced as written? **Yes X** **No☐**
- Is this rule clear, concise, and understandable? **Yes X** **No☐**

Rule **Analysis**

R6-1-201 Title: Definitions

Objective: The objective of this rule is to define the terms in this Article and promote a uniform understanding of terms used by the Department.

- Is this rule effective in meeting the objective? **Yes X** **No☐**
- Is this rule consistent with other rules and statutes? **Yes X** **No☐**
- Is this rule enforced as written? **Yes X** **No☐**
- Is this rule clear, concise, and understandable? **Yes X** **No☐**

Rule **Analysis**

R6-1-202 Title: Request for Review of Debt Setoff

Objective: The objective of this rule is to describe how a person may request the Department to review the propriety of a debt setoff.

- Is this rule effective in meeting the objective? **Yes X** **No☐**
- Is this rule consistent with other rules and statutes? **Yes X** **No☐**
- Is this rule enforced as written? **Yes X** **No☐**
- Is this rule clear, concise, and understandable? **Yes X** **No☐**

Rule **Analysis**

R6-1-203 Title: Departmental Review of Debt Setoff

Objective: The objective of this rule is to describe how the Department conducts a review of debt setoff.

- Is this rule effective in meeting the objective? **Yes X** **No ☐**
- Is this rule consistent with other rules and statutes? **Yes X** **No ☐**
- Is this rule enforced as written? **Yes X** **No ☐**
- Is this rule clear, concise, and understandable? **Yes X** **No ☐**

Rule **Analysis**

R6-1-501 Title: Civil Rights

Objective: The objective of this rule is to describe the Department's compliance with the federal Civil Rights Act of 1964 and the Department's policies and procedures for avoiding discrimination.

- Is this rule effective in meeting the objective? **Yes ☐ No X**
- Is this rule consistent with other rules and statutes? **Yes ☐ No X**
- Is this rule enforced as written? **Yes ☐ No X**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule does not specify age, disability, and genetic information in the list of biases that prohibit discrimination, making this rule inconsistent with the standards of the federal Age Discrimination in Employment Act of 1967, as amended; Age Discrimination Act of 1975; Titles I, II, and V of the Americans with Disabilities Act (ADA) of 1990; sections 501, 503, and 504 of the Rehabilitation Act of 1973, as amended; and Genetic Information Nondiscrimination Act of 2008. The Department proposes to amend this rule to be more concise and include language regarding adherence to applicable federal and state non-discrimination laws, regulations, and rules under specific Chapters in Title 6 of the Arizona Administrative Code. The Department also proposes to update the rule to be consistent with current Department procedures.

3. Has the Department received written criticisms of the rules within the last five years?

Yes ☐ No X

4. Economic, small business, and consumer impact comparison:

Article 1

The Economic, Small Business, and Consumer Impact Statement (EIS) for Article 1 submitted to the Governor's Regulatory Review Council (GRRC) in 2017 when Article 1 was last amended identified savings for individuals, businesses, and political subdivisions because the rules added electronic public comment filing that removed postal cost. Based on the information provided by subject matter experts, the prior EIS projection was correct and there were no additional costs imposed on businesses or members of the public.

Article 2

The EIS for Article 2 submitted to the GRRC in 2018 when Article 2 was last amended projected a minimal economic impact on businesses, individuals, or political subdivisions. The changes made to Article 2 benefitted debtors by eliminating confusion from overly complex language. Based on the information provided by subject matter experts, there were no additional costs imposed on any business or members of the public.

Article 5

The Department has no previously approved EIS for Article 5. The Department anticipates that changes to Article 5 proposed in this report will have no economic impact because the Department already complies with federal and state non-discrimination laws, regulations, and rules. There are no fees or costs to small businesses or consumers associated with these rules.

5. Has the agency received any business competitiveness analyses of the rules?

Yes ☐ No X

6. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Yes ☐ No X

In the previous Five-Year Review Report, the Department stated a plan to request a moratorium exception from the Governor's Office to amend Article 5 by September 2018 and to submit a Notice of Final Rulemaking to GRRC by December 2019. The Department received approval from the Governor's Office to proceed with rulemaking on September 24, 2018, and provided a copy of a Notice of Proposed Rulemaking to the Governor's Office on March 8, 2021. The Department did not receive approval to advance the Notice of Proposed Rulemaking from the previous administration. The Department will request approval to engage in rulemaking from the current administration.

7. 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:

These rules govern public participation in rulemaking, how a debtor can obtain a debt setoff, and civil rights. The rules are designed to assist and inform the public, which is a greater benefit than any costs associated with these rules. There are no fees or costs imposed on small businesses or consumers associated with these rules.

8. Are the rules more stringent than corresponding federal laws? Yes ☐ No X

9. 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 Department has determined that A.R.S. § 41-1037 does not apply to these rules because they do not require a regulatory permit, license, or agency authorization.

10. Proposed course of action:

The Department proposes to update the rules in Chapter 1, Article 5 to address issues identified in Item 2 of this report. The Department anticipates filing a Notice of Proposed Rulemaking (NPR) in March 2024 and submitting a Notice of Final Rulemaking (NFR) to GRRC by July 2024.

Arizona Administrative CODE

Supplement 18-2

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of April 1, through June 30, 2018.

Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 6. ECONOMIC SECURITY

CHAPTER 1. DEPARTMENT OF ECONOMIC SECURITY

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.

R6-1-202. Request for Review of Debt Setoff 3
R6-1-203. Departmental Review of Debt Setoff 4

Questions about these rules? Contact:

Name: Christian J. Eide
Address: Department of Economic Security
P.O. Box 6123, Mail Drop 1292
Phoenix, AZ 85005
or
Department of Economic Security
1789 W. Jefferson St., Mail Drop 1292
Phoenix, AZ 85007
Telephone: (602) 542-9199
Fax: (602) 542-6000
E-mail: ceide@azdes.gov

The release of this Chapter in supplement 18-2 replaces supplement 17-3, 7 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. "'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.
First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31
For example, the first supplement for the first quarter of 2018 is cited as Supp. 18-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document's content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State's website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency's exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor's notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

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Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.

Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 6. ECONOMIC SECURITY

CHAPTER 1. DEPARTMENT OF ECONOMIC SECURITY

Authority: A.R.S. § 41-1954 et seq.

ARTICLE 1. PUBLIC PARTICIPATION IN RULEMAKING

Article 1 consisting of Sections R6-1-101 through R6-1-107 adopted effective September 22, 1988.

Former Article 1 renumbered as Article 2 effective September 22, 1988.

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ARTICLE 1. PUBLIC PARTICIPATION IN RULEMAKING

R6-1-101. Rulemaking Docket and Record

A. The Department of Economic Security ("the Department") shall maintain the official public rulemaking docket and agency rulemaking record required by A.R.S. §§ 41-1021 and 41-1029 in the office of the Department's Rules Unit, in the Department's central headquarters in Phoenix. Any person may review the docket and record Monday through Friday from 8:00 a.m. to 5:00 p.m., except on state holidays.

B. The Department may electronically maintain the rulemaking docket and agency rulemaking record, and shall facilitate public review of documents stored electronically by either providing the documents in paper or electronic form.

C. Any person who reviews a rulemaking docket or record shall sign a log that shall include the following information:

1. The person's name, current address, daytime telephone number, and e-mail address, if available;
2. The name of any partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any nature, or another agency that the person is representing as a registered lobbyist or otherwise;
3. The docket or record that the person is reviewing;
4. Whether the person is requesting the records for a commercial purpose;
5. The date of review; and
6. The person's signature.

Historical Note

Former Section R6-1-101 renumbered as R6-1-201; new Section R6-1-101 adopted effective September 22, 1988 (Supp. 88-3). Amended effective December 22, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 2757, effective November 18, 2017 (Supp. 17-3).

R6-1-102. Manner of Submissions

A. The Department shall accept petitions, requests, submissions, criticisms, or other materials related to the rulemaking process in either paper form or electronically.

B. When submitting in paper form, the writing shall be legibly handwritten or typed on 8 1/2" by 11" white paper.

Historical Note

Adopted effective September 22, 1988 (Supp. 88-3). Amended effective December 22, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 2757, effective November 18, 2017 (Supp. 17-3).

R6-1-103. Petition to Make, Amend, or Repeal a Rule

A. Any person may ask the Department to make a new rule or to amend or repeal an existing rule pursuant to A.R.S. § 41-1033 by filing a written petition with the Department's Director.

B. The petition shall contain:

1. The petitioner's name, current address, daytime telephone number, and e-mail address, if available;
2. The name of any partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any nature, or another agency that the petitioner is representing as a registered lobbyist or otherwise;
3. The specific language of the rule that the person wishes the Department to make, amend, or repeal;
4. The reason for the request, including the reason why any existing rule is inadequate, unreasonable, unduly burdensome, or otherwise improper;
5. A copy of any material that is referenced or otherwise incorporated in the petition; and
6. The signature of the petitioner.

C. Upon receipt of a petition, the Director's Office shall stamp the petition to indicate the date of receipt. If a petitioner submits a petition electronically, the Department shall consider the date of the electronic correspondence to be the receipt date.

D. No later than 60 days after receipt of a petition, the Department shall send the petitioner a written notice of the action taken on the petition. The Department shall send the notice electronically unless otherwise specified in the petition. The notice shall state the petitioner may appeal the Department's action under A.R.S. § 41-1033(B).

Historical Note

Adopted effective September 22, 1988 (Supp. 88-3). Amended effective December 22, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 2757, effective November 18, 2017 (Supp. 17-3).

R6-1-104. Request for Rulemaking Notices

A. A person who wishes to obtain a notice of the establishment of a rulemaking docket pursuant to A.R.S. § 41-1021(C), or a notice of proposed rulemaking pursuant to A.R.S. § 41-1022(C) shall file a written request for such notice with the Department's Director. The request shall contain:

1. The name, current address, and e-mail address, if available, of the requestor;
2. A statement describing the nature of the notice being requested, directed either to proposed rulemaking in general or to specific rules or subject matter; and
3. The signature of the requestor.

B. The Department's Rules Unit shall maintain a mailing list of all docket requests and requests for notice of proposed rulemaking. Requestors shall renew the request for notice by January 30 of each even-numbered year or the Department shall purge the request. The requestor shall keep current any address and information filed with the Department.

C. The Department shall send all information requested under this section electronically, unless the requestor requests a paper copy. The Department shall provide all requested documents according to the provisions of A.R.S. § 39-121 et seq.

Historical Note

Adopted effective September 22, 1988 (Supp. 88-3). Amended effective December 22, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 2757, effective November 18, 2017 (Supp. 17-3).

R6-1-105. Oral Proceedings; Request for; Nature of

A. When requested under A.R.S. § 41-1023(C), the Department shall schedule an oral proceeding in at least one of the districts established under A.R.S. § 41-1961. The Department may provide internet or teleconference access to an oral proceeding.

B. A written request for an oral proceeding filed with the Department under A.R.S. § 41-1023(C) shall contain:

1. The name, current address, daytime telephone number, and e-mail address, if available, of each requestor;
2. The name of any partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any nature, or another agency that the requestor is representing as a registered lobbyist or otherwise;
3. A statement identifying the rule for which the oral proceeding is requested; and
4. The signature of each requestor.

C. A person requesting an oral proceeding may indicate a specific city or district where the person would like the proceeding to be held. If such a location is included, the petition shall also explain how the proposed location will afford interested members of the public a reasonable opportunity to participate.

D. The presiding officer shall conduct an oral proceeding in an informal manner as described in this subsection.
1. A person may make an oral presentation without being placed under oath or affirmation.
2. Any person who makes an oral presentation shall fill out a speaker's registration card prior to speaking.
3. The presiding officer shall conduct the proceeding in a way that avoids undue repetition and assures a reliable record on any proposed rulemaking.
4. Any person may file a written submission at an oral proceeding, in addition to an oral presentation.
5. Prior to taking oral presentations, the presiding officer shall summarize the contents of the rule under consideration and the economic impact and small business statements filed with the rule.
6. Prior to the close of the record of the oral proceeding, the presiding officer shall summarize all subsequent rulemaking steps, procedures, and time-frames.
7. The presiding officer shall record the oral proceeding by electronic or other means. At the start of the oral proceeding, the presiding officer shall announce that the proceeding is being recorded.

Historical Note
Adopted effective September 22, 1988 (Supp. 88-3). Amended effective December 22, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 2757, effective November 18, 2017 (Supp. 17-3).

R6-1-106. Petition for Delayed Effective Date
A. A person who wishes to delay the effective date of a rule under A.R.S. § 41-1032(B) shall file a petition with the Department's Director prior to the proposed rule's close of record.
B. A petition for delayed effective date shall contain:
1. The petitioner's name, current address, daytime telephone number, and e-mail address, if available;
2. The name of any partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any nature, or another agency that the petitioner is representing as a registered lobbyist or otherwise;
3. A statement describing the effect the rule may have on the petitioner, and the reason why delaying the effective date of a rule to a specified date will lessen or eliminate that effect;
4. A demonstration under A.R.S. § 41-1032(B) that good cause exists for, and the public interest will not be harmed by, the later effective date; and
5. The signature of the petitioner.

C. The Department shall notify the petitioner in writing, by mail or electronically, of the Department's determination regarding the petition within 60 days of receipt of the petition.

Historical Note
Adopted effective September 22, 1988 (Supp. 88-3). Amended effective December 22, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 2757, effective November 18, 2017 (Supp. 17-3).

R6-1-107. Written Criticisms of Existing Rules
The Department shall retain written criticisms of existing rules that have been filed with the Department and shall consider such writings when conducting the five-year review required by A.R.S. § 41-1056.

Historical Note
Adopted effective September 22, 1988 (Supp. 88-3). Amended effective December 22, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 2757, effective November 18, 2017 (Supp. 17-3).

ARTICLE 2. DEBT SETOFF

R6-1-201. Definitions
In this article, unless otherwise specified:
1. "Debtor" means a person indebted to the Department.
2. "Department" means the Department of Economic Security.
3. "Request for review" means a request for agency-level review filed with the Department pursuant to A.R.S. §§ 5-575(C) or 42-1122(H), but excludes claims made pursuant to A.R.S. § 42-1122(S).

Historical Note
Adopted as an emergency effective March 2, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days. Former Section R6-1-101 adopted as an emergency effective March 2, 1984 now adopted without change as a permanent rule effective April 30, 1984 (Supp. 84-2). Former Section R6-1-101 renumbered without change as R6-1-201 (Supp. 88-3). Amended and subsections (B)(2) through (C) renumbered to Section R6-1-202 effective December 22, 1993 (Supp. 93-4). R6-1-201 renumbered to R6-1-202; new Section R6-1-201 made by final rulemaking at 24 A.A.R. 1415, effective June 19, 2018 (Supp. 18-2).

R6-1-202. Request for Review of Debt Setoff
A. A Debtor who has had all or part of their debt set off pursuant to A.R.S. §§ 5-575 or 42-1122 may file a request for review of the setoff.
B. To be considered by the Department, the request for review shall:
1. Be in writing;
2. Be received by the Department office that set off the debt, at the address indicated on the notice of debt setoff no later than 30 days after the date of the notice of debt setoff;
3. List any prior judicial or administrative proceedings regarding the debt;
4. Set forth, with specificity, all reasons why the setoff is inaccurate or improper;
5. Be signed by the Debtor or the Debtor's authorized representative; and
6. Include an attached complete copy of the notice of debt setoff from which review is sought.

C. As used in this Section, the date of the notice of debt setoff shall be the following dates, as applicable to the Debtor:
1. The date that the State Lottery Office gives the Debtor a written statement of winnings indicating the amount of the setoff; or
2. The mailing date of the written notice generated by the Department, advising the Debtor of the setoff.

D. Notwithstanding subsection (B), the Department may consider a timely request for review which does not include all the documentation listed in subsection (B) if:
1. The Debtor has good cause for failing to provide the information, and
2. The lack of information does not substantially prejudice the Department's ability to evaluate the request.

Historical Note
Renumbered from R6-1-201(B)(2) through (C) and amended effective December 22, 1993 (Supp. 93-4). R6-1-202 renumbered to R6-1-203; new Section R6-1-202 renumbered from R6-1-201 and amended by final rulemaking at 24 A.A.R. 1415, effective June 19, 2018

(Supp. 18-2).

R6-1-203. Departmental Review of Debt Setoff

A. The Director of the Department shall appoint representatives who shall conduct the review in accordance with A.R.S. §§ 5-575 or 42-1122, as applicable, and in a manner that will observe the substantial rights of the Debtor.

B. Unless otherwise prohibited by law, the Department may correct clerical errors that have occurred in the administration of the debt setoff.

C. In reviewing the debt setoff, the Department shall consider all relevant evidence, including, without limitation, evidence submitted by the Debtor and the documents and records in the Department's files.

D. The Department may dispose of a request for review by:
1. Dismissal, if the Debtor fails to comply with R6-1-202;
2. Withdrawal, if the Debtor withdraws the request for review in writing at any time before the Department issues a decision; or
3. Decision.

E. Every review decision shall be in writing and shall be mailed to the last known address of the Debtor or the Debtor's authorized representative.

F. The Department's decision is final unless the debtor files a petition for judicial review with the Superior Court within 35 days of the date the decision is mailed to the debtor as provided in A.R.S. § 12-904. A debtor who files a petition for review shall mail a copy to the Department office which issued the decision.

Historical Note
New Section R6-1-203 renumbered from R6-1-202 and amended by final rulemaking at 24 A.A.R. 1415, effective June 19, 2018 (Supp. 18-2).

ARTICLE 3. EXPIRED

Article 3, consisting of R6-1-301 through R6-1-309, expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-1-301. Expired

Historical Note
Adopted effective October 11, 1989 (Supp. 89-4). Amended effective December 22, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-1-302. Expired

Historical Note
Adopted effective October 11, 1989 (Supp. 89-4). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-1-303. Expired

Historical Note
Adopted effective October 11, 1989 (Supp. 89-4). Amended effective December 22, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-1-304. Expired

Historical Note
Adopted effective October 11, 1989 (Supp. 89-4). Amended effective December 22, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-1-305. Expired

Historical Note
Adopted effective October 11, 1989 (Supp. 89-4). Amended effective December 22, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-1-306. Expired

Historical Note
Adopted effective October 11, 1989 (Supp. 89-4). Amended effective December 22, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-1-307. Expired

Historical Note
Adopted effective October 11, 1989 (Supp. 89-4). Amended effective December 22, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-1-308. Expired

Historical Note
Adopted effective October 11, 1989 (Supp. 89-4). Amended effective December 22, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-1-309. Expired

Historical Note
Adopted effective October 11, 1989 (Supp. 89-4). Amended effective December 22, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

ARTICLE 4. FINGERPRINTING

R6-1-401. Definitions

In this Article, unless the context otherwise requires:

1. "Certification" means a status conferred by the Department upon personnel who have submitted required materials for fingerprint clearance, and who have been accordingly cleared, permitting them to provide services either with supervision or without supervision to juveniles.
2. "Certification form" means the notarized criminal history disclosure submitted to the Department as required by A.R.S. § 46-141(D).
3. "Department" means the Arizona Department of Economic Security.
4. "Direct visual supervision" means within sight and hearing of provider personnel with full certification.
5. "Full certification" means that personnel are certified to provide service directly to juveniles without supervision.
6. "Juvenile" means an individual who is under 18 years of age.
7. "License" means the whole or part of a Department permit, certificate, registration, or similar form of permission or authorization required by law but shall not include foster home licenses, child care home certifications, adoptive home certifications or licenses for facilities for developmentally disabled persons.
8. "Provider" means a federally recognized Indian tribe, county, political subdivision, military base, person, corporation, partnership or association with whom the

Department contracts, or which the Department licenses, to provide services.

9. "Provider personnel" or "personnel" means paid or unpaid persons who have direct contact with juveniles and provide direct services to juveniles for a provider, including consultants, subcontractors, volunteers, students and persons otherwise affiliated with the provider.
10. "Restricted certification" means that personnel are certified to provide services to juveniles with supervision as authorized by A.R.S. § 46-141(G).
11. "Sanction" means denial, cancellation, revocation or termination of a license or contract.
12. "Services directly to juveniles" means in-person interaction between the personnel and the juvenile client.
13. "Supervision" means within sight and hearing at all times of a supervisor with full certification when providing services of any nature directly to juveniles, including psychological, medical or any ancillary services.

Historical Note
Adopted effective December 2, 1992 (Supp. 92-4).

R6-1-402. Provider Responsibilities

A. A provider shall submit to the Department the fingerprints, the completed certification form, the processing fee and any other documents required by the Department before provider personnel are allowed or required to provide services directly to juveniles.

B. If a provider does not submit all the documents or the certification form required in subsection (A) above or submits incomplete documents, the Department shall return the documents to the provider. The provider shall prohibit personnel from providing services directly to juveniles until all the documents are completed and resubmitted to the Department.

C. If personnel have been certified by the Department of Health Services, the Supreme Court or the Department of Youth Treatment and Rehabilitation to work for the provider, the provider shall submit a copy of the certification to the Department. That certification shall satisfy the certification requirements of this Article.

D. A provider shall maintain a list of names of volunteers who will work only under direct visual supervision. The list shall be made available to the Department upon request.

Historical Note
Adopted effective December 2, 1992 (Supp. 92-4).

R6-1-403. Exempt Providers

A federally recognized Indian tribe or military base provider is exempt from the provisions of this Article except R6-1-405 if the provider certifies in accordance with A.R.S. § 46-141(H).

Historical Note
Adopted effective December 2, 1992 (Supp. 92-4).

R6-1-404. Effect of Certification Form Disclosures

A. Personnel who disclose conviction of, commission of or pending trial for an offense listed in A.R.S. § 46-141(F) shall not be allowed to provide services to juveniles.

B. Personnel who disclose a conviction of or a pending trial for an offense listed in A.R.S. § 46-141(G) shall not be allowed to provide services directly to juveniles without supervision pending completion of the criminal history verification. Services may be provided with supervision.

C. Personnel who disclose no convictions, pending trials or commission of any offenses listed in A.R.S. § 46-141(D) may provide services directly to juveniles without supervision pending completion of the criminal history verification.

Historical Note
Adopted effective December 2, 1992 (Supp. 92-4).

R6-1-405. Costs

If the Department allows the costs of fingerprint checks as an allowable cost when negotiating a contract, the provider shall not then charge the cost of fingerprinting to its personnel.

Historical Note
Adopted effective December 2, 1992 (Supp. 92-4).

R6-1-406. Certification and Sanctions

A. The Department shall grant certification to provider personnel whose criminal records check discloses no criminal history as proscribed by A.R.S. § 46-141.

B. The Department shall deny certification to personnel who disclose, or whose criminal history check shows, that they have committed, been convicted of or are awaiting trial for any offense listed in A.R.S. § 46-141(F).

C. The Department shall grant restricted certification to personnel who disclose, or whose criminal records check shows, that they have been convicted of or are awaiting trial for any offense listed in A.R.S. § 46-141(G).

D. Personnel who are awaiting trial on any of the crimes listed in A.R.S. § 46-141, and whose certification is denied or restricted as a result of the pending charges, may, upon a showing of acquittal, dismissal, or conviction of a lesser nonlisted crime, resubmit pursuant to R6-1-402.

E. The Department shall notify the provider and provider's personnel of the denial of certification or the granting of full or restricted certification. A provider which places provider personnel who have disclosed a criminal history on the certification form which would allow only a restricted certification in a job position requiring or allowing the personnel to provide services directly to juveniles without supervision shall be subject to sanction.

F. A provider which allows volunteers who are exempted from the certification requirements by A.R.S. § 46-141(I) to provide services to juveniles without direct visual supervision shall be subject to sanction.

G. A provider which fails to provide direct visual supervision at all times of volunteers exempted from the certification requirements by A.R.S. § 46-141(I) shall be subject to sanction.

H. A provider which fails to provide supervision at all times to personnel granted a restricted certification pursuant to A.R.S. § 46-141 shall be subject to sanction.

Historical Note
Adopted effective December 2, 1992 (Supp. 92-4).

R6-1-407. Effect of Confirmed Proscribed Criminal History

A. Denial: Upon notification by the Department of denial of certification, the provider shall immediately prohibit those personnel from providing services in any capacity allowing provision of direct services to juveniles, or the employer's license or contract shall be subject to sanction.

B. Restriction: Upon notification by the Department of restricted certification, the provider shall prohibit these personnel from unsupervised contact with juveniles or the provider's license or contract shall be subject to sanction.

Historical Note
Adopted effective December 2, 1992 (Supp. 92-4).

R6-1-408. Certification Expiration

A. A certification is valid for the full period of time that personnel are continuously employed by, or volunteer for, the provider unless it is revoked.

B. A certification shall be revoked if the Department receives information that provider personnel have been convicted of, committed, or are awaiting trial for an offense listed in A.R.S. § 46-141.

Historical Note
Adopted effective December 2, 1992 (Supp. 92-4).

R6-1-409. Subsequent Offenses

A. The provider shall notify the Department in writing within three working days after the provider receives information that any person who has been certified has committed, been convicted of, or is awaiting trial for any criminal offense listed in A.R.S. § 46-141(F).
1. The certification of the person shall be immediately revoked under the provisions of R6-1-408(B).
2. The provider shall immediately prohibit the person from acting in any capacity requiring or allowing contact with juveniles.

B. The provider shall notify the Department, in writing, within three working days after the provider receives information that any person who has been certified has been convicted of, or is awaiting trial for, any criminal offense listed in A.R.S. § 46-141(G).
1. The certification of the person shall be immediately revoked under the provisions of R6-1-408(B).
2. The provider shall immediately prohibit the person from acting in any capacity requiring or allowing unsupervised contact with juveniles.

C. Failure to notify the Department as required in subsections (A) and (B) above shall subject the provider to sanction.

Historical Note
Adopted effective December 2, 1992 (Supp. 92-4).

ARTICLE 5. CIVIL RIGHTS

R6-1-501. Civil Rights

A. Statement of compliance: Pursuant to the provisions of the Civil Rights Act of 1964, no person in the state of Arizona will be excluded from participation in, denied the benefits of, or subjected to discrimination under assistance payments programs on the basis of race, color, religion, sex, or national origin. The Department shall administer such programs in accordance with the laws, regulations, policies, and practices enumerated in the subsections below.

B. Definition of compliance: The Department shall follow policies and practices including, but not limited to, those described below.
1. No individual will, on the basis of race, color, religion, sex, or national origin, be denied any benefit provided under an assistance payment program, or be provided a benefit which is different, or in a different manner, from that provided to others under the same program.
2. No individual will, on the basis of race, color, religion, sex, or national origin, be subjected to segregation or separate treatment in any manner related to receipt of any benefit under an assistance payments program, nor will an individual be restricted in any way from any advantage or privilege enjoyed by others receiving benefits under the same program. This includes any distinction with respect to spaces provided for service, waiting rooms, and restrooms. Neither will separate times be set aside on the basis of race, color, religion, sex, or national origin for the provision of assistance.
3. Employees of the Department will not be assigned caseloads or clientele on the basis of race, color, religion, sex, or national origin of the persons being assisted.
4. Criteria or methods of administration shall not subject individuals to discrimination or defeat or substantially impair the objectives of an assistance payments program on the basis of the individual's race, color, religion, sex, or national origin.
5. The Department shall conduct assistance payments programs in accordance with the requirements of existing laws and regulations, which shall extend not only to those activities which are conducted directly by the Department but also to all related activities which are conducted by other agencies, institutions, organizations, political subdivisions, and vendors.
6. The Department shall maintain records and submit reports as required by federal authorities to assure compliance with regulations. During normal business hours of the Department, access will be permitted to its facilities, records, and other sources of information as may be pertinent to as certain compliance with regulations.
7. The Department will make available to applicants, recipients, and public officials that information required by federal authorities to appraise such persons of the protections against discrimination assured them by the Civil Rights Act of 1964.

C. Methods of administration.
1. The Department shall inform and instruct its staff of obligations under the Civil Rights Act of 1964, existing regulations, and the Statement of Compliance by:
   a. Making copies of all pertinent documents available to the entire staff.
   b. Conducting, as a regular part of the In-service Training Program:
      i. Meetings to explain to all staff personnel the intent and meaning of such documents and to instruct them in their obligation to carry out the policies contained therein.
      ii. Orientation of new staff personnel regarding their responsibilities to comply with the Civil Rights Act of 1964.
      iii. Periodic reminders of Civil Rights Act requirements in appropriate staff meetings and memoranda or other official correspondence.
      iv. Cultural awareness training to all staff personnel concerning ethnic differences among various groups residing in Arizona who comprise the Department's clientele.
      v. Constant review of practices and policies to assure that no individual is discriminated against because of race, color, religion, sex, or natural origin.
2. The Department will inform and instruct other appropriate agencies, institutions, organizations, political subdivisions, and vendors of their obligations to comply with the Civil Rights Act of 1964, existing regulations, and the Statement of Compliance filed by the Department as a condition to their initial or continued financial participation in any assistance payments program. This will be accomplished by:
   a. Making clear the requirements of the Civil Rights Act and implementing regulations and policies to fulfill these requirements.
   b. Determining that the agency, institution, organization, political subdivision, or vendor has executed an assurance in the form prescribed by federal authorities which is currently effective and applicable to the program under which the activity is conducted. This includes the use of memoranda which verifies spe-

cific obligations and undertakings or certification of compliance on each voucher presented to the Department for payment. Regular on-the-spot checks will be made by the Department's staff to assure compliance by any other agency, institution, organization, political subdivision, or vendor participating in an assistance payments program.

c. The Department will inform its clientele and other interested persons that financial assistance and other program benefits are provided on a non-discriminatory basis and of their right to file a complaint with the Department, the federal authorities, or both, if they believe that discrimination on the basis of race, color, religion, sex, or national origin is practiced. Informing clientele will be accomplished by furnishing a written notice and the Statement of Compliance to all clientele and other interested persons.

d. All complaints alleging discrimination because of race, color, religion, sex, or national origin shall be filed in writing, shall describe the type of discrimination alleged, indicate when and where such alleged discrimination occurred, and describe any pertinent facts and circumstances relating to the alleged discrimination. The complaint shall be signed by the complainant. All complaints shall be addressed to the Director of the Department of Economic Security, who will initiate a thorough investigation through established procedure. After the complaint has been investigated, the Director shall determine whether or not any discriminatory practice has occurred. If appropriate, the Director will take such action as the Director deems necessary to correct past practices and prevent future recurrence of such discrimination. The Department shall cease making referrals or vendor payments to any entity which does not fully comply with the Civil Rights Act of 1964. The complainant shall be advised in writing of the Department's determination regarding the complaint.

i. The Department will maintain a file of approved facilities, agencies, resources, and vendors who have executed Statements of Compliance with the Civil Rights Act of 1964. Verified complaints will be referred by the Department for corrective action. If, after a reasonable time, such corrective action has not been taken, the Department will advise and remove the facility, agency, or vendor from its approved list of resources.

ii. The Department will maintain adequate records to show action taken as a result of each complaint and will make this information available to appropriate federal authorities.

iii. Department employees who receive anonymous verbal complaints are required to report them to their supervisor. The supervisor will decide upon further action to be taken in such cases.

e. At least once each year, or more frequently for those cases in which discriminatory practices are alleged or suspected, a representative of the Department will visit institutions, organizations, political subdivisions, or vendors who participate in a program to verify that their practices conform to the Civil Rights Act and the regulations issued pursuant thereto and as reflected in the Statement of Compliance. The Department will periodically determine if discriminatory practices are engaged in by its personnel and will take corrective action as required to ensure that actions are in compliance with the Civil Rights Act and regulations issued pursuant thereto, as reflected in the Statement of Compliance.

f. Policies and procedures will provide effective verbal and written communication with non-English-speaking applicants and recipients. These policies and procedures will be made known to all Department employees. Supervisors will be required to ensure that their staff complies with such policies and procedures.

g. Assistance payments program information will be disseminated to the general public, using appropriate and effective media to reach minority populations.

h. Department advisory committees will include representatives of racial and ethnic minority groups to the extent feasible.

i. The Department shall provide data revealing the extent to which members of minority groups are beneficiaries of, participants in, or both, federally funded assistance payments programs.

Historical Note

R6-1-501 recodified from R6-3-103 effective February 13, 1996 (Supp. 96-1).

41-1954. Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

1. Administer the following services:

(a) Employment services, including manpower programs and work training, field operations, technical services, unemployment compensation, community work and training and other related functions in furtherance of programs under the social security act, as amended, the Wagner-Peyser act, as amended, the federal unemployment tax act, as amended, 33 United States Code, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(b) Individual and family services, which shall include a section on aging, services to children, youth and adults and other related functions in furtherance of social service programs under the social security act, as amended, title IV, except parts B and E, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, the older Americans act, as amended, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(c) Income maintenance services, including categorical assistance programs, special services unit, child support collection services, establishment of paternity services, maintenance and operation of a state case registry of child support orders, a state directory of new hires, a support payment clearinghouse and other related functions in furtherance of programs under the social security act, title IV, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, as amended, and other related federal acts and titles.

(d) Rehabilitation services, including vocational rehabilitation services and sections for the blind and visually impaired, communication disorders, correctional rehabilitation and other related functions in furtherance of programs under the vocational rehabilitation act, as amended, the Randolph-Sheppard act, as amended, and other related federal acts and titles.

(e) Administrative services, including the coordination of program evaluation and research, interagency program coordination and in-service training, planning, grants, development and management, information, legislative liaison, budget, licensing and other related functions.

(f) Manpower planning, including a state manpower planning council for the purposes of the federal-state-local cooperative manpower planning system and other related functions in furtherance of programs under the comprehensive employment and training act of 1973, as amended, and other related federal acts and titles.

(g) Economic opportunity services, including the furtherance of programs prescribed under the economic opportunity act of 1967, as amended, and other related federal acts and titles.

(h) Intellectual disability and other developmental disability programs, with emphasis on referral and purchase of services. The program shall include educational, rehabilitation, treatment and training services and other related functions in furtherance of programs under the developmental disabilities services and facilities construction act (P.L. 91-517) and other related federal acts and titles.

(i) Nonmedical home and community based services and functions, including department-designated case management, housekeeping services, chore services, home health aid, personal care, visiting nurse services, adult day care or adult day health, respite sitter care, attendant care, home delivered meals and other related services and functions.

2. Provide a coordinated system of initial intake, screening, evaluation and referral of persons served by the department.

3. Adopt rules it deems necessary or desirable to further the objectives and programs of the department.

4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

5. Employ and determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons subject to chapter 4, article 4 and, as applicable, article 5 of this title as may be necessary in the performance of its duties, contract for the services of outside advisors, consultants and aides as may be reasonably necessary and reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business.

6. Make contracts and incur obligations within the general scope of its activities and operations subject to the availability of funds.

7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of its purposes, objectives and programs.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

10. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of its duties subject to the departmental rules on the confidentiality of information.

11. Establish and maintain separate financial accounts as required by federal law or regulations.

12. Advise and make recommendations to the governor and the legislature on all matters concerning its objectives.

13. Have an official seal that is judicially noticed.

14. Annually estimate the current year's population of each county, city and town in this state, using the periodic census conducted by the United States department of commerce, or its successor agency, as the basis for such estimates and deliver such estimates to the economic estimates commission before December 15.

15. Estimate the population of any newly annexed areas of a political subdivision as of July 1 of the fiscal year in which the annexation occurs and deliver such estimates as promptly as is feasible after the annexation occurs to the economic estimates commission.

16. Establish and maintain a statewide program of services for persons who are both hearing impaired and visually impaired and coordinate appropriate services with other agencies and organizations to avoid duplication of these services and to increase efficiency. The department of economic security shall enter into agreements for the utilization of the personnel and facilities of the department of economic security, the department of health services and other appropriate agencies and organizations in providing these services.

17. Establish and charge fees for deposit in the department of economic security prelayoff assistance services fund to employers who voluntarily participate in the services of the department that provide job service and retraining for persons who have been or are about to be laid off from employment. The department shall charge only those fees necessary to cover the costs of administering the job service and retraining services.

18. Establish a focal point for addressing the issue of hunger in this state and provide coordination and assistance to public and private nonprofit organizations that aid hungry persons and families throughout this state. Specifically such activities shall include:

(a) Collecting and disseminating information regarding the location and availability of surplus food for distribution to needy persons, the availability of surplus food for donation to charity food bank organizations, and the needs of charity food bank organizations for surplus food.

(b) Coordinating the activities of federal, state, local and private nonprofit organizations that provide food assistance to the hungry.

(c) Accepting and disbursing federal monies, and any state monies appropriated by the legislature, to private nonprofit organizations in support of the collection, receipt, handling, storage and distribution of donated or surplus food items.

(d) Providing technical assistance to private nonprofit organizations that provide or intend to provide services to the hungry.

(e) Developing a state plan on hunger that, at a minimum, identifies the magnitude of the hunger problem in this state, the characteristics of the population in need, the availability and location of charity food banks and the potential sources of surplus food, assesses the effectiveness of the donated food collection and distribution network and other efforts to alleviate the hunger problem, and recommends goals and strategies to improve the status of the hungry. The state plan on hunger shall be incorporated into the department's state comprehensive plan prepared pursuant to section 41-1956.

(f) Establishing a special purpose advisory council on hunger pursuant to section 41-1981.

19. Establish an office to address the issue of homelessness and to provide coordination and assistance to public and private nonprofit organizations that prevent homelessness or aid homeless individuals and families throughout this state. These activities shall include:

(a) Promoting and participating in planning for the prevention of homelessness and the development of services to homeless persons.

(b) Identifying and developing strategies for resolving barriers in state agency service delivery systems that inhibit the provision and coordination of appropriate services to homeless persons and persons in danger of being homeless.

(c) Assisting in the coordination of the activities of federal, state and local governments and the private sector that prevent homelessness or provide assistance to homeless people.

(d) Assisting in obtaining and increasing funding from all appropriate sources to prevent homelessness or assist in alleviating homelessness.

(e) Serving as a clearinghouse on information regarding funding and services available to assist homeless persons and persons in danger of being homeless.

(f) Developing an annual state comprehensive homeless assistance plan to prevent and alleviate homelessness.

(g) Submitting an annual report to the governor, the president of the senate and the speaker of the house of representatives on the status of homelessness and efforts to prevent and alleviate homelessness. The department shall provide a copy of this report to the secretary of state.

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

21. Exchange information, including case specific information, and cooperate with the department of child safety for the administration of the department of child safety's programs.

B. If the department of economic security has responsibility for the care, custody or control of a child or is paying the cost of care for a child, it may serve as representative payee to receive and administer social security and United States department of veterans affairs benefits and other benefits payable to such child. Notwithstanding any law to the contrary, the department of economic security:

1. Shall deposit, pursuant to sections 35-146 and 35-147, such monies as it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use such monies to defray the cost of care and services expended by the department of economic security for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.

3. Shall maintain separate records to account for the receipt, investment and disposition of funds received for each child.

4. On termination of the department of economic security's responsibility for the child, shall release any funds remaining to the child's credit in accordance with the requirements of the funding source or in the absence of such requirements shall release the remaining funds to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person responsible for the child if the child is a minor and not emancipated.

C. Subsection B of this section does not pertain to benefits payable to or for the benefit of a child receiving services under title 36.

D. Volunteers reimbursed for expenses pursuant to subsection A, paragraph 5 of this section are not eligible for workers' compensation under title 23, chapter 6.

E. In implementing the temporary assistance for needy families program pursuant to Public Law 104-193, the department shall provide for cash assistance to two-parent families if both parents are able to work only on documented participation by both parents in work activities described in title 46, chapter 2, article 5, except that payments may be made to families who do not meet the participation requirements if:

1. It is determined on an individual case basis that they have emergency needs.

2. The family is determined to be eligible for diversion from long-term cash assistance pursuant to title 46, chapter 2, article 5.

F. The department shall provide for cash assistance under temporary assistance for needy families pursuant to Public Law 104-193 to two-parent families for no longer than six months if both parents are able to work, except that additional assistance may be provided on an individual case basis to families with extraordinary circumstances. The department shall establish by rule the criteria to be used to determine eligibility for additional cash assistance.

G. The department shall adopt the following discount medical payment system for persons who the department determines are eligible and who are receiving rehabilitation services pursuant to subsection A, paragraph 1, subdivision (d) of this section:

1. For inpatient hospital admissions and outpatient hospital services the department shall reimburse a hospital according to the rates established by the Arizona health care cost containment system administration pursuant to section 36-2903.01, subsection G.

2. The department's liability for a hospital claim under this subsection is subject to availability of funds.

3. A hospital bill is considered received for purposes of paragraph 5 of this subsection on initial receipt of the legible, error-free claim form by the department if the claim includes the following error-free documentation in legible form:

(a) An admission face sheet.

(b) An itemized statement.

(c) An admission history and physical.

(d) A discharge summary or an interim summary if the claim is split.

(e) An emergency record, if admission was through the emergency room.

(f) Operative reports, if applicable.

(g) A labor and delivery room report, if applicable.

4. The department shall require that the hospital pursue other third-party payors before submitting a claim to the department. Payment received by a hospital from the department pursuant to this subsection is considered payment by the department of the department's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For inpatient hospital admissions and outpatient hospital services rendered on and after October 1, 1997, if the department receives the claim directly from the hospital, the department shall pay a hospital's rate established according to this section subject to the following:

(a) If the hospital's bill is paid within thirty days of the date the bill was received, the department shall pay ninety-nine percent of the rate.

(b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the department shall pay one hundred percent of the rate.

(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the department shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. For medical services other than those for which a rate has been established pursuant to section 36-2903.01, subsection G, the department shall pay according to the Arizona health care cost containment system capped fee-for-service schedule adopted pursuant to section 36-2904, subsection K or any other established fee schedule the department determines reasonable.

H. The department shall not pay claims for services pursuant to this section that are submitted more than nine months after the date of service for which the payment is claimed.

I. To assist in the location of persons or assets for the purpose of establishing paternity, establishing, modifying or enforcing child support obligations and other related functions, the department has access, including automated access if the records are maintained in an automated database, to records of state and local government agencies, including:

1. Vital statistics, including records of marriage, birth and divorce.

2. State and local tax and revenue records, including information on residence address, employer, income and assets.

3. Records concerning real and titled personal property.

4. Records of occupational and professional licenses.

5. Records concerning the ownership and control of corporations, partnerships and other business entities.

6. Employment security records.

7. Records of agencies administering public assistance programs.

8. Records of the motor vehicle division of the department of transportation.

9. Records of the state department of corrections.

10. Any system used by a state agency to locate a person for motor vehicle or law enforcement purposes, including access to information contained in the Arizona criminal justice information system.

J. Notwithstanding subsection I of this section, the department or its agents shall not seek or obtain information on the assets of an individual unless paternity is presumed pursuant to section 25-814 or established.

K. Access to records of the department of revenue pursuant to subsection I of this section shall be provided in accordance with section 42-2003.

L. The department also has access to certain records held by private entities with respect to child support obligors or obligees, or individuals against whom such an obligation is sought. The information shall be obtained as follows:

1. In response to a child support subpoena issued by the department pursuant to section 25-520, the names and addresses of these persons and the names and addresses of the employers of these persons, as appearing in customer records of public utilities, cable operators and video service providers.

2. Information on these persons held by financial institutions.

M. Pursuant to department rules, the department may compromise or settle any support debt owed to the department if the director or an authorized agent determines that it is in the best interest of this state and after considering each of the following factors:

1. The obligor's financial resources.

2. The cost of further enforcement action.

3. The likelihood of recovering the full amount of the debt.

N. Notwithstanding any law to the contrary, a state or local governmental agency or private entity is not subject to civil liability for the disclosure of information made in good faith to the department pursuant to this section.

46-134. Powers and duties; expenditure; limitation

The state department shall:

1. Administer all forms of public relief and assistance except those that by law are administered by other departments, agencies or boards.

2. Develop a section of rehabilitation for the visually impaired that shall include a sight conservation section, a vocational rehabilitation section in accordance with the federal vocational rehabilitation act, a vending stand section in accordance with the federal Randolph-Sheppard act and an adjustment service section that shall include rehabilitation teaching and other social services deemed necessary, and shall cooperate with similar agencies already established. The administrative officer and staff of the section for the blind and visually impaired shall be employed only in the work of that section.

3. Assist other departments, agencies and institutions of the state and federal governments, when requested, by performing services in conformity with the purposes of this title.

4. Act as agent of the federal government in furtherance of any functions of the state department.

5. Carry on research and compile statistics relating to the entire public welfare program throughout this state, including all phases of dependency and defectiveness.

6. Cooperate with the superior court in cases of delinquency and related problems.

7. Develop plans in cooperation with other public and private agencies for the prevention and treatment of conditions giving rise to public welfare and social security problems.

8. Make necessary expenditures in connection with the duties specified in paragraphs 5, 6, 7, 13 and 14 of this subsection.

9. Have the power to apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this chapter.

10. Make rules, and take action necessary or desirable to carry out the provisions of this title, that are not inconsistent with this title.

11. Administer any additional welfare functions required by law.

12. If a tribal government elects to operate a cash assistance program in compliance with the requirements of the United States department of health and human services, with the review of the joint legislative budget committee, provide matching monies at a rate that is consistent with the applicable fiscal year budget and that is not more than the state matching rate for the aid to families with dependent children program as it existed on July 1, 1994.

13. Furnish a federal, state or local law enforcement officer, at the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that the recipient is a fugitive felon or a probation, parole or community supervision violator or has information that is necessary for the officer to conduct the official duties of the officer and the location or apprehension of the recipient is within these official duties.

14. In conjunction with Indian tribal governments, request a federal waiver from the United States department of agriculture that will allow tribal governments that perform eligibility determinations for temporary assistance for needy families programs to perform the food stamp eligibility determinations for persons who apply for services pursuant to section 36-2901, paragraph 6, subdivision (a). If the waiver is approved, the state shall provide the

state matching monies for the administrative costs associated with the food stamp eligibility based on federal guidelines. As part of the waiver, the department shall recoup from a tribal government all federal fiscal sanctions that result from inaccurate eligibility determinations.

5-575. Prizes; setoff for debts to state agencies; definitions

A. The commission shall establish a liability setoff program by which state lottery prize payments pursuant to section 5-573 may be used to satisfy debts which a person owes this state. The program shall comply with the standards and requirements prescribed by this section.

B. If a person owes an agency a debt, an agency may notify the commission, furnishing at least the state agency or program identifier, the first name, last name, middle initial and social security number of the debtor, and the amount of the debt. This information shall be in the form the commission prescribes. Each agency shall certify the information and update the information monthly. No information may be transmitted by the department of revenue to the commission if the transmission would violate title 42, chapter 2, article 1.

C. The commission shall match the information submitted by the agency with persons who are entitled to a state lottery prize payment in an amount of six hundred dollars or more. If there is a match, the commission shall set off the amount of the debt from the prize due and notify the person of the person's right to appeal to the appropriate court, or to request a review by the agency pursuant to agency rule. The person shall make such a request or appeal within thirty days after the setoff. If the setoff accounts for only a portion of the prize due, the remainder of the prize shall be paid to the person. The commission shall promptly transfer the setoff, less the amount of the commission's fee, to the agency.

D. If a person requests a review by the agency or provides the agency with proof that an appeal has been taken to the appropriate court within thirty days after the setoff and it is determined that the setoff was made in error under this section, the agency shall reimburse the person with interest as determined pursuant to section 42-1123.

E. The basis for a request for review shall not include the validity of the claim if its validity has been established at an agency hearing, by judicial review in a court of competent jurisdiction in this or any other state or by final administrative decision and shall state with specificity why the person claims the obligation does not exist or why the amount of the obligation is incorrect.

F. The commission may prescribe a fee to be collected from each agency utilizing the setoff procedure. The amount of the fee shall reasonably reflect the actual cost of the service provided.

G. If agencies have two or more delinquent accounts for the same person, the commission shall apportion the prize equally among them, except that a setoff to the department of economic security for overdue support has priority over all other setoffs.

H. If the prize is insufficient to satisfy the entire debt, the remainder of the debt may be collected by the agency as provided by law or resubmitted for setoff against any other prize awarded.

I. An agency shall not enter into an agreement with a debtor for the assignment of any prospective prize to the agency in satisfaction of the debt.

J. In this section:

1. "Agency" means a department, agency, board, commission or institution of this state. Agency also means a corporation under contract with this state that provides a service that would otherwise be provided by a department, agency, board, commission or institution of this state if the contract specifically authorizes participation in the liability setoff program and the attorney general's office has reviewed the contract and approves of such authorization. The participation in the liability setoff program is limited to debts related to the services the corporation provides for or on behalf of this state.

2. "Debt" means an amount over one hundred dollars owed to an agency by a person and may include interest, penalties, charges, costs, fees or any other amount. Debt also includes monies owed by a person for overdue support and referred to the department of economic security for collection.

3. "Overdue support" means a delinquency in court ordered payments for support or maintenance of a child or for spousal maintenance to the parent with whom the child is living if child support is also being enforced pursuant to an assignment or application filed under 42 United States Code section 654(6).

41-1003. Required rule making

Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

42-1122. Setoff for debts to state agencies, political subdivisions and courts; revolving fund; penalties; definitions

A. The department shall establish a liability setoff program by which refunds under section 42-1118 and title 43, chapters 10 and 11 may be used to satisfy debts that the taxpayer owes to this state, a political subdivision or a court. The program shall comply with the standards and requirements prescribed by this section.

B. If a taxpayer owes an agency, political subdivision or court a debt, the agency, political subdivision or court, by November 1 of each year, may notify the department, furnishing at least the state agency, court or program identifier, the taxpayer's first name, last name, middle initial or middle name and suffix and social security number and any other available identification that the agency, political subdivision or court deems appropriate of the debtor as shown on the records of the agency, political subdivision or court, and the amount of the debt.

C. The department shall match the information submitted by the agency, political subdivision or court by at least two items of identification of the taxpayer with taxpayers who qualify for refunds under section 42-1118 and shall:

1. Notify the agency, political subdivision or court of a potential match, the taxpayer's home address and any additional taxpayer identification numbers used by the taxpayer. Even if the taxpayer is not entitled to a refund, the department of revenue shall provide to:

(a) The court, the clerk of the court and the department of economic security, for child support and spousal maintenance purposes only, the home address of a taxpayer whose debt for overdue support is referred for setoff and any additional taxpayer identification numbers used by the taxpayer.

(b) The court the home address and any additional taxpayer identification numbers used by the taxpayer whose debt for a court obligation is referred for setoff and who is identified by the court as a probationer on absconder status.

2. Request final agency, political subdivision or court confirmation in writing or electronically as determined by the department within ten days after the match and of the continuation of the debt. If the agency, political subdivision or court fails to provide confirmation within forty-five days after the request, the department shall release the refund to the taxpayer.

D. An agency, political subdivision or court may submit updated information, additions, deletions and other changes on a quarterly or more frequent basis, at the convenience of the agency, political subdivision or court.

E. On confirmation pursuant to subsection C, paragraph 2 of this section, the agency or political subdivision shall notify the taxpayer, by mail to the most recent physical address or electronically to the most recent email address provided by the taxpayer to the department:

1. Of the intention to set off the debt against the refund due.

2. Of the taxpayer's right to appeal to the appropriate court or to request a review by the agency or political subdivision pursuant to agency or political subdivision rule, within thirty days after the physical or electronic mailing of the notice.

F. In addition, the taxpayer shall receive notice that if the refund is intercepted in error through no fault of the taxpayer, the taxpayer is entitled to the full refund plus interest and penalties from the agency, political subdivision or court as provided by subsection O of this section.

G. The basis for a request for review as provided by subsection E of this section shall not include the validity of the claim if its validity has been established at an agency hearing, by judicial review in a court of competent jurisdiction in this or any other state or by final administrative decision and shall state with specificity why the taxpayer claims the obligation does not exist or why the amount of the obligation is incorrect.

H. If, within thirty days after the physical or electronic mailing of the notice, the taxpayer requests a review by the agency or political subdivision or provides the agency or political subdivision with proof that an appeal has been taken to the appropriate court, the agency or political subdivision shall immediately notify the department and the setoff procedure shall be stayed pending resolution of the review or appeal.

I. If the department does not receive notice of a timely appeal, it shall draw and deliver a warrant in the amount of the available refund up to the amount of the debt in favor of the agency or political subdivision and notify the taxpayer of the action by physical mail or email.

J. Subsections E, G, H and I of this section do not apply to a debt imposed by a court except that the taxpayer shall receive notice of the intent to set off the debt against the refund due and the right to appeal to the court that imposed the debt within thirty days after the physical or electronic mailing of the notice. The basis for the request for review shall not include the validity of the claim and shall state with specificity why the taxpayer claims the obligation does not exist or why the obligation is incorrect.

K. If the setoff accounts for only a portion of the refund due, the remainder of the refund shall be sent to the taxpayer. A court shall not use this section to satisfy a judgment or payment of a fine or civil penalty until the judgment has become final or until the time to appeal the imposition of a fine or civil penalty has expired.

L. A revolving fund is established to recover and pay the cost of operating the setoff program under this section. Monies in the fund may also be used for the general operating expenses of the department. The department may prescribe a fee to be collected from each agency, political subdivision or court using the setoff procedure or from the taxpayer, and the amount shall be deposited in the fund. The amount of the fee shall reasonably reflect the actual cost of the service provided. Monies in the revolving fund are subject to legislative appropriation.

M. If agencies, political subdivisions or courts have two or more delinquent accounts for the same taxpayer, the refund may be apportioned among them pursuant to rules prescribed by the department of revenue, except that a setoff to the department of economic security for overdue support has priority over all other setoffs.

N. If the refund is insufficient to satisfy the entire debt, the remainder of the debt may be collected by the agency, political subdivision or court as provided by law or resubmitted for setoff against subsequent refunds.

O. In the case of a refund that is intercepted in error through no fault of the taxpayer under this section, the taxpayer shall be reimbursed by the agency, political subdivision or court with interest pursuant to section 42-1123. In addition, if all or part of a refund is intercepted in error due to an agency, political subdivision or court incorrectly identifying a taxpayer as a debtor through no fault of the taxpayer, the agency, political subdivision or court shall also pay the taxpayer a penalty as follows:

1. If the agency, political subdivision or court reimburses the taxpayer sixteen through one hundred eighty days after the agency, political subdivision or court receives notification that the refund was erroneously intercepted and the refund was received by the agency, political subdivision or court, the penalty is equal to ten percent of the amount of the refund that was intercepted.

2. If the agency, political subdivision or court reimburses the taxpayer one hundred eighty-one through three hundred sixty-five days after the agency, political subdivision or court receives notification that the refund was erroneously intercepted and the refund was received by the agency, political subdivision or court, the penalty is equal to fifteen percent of the amount of the refund that was intercepted.

3. If the agency, political subdivision or court fails to reimburse the taxpayer within three hundred sixty-five days after the agency, political subdivision or court receives notification that the refund was erroneously intercepted and the refund was received by the agency, political subdivision or court, the penalty is equal to twenty percent of the amount of the refund that was intercepted.

P. The time periods set forth in subsection O of this section shall be stayed during a review of an agency decision pursuant to section 25-522.

Q. Except as is reasonably necessary to accomplish the purposes of this section, the department shall not disclose under this section any information in violation of chapter 2, article 1 of this title.

R. An agency, political subdivision or court shall not enter into an agreement with a debtor for:

1. The assignment of any prospective refund to the agency, political subdivision or court in satisfaction of the debt.

2. Payment of the debt if the debt has been confirmed to the department for setoff under subsection C, paragraph 2 of this section.

S. If a tax refund is based on a joint income tax return and the department of economic security receives a written claim from the nonobligated spouse within forty-five days after the notice of a setoff for overdue child support, the setoff only applies to that portion of the refund due to the obligor. The nonobligated spouse shall provide to the department of economic security copies of both the obligated and nonobligated spouse's federal W-2 forms and evidence of estimated tax payments supporting the proportionate share of each spouse's payment of tax. The department of economic security shall retain the amount of the setoff refund due to the obligated spouse determined by a proration based on the tax payments of each spouse by estimated tax payment or tax withheld from wages.

T. For the purposes of this section:

1. "Agency" means:

(a) A department, agency, board, commission or institution of this state.

(b) A corporation that is under contract with this state and that provides a service that would otherwise be provided by a department, agency, board, commission or institution of this state if the contract specifically authorizes participation in the liability setoff program and the attorney general's office has reviewed the contract and approves such authorization. The participation in the liability setoff program shall be limited to debt related to the services the corporation provides for or on behalf of this state.

2. "Court" means all courts of record, justice courts and municipal courts.

3. "Debt":

(a) Means an amount over $50 that is owed to an agency, political subdivision or court by a taxpayer and may include a judgment in favor of this state or a political subdivision of this state, interest, penalties, charges, costs, fees, fines, civil penalties, surcharges, assessments, administrative charges or any other amount.

(b) Includes monies that are owed by a taxpayer for overdue support and that are referred to the department of economic security or the clerk of the court for collection.

4. "Overdue support" means a delinquency in court ordered payments for spousal maintenance or support of a child or for spousal maintenance to the parent with whom the child is living if child support is also being enforced pursuant to an assignment or application filed under 42 United States Code section 654(6) or other applicable law.

5. "Political subdivision" means a county or an incorporated city or town in this state.

DEPARTMENT OF ECONOMIC SECURITY
Title 6, Chapter 4

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 2, 2024

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

FROM: Council Staff

DATE: March 14, 2024

SUBJECT: **DEPARTMENT OF ECONOMIC SECURITY**
Title 6, Chapter 4

Summary

This Five-Year Review Report (5YRR) from the Department of Economic Security (Department) relates thirty-seven (37) rules in Title 6, Chapter 4, Articles 1-4 regarding the Vocational Rehabilitation (VR) program.

In the prior report for these rules, approved by the Council in June 2018, the Department indicated it would update the rules and submit a Notice of Final Rulemaking to the Council by December 2019. The Department indicates it did not complete the proposed course of action. The Department indicates it received approval from the Governor's Office in July 2017 to proceed with rulemaking for Title 6, Chapter 4. The Department indicates it is required to obtain review and approval of rulemaking for rules in Article 3 from the U.S. Department of Education. The Department indicates it did not anticipate that it would take over a year for the U.S. Department of Education to complete its review of the draft rules.

The Department indicates in early 2020 it was reaching the final stages of drafting the proposed rules when the COVID-19 pandemic required the Department to divert resources to providing pandemic response services. The Department indicates it was responsible for providing essential services to families, which caused a significant delay in the progress of rulemaking.

The Department states, as the pandemic has receded and staff availability has stabilized, the Department has renewed its commitment to rulemaking and has made significant progress on these rules. The Department also indicates it has overhauled its internal drafting and review process, resulting in secondary reviews, by both the general public and internal and external stakeholder in order to mitigate the number of comments received during the formal comment period, thus causing some additional delays in submitting the Notice of Final Rulemaking to the Council.

Proposed Action

In the current report, the Department proposes to amend most rules in Title 6, Chapter 4 to address issues outlined in more detail below. The Department indicates it received approval to conduct rulemaking from the Governor's Office on June 27, 2023. The Department states it anticipates filing a Notice of Proposed Rulemaking in November 2023 and submitting a Notice of Final Rulemaking to the Council by March 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:

During this five-year review, the Department has determined that many of the rules contain outdated terminology, reference outdated procedures, confusing language, and inconsistencies with federal regulation. There was no economic impact statement submitted with the original rulemaking, so the Department included a new one in their review. Wholly, the rules are being sought to align with current federal law and regulations and do not impose any costs to consumers or small businesses. Additionally, the Department has determined that any benefits outweigh the costs of the rules.

Stakeholders are identified as the Department, individuals associated with the Vocational Rehabilitation Program, individuals with serious mental illness, high school districts involved in Pre-Employment Transition Services and Transition School to Work agreements, and blind individuals who own merchandising businesses.

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

The Department has determined that, if their proposed changes are made, the rules would impose the least burden and costs to those regulated and that there is no less intrusive or less costly method of achieving the objectives of this rulemaking.

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 following rules are not clear, concise, and understandable as outlined in Section 2 of the Department's report:

- **R6-4-203**
- **R6-4-204**
- **R6-4-205**
- **R6-4-206**
- **R6-4-302**
- **R6-4-303**
- **R6-4-304**
- **R6-4-305**
- **R6-4-306**
- **R6-4-307**
- **R6-4-308**
- **R6-4-309**
- **R5-4-310**
- **R6-4-311**
- **R6-4-312**
- **R6-4-314**
- **R6-4-315**
- **R6-4-316**
- **R6-4-317**
- **R6-3-318**
- **R6-4-319**
- **R6-4-320**
- **R6-4-321**
- **R6-4-322**
- **R6-4-323**
- **R6-4-324**
- **R6-4-325**
- **R6-4-401**
- **R6-4-402**

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Department indicates the following rules are not consistent with other rules and statutes:

- **R6-4-104:** This rule is inconsistent with other rules and statutes because it contains outdated terminology. The Department proposes to amend this rule and update definitions to align with federal regulations and current Department practice.
- **R6-4-202:** This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and does not reflect current Department practice. The Department proposes to amend this rule to update eligibility and application requirements for the VR program that are consistent with federal regulations. The update will also clarify the application process and specify when an application is considered complete.
- **R6-4-203:** This rule is inconsistent with federal regulations and is not enforced as written. The Department proposes to amend this rule by updating language to make it more clear, concise, and understandable and updating the timelines in which the Department develops a VR program participant's Individualized Plan for Employment (IPE) to be consistent with federal regulations.
- **R6-4-204:** This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and assessment practices. The Department proposes to amend this rule by updating language regarding extending the eligibility determination for an individual with a significant disability.
- **R6-4-205:** This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and does not reflect current Department practice. The Department proposes to amend this rule and update terminology and timeframes and practices for developing a participant's IPE, which has replaced the IWRP, to align with federal regulations and current Department practice.
- **R6-4-206:** This rule is inconsistent with federal regulations and is not enforced as written because the rule contains outdated terminology and does not reflect current Department practice. The Department proposes to amend this rule to update terminology and provide information regarding VR's program determination of an individual's economic need for services including the ability to subtract a VR client's disability-related expenditures, paid for by the VR client and not otherwise reimbursed, from the total reported income of the VR client or of the individual claiming the VR client as a dependent.
- **R6-4-325:** This rule is inconsistent with federal regulations, contains outdated terminology, and is not understandable. The Department proposes to amend this rule and update language to correct the citation to current federal regulations and make the rule more clear, concise, and understandable.
- **R6-4-401:** This rule is inconsistent with federal regulations, contains outdated terminology, and does not reflect current Department practice. The Department proposes to repeal this rule and incorporate information regarding order of selection into Article 2 of this chapter.
- **R6-4-402:** This rule is ineffective in meeting the objective, is inconsistent with other rules and statutes, and is not enforced as written because it contains outdated information and practices regarding providers and service standards, which are addressed in the Arizona Workforce Innovation and Opportunity Act (WIOA) State Plan for Program Years 2020-2023, in accordance with 34 CFR 361.51. The Department proposes to repeal this rule.

- **R6-4-403:** This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and does not reflect current Department practice. The Department proposes to repeal this rule and incorporate updated information regarding VR services contingent upon economic need into Article 2, including adding the ability to subtract a VR client's disability-related expenditures, paid for by the VR client and not otherwise reimbursed, from the total reported income of the VR client or of the individual claiming the VR client as a dependent.
- **R6-4-404:** This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and does not reflect current Department practice. The Department proposes to repeal this rule and incorporate information regarding reviews of staff determinations concerning provision or denial of services into Article 2.
- **R6-4-405:** This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and does not reflect current Department practice. The Department proposes to repeal this rule and incorporate information regarding safeguarding personal information obtained by the VR program, including when release of primary source source information is required and when it's discretionary, into Article 2.

7. <u>Has the agency analyzed the rules' effectiveness in achieving its objectives?</u>

The Department indicates the following rules are not effective in achieving their objectives:

- **R6-4-104:** This rule is inconsistent with other rules and statutes because it contains outdated terminology. The Department proposes to amend this rule and update definitions to align with federal regulations and current Department practice.
- **R6-4-201:** This rule is not enforced as written because it contains outdated definitions and terminology and does not reflect current practice. The Department proposes to amend this rule and incorporate definitions to align with current Department practice and update terminology.
- **R6-4-202:** This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and does not reflect current Department practice. The Department proposes to amend this rule to update eligibility and application requirements for the VR program that are consistent with federal regulations. The update will also clarify the application process and specify when an application is considered complete.
- **R6-4-203:** This rule is inconsistent with federal regulations and is not enforced as written. The Department proposes to amend this rule by updating language to make it more clear, concise, and understandable and updating the timelines in which the Department develops a VR program participant's Individualized Plan for Employment (IPE) to be consistent with federal regulations.
- **R6-4-204:** This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and assessment practices. The

Department proposes to amend this rule by updating language regarding extending the eligibility determination for an individual with a significant disability.

- **R6-4-205:** This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and does not reflect current Department practice. The Department proposes to amend this rule and update terminology and timeframes and practices for developing a participant's IPE, which has replaced the IWRP, to align with federal regulations and current Department practice.
- **R6-4-206:** This rule is inconsistent with federal regulations and is not enforced as written because the rule contains outdated terminology and does not reflect current Department practice. The Department proposes to amend this rule to update terminology and provide information regarding VR's program determination of an individual's economic need for services including the ability to subtract a VR client's disability-related expenditures, paid for by the VR client and not otherwise reimbursed, from the total reported income of the VR client or of the individual claiming the VR client as a dependent.
- **R6-4-301:** This rule is not enforced as written because it contains outdated definitions and terminology and does not reflect current Department practice. The Department proposes to amend this rule and update definitions to align with current Department practice and update terminology.
- **R6-4-305**: This rule contains outdated terminology and does not reflect current Department practice. The Department proposes to amend this rule to align with current Department practice by removing the requirement that a trainee complete a level of training and receive a certificate prior to proceeding to the next level of training and update language to make the rule more clear, concise, and understandable.
- **R6-4-311:** This rule contains outdated terminology, which may cause confusion. The Department proposes to amend this rule to remove the level of the business facility for which a license is issued from the license and update language to make the rule more clear, concise, and understandable.
- **R6-4-313:** This rule contains outdated terminology and is not enforced as written because it does not reflect current Department practice. The Department proposes to amend this rule to update terminology and provide information regarding the order in which a temporary BEP operator is selected to operate a business facility.
- **R6-4-321:** This rule is not enforced as written and contains outdated terminology, which may cause confusion. The Department proposes to amend this rule to comply with federal law and remove the Monthly Assessment Schedule in order to allow the BEP and BEP operators to decide annually what percentage to apply to set-aside funds. The Department will also update the language to make the rule more clear, concise, and understandable
- **R6-4-325:** This rule is inconsistent with federal regulations, contains outdated terminology, and is not understandable. The Department proposes to amend this rule and update language to correct the citation to current federal regulations and make the rule more clear, concise, and understandable.
- **R6-4-401:** This rule is inconsistent with federal regulations, contains outdated terminology, and does not reflect current Department practice. The Department proposes to repeal this rule and incorporate information regarding order of selection into Article 2 of this chapter.

- **R6-4-402:** This rule is ineffective in meeting the objective, is inconsistent with other rules and statutes, and is not enforced as written because it contains outdated information and practices regarding providers and service standards, which are addressed in the Arizona Workforce Innovation and Opportunity Act (WIOA) State Plan for Program Years 2020-2023, in accordance with 34 CFR 361.51. The Department proposes to repeal this rule.
- **R6-4-403:** This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and does not reflect current Department practice. The Department proposes to repeal this rule and incorporate updated information regarding VR services contingent upon economic need into Article 2, including adding the ability to subtract a VR client's disability-related expenditures, paid for by the VR client and not otherwise reimbursed, from the total reported income of the VR client or of the individual claiming the VR client as a dependent.
- **R6-4-404:** This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and does not reflect current Department practice. The Department proposes to repeal this rule and incorporate information regarding reviews of staff determinations concerning provision or denial of services into Article 2.
- **R6-4-405:** This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and does not reflect current Department practice. The Department proposes to repeal this rule and incorporate information regarding safeguarding personal information obtained by the VR program, including when release of primary source information is required and when it's discretionary, into Article 2

8. <u>Has the agency analyzed the current enforcement status of the rules?</u>

The Department indicates the following rules are not enforced as written:

- **R6-4-104:** This rule is inconsistent with other rules and statutes because it contains outdated terminology. The Department proposes to amend this rule and update definitions to align with federal regulations and current Department practice.
- **R6-4-201:** This rule is not enforced as written because it contains outdated definitions and terminology and does not reflect current practice. The Department proposes to amend this rule and incorporate definitions to align with current Department practice and update terminology.
- **R6-4-202:** This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and does not reflect current Department practice. The Department proposes to amend this rule to update eligibility and application requirements for the VR program that are consistent with federal regulations. The update will also clarify the application process and specify when an application is considered complete.
- **R6-4-203:** This rule is inconsistent with federal regulations and is not enforced as written. The Department proposes to amend this rule by updating language to make it more clear, concise, and understandable and updating the timelines in which the

Department develops a VR program participant's Individualized Plan for Employment (IPE) to be consistent with federal regulations.

- **R6-4-204:** This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and assessment practices. The Department proposes to amend this rule by updating language regarding extending the eligibility determination for an individual with a significant disability.
- **R6-4-205:** This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and does not reflect current Department practice. The Department proposes to amend this rule and update terminology and timeframes and practices for developing a participant's IPE, which has replaced the IWRP, to align with federal regulations and current Department practice.
- **R6-4-206:** This rule is inconsistent with federal regulations and is not enforced as written because the rule contains outdated terminology and does not reflect current Department practice. The Department proposes to amend this rule to update terminology and provide information regarding VR's program determination of an individual's economic need for services including the ability to subtract a VR client's disability-related expenditures, paid for by the VR client and not otherwise reimbursed, from the total reported income of the VR client or of the individual claiming the VR client as a dependent.
- **R6-4-301:** This rule is not enforced as written because it contains outdated definitions and terminology and does not reflect current Department practice. The Department proposes to amend this rule and update definitions to align with current Department practice and update terminology.
- **R6-4-305:** This rule contains outdated terminology and does not reflect current Department practice. The Department proposes to amend this rule to align with current Department practice by removing the requirement that a trainee complete a level of training and receive a certificate prior to proceeding to the next level of training and update language to make the rule more clear, concise, and understandable.
- **R6-4-311:** This rule contains outdated terminology, which may cause confusion. The Department proposes to amend this rule to remove the level of the business facility for which a license is issued from the license and update language to make the rule more clear, concise, and understandable.
- **R6-4-313:** This rule contains outdated terminology and is not enforced as written because it does not reflect current Department practice. The Department proposes to amend this rule to update terminology and provide information regarding the order in which a temporary BEP operator is selected to operate a business facility.
- **R6-4-321:** This rule is not enforced as written and contains outdated terminology, which may cause confusion. The Department proposes to amend this rule to comply with federal law and remove the Monthly Assessment Schedule in order to allow the BEP and BEP operators to decide annually what percentage to apply to set-aside funds. The Department will also update the language to make the rule more clear, concise, and understandable
- **R6-4-401:** This rule is inconsistent with federal regulations, contains outdated terminology, and does not reflect current Department practice. The Department proposes to repeal this rule and incorporate information regarding order of selection into Article 2 of this chapter.

- **R6-4-402:** This rule is ineffective in meeting the objective, is inconsistent with other rules and statutes, and is not enforced as written because it contains outdated information and practices regarding providers and service standards, which are addressed in the Arizona Workforce Innovation and Opportunity Act (WIOA) State Plan for Program Years 2020-2023, in accordance with 34 CFR 361.51. The Department proposes to repeal this rule.
- **R6-4-403:** This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and does not reflect current Department practice. The Department proposes to repeal this rule and incorporate updated information regarding VR services contingent upon economic need into Article 2, including adding the ability to subtract a VR client's disability-related expenditures, paid for by the VR client and not otherwise reimbursed, from the total reported income of the VR client or of the individual claiming the VR client as a dependent.
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- **R6-4-405:** This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and does not reflect current Department practice. The Department proposes to repeal this rule and incorporate information regarding safeguarding personal information obtained by the VR program, including when release of primary source information is required and when it's discretionary, into Article 2

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

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

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 none of the rules were adopted after July 29, 2010. Furthermore, the Department states these rules do not require the issuance of a permit, license, or agency authorization.

11. Conclusion

This 5YRR from the Department relates thirty-seven (37) rules in Title 6, Chapter 4, Articles 1-4 regarding the Vocational Rehabilitation (VR) program. The Department proposes to amend most rules in Title 6, Chapter 4 to improve their clarity, conciseness, understandability, consistency, effectiveness, and enforcement. The Department indicates it received approval to conduct rulemaking from the Governor's Office on June 27, 2023. The Department states it

anticipates filing a Notice of Proposed Rulemaking in November 2023 and submitting a Notice of Final Rulemaking to the Council by March 2024.

Council staff recommends approval of this report.

DEPARTMENT OF ECONOMIC SECURITY
Your Partner For A Stronger Arizona

Katie Hobbs
Governor

Vacant
Director

October 26, 2023

Ms. Nicole Sornsin
Council Chair
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 302
Phoenix, Arizona 85007

Dear Ms. Sornsin:

Attached is the Arizona Department of Economic Security (Department) Five-Year Review Report for Arizona Administrative Code (A.A.C.) Title 6, Chapter 4, Rehabilitation Services.

Pursuant to A.R.S. § 41-1056(A) and A.A.C. R1-6-301(C)(4), the Department certifies that it is in compliance with A.R.S. § 41-1091.

Thank you for your attention to this report. The Department will be present at the Council meetings to respond to any questions the Council members may have about the report.

If you have any questions, please contact Kirk Stephens, Deputy Rules Administrator, Governance and Innovation Administration, at (480) 793-2274.

Sincerely,

Nicole Davis
Office of General Counsel

Attachment

Department of Economic Security

Title 6, Chapter 4

Five-Year Review Report

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. § 41-1954(A)(3) and 46-134(10)
Specific Statutory Authority: A.R.S. §§ 23-501 et seq., 41-1953(E)(3), and 1954(A)(1)(d)

2. Analysis of rules:

Rule	Analysis	
R6-4-104	Title:	Definitions
	Objective:	The objective of this rule is to define the terms in this Chapter and promote a uniform understanding of terms used by the Vocational Rehabilitation (VR) program.

- Is this rule effective in meeting the objective? **Yes ☐ No X**
- Is this rule consistent with other rules and statutes? **Yes ☐ No X**
- Is this rule enforced as written? **Yes ☐ No X**
- Is this rule clear, concise, and understandable? **Yes X No ☐**

Explanation: This rule is inconsistent with other rules and statutes because it contains outdated terminology. The Department proposes to amend this rule and update definitions to align with federal regulations and current Department practice.

Rule	Analysis	
R6-4-201	Title:	General considerations
	Objective:	The objective of this rule is to inform the public about the types of VR services available to applicants or participants in the VR program.

- Is this rule effective in meeting the objective? **Yes ☐ No X**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes ☐ No X**
- Is this rule clear, concise, and understandable? **Yes X No ☐**

Explanation: This rule is not enforced as written because it contains outdated definitions and terminology and does not reflect current practice. The Department proposes to amend this rule and incorporate definitions to align with current Department practice and update terminology.

Rule	**Analysis**	
R6-4-202	Title:	Eligibility, ineligibilitly and certification
	Objective:	The objective of this rule is to describe the eligibility requirements applicants shall meet to qualify for the VR program.

- Is this rule effective in meeting the objective? **Yes ☐ No X**
- Is this rule consistent with other rules and statutes? **Yes ☐ No X**
- Is this rule enforced as written? **Yes ☐ No X**
- Is this rule clear, concise, and understandable? **Yes X No ☐**

Explanation: This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and does not reflect current Department practice. The Department proposes to amend this rule to update eligibility and application requirements for the VR program that are consistent with federal regulations. The update will also clarify the application process and specify when an application is considered complete.

Rule	**Analysis**	
R6-4-203	Title:	Diagnostic study
	Objective:	The objective of this rule is to describe how the Department determines eligibility for VR services after determining an applicant is eligible for the VR program.

- Is this rule effective in meeting the objective? **Yes ☐ No X**
- Is this rule consistent with other rules and statutes? **Yes ☐ No X**
- Is this rule enforced as written? **Yes ☐ No X**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule is inconsistent with federal regulations and is not enforced as written. The Department proposes to amend this rule by updating language to make it more clear, concise, and understandable and updating the timelines in which the Department develops a VR program participant's Individualized Plan for Employment (IPE) to be consistent with federal regulations.

Rule **Analysis**

R6-4-204 Title: Extended evaluation

Objective: The objective of this rule is to describe the extended evaluation procedures, which Department staff may use when a VR counselor needs additional time to determine whether an applicant with a severe disability may benefit from receiving VR services in order to achieve an employment outcome.

- Is this rule effective in meeting the objective? **Yes ☐ No X**
- Is this rule consistent with other rules and statutes? **Yes ☐ No X**
- Is this rule enforced as written? **Yes ☐ No X**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and assessment practices. The Department proposes to amend this rule by updating language regarding extending the eligibility determination for an individual with a significant disability.

Rule **Analysis**

R6-4-205 Title: Individualized written rehabilitation program

Objective: The objective of this rule is to describe the requirement for Department staff and a VR program participant to jointly develop an Individualized Written Rehabilitation Program (IWRP).

- Is this rule effective in meeting the objective? **Yes ☐ No X**

- Is this rule consistent with other rules and statutes? **Yes ☐ No X**
- Is this rule enforced as written? **Yes ☐ No X**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and does not reflect current Department practice. The Department proposes to amend this rule and update terminology and timeframes and practices for developing a participant's IPE, which has replaced the IWRP, to align with federal regulations and current Department practice.

Rule	**Analysis**	
R6-4-206	Title:	Provision of VR services
	Objective:	The objective of this rule is to describe the services that Department staff provide to applicants or participants in the VR program and the conditions under which each service is provided.

- Is this rule effective in meeting the objective? **Yes ☐ No X**
- Is this rule consistent with other rules and statutes? **Yes ☐ No X**
- Is this rule enforced as written? **Yes ☐ No X**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule is inconsistent with federal regulations and is not enforced as written because the rule contains outdated terminology and does not reflect current Department practice. The Department proposes to amend this rule to update terminology and provide information regarding VR's program determination of an individual's economic need for services including the ability to subtract a VR client's disability-related expenditures, paid for by the VR client and not otherwise reimbursed, from the total reported income of the VR client or of the individual claiming the VR client as a dependent.

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Rule **Analysis**

R6-4-301 Title: Definitions

Objective: The objective of this rule is to define the terms in Article 3 of this chapter and promote a uniform understanding of terms used by the Business Enterprise Program (BEP).

- Is this rule effective in meeting the objective? **Yes ☐ No X**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes ☐ No X**
- Is this rule clear, concise, and understandable? **Yes X No ☐**

Explanation: This rule is not enforced as written because it contains outdated definitions and terminology and does not reflect current Department practice. The Department proposes to amend this rule and update definitions to align with current Department practice and update terminology.

Rule **Analysis**

R6-4-302 Title: Participating business facilities

Objective: The objective of this rule is to describe how the BEP conducts surveys of properties to determine potential sites for merchandising opportunities, how written agreements with grantors of the site are established, and a description of how facility equipment is to be provided and maintained.

- Is this rule effective in meeting the objective? **Yes X No ☐**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes X No ☐**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule contains outdated terminology and in some areas, is not understandable. The Department proposes to amend this rule and update language to align with current federal regulations and make the rule more clear, concise, and understandable.

Rule	Analysis	
R6-4-303	Title:	Referral for the business enterprise program; qualifications of candidate
	Objective:	The objective of this rule is to describe how a recipient of VR services who is legally blind is referred to the BEP and the application process a client must complete to qualify for the BEP.

- Is this rule effective in meeting the objective? **Yes X No ☐**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes X No ☐**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule contains outdated terminology, which may cause confusion. The Department proposes to amend this rule and update language to make the rule more clear, concise, and understandable.

Rule	Analysis	
R6-4-304	Title:	Screening for acceptance into initial training
	Objective:	The objective of this rule is to describe how Department staff screens a candidate to participate in initial training as a BEP operator.

- Is this rule effective in meeting the objective? **Yes X No ☐**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes X No ☐**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule contains outdated terminology, which may cause confusion. The Department proposes to amend this rule and update language to make the rule more clear, concise, and understandable.

Rule	Analysis	
R6-4-305	Title:	Initial training
	Objective:	The objective of this rule is to describe initial training of a BEP operator.
	● Is this rule effective in meeting the objective?	**Yes ☐ No X**
	● Is this rule consistent with other rules and statutes?	**Yes X No ☐**
	● Is this rule enforced as written?	**Yes ☐ No X**
	● Is this rule clear, concise, and understandable?	**Yes ☐ No X**
	Explanation:	This rule contains outdated terminology and does not reflect current Department practice. The Department proposes to amend this rule to align with current Department practice by removing the requirement that a trainee complete a level of training and receive a certificate prior to proceeding to the next level of training and update language to make the rule more clear, concise, and understandable.

Rule	Analysis	
R6-4-306	Title:	Remedial training
	Objective:	The objective of this rule is to describe the remedial training requirement that the Department provides to a BEP operator when Department staff determines a deficiency or problem exists.
	● Is this rule effective in meeting the objective?	**Yes X No ☐**
	● Is this rule consistent with other rules and statutes?	**Yes X No ☐**
	● Is this rule enforced as written?	**Yes X No ☐**
	● Is this rule clear, concise, and understandable?	**Yes ☐ No X**
	Explanation:	This rule contains outdated terminology, which may cause confusion. The Department proposes to amend this rule and update language to make the rule more clear, concise, and understandable.

Rule **Analysis**

R6-4-307 Title: Upward mobility training

Objective: The objective of this rule is to describe educational and training options BEP provides to improve a BEP operator's work performance and promotional opportunities.

- Is this rule effective in meeting the objective? **Yes X No ☐**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes X No ☐**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule contains outdated terminology, which may cause confusion. The Department proposes to amend this rule and update language to make the rule more clear, concise, and understandable.

Rule **Analysis**

R6-4-308 Title: Qualifications for placement in a business facility

Objective: The objective of this rule is to describe the qualifications a BEP operator shall have in order to be considered to operate a business facility.

- Is this rule effective in meeting the objective? **Yes X No ☐**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes X No ☐**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule contains outdated terminology, which may cause confusion. The Department proposes to amend this rule and update language to make the rule more clear, concise, and understandable.

Rule **Analysis**

R6-4-309 Title: Selection for placement in a business facility

Objective: The objective of this rule is to describe how BEP selects BEP operators of a business facility.

- Is this rule effective in meeting the objective? **Yes X No ☐**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes X No ☐**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule contains outdated terminology, which may cause confusion. The Department proposes to amend this rule and update language to make the rule more clear, concise, and understandable.

Rule **Analysis**

R6-4-310 Title: Refusal of placement in a facility

Objective: The objective of this rule is to describe the process when a business operator refuses to operate a business facility.

- Is this rule effective in meeting the objective? **Yes X No ☐**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes X No ☐**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule contains outdated terminology, which may cause confusion. The Department proposes to amend this rule and update language to make the rule more clear, concise, and understandable.

Rule **Analysis**

R6-4-311 Title: Licensure

Objective: The objective of this rule is to describe the requirement for a BEP operator to obtain a license, how BEP issues a license to a BEP operator once selected and what information is specified on the license.

- Is this rule effective in meeting the objective? **Yes ☐ No X**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes ☐ No X**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule contains outdated terminology, which may cause confusion. The Department proposes to amend this rule to remove the level of the business facility for which a license is issued from the license and update language to make the rule more clear, concise, and understandable.

Rule **Analysis**

R6-4-312 Title: Operator's agreement

Objective: The objective of this rule is to describe how BEP establishes an operator's agreement with a BEP operator.

- Is this rule effective in meeting the objective? **Yes X No ☐**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes X No ☐**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule contains outdated terminology, which may cause confusion. The Department proposes to amend this rule and update language to make the rule more clear, concise, and understandable.

Rule **Analysis**

R6-4-313 Title: Temporary operator

Objective: The objective of this rule is to describe when a temporary BEP operator may operate a business facility.

- Is this rule effective in meeting the objective? **Yes ☐ No X**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes ☐ No X**
- Is this rule clear, concise, and understandable? **Yes X No ☐**

Explanation: This rule contains outdated terminology and is not enforced as written because it does not reflect current Department practice. The Department proposes to amend this rule to update terminology and provide information regarding the order in which a temporary BEP operator is selected to operate a business facility.

Rule **Analysis**

R6-4-314 Title: Initial probation

Objective: The objective of this rule is to describe the probation period when a BEP operator operates a business facility, whether it is the BEP operators first business facility or the BEP operator moves to a higher level facility.

- Is this rule effective in meeting the objective? **Yes X No ☐**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes X No ☐**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule contains outdated terminology, which may cause confusion. The Department proposes to amend this rule and update language to make the rule more clear, concise, and understandable.

Rule **Analysis**

R6-4-315 Title: Performance probation

Objective: The objective of this rule is to describe the methods BEP uses to identify a BEP operator's performance deficiencies,

when BEP may place a BEP operator on performance probation, and how a BEP operator may correct deficiencies or file an appeal.

- Is this rule effective in meeting the objective? **Yes X No ☐**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes X No ☐**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule contains outdated terminology, which may cause confusion. The Department proposes to amend this rule and update language to make the rule more clear, concise, and understandable.

Rule	**Analysis**	
R6-4-316	Title:	Continuing inspections of business facilities
	Objective:	The objective of this rule is to describe how the Department conducts continuing inspections of a BEP business facility and actions the Department may take to ensure compliance with a BEP operator's agreement.

- Is this rule effective in meeting the objective? **Yes X No ☐**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes X No ☐**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule contains outdated terminology, which may cause confusion. The Department proposes to amend this rule and update language to make the rule more clear, concise, and understandable.

Rule	**Analysis**	
R6-4-317	Title:	Exchange of business facilities prohibited
	Objective:	The objective of this rule is to describe the prohibition against the exchange of business facilities between BEP operators.

- Is this rule effective in meeting the objective? **Yes X No ☐**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes X No ☐**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule contains outdated terminology, which may cause confusion. The Department proposes to amend this rule and update language to make the rule more clear, concise, and understandable.

Rule **Analysis**

R6-4-318 Title: Termination of operator's agreement

Objective: The objective of this rule is to describe when BEP may terminate a BEP operator's agreement and the process the BEP shall follow to terminate a BEP operator's agreement.

- Is this rule effective in meeting the objective? **Yes X No ☐**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes X No ☐**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule contains outdated terminology, which may cause confusion. The Department proposes to amend this rule and update language to make the rule more clear, concise, and understandable.

Rule **Analysis**

R6-4-319 Title: Revocation of license

Objective: The objective of this rule is to describe when BEP may revoke a BEP operator's license, the process the BEP uses to notify a BEP operator of the revocation of the BEP operator's license, and the continuing business obligations of a BEP operator.

- Is this rule effective in meeting the objective? **Yes X No ☐**

- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes X No ☐**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule contains outdated terminology, which may cause confusion. The Department proposes to amend this rule and update language to make the rule more clear, concise, and understandable.

Rule **Analysis**

R6-4-320 Title: State committee of blind vendors

Objective: The objective of this rule is to describe the purpose, duties, and responsibilities of the Arizona Participating Operators Committee (APOC).

- Is this rule effective in meeting the objective? **Yes X No ☐**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes X No ☐**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule contains outdated terminology, which may cause confusion. The Department proposes to amend this rule and update language to make the rule more clear, concise, and understandable.

Rule **Analysis**

R6-4-321 Title: Assessment against net proceeds of operators

Objective: The objective of this rule is to describe set aside funds, when the rate for set aside funds set each year is determined, and where the set aside schedule can be found.

- Is this rule effective in meeting the objective? **Yes ☐ No X**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes ☐ No X**

- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule is not enforced as written and contains outdated terminology, which may cause confusion. The Department proposes to amend this rule to comply with federal law and remove the Monthly Assessment Schedule in order to allow the BEP and BEP operators to decide annually what percentage to apply to set-aside funds. The Department will also update the language to make the rule more clear, concise, and understandable.

Rule **Analysis**

R6-4-322 Title: Guaranteed fair minimum of return

Objective: The objective of this rule is to describe when BEP may grant a BEP operator a fair minimum of return.

- Is this rule effective in meeting the objective? **Yes X No ☐**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes X No ☐**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule contains outdated terminology, which may cause confusion. The Department proposes to amend this rule and update language to make the rule more clear, concise, and understandable.

Rule **Analysis**

R6-4-323 Title: Distribution and use of federal unassigned vending machine income

Objective: The objective of this rule is to describe the statutorily mandated distribution and use of the federal unassigned vending machine income by the BEP.

- Is this rule effective in meeting the objective? **Yes X No ☐**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**

- Is this rule enforced as written? **Yes X No ☐**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule contains outdated terminology, which may cause confusion. The Department proposes to amend this rule and update language to make the rule more clear, concise, and understandable.

Rule **Analysis**

R6-4-324 Title: Reports and recordkeeping; access to information

Objective: The objective of this rule is to describe a BEP operator's responsibility to maintain records, submit reports required by the Department, and make information and records accessible to the Department.

- Is this rule effective in meeting the objective? **Yes X No ☐**
- Is this rule consistent with other rules and statutes? **Yes X No ☐**
- Is this rule enforced as written? **Yes X No ☐**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: *This rule contains outdated terminology, which may cause confusion. The Department proposes to amend this rule and update language to make the rule more clear, concise, and understandable.*

Rule **Analysis**

R6-4-325 Title: Appeals

Objective: The objective of this rule is to describe the appeal rights of any BEP candidate, trainee, or operator who has been adversely affected by a decision of the BEP.

- Is this rule effective in meeting the objective? **Yes ☐ No X**
- Is this rule consistent with other rules and statutes? **Yes ☐ No X**
- Is this rule enforced as written? **Yes X No ☐**

- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule is inconsistent with federal regulations, contains outdated terminology, and is not understandable. The Department proposes to amend this rule and update language to correct the citation to current federal regulations and make the rule more clear, concise, and understandable.

Rule	**Analysis**	
R6-4-401	Title:	Order of selection
	Objective:	The objective of this rule is to describe the order of selection Department staff follow when selecting eligible individuals to receive VR services from the Department.

- Is this rule effective in meeting the objective? **Yes ☐ No X**
- Is this rule consistent with other rules and statutes? **Yes ☐ No X**
- Is this rule enforced as written? **Yes ☐ No X**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule is inconsistent with federal regulations, contains outdated terminology, and does not reflect current Department practice. The Department proposes to repeal this rule and incorporate information regarding order of selection into Article 2 of this chapter.

Rule	**Analysis**	
R6-4-402	Title:	Service and provider standards, service authorizations, equipment purchasing, Workers' Compensation
	Objective:	The objective of this rule is to describe service provider standards, and circumstances under which the Department provides Workers' Compensation coverage for an individual participating in a job training program in a community.

- Is this rule effective in meeting the objective? **Yes ☐ No X**
- Is this rule consistent with other rules and statutes? **Yes ☐ No X**

- Is this rule enforced as written? **Yes ☐ No X**
- Is this rule clear, concise, and understandable? **Yes ☐ No X**

Explanation: This rule is ineffective in meeting the objective, is inconsistent with other rules and statutes, and is not enforced as written because it contains outdated information and practices regarding providers and service standards, which are addressed in the Arizona Workforce Innovation and Opportunity Act (WIOA) State Plan for Program Years 2020-2023, in accordance with 34 CFR 361.51. The Department proposes to repeal this rule.

Rule **Analysis**

R6-4-403 Title: Economic need and similar benefits

Objective: The objective of this rule is to describe VR services that are contingent upon economic need, the methodology Department staff use to determine an eligible individual's economic need, and the circumstances under which Department staff determine the availability of comparable benefits.

- Is this rule effective in meeting the objective? **Yes ☐ No X**
- Is this rule consistent with other rules and statutes? **Yes ☐ No X**
- Is this rule enforced as written? **Yes ☐ No X**
- Is this rule clear, concise, and understandable? **Yes X No ☐**

Explanation: This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and does not reflect current Department practice. The Department proposes to repeal this rule and incorporate updated information regarding VR services contingent upon economic need into Article 2, including adding the ability to subtract a VR client's disability-related expenditures, paid for by the VR client and not otherwise reimbursed, from the total reported income of the VR client or of the individual claiming the VR client as a dependent.

Rule **Analysis**

R6-4-404 Title: Administrative review of fair hearings

Objective: The objective of this rule is to describe the administrative procedure by which the Department conducts reviews of Department staff determinations concerning the provision or denial of services.

- Is this rule effective in meeting the objective? **Yes ☐ No X**
- Is this rule consistent with other rules and statutes? **Yes ☐ No X**
- Is this rule enforced as written? **Yes ☐ No X**
- Is this rule clear, concise, and understandable? **Yes X No ☐**

Explanation: This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and does not reflect current Department practice. The Department proposes to repeal this rule and incorporate information regarding reviews of staff determinations concerning provision or denial of services into Article 2.

Rule **Analysis**

R6-4-405 Title: Confidentiality

Objective: The objective of this rule is to describe the Department's policies and procedures for safeguarding the confidentiality of all personal information obtained for the VR program.

- Is this rule effective in meeting the objective? **Yes ☐ No X**
- Is this rule consistent with other rules and statutes? **Yes ☐ No X**
- Is this rule enforced as written? **Yes ☐ No X**
- Is this rule clear, concise, and understandable? **Yes X No ☐**

Explanation: This rule is inconsistent with federal regulations and is not enforced as written because it contains outdated terminology and does not reflect current Department practice. The Department proposes to repeal this rule and incorporate information regarding safeguarding personal information obtained by the VR program, including when release of

primary source information is required and when it's discretionary, into Article 2.

3. **Has the Department received written criticisms of the rules within the last five years?**

Yes ☐ No X

4. **Economic, small business, and consumer impact comparison:**

There is no previous Economic, Small Business, and Consumer Impact Statement available from the last promulgation of the rules to provide an economic impact comparison. The Department is providing an assessment of the actual economic, small business, and consumer impact of the rules pursuant to R1-6-301.

During State Fiscal Year (SFY) 2023, there were 11,830 participants throughout Arizona in the Vocational Rehabilitation (VR) Program who received disability-related employment services under an Individualized Employment Plan. There were 1,268 participants who exited the VR Program with employment in SFY 2023, working an average of 30 hours per week and earning an average hourly wage of $16.25 per hour.

Additionally, through an Interagency Service Agreement (ISA) with Arizona Health Care Cost Containment System (AHCCCS), DES and AHCCCS coordinate the provision of services to support individuals with serious mental illness. There were 3,852 individuals served under the ISA in SFY 2023, of which 248 exited the VR Program with employment.

DES also partners with Arizona school districts to provide structured and goal-oriented vocational and educational activities that prepare students with disabilities for employment. The VR Program engages students with disabilities as early as possible in their high school experience to provide Pre-Employment Transition Service (Pre-ETS), which are specific career exploration and job readiness services that are available to all students with disabilities between the ages of 14-22 who are eligible or potentially eligible for the VR Program. In SFY 2023, DES used Transition School to Work (TSW) agreements to partner with 32 high school districts and provide enhanced services to 4,000 students who were eligible for the full array of VR Program services. DES's collaboration with high school districts that did not have TSW agreements allowed for an additional 367 students to be served. There were also 1,153 potentially eligible students with disabilities who received Pre-ETS during SFY 2023, totaling 5,520 students with disabilities receiving VR services in SFY 2023.

The BEP provides employment opportunities for individuals who are legally blind to own a merchandising business, which includes vending and food service operations. Prior to the COVID-19 Pandemic, BEP Operators benefited from increased economic opportunity

and self-sufficiency. BEP Operators earned a median income of approximately $90,000 per year prior to the COVID-19 Pandemic. With the recovering economy, the median income for BEP Operators is approximately $70,000 per year in SFY 2023.

5. **Has the agency received any business competitiveness analyses of the rules?**

Yes ☐ No X

6. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

Yes ☐ No X

In the previous Five-Year-Review report, approved by the Council in June 2018, the Department indicated a plan to update the rules and submit a Notice of Final Rulemaking by December 2019. The Department received approval in July 2017, from the Governor's Office to proceed with the rulemaking for Chapter 4. The Department is required to obtain review and approval of rulemaking associated with Article 3 of these rules from the U.S. Department of Education. The Department did not anticipate that it would take over a year for the U.S. Department of Education to complete its review of the draft rules. In early 2020, as the Department was reaching the final stages of drafting the proposed rules, the COVID-19 Pandemic required the Department to quickly divert all resources to providing pandemic response services. The Department was responsible for providing essential services to families, which caused a significant delay in the progress of rulemaking. As the pandemic has receded and staff availability has stabilized, the Department has renewed its commitment to rulemaking and has made significant progress on these rules. The Department has also overhauled its internal drafting and review process, resulting in secondary reviews, by both the general public and internal and external stakeholders in order to mitigate the number of comments received during the formal comment period, thus causing some additional delays in submitting the Notice of Final Rulemaking to the Council. Governor's Office approval to proceed with this rulemaking was received from the Hobbs administration on June 27, 2023.

7. **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:**

With the amendments to the rules in Chapter 4 proposed in this report, the Department believes that the rules would impose the least burden and costs to persons regulated by

these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives. These rules do not impose any cost to consumers or small businesses and are being sought to align with current federal law and regulations. Updates to the rules identified in this report outweigh any potential costs incurred from the proposed revisions. Additionally, program subject matter experts indicate that amendments to the rules, as proposed in this report, are the most cost-effective way to bring the Department into compliance with federal requirements because there is no less intrusive or less costly method of achieving the objectives of this rulemaking.

8. Are the rules more stringent than corresponding federal laws?

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 the federal law(s)?

Yes ☐ No X

9. 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 Department has determined that A.R.S. § 41-1037 does not apply to these rules because none of the rules were adopted after July 29, 2010. Furthermore, these rules do not require the issuance of a permit, license, or agency authorization.

10. Proposed course of action:

The Department proposes to update the rules in Chapter 4 to address issues identified in Item 2 of this report. The Department anticipates filing a Notice of Proposed Rulemaking (NPR) in November 2023 and submitting a Notice of Final Rulemaking (NFR) to the Council by March 2024.

TITLE 6. ECONOMIC SECURITY

CHAPTER 4. DEPARTMENT OF ECONOMIC SECURITY REHABILITATION SERVICES

ARTICLE 1. STATE AGENCY ADMINISTRATION

Section
R6-4-101. Expired
R6-4-102. Expired
R6-4-103. Expired
R6-4-104. Definitions
R6-4-105. Expired
R6-4-106. Expired

ARTICLE 2. PROVISION OF SERVICES TO INDIVIDUALS

Section
R6-4-201. General considerations
R6-4-202. Eligibility, ineligibility and certification
R6-4-203. Diagnostic study
R6-4-204. Extended evaluation
R6-4-205. Individualized written rehabilitation program
R6-4-206. Provision of VR services

ARTICLE 3. BUSINESS ENTERPRISE PROGRAM

Section
R6-4-301. Definitions
R6-4-302. Participating business facilities
R6-4-303. Referral for the business enterprise program; qualifications of candidate
R6-4-304. Screening for acceptance into initial training
R6-4-305. Initial training
R6-4-306. Remedial training
R6-4-307. Upward mobility training
R6-4-308. Qualifications for placement in a business facility
R6-4-309. Selection for placement in a business facility
R6-4-310. Refusal of placement in a facility
R6-4-311. Licensure
R6-4-312. Operator's agreement
R6-4-313. Temporary operator
R6-4-314. Initial probation
R6-4-315. Performance probation
R6-4-316. Continuing inspections of business facilities
R6-4-317. Exchange of business facilities prohibited
R6-4-318. Termination of operator's agreement
R6-4-319. Revocation of license
R6-4-320. State committee of blind vendors
R6-4-321. Assessment against net proceeds of operators
R6-4-322. Guaranteed fair minimum of return
R6-4-323. Distribution and use of federal unassigned vending machine income
R6-4-324. Reports and recordkeeping; access to information
R6-4-325. Appeals

ARTICLE 4. OTHER RULES AND PROVISIONS THAT RELATE TO PROVIDING SERVICES TO INDIVIDUALS

Section
R6-4-401. Order of selection
R6-4-402. Service and provider standards, service authorizations, equipment purchasing, Workers' Compensation
R6-4-403. Economic need and similar benefits
R6-4-404. Administrative review and fair hearings
R6-4-405. Confidentiality

ARTICLE 5. RESERVED

ARTICLE 6. EXPIRED

Article 6, consisting R6-4-601 through R6-4-608, expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

Editor's Note: The Section headings for R6-4-601 through R6-4-608 were inadvertently changed to "Expired" in Supp. 04-1. The correct headings have been restored (Supp. 04-2).

Section
R6-4-601. Expired
R6-4-602. Expired
R6-4-603. Expired
R6-4-604. Expired
R6-4-605. Expired
R6-4-606. Expired
R6-4-607. Expired
R6-4-608. Expired

ARTICLE 7. EXPIRED

Article 7, consisting of R6-4-701 through R6-4-707, expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

Section
R6-4-701. Expired
R6-4-702. Expired
R6-4-703. Expired
R6-4-704. Repealed
R6-4-705. Expired
R6-4-706. Repealed
R6-4-707. Expired

ARTICLE 8. EXPIRED

Article 8, consisting of R6-4-801, expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

Section
R6-4-801. Expired

ARTICLE 1. STATE AGENCY ADMINISTRATION

R6-4-101. Expired

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-4-102. Expired

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-4-103. Expired

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-4-104. Definitions

A. "Act." P.L. 93-112, Rehabilitation Act of 1973, as amended.

B. "Client." Any individual receiving any services from Vocational Rehabilitation.
C. "Consultant." Unless stated otherwise, the consultant is the individual hired by the agency for the purpose of providing consultation.
D. "Counselor." Unless stated otherwise, the counselor is the Vocational Rehabilitation counselor.
E. "Department." Unless stated otherwise, the Department is the Department of Economic Security.
F. "Eligible client." Is any individual:
1. Who has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment; and
2. Who can reasonably be expected to benefit in terms of employability from the provision of VR services or for whom an extended evaluation of rehabilitation potential is necessary for the purpose of determining whether he might reasonably be expected to benefit in terms of employability from the provision of VR services; and
3. Who has been so certified by a Vocational Rehabilitation counselor.

G. "Individualized Written Rehabilitation Program (IWRP)." An IWRP is a written program of services developed jointly by the Vocational Rehabilitation counselor and the client who has been determined eligible to receive services. It is a comprehensive document including purposes, goals, responsibilities, services criteria and understandings.
H. "Rehabilitation Services Bureau (RSB)." Is the organizational unit within DES responsible for the operation of the general Vocational Rehabilitation program, rehabilitation programs for the blind and the Disability Certification program.
I. "State plan." The approved plan for VR services and for innovative and expansion grant projects agreeing to administer such in accordance with all applicable regulations, policies and procedures established by the Secretary as a condition to receipt of federal funds under Title I of the Rehabilitation Act of 1973, as amended.

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3).

R6-4-105. Expired

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-4-106. Expired

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

ARTICLE 2. PROVISION OF SERVICES TO INDIVIDUALS

This Article contains the rules that pertain to the provision of services to individuals under the state/federal Vocational Rehabilitation program.

R6-4-201. General considerations

A. Scope of Vocational Rehabilitation services to individuals.
1. As appropriate, the following VR services, as described in 45 CFR 401.40(a) will be available to individuals:
   a. Evaluation of rehabilitation potential;
   b. Counseling, guidance and referral;
   c. Physical and mental restoration services;
   d. Vocational and other training services;
   e. Maintenance;
   f. Transportation;
   g. Services to members of a handicapped individual's family necessary to the adjustment or rehabilitation of the handicapped individual;
   h. Interpreter services for the deaf;
   i. Reader services, rehabilitation teaching services, and orientation and mobility services for the blind;
   j. Telecommunications, sensory and other technological aids and devices;
   k. Placement in suitable employment;
   l. Post-employment services necessary to assist handicapped individuals to maintain suitable employment;
   m. Occupational licenses, tools, equipment and initial stocks (including livestock) and supplies; and
   n. Other goods and services which can reasonably be expected to benefit a handicapped individual in terms of his employability.

B. Vocational Rehabilitation services shall be provided only by Vocational Rehabilitation personnel and only to clients determined eligible for such services by Vocational Rehabilitation personnel.
C. The expenditure of client service funds shall be initiated and authorized only by Vocational Rehabilitation personnel.

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3).

R6-4-202. Eligibility, ineligibility, and certification

A. Eligibility is based only on the presence of a physical or mental disability which for the individual constitutes or results in a substantial handicap to employment, and a reasonable expectation that vocational rehabilitation services may benefit the individual in terms of employability.
B. Eligibility requirements will be applied without regard to sex, race, age, creed, color or national origin. No group of individuals will be excluded or found ineligible solely on the basis of type of disability. No upper or lower age limit will be established which will, of itself, result in a finding of ineligibility for any individual who otherwise meets the basic eligibility requirements.
C. No residence requirement, durational or other, is imposed which excludes from services any individual who is in the state.
D. An individual who has been declared eligible for VR services in another state may or may not be eligible for services in this state, and the Arizona VR counselor must redetermine eligibility.
E. Any individual referred to VR who freely decides not to apply for services or who indicates expressly or by action that he is not interested in pursuing an application for VR services may be screened out without initiating a case file. A record of such action shall be kept in each local office for at least 12 months.
F. The application for VR services shall be a formal declaration by the handicapped individual that he is requesting the assistance of Vocational Rehabilitation agency and its involvement in his rehabilitation effort. Such an application implies that the applicant has a basic understanding of the eligibility requirements, knowledge of the kind of services the agency provides, a desire to undertake a rehabilitation program and understanding of both his and the agency's obligations and responsibilities.
G. Any individual who has reached the age of 18, or is married, or is in the armed forces, or is living away from home and is self-supporting or who has not had a guardian appointed for him is regarded as an adult and may sign his own application and any

other VR documents requiring client signatures. Parent or guardian co-signatures are otherwise required.

H. In each instance, there shall be a certification, dated and signed by a VR counselor as to eligibility or ineligibility for services or for an extended evaluation. The certification that the individual has met the eligibility requirements shall be made prior to or simultaneously with acceptance of a handicapped individual for VR services. The certification for extended evaluation and the certification of ineligibility shall be issued pursuant to the requirements of 45 CFR 401.37(b) and (c) respectively.

I. An individual determined to be rehabilitated will have been, as a minimum:
   a. Determined to be eligible;
   b. Provided an evaluation of rehabilitation potential and counseling and guidance, as essential VR services;
   c. Provided appropriate VR services in accordance with the individualized written program;
   d. Determined to have achieved suitable employment which has been maintained for at least 60 days.

2. Post-employment services will be provided to those individuals determined to be rehabilitated who require such services to the extent necessary to maintain suitable employment.

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3).

R6-4-203. Diagnostic study

A. Preliminary diagnostic study.
1. In order to determine whether any individual is eligible for vocational rehabilitation services, there shall be a preliminary diagnostic study sufficient to determine:
   a. Whether the individual has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment, and
   b. Whether VR services may reasonably be expected to benefit the individual in terms of employability or whether an extended evaluation of rehabilitation potential is necessary to make such a determination. It will place primary emphasis upon the determination of a vocational goal for the individual and his potential for achieving such a goal.
2. Information required for preliminary diagnostic study:
   a. Each applicant shall have documented in the file a complete medical assessment in order to appraise current general health status. The general medical assessment will include a medical history, thorough physical examination and a routine urinalysis. The decision as to what is current is determined on an individual basis.
   b. Examinations and diagnostic studies necessary for the agency to determine whether the individual has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment.
   c. In all cases of mental or emotional disorders, an examination will be provided by a physician or by a certified psychologist skilled in diagnosis and treatment of such disorders.
   d. In cases of alcoholism and drug addiction, evidence from such sources as hospital records, a physician's report, a social summary or treatment facility, records will be necessary to document the existence of these disabilities.

B. Thorough diagnostic study.
1. Before implementation of an IWRP for a client, a thorough diagnostic study shall be completed, to include:
   a. As appropriate, a comprehensive evaluation of pertinent medical, psychological, vocational, educational and other related factors such as personal, vocational and social adjustment, patterns of work behavior, ability to acquire job skills and capacity for successful job performance which bear on the individual's handicap to employment and scope of rehabilitation services needed. The findings of such study(s) must be recorded in client's individual case folders.
   b. In all cases of visual impairment, an evaluation of visual loss will be provided by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select.
   c. In all cases of blindness, a screening for hearing loss will be obtained from a physician skilled in the diseases of the ear or from an audiologist licensed or certified in accordance with state laws and regulations.
   d. In all cases of hearing impairment, an evaluation of the auditory system will be obtained from a physician skilled in the diseases of the ear and based on his findings a hearing evaluation may be provided by such a physician or by a licensed audiologist.
   e. In all cases of deafness, an evaluation of the individual's vision will be provided by a physician skilled in the diseases of the eye or by an optometrist.
   f. In all cases of mental retardation, a psychological evaluation will be obtained from a psychologist certified by the Arizona State Board of Psychologist Examiners which will include a valid test of intelligence, an assessment of social functioning and educational progress and achievement.
   g. In all cases where drug addiction or alcoholism are documented as disabilities, evaluation by a certified psychologist or psychiatrist skilled in the diagnosis and treatment of mental or emotional disorders must be obtained.

C. The client shall be offered and given the choice of physicians, psychologists or providers of diagnostic services in all cases with the following restrictions:
1. The counselor, in consultation with medical/psychological and other appropriate consultants and within the limits set by law and described in these regulations, determines both the scope and type of studies and evaluations to be acquired;
2. The individuals chosen to do the necessary diagnostic studies and evaluations must have the minimum qualifications set forth in law and described elsewhere in these rules and regulations (see Section R6-4-302);
3. If the agency has contracted with someone or some group to provide specific diagnostic studies or evaluations, their services must be utilized unless special considerations noted in the file deem it inappropriate to do so;
4. The individuals chosen to do the necessary diagnostic studies and evaluations must also be willing and able to conform to set fee schedules and reporting requirements.

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3).

R6-4-204. Extended evaluation

A. An extended evaluation is used for those individuals for whom the presence of a disability which constitutes a substantial handicap for employment has been documented but for whom the counselor is unable to make a determination that services

might benefit the individual in terms of employability without an extended evaluation to determine rehabilitation potential.

B. The full range of VR services will be provided under an IWRP during extended evaluation but for no longer than 18 months and in conformity with 45 CFR 401.36(b) and (c). The individual's progress will be thoroughly assessed as frequently as necessary but at least once every 90 days while services are provided. Periodic reports from those providing services will be considered in this assessment. The extended evaluation will be terminated in accordance with 45 CFR 401.36(e).

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3).

R6-4-205. Individualized written rehabilitation program

A. An individualized written rehabilitation program will be initiated and continuously developed for each handicapped individual eligible for VR services and each handicapped individual being provided such services under an extended evaluation. All VR services will be provided in accordance with such a program. This program will be developed jointly by the VR counselor and the handicapped individual (or, as appropriate, his parent, guardian or other representative). It will emphasize primarily the determination and achievement of a vocational goal. A copy of the written program, and any amendments thereto, will be provided to the handicapped individual, or as appropriate, his parent, guardian, or other representative.

B. The program shall be initiated after certification of eligibility or certification for extended evaluation. The program will include at least the information described in 45 CFR 401.39(c), as appropriate. The program will be reviewed at least annually, at which time the individual (or, as appropriate, the parent, guardian or other representative) will be afforded opportunity to review the program and if necessary redevelop its terms jointly with the appropriate state agency staff member. When services are to be terminated on the basis of a determination that the individual cannot achieve a vocational goal, the conditions set forth in 45 CFR 401.39(e)(1) and (2) will be met. There will be at least an annual review of the ineligibility decision, in which the individual will be given opportunity for full consultation.

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3).

R6-4-206. Provision of VR services

A. Scope and general considerations.
1. Rehabilitation Services Bureau provides all those services included under scope of services outlined in R6-4-201(A) and for which federal government provides financial participation.
2. No VR services shall be provided to VR personnel or their families without prior review and approval of District VR Program Manager and the Chief of Rehabilitation Services Bureau. All such actions shall also be reviewed by Department of Economic Security administration.
3. Cases and case facts, including the Individualized Written Rehabilitation program, shall be subject to review by VR administrative and consultative personnel.

B. Restoration services.
1. Physical or mental restorative services shall be provided only by individuals specially qualified to provide such services. The agency has established provider standards which are on file with Rehabilitation Services Bureau and available for review to the public on request.
2. Any IWRP, Program of Services, which proposes to provide physical or mental restorative services in excess of $5,000 shall be submitted for review and approval by the District VR Program Manager and consultants, as appropriate.
3. Restorative procedures that might be considered investigative, controversial or of high risk to the client shall be subject to approval by Rehabilitation Services Bureau administration.
4. A course of physical or mental restoration shall not extend beyond three months without an assessment of documented progress made towards stated goals. Authorization for additional physical or mental restoration shall be predicated upon acceptable progress to date, and the setting of treatment goals for any subsequent course of therapy.
5. Authorization for inpatient care at any hospital, rehabilitation center, skilled nursing facility or any other institutions whose primary function it is to provide medical or allied services shall be for a specified period of time. A comprehensive assessment of progress to date and a statement of justification by the treating physician will be required for any extension exceeding 30 days.
6. Chronic conditions; e.g., diabetes, epilepsy, which were diagnosed and placed on an effective medical regime before an individual becomes a client shall not become the responsibility of VR. The counselor shall not pay for his ongoing health maintenance costs.

C. Training services.
1. Training services shall be provided to prepare an eligible individual with the necessary skills for employment consistent with the rehabilitation goal.
2. All training, including OJT's, purchased from private schools or individuals shall be provided under a contract signed by the VR counselor and the trainer or representative of the training institution.
3. Training services will be provided to prepare a client for placement at entry level requirements. In the case of higher education, VR will normally conclude sponsorship of training with completion of a bachelor's degree. Consideration will be given to the special needs of a severely disabled individual who may require post-graduate training due to an inability to work at entry level.
4. The VR client shall be given his choice of properly licensed private, technical, business and vocational training schools. The counselor, however, shall also consider:
   a. Relative costs of training;
   b. Transportation;
   c. Living arrangements;
   d. Other factors bearing on the particular client situation.
5. VR shall not pay non-resident fees to out-of-state schools if the same training programs are available within the state.
6. VR may pay non-resident fees to a local school if required and necessary to carry out an IWRP, Program of Services.
7. Training at private, business, technical and vocational schools shall be paid for on a month-to-month basis after the service has been provided. Encumbrances shall be written prior to the provision of training. If a client withdraws from training prior to completion, VR shall pay only for that portion of the training utilized by the client on a prorated basis.
8. On-the-job training shall be that training purchased under contract from an employer who provides the individual

training on the job site. Such arrangements may result in an employer/employee relationship subject to wage and hour laws under the Fair Labor Standards Act.

9. OJT contracts shall be written only in those instances where the client does not meet the entry and/or production requirements for that job without a period of on-the-job training or unless a period of on-the-job training is necessary to provide an employment opportunity for the individual.
10. OJT contracts shall be written only for those occupations in which the client, upon successful completion of the on-the-job training, can reasonably be expected to become employed. OJT contracts shall not be written for:
    a. Occupations in which commissions provide more than 50% of client's salary;
    b. Intermittent seasonal occupations;
    c. Occupations which require licenses such as therapists, teachers, barbers, cosmetologists, nurses, etc.
11. Workmen's Compensation Insurance shall be provided by VR for the duration of an OJT contract unless such coverage is provided by the employer.
12. Wages to be paid the client upon successful completion of an OJT contract shall be comparable to wages of other employees engaged in similar work and at the same production level.
13. An employer may not have more than 25% of his labor force under OJT contracts. If an employer has fewer than four employees, he may be given one OJT contract if he demonstrates the capability of providing the necessary training.
14. Payment to the employer under an OJT contract shall never be in excess of 50% of client's wages averaged over the length of the contract.
15. All training and adjustment services shall be provided under established standards (see R6-4-302(A) and (B)).

D. Maintenance.

1. Maintenance means payments, not exceeding the estimated cost of subsistence and provided at any time from the date of initiation of vocational rehabilitation services through the provision of post-employment services, to cover a handicapped individual's basic living expenses, such as food, shelter, clothing and other subsistence expenses. Maintenance is provided only in order to enable a handicapped individual to derive the benefit of other vocational rehabilitation services being provided.
2. General considerations.
    a. Vocational Rehabilitation is not legally obligated to meet the total costs of living for its clients nor does the budget provide funds to do so. Because of these limitations, maintenance payments are provided only to assist the client with expenses essential to services listed in the client's individualized written rehabilitation program and approved in advance by the Vocational Rehabilitation in an IWRP, Program of Services, except for those maintenance payments necessary to complete diagnostic services.
    b. Maintenance may not be paid out of SSI/SSDI special funds unless it is to defray extra costs of client living away from home because of participation in a rehabilitation program. If a counselor decides to pay regular maintenance for a client eligible for special funds, but not eligible for maintenance under those funds, maintenance must be paid for out of regular funds and are subject to all regulations set forth in this subsection.
    c. Maintenance checks may be paid directly to the client, to the training agent or to parents or guardian or other representative.
    d. The counselor must monthly review, adjust, as appropriate, and authorize the disbursement of maintenance checks.
    e. The combined total of maintenance plus the client's income will never exceed client's actual client monthly obligations.
    f. Maintenance for a client who must live on campus, in a rehabilitation facility, halfway house, or boarding home may be paid to the college, school or facility directly either for only that portion of maintenance to include room and board or for distribution of total maintenance.
    g. Maintenance may not be provided for clients pursuing academic college level training as a part-time student, as defined by the school, except in the case of an extended evaluation to determine rehabilitation potential and then only after prior supervisory review.
    h. Maintenance may never be provided for the sole purpose of meeting total costs of subsistence for clients or to supplement other resource (AD, SSDI, etc.) deficiencies.
    i. Unusual client circumstances may call for an administrative adjustment by the District VR Program Manager in the rates set on a case-by-case basis.
3. Provision of maintenance.
    a. No economic need criteria apply to maintenance provided while client is receiving diagnostic services regardless of status. Maintenance in this case is only that money necessary to defray costs to client during a period away from the home. The amount of maintenance may never exceed the actual costs incurred by the client as a result of participating in the diagnostic study.
    b. Maintenance as ongoing payments during an IWRP will never, together with client income, exceed established client monthly obligations.
        i. All liquid assets must be used first.
        ii. Once liquid assets have been used, the following procedure is used:
            (1) If client does not meet the economic need criteria, no maintenance may be provided. When the client does meet the economic need criteria, the counselor must complete the Financial Disclosure Statement and compare client's total income to client's monthly obligations;
            (2) The counselor may provide maintenance payments necessary to assist client with expenses essential to accomplishing the services listed in the client's IWRP up to documented need; i.e., monthly obligations, but never to exceed the maximum allowed.
    c. Maintenance payments above the basic rate may be approved by the supervisor when they are provided to meet special client needs which are ongoing but not normally considered as usual subsistence requirements. Such special needs may include special diet, ongoing repair and maintenance of assistive devices, ongoing need for medical supplies such as stump socks, catheters, etc. These needs must be documented and explained on the client's IWRP.

4. A counselor may pay for a client's attendant care only as necessary while client is engaged in a program of services. Financial need criteria as well as the need to explore and use similar benefits, if available, apply. Vocational Rehabilitation does not accept responsibility for total costs of attendant care. Vocational Rehabilitation will pay for such care within the following guidelines:
   a. The client must have a doctor's statement regarding the need for and extent of attendant care required.
   b. For the purpose of computing the amount of Vocational Rehabilitation's contribution, a distinction is made between:
      i. Training or training-related costs, such as preparation for school, transportation to and from school, assistance while in school.
      ii. Attendant care not directly related to a specific rehabilitation activity but necessary for health maintenance. Such care can and is often provided by family or friends and should not be paid for by Vocational Rehabilitation unless absolutely necessary, and unless it is a direct cost item to the client.
   c. Hourly minimum wage shall be paid to attendants; however, Rehabilitation Services Bureau will not contribute more than $150 monthly for each type of attendant care.

E. Transportation. In providing transportation monies to the VR client, the following rules shall be applied:
1. Client may only be reimbursed for actual costs for transportation and per diem.
2. The counselor shall determine the most economical, yet adequate, mode of transportation available to client.
3. The maximum allowed per diem shall never be more than $30 a day.

F. Other services.
1. The VR counselor shall not purchase for a client automobiles, trucks or any other self-powered vehicles which require licensing by the state. Included in this prohibition is purchasing or contributing to the cost of those accessories or optional equipment normally available by or through automobile manufacturers or dealers in the purchase of a new vehicle.
2. The VR counselor may purchase assistive devices and modifications designed to allow a handicapped individual to use or operate a vehicle either for a new or used vehicle.
3. The VR counselor may purchase or contribute to the purchase, accessories or optional equipment as well as assistive devices and modifications to used or previously purchased vehicles when such are medically prescribed.

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3).

ARTICLE 3. BUSINESS ENTERPRISE PROGRAM

R6-4-301. Definitions

In this Article the following definitions apply unless the context otherwise requires:
1. "Abandoned facility" means a business facility where a BEP operator has failed to open the facility without good cause for 24 hours.
2. "Agreement for operation of a vending facility" or "operator's agreement" means the written contract between the Department of Economic Security and a business enterprise program operator that regulates the terms and conditions under which the business enterprise shall be managed.
3. "Arizona Participating Operators Committee" or "APOC" means a fully representative committee of blind operators elected biennially by their peers which functions as an integral part of the Business Enterprise Program having active participation in major BEP administrative decisions and policy and program development decisions affecting the overall administration of the state's vending facility program.
4. "Business Enterprise Program" or "BEP" means an organizational unit of the Rehabilitation Services Administration within the Department of Economic Security which is the state licensing agency that provides opportunities for legally blind persons to operate merchandising business facilities in public and other property.
5. "Business Enterprise Program operator" or "BEP operator" means a licensee who enters into an operator's agreement with the BEP to manage and operate a business facility.
6. "Business facility" means a particular place of merchandising identified by the BEP which provides an opportunity to operate a vending facility.
7. "Candidate" means a legally blind client receiving vocational rehabilitation services who is referred to the BEP by a vocational rehabilitation counselor for training and placement.
8. "Certified trainee" means a legally blind client of the Vocational Rehabilitation Program who has successfully completed training and has been certified by the BEP.
9. "Department" means the Arizona Department of Economic Security.
10. "Displaced operator" means a licensee who has operated a business facility in Arizona under the provisions of this Article and is not currently assigned to a business facility as a result of a facility or building closure or medical leave.
11. "Grantor" means the agency that grants a permit to, or enters into an agreement with, the BEP to provide a satisfactory site for the operation of a business facility.
12. "Guaranteed fair minimum of return" means the prevailing federal minimum wage multiplied by a 40-hour work week.
13. "Initial probation" means the first six months after an operator assumes management of his first business facility or a higher level business facility during which time the operator's performance is evaluated for permanent status, termination or performance probation.
14. "Legally blind person" means a person who, after examination by an ophthalmologist, has been determined to have no vision or acuity or has a central visual acuity of 20/200 or less in the better eye, with the best correction by single magnification, or who has a field defect in which the peripheral field has been contracted to such extent that the widest diameter of visual field subtends an angular distance no greater than 20 degrees.
15. "Licensee" means a legally blind person who has been licensed by the Department to operate a business facility.
16. "Net proceeds" means the amount remaining after the deduction of business expenses from all income accruing to a BEP operator from the operation of a vending facility.
17. "Performance probation" means a period of time not exceeding six months during which a business facility operator who is not on initial probation shall correct documented, unacceptable performance or deficiencies upon written notice by the BEP.

18. "Rehabilitation Services Administration" or "RSA" means the organizational unit within the Department which is responsible for the administration of the Vocational Rehabilitation Program for the Blind and Visually Impaired.
19. "Temporary Business Enterprise Program operator" or "temporary operator" means an individual who contracts with the Department to operate a business facility for a specified period of time and who may or may not be a legally blind person.
20. "Trainee" means a candidate who has been accepted into and is receiving training from the BEP prior to placement and licensure.
21. "Upward mobility training" means additional training that enhances a BEP operator's work opportunities.
22. "Vending facility" means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by blind licensees, and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, food, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of chances for any lottery authorized by state law and conducted by an agency of a state within such state.
23. "Vocational rehabilitation counselor" or "counselor" means the person in the Vocational Rehabilitation Program (VR) who determines the appropriateness of its clients for referral to the BEP.

Historical Note
Former Section R6-4-301 renumbered to R6-4-401, new R6-4-301 adopted effective May 7, 1990 (Supp. 90-2).

R6-4-302. Participating business facilities

A. The Business Enterprise Program (BEP) shall conduct surveys of public or other properties upon written request of the owner or management or as determined necessary by the Department to determine merchandising opportunities for licensees. The survey shall include the following information:
1. Identification of location and nature of site and contact person.
2. Demographics of site to include building population, work hours, nature of work, salary range, and locally, other selling locations, existing merchandise and vending machines.
3. The proposed business recommended by BEP, including suggested merchandise, number of employees, anticipated volume, hours of operation and current purchasing patterns.

B. The BEP shall, following consultation with APOC, determine through these surveys if a public or other property meets the requirements for a satisfactory site for a merchandising business.

C. If a surveyed property meets the requirements as a satisfactory site for a merchandising business, a written agreement shall be entered into between the Department and the grantor.

D. The BEP shall provide each business facility with suitable equipment, adequate initial stock, utensils, and cash necessary for the establishment and operation of the facility. The operator shall return the equipment, stock, utensils and cash upon surrender of the facility.

E. Unless otherwise agreed, the BEP shall maintain all business facility equipment in good repair and shall replace worn-out or obsolete equipment to assure the continued operation of the facility.

F. Title to the BEP-purchased equipment and stock shall remain with the BEP until disposed of in accordance with law. When title to the equipment and stock is vested in the BEP operator, procedures and responsibility for providing the necessary maintenance or replacement shall be prescribed by the BEP in the operator's agreement.

Historical Note
Former Section R6-4-302 renumbered to R6-4-402, new R6-4-302 adopted effective May 7, 1990 (Supp. 90-2).

R6-4-303. Referral for the business enterprise program; qualifications of candidate

A. A client of the Department's Vocational Rehabilitation Program who expresses interest in participating in the BEP program shall be referred to the BEP by a vocational rehabilitation counselor when it is determined that referral is appropriate following medical and vocational assessments, consultation with the client, and completion of an application packet.

B. As a part of referral each client shall complete an application on a form prescribed by the BEP which shall include the following:
1. Identifying information including name, address, telephone number and date of birth.
2. Medical information including visual acuity and diagnosis.
3. Education and work experience.
4. Mobility and communication functioning levels.

C. The counselor shall attach the following to the application if applicable:
1. Vocational assessments.
2. Psychological evaluation.

D. The counselor shall also determine and document that the client is
1. Legally blind,
2. At least 18 years old,
3. A citizen of the United States,
4. Able to function independently in business to the degree that the client's needs have been addressed by VR,
5. Medically stable with all necessary physical restoration services completed.

E. BEP shall review application packets for completeness and shall return incomplete packets to VR.

F. Completed packets shall be referred to the screening committee.

Historical Note
Former Section R6-4-303 renumbered to R6-4-403, new R6-4-303 adopted effective May 7, 1990 (Supp. 90-2).

R6-4-304. Screening for acceptance into initial training

A. The screening of a candidate shall be conducted by a committee which shall consist of:
1. Two voting BEP staff members.
2. Two voting BEP operators appointed by the chairman of the Arizona Participating Operators' Committee (APOC).
3. The BEP supervisor shall act as the chairman of the committee. He shall vote only in the event of a tie. The committee chairman shall consult with the chairman of APOC before casting his vote.
4. The referring vocational rehabilitation counselor, who shall have no vote.

B. The screening shall consist of a review of the candidate's case history and an interview with the candidate relating to voluntary participation in the BEP program and the candidate's job qualifications. The committee shall then vote to accept into training, or reject the candidate and return to VR for further

services as appropriate to assist the candidate in meeting the program criteria.

C. The determination of the screening committee shall be provided to the candidate in writing. In the event of rejection the determination shall contain the reasons for the determination, recommendations for remedying any deficiencies, and provide notice of the right to appeal.

Historical Note
Former Section R6-4-304 renumbered to R6-4-404, new R6-4-304 adopted effective May 7, 1990 (Supp. 90-2).

R6-4-305. Initial training

A. Once accepted into training, a candidate shall be trained for one or more of the three levels of business facility operations, beginning with level one. The course content, objectives and length of training shall be developed for each level by the BEP with the active participation of APOC. Only upon satisfactory completion of the level and granting of a certificate for that level shall the trainee be permitted to proceed to the next higher level.

B. At level one, training shall cover business facilities, such as snack bars, vending banks, and gift shops at which food is not prepared, and shall orient the trainee to basic business and merchandising principles, the parameters of the BEP program, and the applicable provisions of federal regulations and state law. On-the-job training shall also be provided in existing business facilities of this type.

C. At level two, training shall cover business facilities such as coffee shops at which limited food preparation occurs. On-the-job training shall be provided at appropriate, existing, level two facilities.

D. At level three, training shall cover cafeterias providing a variety of prepared foods and beverages. On-the-job training shall be provided at appropriate, existing, level three facilities.

E. With respect to completion of each level:
1. If a trainee misses five days or more of training without good cause whether consecutive or not, he shall be terminated. Good cause shall mean temporary illness of the trainee or family crisis.
2. If, during training or following completion of any level of training, it becomes apparent that the trainee lacks sufficient skills, knowledge, experience, health or other abilities, the BEP shall review the case, consult with the counselor, APOC, and the trainee, and either:
   a. Revise the training plan as needed; or
   b. Terminate the training and return the trainee to VR for further services as appropriate.
3. A trainee who satisfactorily completes a level of training shall be certified by the BEP. The term of the certificate shall be indefinite except as addressed in subsection (G).

F. A determination to terminate shall be provided to the trainee in writing and shall state the reasons for the determination, recommendations for remedying any deficiencies, and notice of the right to appeal.

G. Any trainee who is not placed in a business facility within 12 months of the date of certification shall receive appropriate training, following an evaluation of proficiency, in order to maintain certification.

H. Operators licensed as of the date of the adoption of these rules shall be exempted from the initial training required for their current level of facility operation.

Historical Note
Former Section R6-4-305 renumbered to R6-4-405, new R6-4-305 adopted effective May 7, 1990 (Supp. 90-2).

R6-4-306. Remedial training

A. When the BEP determines that remedial training is required to correct identified problems or deficiencies to assist a BEP operator, it shall develop a specialized program with the active participation of APOC to address those concerns. The BEP operator may be placed on performance probation pursuant to R6-4-315 pending satisfactory completion of the remedial training.

B. Any BEP operator who has surrendered his license for a period exceeding 12 months and wishes to return to the BEP shall be evaluated by the BEP, in consultation with APOC, to determine the level for which he shall be certified or any remedial training needed.

Historical Note
Adopted effective May 7, 1990 (Supp. 90-2).

R6-4-307. Upward mobility training

A. At least once a year the BEP shall offer special training programs to BEP operators which shall be developed with the active participation of APOC and shall include education in new program developments or business and merchandising techniques and additional training to improve work performance.

B. BEP shall offer training to operators for promotion opportunities pursuant to R6-4-305(A).

Historical Note
Adopted effective May 7, 1990 (Supp. 90-2).

R6-4-308. Qualifications for placement in a business facility

A. When a business facility becomes available the BEP shall:
1. Notify each BEP operator and certified trainee in writing of the opportunity to request placement in a location by filing an application. The notice shall be mailed at least 15 calendar days prior to the announced closure of the filing period;
2. Accept any timely filed written application which contains a statement of interest in placement in the facility.

B. A qualifications committee shall consider each applicant's record on file with the BEP, together with the application and any supporting documents. The committee shall be comprised of:
1. Two voting BEP staff members.
2. Two voting BEP operators appointed by the chairman of APOC.
3. The BEP supervisor shall act as the chairman of the committee. He shall vote only in the event of a tie. The committee chairman shall consult with the chairman of APOC before casting his vote.

C. Qualifications of a BEP operator or a certified trainee for placement in a business facility shall be determined based upon:
1. For a BEP operator:
   a. Compliance with the BEP operator's agreement and with the provisions of this Article.
   b. The existence of no more than two substantiated customer complaints during the prior six month period. Only written and signed complaints shall be considered.
   c. Maintenance of a level of inventory adequate for the location in which the operator is currently placed.
   d. Degree of profitability of a facility under the operator's management.
   e. Involvement of the operator in training and seminars.
   f. Attendance at the last all operators meeting.

2. For a certified trainee: relevant knowledge, skill, training, prior experience or education, and the performance of the individual during training.

D. The committee shall make its determination by majority vote within 30 calendar days from the closure of the filing period.

E. Each applicant shall be notified by the BEP within seven calendar days of the committee's determination. For those applicants found disqualified, the notification shall be in writing and shall include the reasons for the disqualification, and notice of the right to appeal.

Historical Note
Adopted effective May 7, 1990 (Supp. 90-2).

R6-4-309. Selection for placement in a business facility

A. Those BEP operators and certified trainees who qualify shall be considered for placement in a facility by a selection committee which shall consist of:
1. Two voting BEP staff members.
2. Two voting BEP operators appointed by the chairman of the Arizona Participating Operators' Committee (APOC).
3. The BEP supervisor shall act as the chairman of the committee. He shall vote only in the event of a tie. The committee chairman shall consult with the chairman of APOC before casting his vote.
4. The grantor, who may attend the meeting but shall not vote.

B. Selection shall be based upon the applicant's qualifications as well as upon an interview with each candidate on factors related to the work including demonstrated management skills, ability to handle increased responsibilities, and any past comparable work experience. In addition, the committee shall consider applications in the following order from the highest priority for placement to the lowest:
1. Any displaced operator who managed a business facility at a comparable level.
2. Any BEP operator who is no longer on initial probation.
3. Any BEP operator who is on initial probation.
4. Any trainee certified for the level of the available facility.

C. If no qualifying applicant can be recommended for placement, a temporary operator shall be placed by the BEP pursuant to R6-4-313.

D. Applicants shall be notified of the decision by the BEP within seven calendar days of approval of the selection. Those applicants who have not been selected shall be notified in writing of the reasons for the rejection and notice of right to appeal.

E. If the facility becomes available again within 30 calendar days of selection, or if the selected operator refuses the placement, the Supervisor of the BEP shall request another selection from the committee within the order of priority.

Historical Note
Adopted effective May 7, 1990 (Supp. 90-2).

R6-4-310. Refusal of placement in a facility

A. Any BEP operator, certified trainee or displaced operator who applies and is selected for placement in a business facility and then refuses the placement without good cause shall not be considered for any new placement for 90 calendar days.

B. For purposes of this Section good cause shall include temporary illness of the individual, family crisis, or a facility location that is inaccessible by public transportation.

Historical Note
Adopted effective May 7, 1990 (Supp. 90-2).

R6-4-311. Licensure

A. A BEP business facility shall be operated only by a licensed BEP operator with the exception of a temporary operator pursuant to R6-4-313.

B. Once a person is selected for placement in a business facility, a license shall be issued to that person by the Department which shall remain in effect unless revoked or surrendered by the BEP operator. The license shall specify the name of the BEP operator, the level of the business facility for which the license is issued, issuance date, the signature of the authorized Department representative and contain a warning that the license shall not be transferred.

Historical Note
Adopted effective May 7, 1990 (Supp. 90-2).

R6-4-312. Operator's agreement

A standard operator's agreement shall be developed by the BEP in active participation with APOC. A new standard operator's agreement shall not be adopted before APOC has an opportunity to present the proposed agreement to the operators for input at an all operators meeting, following which additional discussions between BEP and APOC shall be conducted if needed. A BEP facility shall be operated only by a person who has executed an agreement for operation of a business facility with the Department.

Historical Note
Adopted effective May 7, 1990 (Supp. 90-2).

R6-4-313. Temporary operator

A. A temporary Business Enterprise Program operator shall be recruited for placement in a business facility by the BEP, after consultation with the chairman of APOC, for a six-month period:
1. When a facility is abandoned; or
2. In the event no qualified legally blind person applies for assignment to a business facility; or
3. In an emergency.

B. The placement of a temporary operator may be extended on a monthly basis until such time as a qualified legally blind person is available.

C. The BEP shall consider placement of a temporary operator in the following order from the highest priority to the lowest:
1. A displaced operator who managed a business facility at a comparable level.
2. A certified trainee for a comparable level who is not currently operating a business facility.
3. An operator who is currently managing a business facility at a comparable level.
4. A displaced operator who managed a business facility at a lower level.
5. A certified trainee for a lower level who is not currently operating a business facility.
6. A vocational rehabilitation client who is a legally blind person.
7. A vocational rehabilitation client who is visually impaired.
8. A vocational rehabilitation client with a disability other than visual.
9. Any other person.

Historical Note
Adopted effective May 7, 1990 (Supp. 90-2).

R6-4-314. Initial probation

A. A BEP operator who is placed in his first business facility or in a higher level business facility shall be placed on initial probation for six months to assure compliance with the operator's agreement, the provisions of this Article, and applicable law.

B. During the probationary period, the BEP shall conduct unannounced onsite inspections at least twice monthly. Upon the inspector's arrival, the operator shall be notified.

C. At the conclusion of each site inspection, a facility inspection report shall be completed which identifies the conditions found, any deficiencies requiring corrective action, and which contains a statement of the required standard and any recommendation to bring the operator into compliance. The inspection report shall be read to the operator who, after signing the report, shall receive a copy.

D. At the end of the six-month period, the BEP, following consultation with APOC, shall notify the operator in writing of either satisfactory completion of probation, of placement on performance probation or termination of the operator's agreement.

Historical Note
Adopted effective May 7, 1990 (Supp. 90-2).

R6-4-315. Performance probation

A. When the operation of a business facility is adversely affected by the deteriorated performance of the BEP operator, the operator shall be placed on performance probation by the BEP, following prior notification to the APOC chairman, for no longer than six months.

B. Deficiencies shall be identified as follows:
1. By a substantiated, written and signed complaint from any member of the public which has been filed with the Department; or
2. By the BEP during onsite inspections.

C. An operator shall be given written notice of placement on performance probation by certified mail, return receipt requested, or in person. The notice shall state the grounds for the action and shall refer to any applicable agreement sections or legal provisions. It shall identify the corrective action to be taken, the length of the probation, the consequences of failure to timely complete the corrective action, and notice of right to appeal.

D. At the end of the performance probation period:
1. If the required corrective actions have been taken by the BEP operator, written notice of satisfactory completion and lifting of probation shall be immediately issued by the Department;
2. If the required corrective actions have not been taken by the BEP operator, the Department, following notification to the APOC chairman, shall terminate the operator's agreement.

Historical Note
Adopted effective May 7, 1990 (Supp. 90-2).

R6-4-316. Continuing inspections of business facilities

The Department shall conduct inspections for the health, safety and welfare of the public, with or without notice, throughout the existence of an operator's agreement, and shall take any appropriate action to assure the operator's compliance with the operator's agreement, this Article, and applicable law.

Historical Note
Adopted effective May 7, 1990 (Supp. 90-2).

R6-4-317. Exchange of business facilities prohibited

There shall be no exchange of business facilities between BEP operators. Any placement in a facility shall be made pursuant to this Article.

Historical Note
Adopted effective May 7, 1990 (Supp. 90-2).

R6-4-318. Termination of operator's agreement

A. An agreement for operation of a business facility shall be terminated:
1. Under the terms of the agreement,
2. By failure to meet conditions of initial or performance probation,
3. Upon revocation or surrender of a license,
4. Upon termination of the grantor agreement,
5. When the BEP operator abandons the facility.

B. The BEP operator shall be given written notice by the BEP, following notification to the APOC chairman, of termination of the operator's agreement. The notice shall be by certified mail, return receipt requested, or in person and shall state the grounds for the action, refer to any applicable provision of law or agreement, and advise the operator of the right to appeal.

C. Upon termination of an operator's agreement, the BEP shall reconcile all records and inventoried items for which the operator was responsible. The report of the reconciliation shall be transmitted in writing to the BEP operator or his estate within 90 calendar days from termination of the operator's agreement and shall include notice of the right to appeal.

D. Termination of the agreement shall not relieve the operator of any business obligations existing as of that date.

Historical Note
Adopted effective May 7, 1990 (Supp. 90-2).

R6-4-319. Revocation of license

A. The following shall be grounds for the revocation of a BEP operator's license:
1. The operator is not in compliance with the requirements of this Article, contractual agreements or any applicable federal or state statute or rule.
2. There is a deliberate material misrepresentation to the Department by the operator relating to the BEP.
3. The operator uses alcoholic beverages or illegal drugs while engaged in the operation of the business facility or operates the business facility while under their influence.
4. The operator neglects or refuses to timely provide information, including reports, and to timely transmit assessments required by this Article.
5. The operator abandons the business facility or fails without just cause to open the facility for business at the scheduled hours without prior notice to the BEP.
6. The operator is convicted of a felony while participating in the program.
7. The operator no longer meets the qualifications for participation in the BEP due to:
   a. Improvement of vision to the degree that he is no longer a legally blind person,
   b. Change of citizenship from the United States,
   c. Inability to meet the physical or emotional demands of operating a business facility following evaluation by the BEP.

B. The BEP operator shall be given written notice, following notification to the APOC chairman, of the Department's revocation by certified mail, return receipt requested, or in person. The notice shall state the grounds for the action and shall refer to any applicable provision of law, rule or agreement, and it shall advise the operator of the right to appeal.

C. The revocation of an operator's license shall not relieve the operator of any business obligations existing as of that date.

Historical Note
Adopted effective May 7, 1990 (Supp. 90-2).

R6-4-320. State committee of blind vendors

A. In Arizona, the Arizona Participating Operators Committee (APOC) shall be the state committee of blind vendors which shall actively participate in the Business Enterprise Program as provided below and elsewhere in this Article.

B. APOC shall enact bylaws consistent with this Article and any applicable regulatory or statutory provisions and provide BEP with a copy.

C. In fulfilling its ultimate responsibility for the administration and operation of all aspects of the Business Enterprise Program, the Department shall assure that APOC shall actively participate in the BEP through the following:

1. The rulemaking procedures outlined in A.R.S. § 41-1001 and following.
2. The receipt and transmittal to the BEP of grievances filed in writing with APOC at the request of BEP operators, and at the discretion of the BEP operator, the appearance of a member of APOC as his representative at any hearing within the Department pursuant to this Article.
3. The review, consideration and involvement in the program's decision making through membership on committees established by this Article.
4. By working with the BEP to establish training curricula and by serving as lecturers, faculty members, or in other roles at such training.
5. In addition, the BEP shall consult with APOC when advice and counsel may be of assistance to the program and Arizona's BEP operators.

Historical Note
Adopted effective May 7, 1990 (Supp. 90-2).

R6-4-321. Assessment against net proceeds of operators

A. The BEP shall set aside funds from the net proceeds of the operation of a business facility based on a monthly assessment schedule determined after consultation with APOC and approved by the Secretary of the U.S. Department of Education. The currently approved monthly assessment schedule is:

Net Proceeds	Assessment Schedule
First $400	2%
$401-$500	$8.00 plus 5%
$501-$600	$13.00 plus 10%
$601-$700	$23.00 plus 15%
$701 and over	$38.00 plus 20%

B. The funds set aside from the operator's monthly assessment shall be used only for the purposes stated in 34 CFR 395.9(b) (July 1, 1988), incorporated by reference and on file with the Office of the Secretary of State.

Historical Note
Adopted effective May 7, 1990 (Supp. 90-2).

R6-4-322. Guaranteed fair minimum of return

A. A guaranteed fair minimum of return shall be granted to a BEP operator by the BEP if the net proceeds over three consecutive months average less than the prevailing federal minimum wage and if the reason for the low net proceeds is beyond the control of the operator as determined by the BEP, following consultation with APOC. The need for a guaranteed fair minimum of return may be reflected in the monthly operator's report pursuant to R6-4-324(B) or may be requested by the BEP operator.

B. The BEP shall notify the BEP operator of approval or denial of the request for a fair minimum of return within 15 calendar days of the operator's request.

C. Any denial by the BEP of a guaranteed fair minimum of return to a BEP operator shall be reduced to writing and issued by certified mail, return receipt requested, or in person and shall include the reasons for the determination and notice of the right to appeal.

Historical Note
Adopted effective May 7, 1990 (Supp. 90-2).

R6-4-323. Distribution and use of federal unassigned vending machine income

Federal unassigned vending machine income shall be used for BEP operator benefits as determined by a majority vote of all BEP operators in the state at an all operator's meeting, and as limited by 34 CFR 395.8 (July 1, 1988), incorporated by reference and on file with the Office of the Secretary of State. Any federal unassigned vending machine income not necessary for such purposes shall be used by the BEP for the maintenance and replacement of equipment, the purchase of new equipment, management services, and assuring a fair minimum of return to vendors.

Historical Note
Adopted effective May 7, 1990 (Supp. 90-2).

R6-4-324. Reports and recordkeeping; access to information

A. The BEP operator shall maintain financial records of all operations in accordance with generally accepted accounting principles. These records shall be available for inspection by the Department and shall be retained by the operator at least five years unless involved in an audit by the Department. In case of an audit the records shall be retained until the audit is closed and any appeals finalized.

B. Each BEP operator shall submit to the Department a monthly operator's report by the date posted on the monthly billing statement issued by BEP to each operator. The operator's report shall be on a form prescribed by the Department, in consultation with APOC, and shall include the following information:

1. Gross sales which shall include the total of all sales of goods plus vending machine income.
2. Allowable business expenses.
3. Net profit.
4. Amount of monthly assessment.

C. Monthly assessments which are due and owing to the Department shall accompany the monthly operator's report in the form of a personal check if an insufficient funds check has not been submitted in the preceding 12 months, otherwise by certified check or money order.

D. Each BEP operator shall submit to the Department an annual inventory report which shall be on a form prescribed by the Department.

E. Each BEP operator shall furnish copies of any records and accounts pertaining to the operation of a business facility requested by the Department.

Historical Note
Adopted effective May 7, 1990 (Supp. 90-2).

R6-4-325. Appeals

A. A BEP candidate, trainee, or operator adversely affected by any decision made by the BEP shall have recourse to an administrative review and fair hearing pursuant to R6-4-404 except that, for a BEP candidate or trainee, the decision of a hearing officer may be reviewed by the Department in accordance with 34 CFR 361.48(c)(2)(iv) (July 1, 1988), incorpo-

rated by reference and on file with the Office of the Secretary of State. The decision of the hearing officer shall be final 20 days from the mailing of the hearing officer's decision if no further action is taken by the Department. For a BEP candidate or trainee, a final decision may be appealed through judicial review pursuant to A.R.S. § 12-901 et seq.

B. A final decision of the Department may be appealed by a BEP operator either through judicial review pursuant to A.R.S. § 12-901 et seq. or through the Secretary of the U.S. Department of Education pursuant to 34 CFR 395.13 (July 1, 1988), incorporated by reference and on file with the Office of the Secretary of State.

Historical Note
Adopted effective May 7, 1990 (Supp. 90-2).

ARTICLE 4. OTHER RULES AND PROVISIONS THAT RELATE TO PROVIDING SERVICES TO INDIVIDUALS

This Article contains the rules related to the provision of services to individuals under the state/federal Vocational Rehabilitation program but are more general in scope than Article 2.

R6-4-401. Order of selection

A. The order of selection is an organized, equitable method for serving selected groups of handicapped individuals in their order of priority if all eligible individuals who apply cannot be served.

B. The state agency shall maintain the following order of selection:
1. The severely handicapped (as defined by R.S.A. Chapter 3005.00, Statistical Reporting System);
2. The disabled public assistance recipients;
3. The deaf-blind. This target group population is comprised of those handicapped individuals who are:
   a. Visually impaired within the definition used by SBS for eligibility for Vocational Rehabilitation services;
   b. Deaf to the extent that the individual is not able to hear normal speech with or without amplification or not expected to be able to do so in the near future as a result of a progressive disease process; and
   c. Who need services not available traditionally in programs serving either one or the other of disability groups alone.
4. The developmentally disabled.
   a. The term "developmental disability" means a disability of a person which:
      i. Is attributable to mental retardation, cerebral palsy, epilepsy or autism;
      ii. Is attributable to any other condition of a person found to be closely related to mental retardation because such condition results in similar impairment of general intellectual functioning or adaptive behavior to that of mentally retarded persons or requires treatment and services similar to those required for such persons; or
      iii. Is attributable to dyslexia resulting from a disability described in subsection (B)(4)(a)(i) or (ii);
   b. Originates before such person attains age 18;
   c. Has continued or can be expected to continue indefinitely; and
   d. Constitutes a substantial handicap to such person's ability to function normally in society.
5. All other eligible vocationally handicapped individuals with the state.

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3). Renumbered from R6-4-301 effective May 7, 1990 (Supp. 90-2).

R6-4-402. Service and provider standards, service authorizations, equipment purchasing, Workers' Compensation

A. Provider standards
1. Providers of medical diagnostic and restorative services must, as a minimum, meet the following definitions:
   a. "Dentist." Dentist means a person licensed to practice dentistry or dental surgery under Chapter 11, Title 32 of the Arizona Revised Statutes.
   b. "Dispensing optician." Dispensing optician means any person who is licensed under Chapter 15, Title 32 of the Arizona Revised Statutes to dispense lenses, contact lenses, frames, artificial eyes, optical devices, appurtenances thereto or parts thereof to the intended wearer on written prescription from a duly licensed physician or optometrist.
   c. "Occupational therapist." Occupational therapist means a person who is a graduate of an occupational therapy curriculum accredited jointly by the Council on Medical Education of the American Medical Association and the American Occupational Therapy Association or has two years of appropriate experience as an occupational therapist and has achieved a satisfactory grade on a proficiency examination approved by the Secretary except that such determination of proficiency shall not apply with respect to persons initially licensed by a state or seeking initial qualifications as an occupational therapist after December 21, 1977.
   d. "Optometrist." Optometrist means a person who is licensed to practice optometry under Chapter 16, Title 32 of the Arizona Revised Statutes.
   e. "Orthotist and/or prosthetist." Orthotist and/or prosthetist means a person who is certified by the American Board for Certification for Orthotics and Prosthetics, Inc.
   f. "Physical therapist." Physical therapist means a person registered to practice physical therapy under Chapter 19, Title 32, Arizona Revised Statutes.
   g. "Physician." Physician means a person licensed under Chapter 13 or 17, Title 32, Arizona Revised Statutes.
   h. "Physician specialist." For purposes of this program, a specialist is a licensed physician who limits his practice to specialization and who:
      i. Is a diplomat of the appropriate American or Osteopathic Board; or
      ii. Is a fellow of the appropriate American Specialty College or a member of an Osteopathic Specialty College; or
      iii. Has been notified of admissibility to examination by the appropriate American Board or Osteopathic Board or has evidence of completion of an appropriate qualifying residency approved by the American Medical Association or American Osteopathic Association and has not lost his eligibility; or
      iv. Holds a staff appointment on July 1, 1976, with specialty privileges in a hospital accredited by the Joint Commission of Accreditation of Hospitals or by the American Osteopathic Association.

i. "Podiatrist." Podiatrist means a person licensed to practice podiatry under Chapter 7, Title 32, Arizona Revised Statutes.
j. "Respiratory therapist." Respiratory therapist means a person who is a graduate of an American Medical Association approved respiratory care education and training program and who has been registered by the American Registry of Inhalation Therapist, Inc., following successful completion of the American Registered Inhalation Therapist Examination.
k. "Speech therapist or audiologist." Speech therapist means a person who has been granted the Certificate of Clinical Competence in the American Speech and Hearing Association, or who has completed the equivalent educational requirements and work experience required for such a certificate, or who has completed the academic program or is in the process of accumulating the supervised work experience required for such a certificate.

2. Psychological services for VR are to be provided only by qualified psychologists, as described below:
a. A certified psychologist who holds a current certificate for the practice of psychology issued by the Arizona State Board of Psychologist Examiners and who has the necessary skills to provide diagnosis and treatment of mental or emotional disorders; or
b. A noncertified associate psychologist who has as a minimum a master's degree in psychology, clinical psychology, counseling psychology, or educational psychology from an approved psychology training program at an accredited college or university, and the necessary skills to provide diagnosis and treatment of mental or emotional disorders, and is professionally supervised by a certified psychologist and who assumes professional responsibility and accountability for the psychological services of his staff. The supervising psychologist shall review the referral information to assist in the selection of appropriate diagnostic or treatment methods, be available for case consultation during evaluation or treatment sessions, participate in data interpretation and report development and review and co-sign evaluation or treatment reports.

3. Standards for providers of training or education:
a. Private business, vocational or technical schools. Those schools that are licensed in accordance with A.R.S. § 15-931 and provide printed curricula and fees.
b. Tutors. VR counselors shall use tutors, for fee, only when such individuals have demonstrated competence and/or training in the area of service being purchased.
c. OJT. On-the-job training shall be purchased in accordance with the instructions in R6-4-206(C)(8) through (14).
d. Orientation and mobility specialist. Bachelor's or master's degree in orientation and mobility. AAWB provisional or permanent orientation and mobility certification within six months of employment.
e. Rehabilitation teacher. One year of experience in rehabilitation teaching or related instruction of the handicapped or a master's degree in rehabilitation teaching, special education or related. AAWB provisional or permanent rehabilitation teaching certification within six months of employment. In the case of services to children, a special education certificate in the area of visually handicapped and/or deaf/blind or a special education certificate and a minimum of one year's experience.
f. Rehabilitation facilities. By 1980, all facilities utilized by VR shall be accredited, or in the process of applying for accreditation, by CARF, NAC, or other recognized accrediting bodies.

4. Interpreters for the deaf must be certifiable by the Registry of Interpreters for the Deaf whenever possible.

B. Service standards and service descriptions.
1. Medical.
a. Medical consultation may be provided only by a person currently licensed by the state as "physician."
b. The provider of restoration services shall:
i. Submit a report outlining the problem, what restoration services are necessary and timeframes in which such will be accomplished.
ii. Submit a written report to justify any services that may be required beyond 90 days.
iii. Advise counselor of all extra procedures required but not included in the original authorization.
iv. Advise counselor of costs and all changes in costs.
v. Provide billings promptly.
c. Ancillary services. All medical and related health services must be prescribed by, or under the formal supervision of, persons licensed to prescribe or supervise the provision of such services in the state.
i. Physical therapy shall provide information regarding range of motion, strength, coordination and physical tolerance. It can also recommend whether an existing orthopedic condition is stable and make recommendations for further treatment. The knowledge gained can be expressed in functional terms which is directly related to the client's vocational planning. The therapy aspect is designed to assist the individual in reaching his maximum functional level through various treatment modalities such as hydrotherapy, electrotherapy and coordinated exercises.
ii. Occupational therapy shall involve a determination of the client's level of independent living skills relating to self-care activities, homemaking activities, and ability to utilize transportation. Additionally, evaluation of upper-extremity function and perceptual skills are included. The OT evaluation also determines the suitability of the client's home in terms of architectural features and determine the need for modifications, if appropriate, as well as the need for special equipment such as splints, upper-extremity prosthesis and assistive devices.
iii. Rehabilitation nursing shall provide screening to detect possible health problems, identifies possible accident-prone clients, detects poor hygiene, possible substance abuse, behavioral and attitudinal factors and need for additional medical evaluations. The evaluation identifies the vocational significance of these factors and also indicates the manner in which the presence of certain factors might affect the evaluative findings of other services of the facility. The therapeutic aspect of Rehabilitation Nursing is

expressed by its role of consultant to other members of the rehabilitation team.

d. Speech therapy shall identify disorders of voice, articulation, language or fluency along with the vocational significance of various disorders. Treatment consists of individual and group therapy to correct the diagnosed disorder.

e. Audiological services shall be utilized to determine the existence of hearing difficulties and to develop a plan to manage the deficiencies. The evaluation determines the nature of the hearing loss and its vocational significance. The treatment program might include auditory training, lip reading and counseling regarding the use of a hearing aid.

f. Interpreter services shall involve the provision of an interpreter who is certifiable by the Registry of Interpreters for the Deaf to assist the deaf person in communication with hearing people. Interpreting services are necessary if the deaf individual is to have access to, and benefit from, those services and resources available to clients in the rehabilitation process. Specifically, the interpreter must be capable of interpreting speech for the deaf individual and reverse interpreting; i.e., manual communication into speech at the level and speed at which the deaf person communicates.

2. Psychological services.

a. Psychological evaluation for the VR program requires the administration, scoring and interpretation of psychological tests which measure intelligence, personality, achievement, aptitudes, interests and other clinically significant psychological attributes of clients. The psychologist must provide reports of findings to VR counselors, including diagnosis of mental or emotional disorders, if present, and recommendations for appropriate counseling, treatment or training strategies which may render the individual more employable.

b. Consultation shall be related to the psychological aspects of individual cases so as to establish whether a psychological disability is adequately documented by the available evidence; to provide certification of severely disabled status; to assess all psychologically related needs of an individual in a VR program; to recommend appropriate restorative services. All case records reviewed will be annotated and reviews will be coordinated with medical consultants, where appropriate. Consultation can only be provided by a certified psychologist.

c. Mental restoration services. The provider of mental restoration services shall:

i. Submit a report outlining the problem, proposed services and therapy goals and timeframes in which such will be accomplished.

ii. Submit regular progress reports to the VR counselor.

iii. Advise counselor of all changes in therapy goals or changes in timeframes.

iv. Advise counselor of costs and all changes in costs.

v. Provide billings for services performed promptly.

3. Vocational evaluation shall be a comprehensive process that systematically utilizes real or simulated work as a means of determining an individual's present work ability and predicting his work potential. The process is based upon a review and consideration of all data relating to the client, including medical, psychological, social, vocational, cultural, education and economic as well as objective data obtained by assessment of the client. The process will include as appropriate for the client, paper and pencil tests, work samples, situational assessment on job stations and on the job tryout. The evaluation will generate a report to the referring VR or SRBVI counselor which will provide the counselor with an understanding of the client's capabilities and limitations as they relate to work, will provide a basis for vocational exploration and will enable the counselor to identify vocational goals which are suitable to the client's interests, aptitudes, and physical and mental capabilities.

4. Training services.

a. Work adjustment services shall be provided by rehabilitation facilities or sheltered workshops who have the resources, knowledge and accountability to provide this service. Work adjustment is a treatment/training process utilizing individual and/or group work or work-related activities. The goal of work adjustment is to assist clients in understanding the meaning, value and demands of work; to modify or develop positive attitudes toward work; to develop appropriate personal characteristics and behavior; and to develop the functional capacities necessary to reach an optimum level of vocational development. The facility will:

i. Have prior authorization to provide services from the VR counselor;

ii. Notify counselor of any changes in goals or timeframes;

iii. Provide monthly progress reports including objective data relative to client movement towards the goals;

iv. Provide billing promptly;

5. Pre-vocational adjustment shall be a work adjustment process especially designed to meet the needs of a specific target population; namely, physically or mentally disabled persons who have no known skills and who have never been employed. It is a process which is normally provided by a sheltered workshop and the goal is generally that of assisting the client to adjust to the workshop setting. Pre-vocational adjustment differs from work adjustment in that it focuses on habilitation rather than rehabilitation. Essentially, the same techniques will be utilized with modification as necessary to meet the special needs of the target group. The program must demonstrate objective client progress in development of behavior appropriate to a work setting and positive attitudes toward work. Facility responsibilities are the same as under work adjustment.

6. Personal adjustment.

a. Personal and social adjustment as provided in a rehabilitation facility shall be a formalized training process designed to assist clients in resolving problems which may not be directly work related but which, nevertheless, must be resolved if the individual is to reach his optimum level vocationally or if he is to remain in employment over an extended period of time. Included are problems which, if not resolved, will eventually carry over into employment settings and result in marginal performance, excessive tardiness, absenteeism, or possibly termination. The program must demonstrate client progress in terms of greater independence and more

effective functioning in a work setting as well as in all areas of the client's life.

b. Other personal adjustment services. Personal adjustment may also include services which provide skills or techniques for the specific purpose of enabling the individual to compensate for the loss of a member of the body or the loss of a sensory function. Included may be the following: training in the use of artificial limbs, aids or appliances; remedial training; literacy training; lip reading; braille; orientation and mobility training and rehabilitation teaching.

c. Rehabilitation teaching. Rehabilitation teaching provides instruction and training in learning adaptive skills necessary because of visual problems and/or blindness. These skills include communications skills (such as braille, typing, handwriting); home management skills (such as food preparation and nutrition, adaptive sewing techniques, marketing and budgeting); personal management skills (such as clothing care and organization, laundering, identification and labeling, grooming and hygiene); adaptive recreational skills, adaptive home mechanics and use of tools; and basic orientation skills within the home to enable a person to be mobile in his home environment and the necessary case management.

d. Orientation and mobility. Orientation and mobility provides instruction in cane training to blind and visually impaired persons in learning how to travel from one part of their environment to another in a safe, efficient, graceful and independent manner. These services may include orientation to the physical environment, instruction in independent travel techniques and/or lessons in the use of the low vision aids.

e. Whether these services are provided by a facility or individuals, appropriate provider standards apply. The reporting responsibilities are the same as those stated under the paragraph dealing with work adjustment. Rehabilitation teaching, orientation and mobility services are described below.

7. OJT.

a. When an OJT establishes an employer/employee relationship, all applicable wage and hour laws shall apply.

b. The employer must be willing to provide such a service under contract.

c. Employer must be willing to observe all wage laws as they pertain; e.g., minimum wage, exceptions to minimum wage, etc.

d. Must state precisely what training will be provided and how such will be accomplished.

e. Employer must agree on timeframes and must be willing to accept payment for training as agreed in the contract.

f. Must report monthly on client's progress and submit billings on a monthly basis.

C. Authorizations for services purchased from vendors.

1. Contracts. Contracts for services may be negotiated between the counselor and vendor.

a. They should contain the following elements:

i. Identify the parties involved;

ii. The specific services being authorized;

iii. Beginning and ending dates;

iv. The manner in which services will be provided;

v. Any required ancillary services; e.g., tools and supplies, registration fees, etc.

vi. The provider of the service;

vii. Goal of service being provided;

viii. Costs involved broken down in units of a month or less;

ix. Signatures of VR counselor and vendor.

b. Contracts must be written for all training services (including OJT's).

c. Contracts are to be written and signed before services are authorized.

d. If client or other sources are being used to pay for part of the training, this must be so stated on the contract.

2. A written authorization of services shall be made simultaneously with or prior to the purchase of services and such authorization will be retained. A VR counselor who is permitted to make an oral authorization in an emergency shall promptly document such an authorization in the client's case record and confirm it in writing to the provider of the service.

D. Fee schedules. Fees shall be based on:

1. The 1969 Relative Value Studies (unrevised) of the California Medical Association for medicine, surgery, radiology and pathology with the conversion factors set by Rehabilitation Services Bureau and available through state or local VR offices.

2. ASA Relative Value Guide of 1974 with the conversion factors set by Rehabilitation Services Bureau and available through state or local VR offices.

3. General medical examination to include a routine (chemical) urinalysis according to established fee schedule.

4. Dental fee schedule is developed by Rehabilitation Services Bureau and available through state or local offices.

5. Fee schedule for eye services is developed by Rehabilitation Services Bureau and available through state or local offices.

6. Psychological evaluation fee structure. Three levels of psychological evaluation have been established and for each level there is a fee range in recognition of differences in usual and customary fees for similar services among psychologists in various areas of the state. The psychologist and the local VR counselor may wish to agree to a set fee, within the fee range, for each level of evaluation to avoid having to negotiate the fee for evaluating each client; even so, flexibility should be allowed so that the fee for a particular level of evaluation may be adjusted higher or lower, within the fee range, depending upon the complexity of a particular case. Fee ranges have been set by Rehabilitation Services Bureau and are available through the state office or local VR office. Levels of psychological evaluation and reporting. (If, in the psychologist's judgment, a lower level evaluation than requested will provide the requested information, the psychologist shall render the lower level evaluation without the VR counselor's approval and adjust the billing; however, if a higher level evaluation than requested will be necessary to adequately answer the referral questions, such evaluation must first be authorized by the VR counselor (a telephone call and a brief case discussion may accomplish this). If a VR counselor is in doubt as to which level of evaluation to obtain, advice may be sought from the VR supervisor and, where available, the VR psychological consultant.

a. Minimal evaluation. Appropriate for individuals with a known history of mental or emotional impair-

ment and prior psychological evaluation where an updating of the previous psychological information is desired (the psychologist's report will compare prior and current findings); also appropriate for individuals for whom only minimal information is needed.

b. Moderate evaluation. Appropriate for most individuals with no prior psychological evaluation or where prior evaluations are no longer applicable, and where more than a minimal evaluation is needed; the psychologist's report will provide a fairly detailed picture of the individual's assets and liabilities in response to the referral questions.

c. Comprehensive evaluation. Appropriate for individuals requiring a very extensive or specialized psychological evaluation to answer the referral questions, whether or not prior evaluations have been rendered; the psychologist's report will provide a very extensive description of the individual's assets and liabilities.

7. Mental restoration services. (Appointments missed without prior notification will be reimbursed at 1/2 the agreed-upon fee; however, no reimbursement will be provided for a missed appointment if, before such appointment, the psychologist and individual jointly reschedule the appointment.)

a. Individual or family therapy. The VR counselor and the psychologist will agree to a reasonable fee based on the psychologist's usual and customary fees, area of treatment specialization and length of treatment session.

b. Group therapy. The VR counselor and the psychologist will agree to a reasonable fee based on the psychologist's usual and customary fees, area of treatment specialization and length of treatment session.

E. Purchase of equipment. All equipment purchases shall be made in conformance with A.R.S. § 41-730 and rules, regulations and policies established and published under its authority.

F. Inventory of equipment. All equipment purchased shall be inventoried in accordance with policies established by state Department of Administration and the Department in conformance with A.R.S. § 41-729 and rules, regulations and policies established and published under this authority.

G. Workmen's Compensation coverage for client's shall be provided in conformance to A.R.S. § 23-901 et seq.

Historical Note

Adopted effective June 14, 1977 (Supp. 77-3). Renumbered from R6-4-302 effective May 7, 1990 (Supp. 90-2).

R6-4-403. Economic need and similar benefits

A. Economic need criteria.

1. Economic need. The purpose of economic need criteria is to determine whether the client will contribute, in whole or in part, to the cost of those services for which an economic need test is required or not.

a. An economic need test shall be applied for the following services:

i. Physical and mental restoration services;
ii. Maintenance;
iii. Transportation for other than diagnostic purposes;
iv. Services to members of a handicapped individual's family necessary to the adjustment or rehabilitation of the handicapped individual;
v. Telecommunications, sensory and other technological aids and devices;
vi. Occupational licenses, tools, equipment and initial stocks (including livestock) and supplies (including training books and materials);
vii. Other goods and services which can reasonably be expected to benefit a handicapped individual in terms of his employability;
viii. Nondiagnostic services provided to a client in extended evaluation are subject to economic need criteria.

b. No test of economic need shall be applied as a condition for furnishing the following vocational rehabilitation services:

i. Evaluation of rehabilitation potential; i.e., diagnostic and related services;
ii. Transportation for diagnostic purposes only;
iii. Counseling, guidance and referral;
iv. Interpreter services for the deaf;
v. Reader services, rehabilitation teaching services and orientation mobility services for the blind;
vi. Vocational and other training services (available similar benefits for higher education must be considered);
vii. Placement.

c. No test of economic need will be applied for those services provided with SSI/SSDI special funds (see Section R6-4-601 and R6-4-602).

2. General considerations.

a. Eligibility requirements for VR services will be applied without regard to the economic status of the applicant.

b. All available client resources shall be utilized when providing services conditioned on economic need including all liquid assets (assets readily converted to cash by financial institutions limited to checking accounts, savings accounts, bonds, and securities) before considering economic need based on income.

c. A client may be allowed to reserve liquid assets (as defined in subsection (A)(2)(a)) up to $2,500, but to reserve liquid assets, it must be documented that such a reserve is required for medical, health reasons or other disability related reasons; e.g., an individual without health insurance coverage but who is known to have or will have in the near future, substantial medical expenses. Counselor must exercise prudent judgment and must have prior supervisory approval before disallowing such assets.

d. All similar benefits and financial assistance programs must be explored and utilized (per instructions in Section R6-4-303(B)) including work study programs.

e. Economic need must be redetermined when a change in client's financial status occurs. The yearly annual review of progress will include a review of the client's financial status.

f. Economic need criteria will be applied to the family unit for a dependent minor. A minor is anyone under 18 years of age who is dependent on parents, legal guardian, other family member. When the minor and family are estranged, and family is not contributing substantially to his welfare, the minor may be considered as an independent adult.

g. Economic need criteria will also be applied to the family unit for those VR clients who are non-minors

(adults) and who are currently being claimed as dependents for income tax purposes during the current tax year.

3. Income.
   a. Income that must be counted is net wages after mandatory deductions such as income taxes, social security, taxes and mandatory retirement contributions.
   b. Also counted as income are:
      i. Financial assistance from family and friends including trust funds, alimony and inheritance;
      ii. Welfare. ADC, GA, SSI;
      iii. Compensation. VA disability, SSDI, Workmen's Compensation, U.I.,retirement, insurance settlements, etc.;
      iv. Interest, dividends and fees available or received;
      v. Tribal or BIA assistance;
      vi. Child support payments.
   c. Any difference between similar benefits provided and actual cost of training or health maintenance must be considered as income, including but not limited to the following:
      i. Hospital or health insurance;
      ii. GI bill;
      iii. VA rehabilitation;
      iv. Educational grants;.
      v. Scholarships.
4. The value of investment or income property owned by the client is considered in determining contributions to be made by the client to the costs of his rehabilitation services. Such are considered as assets and must be used to contribute to the cost of those rehabilitation services which are dependent on economic need. These cases will be handled on an individual basis. The counselor shall discuss them with supervisor and, as necessary, the District Program Manager.
5. Method of applying the economic need determination to client's participation in the costs of the rehabilitation program:
   a. See R6-4-206(D) for instructions on how to apply economic need criteria to the provision of maintenance services;
   b. In making an economic need determination, all liquid assets will be applied to cost of services before considering client's contributions based on monthly income;
   c. If client has income over 80% of the Arizona median income figures provided by Department of Economic Security for administration of Title XX, he shall contribute that portion towards the cost of services which have an economic need criteria. Every attempt must be made to have vendor agree to time payments for one-time purchases when client is able to contribute to only part of their costs.
   d. Exceptions to the above require prior approval by the supervisor.

B. Similar benefits.
1. Similar benefits are those benefits provided under programs other than VR which, if available, are used to meet, in whole or in part, the cost of the same or similar VR service the Agency would otherwise provide.
2. Use of similar benefits:
   a. Services for which similar benefits must be considered and used, if available, are:
      i. Physical and mental restoration services;
      ii. Training, which includes:
         (1) Colleges, Community/Junior;
         (2) Vocational training in private or public schools.
      iii. Maintenance;
      iv. Occupational licenses, tools, equipment and initial stocks and supplies;
      v. Transportation in connection with rehabilitation services (not for evaluation of rehabilitation potential);
      vi. Telecommunications, sensory and other technological aids and devices;
      vii. Interpreter and reader services;
      viii. Rehabilitation teaching services and orientation/mobility services for the blind.
   b. Similar benefits are not mandated for the following, but the counselor must make all efforts to acquire any similar benefits that may be available:
      i. OJT's;
      ii. Work adjustment;
      iii. Remedial education;
      iv. Evaluation of rehabilitation potential;
      v. Counseling, guidance and referral;
      vi. Books, tools and other training materials;
      vii. Services to family members;
      viii. Most employment services necessary to maintain handicapped client in suitable employment.
   c. Similar benefits are to be utilized in all cases to the extent they are adequate, timely and do not interfere with achieving the rehabilitation objective of the individual.
   d. An exception is made to the similar benefits review if such would cause significant delay in the provision of physical and mental restoration or maintenance services.
   e. Although services to family members and post-employment services are not listed as requiring a similar benefits' review, a similar benefits' review is required for all those services provided in these two service categories which are listed elsewhere as requiring such.
3. General considerations.
   a. An individual is eligible for similar benefits when he is legally qualified to receive such service.
   b. The counselor must give full consideration of all available similar benefits.
   c. The counselor must use maximum effort to secure similar benefit for a rehabilitation service. This effort must be documented in the IWRP. Counselor also must use contracted services or services under cooperative agreements if such are available to the client.
   d. An individual eligible for similar benefits must utilize such insofar as they are adequate and do not interfere with achieving the rehabilitation objective of the individual.

Historical Note

Adopted effective June 14, 1977 (Supp. 77-3). Renumbered from R6-4-303 effective May 7, 1990 (Supp. 90-2).

R6-4-404. Administrative review and fair hearings

A. General considerations.
1. Pursuant to federal regulations (CFR 1361.46) the VR Agency shall provide for applicants or clients of Vocational Rehabilitation who are dissatisfied with any action with regard to the furnishing or denial of services, a

chance to file a request for an administrative review and redetermination of that action. When the individual is dissatisfied with the finding of this administrative review, he shall be granted an opportunity for a hearing. All clients must be informed of this provision at the time they apply for services.

2. A dissatisfied client has a number of recourses which shall be explored before an administrative review or a hearing is necessary or recommended:
   a. Clients shall first be encouraged to discuss problems with their counselor. It is a normal part of counseling that the client and counselor must from time-to-time confront issues not pleasant or agreeable to either. The counselor/client relationship must be preserved if at all possible, not to protect the agency but to preserve the necessary continuity and autonomy of that counseling relationship.
   b. When it is clear to either counselor, client or supervisor that the client/counselor relationship has broken down or that disagreements are not solvable within the context of that relationship, several alternatives may be considered.
      i. Assignment to different counselor if the problem is judged to be a conflict in personality or style of relating;
      ii. Meeting of client with the counselor's immediate supervisor with or without counselor present to help clarify policy or programmatic issues. This may result in either the transferring of case to another counselor or renewed attempt to reestablish the original client/counselor relationship;
      iii. For this type of informal review, it is often helpful for supervisor to request or bring in outside consultation to help clarify the issues or problems.
   c. If, after all alternatives have been explored, and the client remains dissatisfied, he shall be reminded of the recourse he has for an administrative review and must be assisted in receiving the benefit of such a review. Courtesy, fairness and promptness must guide the counselor's or supervisor's actions. After it has been established that a review will be set up, the counselor or supervisor may not change a program of services or take any new action on the case regarding the issue(s) raised until such issues have been resolved, nor may an attempt be made to influence the direction of the review.
3. Administrative review.
   a. An administrative review is instituted at the request (written or verbal) of a client or applicant who is dissatisfied with any action regarding the furnishing or denial of services. Other informal avenues are to be explored before an administrative review is instituted. Requests for review, if in writing, shall be filed in client's case and copy forwarded to District VR Program Manager.
   b. An administrative review shall be set up and held at the district level by District VR Program Manager or SBS/VR Manager. The individual with whom the complaint is filed is responsible for making necessary arrangements or to see that such arrangements are made. The hearing shall be conducted at a reasonable time, date and place and adequate preliminary written notice shall be given.
   c. Persons to be involved are:
      i. Client who is requesting the review;
      ii. District VR Program Manager or SBSVR Manager as representatives of the Bureau Chief;
      iii. VR Counselor involved;
      iv. If client is deaf or mute, an interpreter will be present;
      v. If the client does not have an adequate "grasp" of the English language, then an interpreter must be provided.
   d. Persons who may also be involved:
      i. Client may request to have a representative present;
      ii. Other specialists at the discretion of District VR Program Manager.
   e. Review procedures:
      i. Minutes of the meeting shall be taken which summarize the issues raised, facts presented and discussion (a verbatim transcript is not required). If decisions were made during the review, they are also to be recorded. A copy of such minutes must be kept in permanent record files.
      ii. The counselor is asked first to summarize the problem and to present his position;
      iii. The client is asked if he has any questions and then to present his views on the problem and his position. In turn, the counselor may ask him questions.
      iv. Discussion may follow with each individual given a chance to make closing comments. The client should be allowed to speak last.
   f. Client shall be advised that the Administrative Review is not a legal hearing but an attempt to resolve conflicts by clarifying the issues, reviewing decisions and deciding whether to uphold those decisions based on state and federal laws, rules, regulations and policies as they apply to the particular circumstances of the case. The Agency must give timely and adequate notice to the client of decisions reached. Decision will be made within ten working days following the review.
   g. Any decisions must be made with due regard to client's rights. The district VR Program Manager must be able and willing to state to the client the reasons for decisions reached.
   h. The District VR Program Manager must advise RSB of a pending review. Technical assistance will be provided on request.
   i. The results of the meeting shall be recorded as well as the rationale for any decisions made. A copy of this is to be forwarded to Rehabilitation Services Bureau and original filed with the District VR Program Manager; client's lawyer or representative shall also be furnished a copy on request. Records shall include the issues raised and discussed by both sides, evidence used and proposed findings, decisions or opinions. Client's case file will contain the facts and findings of the review.
   j. All those participating in the review shall be advised that confidential information is involved and confidentiality must be observed. If non-VR individuals are present, the client should be asked to sign an authorization for release of personal information before proceeding. Client consent should never be presumed. Medical or psychological data obtained from third party may not be released without express

authorization from that party. All other rules of confidentiality contained in federal regulations must be observed.

k. If the client remains dissatisfied with the results of an administrative review, the client may request a hearing.

l. The RSB Chief, as administrator of the single state agency, (per CFR 1361.46) acknowledges the Appeals Bureau under the Department's Deputy Director as his designee to represent him in hearings, reserving the right, however, under R6-4-304(C), reconsideration, to request a reconsideration of the hearing officer's decision by the Director.

B. Fair hearings.

1. Filing of appeal.
   a. A request for a hearing shall be filed in writing with the Department or provider within fifteen calendar days after the mailing date of the decision letter.
   b. Except as otherwise provided by Statute or by Department regulation, any appeal, application, request, notice, report, or other information or document submitted to the Department shall be considered received by and filed with the Department.
      i. If transmitted via the United States Postal Service, or its successor, on the date it is mailed. The mailing date will be as follows:
         (1) As shown by the postmark;
         (2) In the absence of a postmark the postage meter mark of the envelope in which it is received;
         (3) If not postmarked or postage meter marked, or if the mark is illegible, the date entered on the document as the date of completion.
      ii. If transmitted by any means other than the United States Postal Service or its successor, on the date it is received by the Department.
      iii. The submission of any appeal, application, request, notice, report, or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the Department that the delay in submission was due to Department error or misinformation, or to delay or other action of the United States Postal Service or its successor.
      iv. Any notice, determination, decision, or other data mailed by the Department shall be considered as having been given to the addressee to whom it is directed on the date it is mailed to the addressee's last known address. The date mailed shall be presumed to be the date of the notice, determination, decision, or other date unless otherwise indicated by the facts. Computation of time shall be made in accordance with rule 6(a) of the rules of Civil Procedure, 16 A.R.S.
   c. Benefits shall not be reduced or terminate prior to a hearing decision unless such is due to a subsequent change in household eligibility and/or another notice of adverse action is received and not timely appealed.
   d. The local office or provider shall advise the client of any community legal services available and, when requested, shall assist in completing the hearing request.
2. Notice of hearing.
   a. Hearings will be held at the local office or any other place mutually agreed upon by the hearing officer and appellant. They shall be scheduled not less than twenty, nor more than thirty, days from the date of filing of the request for hearing. The appellant shall be given no less than 15 days notice of hearing except that the appellant may waive the notice period or request a delay.
   b. The notice of hearing shall inform the appellant of the date, time, and place of the hearing, the name of the hearing officer, the issues involved, and of his rights to: present his case in person or through a representative; examine and copy any documents in the Department's possession which pertain to the issue prior to the hearing; obtain assistance from the local office in preparing his case; and of his opportunity to make inquiry at the local office about the availability of community legal resources which could provide representation at the hearing.
   c. Appellant, in lieu of a personal appearance, may submit a written statement, under oath or affirmation, setting forth the facts of the case provided that the statement is submitted to the Department prior to or at the time of the hearing. All parties shall be ready and present with all witnesses and documents at the time and place specified in the notice of hearing, and shall be prepared at such time to dispose of all issues and questions involved in the appeal.
   d. The hearing officer may take such action for the proper disposition of an appeal as he deems necessary, and on his own motion, or at the request of any interested party upon a showing of good cause may continue the hearing to a future time or reopen a hearing before a decision is final to take additional evidence. If an interested party fails to appear at a scheduled hearing, the hearing officer may adjourn the hearing to a later date, or may make his decision upon the record, and such evidence as may be presented at the scheduled hearing. If within ten days of the scheduled hearing, appellant files a written application requesting reopening of the proceedings, and establishes good cause for failure to appear at the scheduled hearing, the hearing shall be rescheduled. Notice of the time, place, and purpose of any continued, reopened, or rescheduled hearing shall be given to all interested parties.
3. Pre-hearing summary.
   a. A pre-hearing summary of the facts and grounds for the action taken shall be prepared and forwarded to the hearing officer no less than four days prior to the hearing.
   b. The summary shall be provided to the appellant prior to the commencement of the hearing.
4. The hearing officer may subpoena any witnesses or documents requested by the Department or claimant to be present at the hearing. The request shall be in writing and shall state the name and address of the witness and the nature of his testimony. The nature of the witnesses testimony must be relevant to the issues of the hearing, otherwise the hearing officer may deny the request. The request for the issuance of a subpoena shall be made to give sufficient time, a minimum of three working days, prior to the hearing. A subpoena requiring the production of records and documents shall specifically describe them

in detail and further set forth the name and address of the custodian thereof.

5. Review of file. In the presence of a Department representative, the appellant and/or his authorized representative shall be permitted to review, obtain, or copy any Department record necessary for the proper presentation of the case.
6. Conduct of the hearing.
   a. Hearings shall be conducted in an orderly and dignified manner.
   b. Hearings are opened, conducted and closed by the hearing officer who shall rule on the admissibility of evidence, and shall direct the order of proof. He shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses; the production of books, papers, correspondence, memoranda, and other records he deems necessary as evidence in connection with a hearing.
   c. Evidence not related to the issue shall not be allowed to become a part of the record.
   d. The hearing officer may, on his own motion, or at the request of the appellant or Department representative, exclude witnesses from the hearing room.
   e. The worker, supervisor, or other appropriate person may be designated Department representative for the hearing.
   f. The appellant and Department representative may testify, present evidence, and cross-examine witnesses and present arguments.
   g. The appellant may appear for himself or be represented by an attorney or any other person he designates.
   h. A full and complete record shall be kept of all proceedings in connection with an appeal, and such records shall be open for inspection by any interested party. A transcript of the proceedings need not, however, be made unless it is required by the Director for further proceedings. When a transcript has been made for further proceedings, a copy shall be furnished without cost to each interested party.
7. Hearing decision.
   a. The hearing decision shall be rendered exclusively on the evidence and testimony produced at the hearing and Department rules governing the issues in dispute.
   b. The decision shall set forth the pertinent facts involved, the conclusions drawn from such facts, the sections of applicable law or rule, the decision and the reasons therefor. A copy of such decision, together with an explanation of the appeal rights, shall be delivered or mailed to each interested party and their attorneys of record not more than sixty days from the date of filing the request for appeal, unless the delay was caused by the appellant.
   c. In those cases where the local office must take additional action as a result of a decision, such action must be taken immediately.
   d. All decisions in favor of the appellant apply retroactively to the date of the action being appealed, or to the date the hearing officer specifically finds appropriate.
   e. When a hearing decision upholds the proposed action of reducing, suspending, or terminating a grant, an overpayment is the result.
   f. All hearing decisions will be made accessible to the public, subject to meeting the provision for safeguarding confidential information relating to the client.
   g. Decision of the hearing officer will be the final decision of the Department unless a reconsideration is requested in accordance with Section I.
   h. Pursuant to A.R.S. § 36-563(C), Bureau of Mental Retardation decisions shall become final upon issuance of an order of the Director.
8. Withdrawal of appeal.
   a. An appeal may be withdrawn as follows:
      i. Voluntary withdrawal. This may be accomplished by completing and signing the proper Department form, or by submitting a letter properly signed.
      ii. Abandonment or involuntary withdrawal. This occurs when an appellant fails to appear at a scheduled hearing and within ten days thereof fails to request a rescheduled hearing, or fails to appear at a rescheduled hearing which he has requested. A hearing may not be considered abandoned if the claimant provides notification up to the time of the hearing that he is unable, due to good cause, to keep the appointment and that he still wishes a hearing.

C. Reconsideration.

1. An appellant, within ten calendar days after the decision was mailed or otherwise delivered to him, may request the Director to review the decision. (Exception, see R6-4-304(A)(3)(e)) The request shall be in writing and should set forth a statement of the grounds for review and may be filed personally or by mail.
2. After receipt of the request, the Director shall:
   a. Remand the case for rehearing, specifying the nature of any additional evidence required and/or issues to be considered, or
   b. Decide the appeal on the record.
3. The Director shall promptly adopt his decision which shall be the final decision of the Department. A copy of the decision, together with a statement specifying the rights for judicial review, shall be distributed to each interested party.

Historical Note

Adopted effective June 14, 1977 (Supp. 77-3). Amended effective June 9, 1978 (Supp. 78-3). Renumbered from R6-4-304 effective May 7, 1990 (Supp. 90-2).

R6-4-405. Confidentiality

A. Definitions.

1. "Client information." Client information, written or otherwise, includes all medical, psychological, social, personal, financial, vocational and evaluative information which Vocational Rehabilitation acquires in the VR process.
2. "Informed consent of client." Informed consent is never presumed. A complete and signed authorization indicates "informed consent" in most cases. An authorization for release of information must include the following:
   a. From whom the information is being requested;
   b. The recipient of the information and his/her relationship to the client;
   c. The type of information being requested;
   d. The purpose for which information is being requested;
   e. The duration for which client consent is being given;

f. An assurance, signed by the individual requesting the information, that information received will be treated as confidential and will not be used contrary to the expressed intent of the request.

3. "Primary source information." All that information which Vocational Rehabilitation acquired through personal interaction with client and evaluations and reports done at counselor's request and written specifically for VR.
4. "Secondary source information." All that information which Vocational Rehabilitation acquired from other sources but not originally done for or intended for Vocational Rehabilitation use.
5. "Direct administration of a client's rehabilitation program." Sharing information under the following circumstances constitutes sharing information in the direct administration of a rehabilitation program:
   a. To assist in the diagnostic process; i.e., sharing existing medical and psychological information with other specialists on an as needed basis;
   b. To develop an appropriate program of services; i.e., sharing such information as necessary or appropriate with rehabilitation facilities or other vendors who may become providers of rehabilitation services;
   c. To search out and obtain similar benefit resources; i.e., sharing information with any similar benefit resource but only for the express purpose of determining eligibility for such similar benefits;
   d. To ensure success of an IWRP (Program of Services); i.e., sharing information on a "need to know" basis with service providers and within the constraints of B.(below) to ensure the success of a Program of Services;
   e. To assist the client in finding and obtaining or retaining employment; i.e., sharing such information with the (prospective) employer as is necessary to obtain, retain, or ensure suitable placement;
   f. To provide continuity of services; i.e., sharing client information with other state VR personnel or between states as necessary to ensure continuity and consistency in Agency dealings with the individual.
6. "Individualized Written Rehabilitation Program (IWRP)." That part of the individual client case file which contains the program of services and all basic understandings and ensurances including client's consent to release of information in the administration of a rehabilitation program, and an assurance that otherwise client information will be held confidential.
7. "Client's representative." In the context of this Section, "representative" is an individual, so designated by the client, who is competent to handle personal client information and will do so responsibly for the benefit of the client.

B. Sharing client information in direct administration of VR program. VR counselor may release client information of which we are either primary or secondary source (without separate written authorization) to other individuals or agencies in the direct administration of a client's rehabilitation program as long as only necessary information is shared and that in the counselor's judgment, recipient can and will handle information in confidential manner. Consent for this release is given by client when he signs an application for services (see IWRP).

C. Answering requests for client information from clients or other individuals:

1. Information of which VR is not the primary source is only released in direct administration of a client's rehabilitation program. Requestors should be asked to contact the original source for secondary source information in possession of VR.
2. VR may release client information of which VR is primary source (other than under B. above) with client's informed written consent to only those other individuals or agencies who can give satisfactory assurance that information will be used only for the purpose for which it is provided, and that it will not be released to anyone else. In the adjudication of an individual's claim for Social Security or SSI benefits, Disability Certification Section has free access to primary source client information. VR counselors have free access to Disability Certification Section client information in the administration of a rehabilitation program.
3. With informed written consent of the client, federal regulations allow release of information (besides the IWRP which does not require special consent) to the client or, as appropriate, his parent, guardian or other representative. This shall be done with extreme care and may only be authorized by the counselor. The counselor will not normally copy actual medical, psychological or social reports to give to client. Such may be provided to the client's representative with proper written authorizations from client. It is advised, however, that the counselor dictate letters explaining Vocational Rehabilitation involvements in a general way when such information is requested by the client. Copies of such letters are placed in client's case folder. Interpretations of technical psychological or medical data shall only be provided by the originator of the report.
4. Client has a right to copies of his IWRP and shall be given such.
5. With informed consent, information shall be made available for review (but not to be removed from client file or copies without subpoena) to such client, parent, guardian or other representative for purposes in connection with any proceeding or action for benefits or damage, including any proceeding or action against any public agency provided
   a. That only such information as is relevant to the needs of the client shall be released, and
   b. In the case of medical or psychological information, the knowledge of which may be harmful to the client, such information will be released to the parent, guardian or other representative of the client by the state agency or to the client by a physician or by a licensed or certified psychologist. The psychologist or medical VR consultant or the examiner should be consulted to determine whether information may be harmful.
6. Information shall be released to an organization or individual engaged in research only for purposes directly connected with the administration of the State Vocational Rehabilitation program and only if the organization or individual furnishes satisfactory assurance that the information will be used only for the purpose for which it is provided; that it will not be released to persons not connected with the study under consideration; and that the final product of the research will not reveal any information that may serve to identify any person about whom information has been obtained through the state agency without written consent of such person and the state agency.
7. In any case, where client's informed consent is in doubt and/or when information may be damaging, such as

during litigation with client as defendant, counselor is advised to not release personal client information even with a signed authorization for such release. In such an instance, the information may be subpoenaed.

8. All client information released shall be stamped CONFIDENTIAL.

D. Vocational Rehabilitation requesting information on clients from others:

1. Information being requested must have direct relevance to establishing client's eligibility and to the success of client's rehabilitation program. Counselor must be selective in his approach to information gathering.
2. Request for information must be as specific as possible (fulfill the criteria as set in R6-4-305(A)(2)).

E. Informing client about confidentiality.

1. The client shall be told at the beginning of his/her relationship with Vocational Rehabilitation that records will be held confidential but also that there are limits to that confidentiality; e.g., client files may be subpoenaed in whole or in part and contents used in court.
2. The client shall also be told both at the beginning of relationship with counselor and any other time as necessary that:
   a. The counselor must report any ongoing or future illegal activity to proper authorities, especially if it involves possible injury to other individuals or damage to property. That not doing so might make him/her legally accessories to the crime.
   b. The counselor himself/herself may be subpoenaed and questioned in court in which case he must answer questions honestly and truthfully on the order of the judge.
3. When counselor is aware that client may be or may become in violation of the law, the counselor must inform the client of this and the possible consequences.
4. Counselor should know that counselor-client relationship is not protected by privileged communication laws in the same way that the doctor-patient, lawyer-client or clergyman-penitent relationship is.

F. Client files shall not contain information which the client does not want known beyond the client-counselor relationship. Moreover, if the client wants to reveal the details of an illegal act or source of information, the counselor should interrupt the client and advise him that he is interested only in the effects of such activity, not the act itself.

G. Client files must be kept in such a way that no unauthorized individual will have access to them. An unauthorized individual is anyone who is not directly connected with the administration of the rehabilitation program. All non-professional VR staff who have access to the client's records will be thoroughly briefed concerning the confidentiality standards to be observed.

H. When a client/applicant is involved in litigation and has an attorney, the rehabilitation counselor shall inform the client's attorney of Agency involvement and plans for providing services.

I. Subpoena of Vocational Rehabilitation counselor or client records.

1. Counselors receiving subpoenas must contact their supervisor and the Department's Legal Section immediately for assistance.
2. To provide full protection of the counselor, any subsequent legal actions taken by the VR counselor shall be on instruction from Legal Section.
3. Secondary source information such as medical or psychological data obtained from another agency shall not be released without advice from Legal Section even under subpoena. The counselor should explain that this information should be secured from the original source. SSA information shall never be released, even under subpoena 42 U.S.C. 1306(a).

J. All client information is the property of the Department and shall be used in conformance with the regulations and policies stated in this Section.

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3). Renumbered from R6-4-305 effective May 7, 1990 (Supp. 90-2).

ARTICLE 5. RESERVED

ARTICLE 6. EXPIRED

R6-4-601. Expired

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3). Section repealed, new Section adopted effective October 22, 1991 (Supp. 91-4). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R6-4-602. Expired

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3). Section repealed, new Section adopted effective October 22, 1991 (Supp. 91-4). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R6-4-603. Expired

Historical Note
Adopted effective October 22, 1991 (Supp. 91-4). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R6-4-604. Expired

Historical Note
Adopted effective October 22, 1991 (Supp. 91-4). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R6-4-605. Expired

Historical Note
Adopted effective October 22, 1991 (Supp. 91-4). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R6-4-606. Expired

Historical Note
Adopted effective October 22, 1991 (Supp. 91-4). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R6-4-607. Expired

Historical Note
Adopted effective October 22, 1991 (Supp. 91-4). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R6-4-608. Expired

Historical Note
Adopted effective October 22, 1991 (Supp. 91-4). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

ARTICLE 7. EXPIRED

Article 7, consisting of R6-4-701 through R6-4-707, expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-4-701. Expired

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-4-702. Expired

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3). Amended effective October 13, 1978 (Supp. 78-5). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-4-703. Expired

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-4-704. Repealed

Historical Note
Adopted effective January 7, 1981 (Supp. 81-1). Repealed effective May 7, 1990 (Supp. 90-2).

R6-4-705. Expired

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-4-706. Repealed

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3). Former Section R6-4-706 repealed, new Section R6-4-706 adopted effective June 17, 1985 (Supp. 85-3). Repealed effective October 22, 1991 (Supp. 91-4).

R6-4-707. Expired

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

ARTICLE 8. EXPIRED

Article 8, consisting of R6-4-801, expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

R6-4-801. Expired

Historical Note
Adopted effective June 14, 1977 (Supp. 77-3). Section expired under A.R.S. § 41-1056(E) at 10 A.A.R. 1165, effective October 31, 2003 (Supp. 04-1).

41-1954. Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

1. Administer the following services:

(a) Employment services, including manpower programs and work training, field operations, technical services, unemployment compensation, community work and training and other related functions in furtherance of programs under the social security act, as amended, the Wagner-Peyser act, as amended, the federal unemployment tax act, as amended, 33 United States Code, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(b) Individual and family services, which shall include a section on aging, services to children, youth and adults and other related functions in furtherance of social service programs under the social security act, as amended, title IV, except parts B and E, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, the older Americans act, as amended, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(c) Income maintenance services, including categorical assistance programs, special services unit, child support collection services, establishment of paternity services, maintenance and operation of a state case registry of child support orders, a state directory of new hires, a support payment clearinghouse and other related functions in furtherance of programs under the social security act, title IV, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, as amended, and other related federal acts and titles.

(d) Rehabilitation services, including vocational rehabilitation services and sections for the blind and visually impaired, communication disorders, correctional rehabilitation and other related functions in furtherance of programs under the vocational rehabilitation act, as amended, the Randolph-Sheppard act, as amended, and other related federal acts and titles.

(e) Administrative services, including the coordination of program evaluation and research, interagency program coordination and in-service training, planning, grants, development and management, information, legislative liaison, budget, licensing and other related functions.

(f) Manpower planning, including a state manpower planning council for the purposes of the federal-state-local cooperative manpower planning system and other related functions in furtherance of programs under the comprehensive employment and training act of 1973, as amended, and other related federal acts and titles.

(g) Economic opportunity services, including the furtherance of programs prescribed under the economic opportunity act of 1967, as amended, and other related federal acts and titles.

(h) Intellectual disability and other developmental disability programs, with emphasis on referral and purchase of services. The program shall include educational, rehabilitation, treatment and training services and other related functions in furtherance of programs under the developmental disabilities services and facilities construction act (P.L. 91-517) and other related federal acts and titles.

(i) Nonmedical home and community based services and functions, including department-designated case management, housekeeping services, chore services, home health aid, personal care, visiting nurse services, adult day care or adult day health, respite sitter care, attendant care, home delivered meals and other related services and functions.

2. Provide a coordinated system of initial intake, screening, evaluation and referral of persons served by the department.

3. Adopt rules it deems necessary or desirable to further the objectives and programs of the department.

4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

5. Employ and determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons subject to chapter 4, article 4 and, as applicable, article 5 of this title as may be necessary in the performance of its duties, contract for the services of outside advisors, consultants and aides as may be reasonably necessary and reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business.

6. Make contracts and incur obligations within the general scope of its activities and operations subject to the availability of funds.

7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of its purposes, objectives and programs.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

10. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of its duties subject to the departmental rules on the confidentiality of information.

11. Establish and maintain separate financial accounts as required by federal law or regulations.

12. Advise and make recommendations to the governor and the legislature on all matters concerning its objectives.

13. Have an official seal that is judicially noticed.

14. Annually estimate the current year's population of each county, city and town in this state, using the periodic census conducted by the United States department of commerce, or its successor agency, as the basis for such estimates and deliver such estimates to the economic estimates commission before December 15.

15. Estimate the population of any newly annexed areas of a political subdivision as of July 1 of the fiscal year in which the annexation occurs and deliver such estimates as promptly as is feasible after the annexation occurs to the economic estimates commission.

16. Establish and maintain a statewide program of services for persons who are both hearing impaired and visually impaired and coordinate appropriate services with other agencies and organizations to avoid duplication of these services and to increase efficiency. The department of economic security shall enter into agreements for the utilization of the personnel and facilities of the department of economic security, the department of health services and other appropriate agencies and organizations in providing these services.

17. Establish and charge fees for deposit in the department of economic security prelayoff assistance services fund to employers who voluntarily participate in the services of the department that provide job service and retraining for persons who have been or are about to be laid off from employment. The department shall charge only those fees necessary to cover the costs of administering the job service and retraining services.

18. Establish a focal point for addressing the issue of hunger in this state and provide coordination and assistance to public and private nonprofit organizations that aid hungry persons and families throughout this state. Specifically such activities shall include:

(a) Collecting and disseminating information regarding the location and availability of surplus food for distribution to needy persons, the availability of surplus food for donation to charity food bank organizations, and the needs of charity food bank organizations for surplus food.

(b) Coordinating the activities of federal, state, local and private nonprofit organizations that provide food assistance to the hungry.

(c) Accepting and disbursing federal monies, and any state monies appropriated by the legislature, to private nonprofit organizations in support of the collection, receipt, handling, storage and distribution of donated or surplus food items.

(d) Providing technical assistance to private nonprofit organizations that provide or intend to provide services to the hungry.

(e) Developing a state plan on hunger that, at a minimum, identifies the magnitude of the hunger problem in this state, the characteristics of the population in need, the availability and location of charity food banks and the potential sources of surplus food, assesses the effectiveness of the donated food collection and distribution network and other efforts to alleviate the hunger problem, and recommends goals and strategies to improve the status of the hungry. The state plan on hunger shall be incorporated into the department's state comprehensive plan prepared pursuant to section 41-1956.

(f) Establishing a special purpose advisory council on hunger pursuant to section 41-1981.

19. Establish an office to address the issue of homelessness and to provide coordination and assistance to public and private nonprofit organizations that prevent homelessness or aid homeless individuals and families throughout this state. These activities shall include:

(a) Promoting and participating in planning for the prevention of homelessness and the development of services to homeless persons.

(b) Identifying and developing strategies for resolving barriers in state agency service delivery systems that inhibit the provision and coordination of appropriate services to homeless persons and persons in danger of being homeless.

(c) Assisting in the coordination of the activities of federal, state and local governments and the private sector that prevent homelessness or provide assistance to homeless people.

(d) Assisting in obtaining and increasing funding from all appropriate sources to prevent homelessness or assist in alleviating homelessness.

(e) Serving as a clearinghouse on information regarding funding and services available to assist homeless persons and persons in danger of being homeless.

(f) Developing an annual state comprehensive homeless assistance plan to prevent and alleviate homelessness.

(g) Submitting an annual report to the governor, the president of the senate and the speaker of the house of representatives on the status of homelessness and efforts to prevent and alleviate homelessness. The department shall provide a copy of this report to the secretary of state.

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

21. Exchange information, including case specific information, and cooperate with the department of child safety for the administration of the department of child safety's programs.

B. If the department of economic security has responsibility for the care, custody or control of a child or is paying the cost of care for a child, it may serve as representative payee to receive and administer social security and United States department of veterans affairs benefits and other benefits payable to such child. Notwithstanding any law to the contrary, the department of economic security:

1. Shall deposit, pursuant to sections 35-146 and 35-147, such monies as it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use such monies to defray the cost of care and services expended by the department of economic security for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.

3. Shall maintain separate records to account for the receipt, investment and disposition of funds received for each child.

4. On termination of the department of economic security's responsibility for the child, shall release any funds remaining to the child's credit in accordance with the requirements of the funding source or in the absence of such requirements shall release the remaining funds to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person responsible for the child if the child is a minor and not emancipated.

C. Subsection B of this section does not pertain to benefits payable to or for the benefit of a child receiving services under title 36.

D. Volunteers reimbursed for expenses pursuant to subsection A, paragraph 5 of this section are not eligible for workers' compensation under title 23, chapter 6.

E. In implementing the temporary assistance for needy families program pursuant to Public Law 104-193, the department shall provide for cash assistance to two-parent families if both parents are able to work only on documented participation by both parents in work activities described in title 46, chapter 2, article 5, except that payments may be made to families who do not meet the participation requirements if:

1. It is determined on an individual case basis that they have emergency needs.

2. The family is determined to be eligible for diversion from long-term cash assistance pursuant to title 46, chapter 2, article 5.

F. The department shall provide for cash assistance under temporary assistance for needy families pursuant to Public Law 104-193 to two-parent families for no longer than six months if both parents are able to work, except that additional assistance may be provided on an individual case basis to families with extraordinary circumstances. The department shall establish by rule the criteria to be used to determine eligibility for additional cash assistance.

G. The department shall adopt the following discount medical payment system for persons who the department determines are eligible and who are receiving rehabilitation services pursuant to subsection A, paragraph 1, subdivision (d) of this section:

1. For inpatient hospital admissions and outpatient hospital services the department shall reimburse a hospital according to the rates established by the Arizona health care cost containment system administration pursuant to section 36-2903.01, subsection G.

2. The department's liability for a hospital claim under this subsection is subject to availability of funds.

3. A hospital bill is considered received for purposes of paragraph 5 of this subsection on initial receipt of the legible, error-free claim form by the department if the claim includes the following error-free documentation in legible form:

(a) An admission face sheet.

(b) An itemized statement.

(c) An admission history and physical.

(d) A discharge summary or an interim summary if the claim is split.

(e) An emergency record, if admission was through the emergency room.

(f) Operative reports, if applicable.

(g) A labor and delivery room report, if applicable.

4. The department shall require that the hospital pursue other third-party payors before submitting a claim to the department. Payment received by a hospital from the department pursuant to this subsection is considered payment by the department of the department's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For inpatient hospital admissions and outpatient hospital services rendered on and after October 1, 1997, if the department receives the claim directly from the hospital, the department shall pay a hospital's rate established according to this section subject to the following:

(a) If the hospital's bill is paid within thirty days of the date the bill was received, the department shall pay ninety-nine percent of the rate.

(b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the department shall pay one hundred percent of the rate.

(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the department shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. For medical services other than those for which a rate has been established pursuant to section 36-2903.01, subsection G, the department shall pay according to the Arizona health care cost containment system capped fee-for-service schedule adopted pursuant to section 36-2904, subsection K or any other established fee schedule the department determines reasonable.

H. The department shall not pay claims for services pursuant to this section that are submitted more than nine months after the date of service for which the payment is claimed.

I. To assist in the location of persons or assets for the purpose of establishing paternity, establishing, modifying or enforcing child support obligations and other related functions, the department has access, including automated access if the records are maintained in an automated database, to records of state and local government agencies, including:

1. Vital statistics, including records of marriage, birth and divorce.

2. State and local tax and revenue records, including information on residence address, employer, income and assets.

3. Records concerning real and titled personal property.

4. Records of occupational and professional licenses.

5. Records concerning the ownership and control of corporations, partnerships and other business entities.

6. Employment security records.

7. Records of agencies administering public assistance programs.

8. Records of the motor vehicle division of the department of transportation.

9. Records of the state department of corrections.

10. Any system used by a state agency to locate a person for motor vehicle or law enforcement purposes, including access to information contained in the Arizona criminal justice information system.

J. Notwithstanding subsection I of this section, the department or its agents shall not seek or obtain information on the assets of an individual unless paternity is presumed pursuant to section 25-814 or established.

K. Access to records of the department of revenue pursuant to subsection I of this section shall be provided in accordance with section 42-2003.

L. The department also has access to certain records held by private entities with respect to child support obligors or obligees, or individuals against whom such an obligation is sought. The information shall be obtained as follows:

1. In response to a child support subpoena issued by the department pursuant to section 25-520, the names and addresses of these persons and the names and addresses of the employers of these persons, as appearing in customer records of public utilities, cable operators and video service providers.

2. Information on these persons held by financial institutions.

M. Pursuant to department rules, the department may compromise or settle any support debt owed to the department if the director or an authorized agent determines that it is in the best interest of this state and after considering each of the following factors:

1. The obligor's financial resources.

2. The cost of further enforcement action.

3. The likelihood of recovering the full amount of the debt.

N. Notwithstanding any law to the contrary, a state or local governmental agency or private entity is not subject to civil liability for the disclosure of information made in good faith to the department pursuant to this section.

46-134. Powers and duties; expenditure; limitation

The state department shall:

1. Administer all forms of public relief and assistance except those that by law are administered by other departments, agencies or boards.

2. Develop a section of rehabilitation for the visually impaired that shall include a sight conservation section, a vocational rehabilitation section in accordance with the federal vocational rehabilitation act, a vending stand section in accordance with the federal Randolph-Sheppard act and an adjustment service section that shall include rehabilitation teaching and other social services deemed necessary, and shall cooperate with similar agencies already established. The administrative officer and staff of the section for the blind and visually impaired shall be employed only in the work of that section.

3. Assist other departments, agencies and institutions of the state and federal governments, when requested, by performing services in conformity with the purposes of this title.

4. Act as agent of the federal government in furtherance of any functions of the state department.

5. Carry on research and compile statistics relating to the entire public welfare program throughout this state, including all phases of dependency and defectiveness.

6. Cooperate with the superior court in cases of delinquency and related problems.

7. Develop plans in cooperation with other public and private agencies for the prevention and treatment of conditions giving rise to public welfare and social security problems.

8. Make necessary expenditures in connection with the duties specified in paragraphs 5, 6, 7, 13 and 14 of this subsection.

9. Have the power to apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this chapter.

10. Make rules, and take action necessary or desirable to carry out the provisions of this title, that are not inconsistent with this title.

11. Administer any additional welfare functions required by law.

12. If a tribal government elects to operate a cash assistance program in compliance with the requirements of the United States department of health and human services, with the review of the joint legislative budget committee, provide matching monies at a rate that is consistent with the applicable fiscal year budget and that is not more than the state matching rate for the aid to families with dependent children program as it existed on July 1, 1994.

13. Furnish a federal, state or local law enforcement officer, at the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that the recipient is a fugitive felon or a probation, parole or community supervision violator or has information that is necessary for the officer to conduct the official duties of the officer and the location or apprehension of the recipient is within these official duties.

14. In conjunction with Indian tribal governments, request a federal waiver from the United States department of agriculture that will allow tribal governments that perform eligibility determinations for temporary assistance for needy families programs to perform the food stamp eligibility determinations for persons who apply for services pursuant to section 36-2901, paragraph 6, subdivision (a). If the waiver is approved, the state shall provide the

state matching monies for the administrative costs associated with the food stamp eligibility based on federal guidelines. As part of the waiver, the department shall recoup from a tribal government all federal fiscal sanctions that result from inaccurate eligibility determinations.

23-501. Definitions

In this article, unless the context otherwise requires:

1. "Department" means the department of economic security.

2. "Director" means the director of the department.

3. "Division" means the department of economic security.

4. "Maintenance" means money payments not to exceed the estimated cost of subsistence during vocational rehabilitation.

5. "Person with a disability" means any individual who has a physical or mental disability and a substantial disadvantage to employment, which is of such a nature that vocational rehabilitation services may reasonably be expected to render the person fit to engage in a gainful occupation, including a gainful occupation which is more consistent with the person's capacities and abilities, or for whom vocational rehabilitation services are necessary for the purpose of extended evaluation to determine rehabilitation potential.

6. "Physical restoration" means medical, surgical or therapeutic treatment necessary to correct or reduce the employment disadvantage of a person with a disability and includes medical, psychiatric, dental and surgical treatment, nursing service, hospital care not to exceed ninety days, convalescent home care, drugs, medical and surgical supplies and prosthetic appliances and other related services as defined in the vocational rehabilitation act, as amended.

7. "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body, or to increase the acuity of a sense organ.

8. "Vocational rehabilitation" or "vocational rehabilitation service" means a service determined by the director to be necessary to enable a person with a disability to engage in a remunerative occupation and includes medical and vocational diagnosis, vocational guidance, counsel and placement, rehabilitation, training, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance and training books and materials, follow up, evaluation and work adjustment and other related services as defined in the vocational rehabilitation act, as amended.

23-502. Rehabilitation services

The department shall provide vocational rehabilitation service to persons with a disability who are eligible as provided by this article.

23-503. Duties and powers

The department shall cooperate in carrying out the purposes of federal statutes pertaining to vocational rehabilitation. The division may adopt methods of administration found by the federal government necessary for the proper and efficient operation of agreements relating to vocational rehabilitation, and shall comply with conditions deemed necessary to secure the full benefits of such federal statutes. The division may:

1. Cooperate with other departments, divisions, agencies and institutions in providing for the vocational rehabilitation of persons with a disability and studying the problems involved therein, and in establishing, developing and providing programs, facilities and services deemed necessary or desirable.

2. Enter into reciprocal agreements with other states to provide for vocational rehabilitation of residents of the states concerned.

23-503.01. Coordination of vocational rehabilitation services

The department shall coordinate its provision of vocational rehabilitation services to persons with an intellectual disability with its provision of intellectual disability services to such persons, including the areas of evaluation of applicants for either type of services and the development of program and rehabilitation plans for persons with an intellectual disability.

23-504. Merchandising businesses for the blind

A. The department of economic security shall make surveys of merchandising business opportunities for and license persons who have no vision or acuity, or have a central visual acuity of 20/200 or less in the better eye, with the best correction by single magnification, or who have a field defect in which the peripheral field has been contracted to such an extent that the widest diameter of visual field subtends an angular distance no greater than 20 degrees, to operate such businesses on state, county or municipal property where such businesses may be properly and satisfactorily operated by blind persons all in accordance with the provisions of the Randolph-Sheppard act, as amended by Public Law 93-516, title 20, United States Code, sections 107 through 107f. For the purposes of this section "merchandising business" shall include but not be limited to food service operations, including cafeterias, snack bars and vending machines for food and beverages and souvenir and gift shops.

B. The head or governing body of each department or agency and of each county or municipality or other local government entity having control of state, county or other local government property shall cooperate with the department of economic security in surveys of property under their control to find suitable locations for the operation of merchandising businesses by blind persons, and after it has been determined that there is need for a merchandising business and after the department of economic security has determined that such a business may be properly and satisfactorily operated by a blind person grant space to the department of economic security for the operation of a merchandising business by a licensed blind person and cooperate with the department of economic security in the installation of such merchandising business.

C. Notwithstanding the provisions of section 41-792.01, the head or governing body of each department or agency of the state and of each county or city having control of public property shall not charge any rent or other assessment for the use or occupancy of the space granted for the operation of merchandising businesses by licensed blind persons.

D. Any person licensed under this section to operate a merchandising business has the right of appeal under section 23-507.

E. Preference to the blind is not mandatory for those merchandising businesses operated by public educational institutions where merchandising facilities are provided as an integral part of service to students or as a training program to students, nor for major food services provided by hospitals or residential institutions of the state as a direct service to patients, inmates, trainees or otherwise institutionalized persons.

23-506. Eligibility for assistance

A. Vocational rehabilitation service shall be provided to a person with a disability, resident in the state, whose vocational rehabilitation in the judgment of the director after investigation can satisfactorily be achieved, or to any such person who is eligible for rehabilitation service under the terms of an agreement with the federal government or with another state. Unless otherwise provided by law, the following vocational rehabilitation services shall be provided at public cost only to persons with a disability who are determined to require financial assistance:

1. Physical restoration not including curative treatment for acute or transitory conditions.

2. Transportation not otherwise provided to determine the eligibility of the individual and the nature and extent of the rehabilitation services necessary.

3. Occupational licenses.

4. Customary occupational tools and equipment.

5. Maintenance.

6. Training books and materials.

B. The right of a person with a disability to maintenance granted under this section may not be transferred or assigned.

23-507. Hearings

A person applying for or receiving vocational rehabilitation service who is aggrieved by an action of the division may appeal to the director, subject to rules and regulations of the department.

23-508. Administrative funds

A. The state treasurer shall be the custodian of monies received from the federal government for the purpose of carrying out any federal law relating to vocational rehabilitation, and shall disburse them and any state monies available for vocational rehabilitation purposes in the manner provided by law.

B. The legislature shall annually appropriate to the department from the general fund such funds as may be necessary to carry out the purposes of this article.

41-1953. Department organization; deputy director; assistant directors

A. The director may establish, abolish or reorganize the positions or organizational units within the department to carry out the functions provided by section 41-1954, subject to legislative appropriation, if in the director's judgment the modification of organization would make the operation of the department more efficient, effective or economical. The director or the director's deputy shall enforce cooperation among the divisions in the provision and integration of all functions on the district and local level.

B. The director shall appoint a deputy director of the department with the advice and consent of the governor. The deputy director shall serve at the pleasure of the director. The deputy director shall be directly responsible for the operation and coordination of those services of the department concerning initial intake, screening, evaluation and referral of persons served by the department.

C. The director shall appoint an assistant director to head each organizational unit that the director may establish. Each assistant director shall serve at the pleasure of the director.

D. To the maximum extent possible, the director shall establish separate investigation units for the purpose of investigating allegations of dependency, abuse and neglect according to protocols established pursuant to section 8-817.

E. The department succeeds to the authority, powers, duties and responsibilities of the following:

1. The employment security commission of Arizona and its Arizona state employment service, unemployment compensation and administrative service divisions.

2. The state department of public welfare.

3. The division of vocational rehabilitation.

4. The state office of economic opportunity.

5. The state office of manpower planning.

6. The state department of mental retardation.

F. In the statutes, references to the agencies and departments listed in subsection E shall be deemed to be references to the department of economic security or its appropriate divisions, offices or organizational units.

DEPARTMENT OF ECONOMIC SECURITY
Title 6, Chapter 11

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 2, 2024

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

FROM: Council Staff

DATE: March 14, 2024

SUBJECT: **DEPARTMENT OF ECONOMIC SECURITY**
Title 6, Chapter 11

Summary

This Five-Year Review Report (5YRR) from the Department of Economic Security (Department) relates to fourteen (14) rules in Title 6, Chapter 11, Articles 1 and 2 regarding implementation and administration of the Job Training Partnership Act (JTPA).

In the prior report for these rules, approved by the Council in June 2018, the Department anticipated submitting two rulemaking packages to update the rules in Chapter 11 to the Council by March 2019. However, the Department indicates it decided to submit the amendments to these rules as one package instead of two and the draft rules have undergone several iterations. In early 2020, as the Department was reaching the final stages of drafting the proposed rules, the COVID-19 Pandemic required the Department to quickly divert all resources to providing pandemic response services. The Department was responsible for providing essential services to families, which caused a significant delay in the progress of rulemaking.

The Department states, as the pandemic has receded and staff availability has stabilized, it has renewed its commitment to rulemaking and has made significant progress on these rules. The Department also indicates it has overhauled its internal drafting and review process, resulting in secondary reviews, by both the general public and internal and external stakeholders

in order to mitigate the number of comments received during the formal comment period, thus causing some additional delays in submitting the Notice of Final Rulemaking to the Council.

Proposed Action

In the current report, the Department proposes to amend most rules in Title 6, Chapter 11 to address issues outlined in more detail below. The Department indicates it received approval to conduct rulemaking from the Governor's Office on June 27, 2023. The Department states it anticipates filing a Notice of Proposed Rulemaking in November 2023 and submitting a Notice of Final Rulemaking to the Council by March 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:

There was no economic impact statement in the rules' initial promulgation, so the Department included one with their review. Largely, the rules relate to Workforce Innovation and Opportunities Act (WIOA) Title I related activities. In Program Year 2022, Arizona received nearly $87 million dollars from the United States Department of Labor under WIOA Title I; these funds were split into the Adult allocation, Dislocated Worker allocation, and the Youth allocation funding streams. The Department of Economic Security passes most of these funds to the state's twelve Local Workforce Development Areas. These funds are used to facilitate on-the-job training opportunities and other work-based learning activities at no cost for participants. This included over 14 thousand individuals in Program Year 2022. These opportunities help individuals maintain employment and seek higher wages and assist in expanding the pool of trained workers a business may employ. The Department has determined that the rules do not increase any costs to businesses or consumers; rather, the rules are being sought to align with federal regulation.

Stakeholders are identified as the Department, individuals and businesses connected to WIOA Title I funding, and the public.

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

The Department has determined that, if their proposed changes are made, the rules impose the least burden and costs to those regulated and that there is no less intrusive or less costly method of achieving the objectives of this rulemaking.

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, effectiveness in achieving its objectives, and current enforcement status?

The Department indicates the following rules are not consistent with other rules and statutes, are ineffective, and not currently enforced as written:

- **R6-11-101:** This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because the rule does not align with WIOA, the current federal legislation that supersedes JTPA. The Department proposes to revise the current rules to identify the Department as the state agency responsible for the administration of the WIOA Title I-B Adult, Dislocated Worker, and Youth Programs and remove all references to the JTPA.
- **R6-11-102:** This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because the rule does not align with WIOA, the current federal legislation that supersedes JTPA. The Department proposes to revise the current rules to identify the Department as the state agency responsible for the administration of the WIOA Title I-B Adult, Dislocated Worker, and Youth Programs and remove all references to the JTPA.
- **R6-11-103:** This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because the rule does not align with WIOA, the current federal legislation that supersedes JTPA. The Department proposes to revise the current rules to identify the Department as the state agency responsible for the administration of the WIOA Title I-B Adult, Dislocated Worker, and Youth Programs and remove all references to the JTPA.
- **R6-11-104:** This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not enforced as written because the rule does not align with WIOA, the current federal legislation that supersedes JTPA. The Department proposes to revise the current rule to describe priority of service in the WIOA Title I-B Adult Program and the exception of up to five percent of participants in the WIOA Title I-B Youth Program who do not have to be low-income individuals to align with WIOA.
- **R6-11-107:** This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because it does not align with the WIOA, the current federal legislation that supersedes JTPA. The Department proposes to revise the current rules to align requirements for the confidentiality of information with WIOA and remove all references to JTPA.

- **R6-11-111:** This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because the rule does not align with the WIOA, the current federal legislation that supersedes JTPA. The Department proposes to revise the current rules to align requirements for a subrecipient's complaint resolution procedures with WIOA and remove all references to JTPA.
- **R6-11-201:** This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because the rule does not align with the WIOA, the current federal legislation that supersedes JTPA. The Department proposes to revise the current rules to clarify an interested party's right to appeal a Department's or subrecipient's determination, decision, order, or other action or inaction with WIOA and remove all references to JTPA.
- **R6-11-202:** This rule is inconsistent with federal regulations and is not enforced as written because the rule does not align with the WIOA, the current federal legislation that supersedes JTPA funds. The Department proposes to revise the current rules to clarify the procedures an interested party shall use to request a hearing to appeal an adverse action by the Department or subrecipient with WIOA and remove all references to JTPA.
- **R6-11-203:** This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because the rule does not align with the WIOA, the current federal legislation that supersedes JTPA. The Department proposes to revise the current rules to clarify how a party is provided a notice of hearing and the contents of the notice with WIOA and remove all references to JTPA.
- **R6-11-204:** This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because the rule refers to hearing procedures for JTPA and does not align with WIOA, the current federal legislation that supersedes JTPA. The Department proposes to revise the current rules to clarify hearing procedures and the responsibilities of individuals involved in the hearing proceedings with WIOA and remove all references to JTPA.
- **R6-11-205:** This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because the rule refers to the process through which hearing decisions are made and establish procedures for filing for a redetermination of a hearing decision for JTPA. It does not align with WIOA, the current federal legislation that supersedes JTPA. The Department proposes to revise the current rules to align the process through which hearing decisions are made and establish procedures for requesting a reconsideration of a hearing decision with WIOA and remove all references to JTPA.
- **R6-11-206:** This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because the rule refers to consequences when a party fails to appear at a scheduled hearing for JTPA and does not align with WIOA, the current federal legislation that supersedes JTPA. The Department proposes to revise the current rules to clarify the consequences when a party fails to appear at a properly noticed hearing with WIOA and remove all references to JTPA.
- **R6-11-207:** This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because the instances and procedures in which a hearing officer may be disqualified or in which an interested party may request a change of hearing officer pertain to JTPA and must be revised to align with the WIOA,

the current federal legislation that supersedes JTPA. The Department plans to revise the current rules to define when a hearing officer may be disqualified or when an interested party may request a change of hearing officer to align with WIOA and remove all references to JTPA.

- **R6-11-208:** This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because the process and circumstances under which a scheduled hearing may be postponed pertain to JTPA and must be revised to align with the WIOA, the current federal legislation that supersedes JTPA. The Department plans to revise the current rules to align the process and circumstances under which a scheduled hearing may be postponed with WIOA and remove all references to JTPA.

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

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

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The Department indicates the rules were last adopted on April 5, 1984. Furthermore, the Department states these rules do not require the issuance of a permit, license, or agency authorization.

9. Conclusion

This 5YRR from the Department relates to fourteen (14) rules in Title 6, Chapter 11, Articles 1 and 2 regarding implementation and administration of the Job Training Partnership Act (JTPA). The Department proposes to amend most rules in Title 6, Chapter 11 to improve their consistency, effectiveness, and enforcement.. The Department indicates it received approval to conduct rulemaking from the Governor's Office on June 27, 2023. The Department states it anticipates filing a Notice of Proposed Rulemaking in November 2023 and submitting a Notice of Final Rulemaking to the Council by March 2024.

Council staff recommends approval of this report.

DEPARTMENT OF ECONOMIC SECURITY
Your Partner For A Stronger Arizona

Katie Hobbs
Governor

Vacant
Director

October 26, 2023

Ms. Nicole Sornsin
Council Chair
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 302
Phoenix, Arizona 85007

Dear Ms. Sornsin:

Attached is the Arizona Department of Economic Security (Department) Five-Year Review Report for Arizona Administrative Code (A.A.C.) Title 6, Chapter 11, Job Training Partnership Act.

Pursuant to A.R.S. § 41-1056(A) and A.A.C. R1-6-301(C)(4), the Department certifies that it is in compliance with A.R.S. § 41-1091.

Thank you for your attention to this report. The Department will be present at the Council meetings to respond to any questions the Council members may have about the report.

If you have any questions, please contact Kirk Stephens, Deputy Rules Administrator, Governance and Innovation Administration, at (480) 793-2274.

Sincerely,

Nicole Davis
Office of General Counsel

Attachment

Department of Economic Security

Title 6, Chapter 11

Five-Year Review Report

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. §§ 41-1954(A)(3) and 46-134(10)

Specific Statutory Authority: A.R.S. § 41-1954 (A)(1)(a)

2. Analysis of rules:

Rule	Analysis	
R6-11-101	Title:	Administrative agency
	Objective:	The objective of this rule is to identify the Department as the state agency responsible for the administration of the Job Training Partnership Act (JTPA) program.
	● Is this rule effective in meeting the objective?	**Yes** ☐ **No X**
	● Is this rule consistent with other rules and statutes?	**Yes** ☐ **No X**
	● Is this rule enforced as written?	**Yes** ☐ **No X**
	● Is this rule clear, concise, and understandable?	**Yes X** **No** ☐
	Explanation:	This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because the rule does not align with WIOA, the current federal legislation that supersedes JTPA. The Department proposes to revise the current rules to identify the Department as the state agency responsible for the administration of the WIOA Title I-B Adult, Dislocated Worker, and Youth Programs and remove all references to the JTPA.

Rule	Analysis	
R6-11-102	Title:	Definitions
	Objective:	The objective of this rule is to define the terms in this Chapter and promote a uniform understanding of terms used by the JTPA programs.
	● Is this rule effective in meeting the objective?	**Yes** ☐ **No X**
	● Is this rule consistent with other rules and statutes?	**Yes** ☐ **No X**
	● Is this rule enforced as written?	**Yes** ☐ **No X**
	● Is this rule clear, concise, and understandable?	**Yes X** **No** ☐

Explanation: This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because the rule does not align with WIOA, the current federal legislation that supersedes JTPA. The Department proposes to revise the current rules to identify the Department as the state agency responsible for the administration of the WIOA Title I-B Adult, Dislocated Worker, and Youth Programs and remove all references to the JTPA.

Rule **Analysis**

R6-11-103 Title: Eligibility criteria

Objective: The objective of this rule is to set forth the general and specific eligibility criteria for enrollment in JTPA programs.

- Is this rule effective in meeting the objective? **Yes** ☐ **No X**
- Is this rule consistent with other rules and statutes? **Yes** ☐ **No X**
- Is this rule enforced as written? **Yes** ☐ **No X**
- Is this rule clear, concise, and understandable? **Yes X** **No** ☐

Explanation: This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because the rule does not align with WIOA, the current federal legislation that supersedes JTPA. The Department proposes to revise the current rules to identify the Department as the state agency responsible for the administration of the WIOA Title I-B Adult, Dislocated Worker, and Youth Programs and remove all references to the JTPA.

Rule **Analysis**

R6-11-104 Title: Selection-enrollment responsibility

Objective: The objective of this rule is to describe a subrecipient's responsibility to establish criteria regarding how an applicant is selected to participate in a JTPA program.

- Is this rule effective in meeting the objective? **Yes** ☐ **No X**
- Is this rule consistent with other rules and statutes? **Yes** ☐ **No X**
- Is this rule enforced as written? **Yes** ☐ **No X**
- Is this rule clear, concise, and understandable? **Yes X** **No** ☐

Explanation: This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not enforced as written because the rule does not align with WIOA, the current federal legislation that supersedes JTPA. The Department proposes to revise the current rule to describe priority of service in the WIOA Title I-B Adult

Program and the exception of up to five percent of participants in the WIOA Title I-B Youth Program who do not have to be low-income individuals to align with WIOA.

Rule **Analysis**

R6-11-107 Title: Confidentiality

Objective: The objective of this rule is to require subrecipients of JTPA funds to comply with applicable federal and state statutes, regulations, and policies regarding the confidentiality of information.

- Is this rule effective in meeting the objective? **Yes** ☐ **No X**
- Is this rule consistent with other rules and statutes? **Yes** ☐ **No X**
- Is this rule enforced as written? **Yes** ☐ **No X**
- Is this rule clear, concise, and understandable? **Yes X** **No** ☐

Explanation: This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because it does not align with the WIOA, the current federal legislation that supersedes JTPA. The Department proposes to revise the current rules to align requirements for the confidentiality of information with WIOA and remove all references to JTPA.

Rule **Analysis**

R6-11-111 Title: Complaint resolution procedures

Objective: The objective of this rule is to describe the complaint resolution procedures that a subrecipient of JTPA funds shall have in place to address complaints from a participant or other interested party.

- Is this rule effective in meeting the objective? **Yes** ☐ **No X**
- Is this rule consistent with other rules and statutes? **Yes** ☐ **No X**
- Is this rule enforced as written? **Yes** ☐ **No X**
- Is this rule clear, concise, and understandable? **Yes X** **No** ☐

Explanation: This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because the rule does not align with the WIOA, the current federal legislation that supersedes JTPA. The Department proposes to revise the current rules to align requirements for a subrecipient's complaint resolution procedures with WIOA and remove all references to JTPA.

Rule **Analysis**

R6-11-201 Title: Right to appeal

Objective: The objective of this rule is to describe an interested party's right to appeal a determination, decision, order, or other action or inaction by the Department or subrecipient.

- Is this rule effective in meeting the objective? **Yes** ☐ **No X**
- Is this rule consistent with other rules and statutes? **Yes** ☐ **No X**
- Is this rule enforced as written? **Yes** ☐ **No X**
- Is this rule clear, concise, and understandable? **Yes X** **No** ☐

Explanation: This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because the rule does not align with the WIOA, the current federal legislation that supersedes JTPA. The Department proposes to revise the current rules to clarify an interested party's right to appeal a Department's or subrecipient's determination, decision, order, or other action or inaction with WIOA and remove all references to JTPA.

Rule **Analysis**

R6-11-202 Title: Hearing request

Objective: The objective of this rule is to describe the process an interested party or their legal counsel shall use to request a hearing to appeal an adverse action by the Department or a subrecipient.

- Is this rule effective in meeting the objective? **Yes** ☐ **No X**
- Is this rule consistent with other rules and statutes? **Yes** ☐ **No X**
- Is this rule enforced as written? **Yes** ☐ **No X**
- Is this rule clear, concise, and understandable? **Yes X** **No** ☐

Explanation: This rule is inconsistent with federal regulations and is not enforced as written because the rule does not align with the WIOA, the current federal legislation that supersedes JTPA funds. The Department proposes to revise the current rules to clarify the procedures an interested party shall use to request a hearing to appeal an adverse action by the Department or subrecipient with WIOA and remove all references to JTPA.

Rule **Analysis**

R6-11-203 Title: Notice of hearing

Objective: The objectives of this rule are to describe how an interested party is provided a notice of hearing and the contents of the notice.

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- Is this rule effective in meeting the objective? **Yes** ☐ **No X**
- Is this rule consistent with other rules and statutes? **Yes** ☐ **No X**
- Is this rule enforced as written? **Yes** ☐ **No X**
- Is this rule clear, concise, and understandable? **Yes X** **No** ☐

Explanation: This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because the rule does not align with the WIOA, the current federal legislation that supersedes JTPA. The Department proposes to revise the current rules to clarify how a party is provided a notice of hearing and the contents of the notice with WIOA and remove all references to JTPA.

Rule **Analysis**

R6-11-204 Title: Hearing procedures

Objective: The objectives of this rule are to explain the hearing procedures and responsibilities of individuals involved in the hearing proceedings.

- Is this rule effective in meeting the objective? **Yes** ☐ **No X**
- Is this rule consistent with other rules and statutes? **Yes** ☐ **No X**
- Is this rule enforced as written? **Yes** ☐ **No X**
- Is this rule clear, concise, and understandable? **Yes X** **No** ☐

Explanation: This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because the rule refers to hearing procedures for JTPA and does not align with WIOA, the current federal legislation that supersedes JTPA. The Department proposes to revise the current rules to clarify hearing procedures and the responsibilities of individuals involved in the hearing proceedings with WIOA and remove all references to JTPA.

Rule **Analysis**

R6-11-205 Title: Hearing decisions

Objective: The objectives of this rule are to describe the process through which hearing decisions are made and establish procedures for requesting a rehearing or a Director's reconsideration.

- Is this rule effective in meeting the objective? **Yes** ☐ **No X**
- Is this rule consistent with other rules and statutes? **Yes** ☐ **No X**
- Is this rule enforced as written? **Yes** ☐ **No X**
- Is this rule clear, concise, and understandable? **Yes X** **No** ☐

Explanation: This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because the rule refers to the process through which hearing decisions are made and establish procedures for filing for a redetermination of a hearing decision for JTPA. It does not align with WIOA, the current federal legislation that supersedes JTPA. The Department proposes to revise the current rules to align the process through which hearing decisions are made and establish procedures for requesting a reconsideration of a hearing decision with WIOA and remove all references to JTPA.

Rule **Analysis**

R6-11-206 Title: Failure of a party to appear

Objective: The objective of this rule is to define the consequences when a party to a hearing fails to appear at a scheduled hearing.

- Is this rule effective in meeting the objective? **Yes** ☐ **No X**
- Is this rule consistent with other rules and statutes? **Yes** ☐ **No X**
- Is this rule enforced as written? **Yes** ☐ **No X**
- Is this rule clear, concise, and understandable? **Yes X** **No** ☐

Explanation: This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because the rule refers to consequences when a party fails to appear at a scheduled hearing for JTPA and does not align with WIOA, the current federal legislation that supersedes JTPA. The Department proposes to revise the current rules to clarify the consequences when a party fails to appear at a properly noticed hearing with WIOA and remove all references to JTPA.

Rule **Analysis**

R6-11-207 Title: Hearing officer

Objective: The objective of this rule is to describe the process and circumstances under which a hearing officer may be disqualified or when an interested party may request a change of hearing officer.

- Is this rule effective in meeting the objective? **Yes ☐** **No X**
- Is this rule consistent with other rules and statutes? **Yes ☐** **No X**
- Is this rule enforced as written? **Yes ☐** **No X**
- Is this rule clear, concise, and understandable? **Yes X** **No ☐**

Explanation: This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because the instances and procedures in which a hearing officer may be disqualified or in which an interested party may request a change of hearing officer pertain to JTPA and must be revised to align with the WIOA, the current federal legislation that supersedes JTPA. The Department plans to revise the current rules to define when a hearing officer may be disqualified or when an interested party may request a change of hearing officer to align with WIOA and remove all references to JTPA.

Rule **Analysis**

R6-11-208 Title: Postponement of hearing

Objective: The objectives of this rule are to describe the process for and circumstances under which a scheduled hearing may be postponed.

- Is this rule effective in meeting the objective? **Yes ☐** **No X**
- Is this rule consistent with other rules and statutes? **Yes ☐** **No X**
- Is this rule enforced as written? **Yes ☐** **No X**
- Is this rule clear, concise, and understandable? **Yes X** **No ☐**

Explanation: This rule is ineffective in meeting the objective, is inconsistent with federal regulations, and is not fully enforced as written because the process and circumstances under which a scheduled hearing may be postponed pertain to JTPA and must be revised to align with the WIOA, the current federal legislation that supersedes JTPA. The Department plans to revise the current rules to align the process and circumstances under which a scheduled hearing may be postponed with WIOA and remove all references to JTPA.

3. Has the Department received written criticisms of the rules within the last five years?

Yes ☐ **No X**

4. Economic, small business, and consumer impact comparison:

There is no previous Economic, Small Business, and Consumer Impact Statement available from the last promulgation of the rules to provide an economic impact comparison. The Department is providing an assessment of the actual economic, small business, and consumer impact of the rules pursuant to R1-6-301.

The State of Arizona, via the Department of Economic Security, receives federal funds from the United State Department of Labor as authorized under WIOA Title I. The amount of the WIOA Title I grant allocations are provided in three funding streams: Adult, Dislocated Worker, and Youth. In Program Year (PY) 2022 (July 1, 2022 - June 30, 2023), Arizona received $86,990,453.00 and of that amount, $26,301,024.00 was under the Adult allocation, $32,882,281.00 was under the Dislocated Worker allocation, and $27,807,148.00 was under the Youth allocation. In Arizona, the Department of Economic Security contracts with 12 Local Workforce Development Areas (LWDAs), one of which consists of 13 Tribal Area entities. The LWDAs receive 85 percent of the grant money and the Department retains five percent of the total allocation for the statewide administration of the WIOA Title I-B programs. The remaining 10 percent of the grant funds are used for statewide projects, which are administered through the Governor's Office.

Participants of WIOA Title I-B programs benefit from services, such as on-the-job training and other work-based learning activities, which assist participants with gaining skills that help with retaining or gaining employment that pays higher wages. These services are provided at no cost to participants in WIOA Title I-B programs. In Program Year 2022, a total of 14,143 program customers (9,195 WIOA Adult Program participants; 1,071 Dislocated Worker Program participants; and 3,877 Youth Program participants) benefited from the WIOA Title I funded services provided through LWDAs in Arizona, including staff-assisted career, training, and program services.

Reports in the Arizona Job Connection (AJC), Arizona's web-based job-matching and labor market information system, indicate that 72.1 percent of the WIOA Title I Adult Program exiters, 75.9 percent of the WIOA Title I Dislocated Worker exiters, and 76 percent of the WIOA Title I Youth Program exiters were employed or in education in the second quarter after exit in Program Year 2022.

Businesses may benefit from the expanded pool of trained workers resulting from services provided by LWDAs through the WIOA Title I funds. Small businesses include service providers who provide services and activities to participants in WIOA Title I-B programs. There are potential positive economic impacts to small businesses, which may access WIOA Title I-B funds. Additionally, service providers that offer on-the-job training and other work-based learning activities to participants benefit from a positive economic impact by saving on the cost of training a new employee.

5. Has the agency received any business competitiveness analyses of the rules?

Yes ☐ No X

6. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Yes ☐ No X

In the previous Five-Year-Review report, approved by the Council in June 2018, the Department anticipated submitting two rulemaking packages to update the rules in Chapter 11. The Department received approval on July 20, 2017, from the Governor's Office to proceed with the rulemaking for Chapter 11. The Department anticipated filing a Notice of Final Rulemaking with the Council by March 2019. However, the Department decided to submit the amendments to these rules as one package instead of two and the draft rules have undergone several iterations. In early 2020, as the Department was reaching the final stages of drafting the proposed rules, the COVID-19 Pandemic required the Department to quickly divert all resources to providing pandemic response services. The Department was responsible for providing essential services to families, which caused a significant delay in the progress of rulemaking. As the pandemic has receded and staff availability has stabilized, the Department has renewed its commitment to rulemaking and has made significant progress on these rules. The Department has also overhauled its internal drafting and review process, resulting in secondary reviews, by both the general public and internal and external stakeholders in order to mitigate the number of comments received during the formal comment period, thus causing some additional delays in submitting the Notice of Final Rulemaking to the Council. Governor's Office approval to proceed with this rulemaking was received from the Hobbs administration on June 27, 2023.

7. **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:**

With the amendments proposed in this report, the Department believes that the rules would impose the least burden and costs to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives. These rules do not impose any cost to consumers or small businesses and are being sought to align with current federal law and regulations. Updates to the rules identified in this report outweigh any potential costs incurred from the proposed revisions. Additionally, program subject matter experts indicate that amendments to the rules, as proposed in this report, are the most cost-effective way to bring the Department into compliance with federal requirements because there is no less intrusive or less costly method of achieving the objectives of this rulemaking.

8. **Are the rules more stringent than corresponding federal laws?**

Yes ☐ No X

The Department has determined that the rules are not more stringent than corresponding federal law.

9. 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 Department has determined that A.R.S. § 41-1037 does not apply to these rules because all the rules were last adopted on April 5, 1984. Furthermore, these rules do not require the issuance of a permit, license, or agency authorization.

10. Proposed course of action:

The Department proposes to update the rules in Chapter 11 to address issues identified in Item 2 of this report. The Department anticipates filing a Notice of Proposed Rulemaking (NPR) in November 2023 and submitting a Notice of Final Rulemaking (NFR) to the Council by March 2024.

TITLE 6. ECONOMIC SECURITY

CHAPTER 11. DEPARTMENT OF ECONOMIC SECURITY
JOB TRAINING PARTNERSHIP ACT (JTPA)

(Authority: A.R.S. § 41-1954 et seq.)

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ARTICLE 1. GENERAL PROVISIONS

R6-11-101. Administrative agency

The Arizona Department of Economic Security (DES) is the state agency responsible for administration of Job Training Partnership Act (JTPA) programs, designated by the Governor of Arizona, pursuant to P.L. 97-300 as amended.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-101 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-102. Definitions

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

1. "Administrative entity" means the organizations or agencies designated by the Private Industry Council (PIC) to operate the programs for the Service Delivery Area (SDA) grant recipient.
2. "DES or the Department" means the Arizona Department of Economic Security.
3. "Direct subrecipient" means a subrecipient which contracts directly with DES to receive JTPA funds.
4. "Economically disadvantaged" means an individual as described in Section 4(8) of JTPA.
5. "Grant recipient" means the organization or agency designated by the Private Industry Council (PIC) and local elected officials to contract and receive funds for the Service Delivery Area (SDA) under Title II of JTPA.
6. "Interested party" means an individual who participates in or applies for participation in a program administered under JTPA or a person or organization which is directly or adversely affected by the action or inaction of DES with regard to JTPA.
7. "JTPA" means the Job Training Partnership Act of 1982, P.L. 97-300, as amended.
8. "Needs-based payment" means cash payments based on need providing direct benefits to individual participants to enable them to participate in a training program under JTPA.
9. "Private Industry Council (PIC)" means the group of individuals from the public and private sectors certified by the Governor to plan and oversee the Title II programs under JTPA.
10. "Service Delivery Area (SDA)" means the geographical area designated by the Governor in which a comprehensive program pursuant to JTPA will be planned by a certified PIC.
11. "Stop-gap employment" means work which an applicant does only because he has lost the customary work for which his training, experience or work history qualifies him. Employment would be considered "stop-gap" if the salary is substantially below the salary of the applicant's primary occupation and if he is working substantially under the skill level of his customary occupation. Regardless of the number of hours devoted to the stop-gap work activity, it is considered odd-job work outside the customary occupation for which he is qualified.
12. "Subrecipient" means any person, organization or other entity which receives JTPA funds either directly or indirectly from DES. Depending on local circumstances, the PIC, local elected official, or administrative entity may be a subrecipient.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-102 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-103. Eligibility criteria

A. Applicants shall be determined eligible for enrollment into JTPA programs if they meet the requirements set forth in both the General Criteria (subsection (B) below) and the respective Specific Criteria (subsection (C) below) *or* otherwise comply with Section 181(k) of JTPA.

B. General criteria. Applicants must meet the following:

1. Be citizens or nationals of the United States, or lawfully admitted permanent resident aliens, or lawfully admitted refugees or parolees, or other individuals authorized by the United States Attorney General to work in the United States; and
2. Be in compliance with Section 3 of the Military Selective Service Act (50 U.S.C. App. 453) if applicable.

C. Specific criteria. To be determined eligible for enrollment in one of the described JTPA subparts (Titles II-A, II-B, or III) or Section 124, an applicant must meet the criteria listed below for that specific subpart.

1. Title II-A, adult or youth programs:
   a. Economically disadvantaged; and
   b. Sixteen years of age or older, except that youths aged 14 and 15 may also be eligible if the SDA Job Training Plan has provided for a "pre-employment skills training program" for these youths; and
   c. Resident of the SDA to which application is made, except that non-residents may be eligible if the SDA Job Training Plan provides for service to non-residents.
2. Title I, Section 124, training programs for older individuals:
   a. Economically disadvantaged; and
   b. Fifty-five years of age or older.
3. Title II-B, Summer Youth Employment Training Programs:
   a. Economically disadvantaged; and
   b. Age 16 through 21, except that individuals aged 14 and 15 may be eligible if the SDA Job Training Plan identifies services to this age group; and
   c. Resident of the SDA to which application is made, except that non-residents may be eligible if the SDA Job Training Plan provides for service to non-residents.
4. Title III, employment and training assistance for dislocated workers programs (any one of the four eligibility categories):
   a. Category one:
      i. Has been terminated or laid-off from employment; and
      ii. Is eligible for or has exhausted his entitlement to unemployment compensation.
   b. Category two:
      i. Has been or will be terminated as a result of any permanent closure of a plant or facility; and
      ii. Is unlikely to return to his previous industry or occupation.
   c. Category three:
      i. Has been involuntarily unemployed (as defined in A.R.S. § 23-777 and A.C.R.R. R6-3-5605, R6-3-56130 and R6-3-56205) for 13 weeks or more, or is employed in stop-gap employment; and
      ii. Is unlikely to return to a previous or similar occupation within the applicant's labor market area.
   d. Category four:
      i. Has been involuntarily unemployed (as defined in A.R.S. § 23-777 and A.C.R.R. R6-3-5605, R6-3-56130 and R6-3-56205) for 13 weeks or more, or is employed in stop-gap employment; and
      ii. Has little likelihood of employment in a similar industry or occupation within the applicant's labor market area; and
5. Applicants shall be eligible for Title II-A programs even though they are not economically disadvantaged, if they have encountered substantial barriers to employment as defined in Section 203(a)(2) of JTPA and the respective SDA Job Training Plan or SDA contract with DES.
6. Handicapped youth shall be considered as a family of one for the purposes of determining eligibility.

D. Applicants determined eligible may be enrolled as participants within 45 calendar days of the date of the completed application. If the applicant is not enrolled within this time, a new application must be taken (or the original application updated to show any changes in applicant data and the date of update) and have affixed the signature of the applicant (parent or guardian if the applicant is under age 18) and the authorized SDA or subrecipient representative.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-103 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-104. Selection-enrollment responsibility

A. Each direct subrecipient of the Department shall establish criteria to be used for selection of eligible applicants to participate in JTPA programs for which the subrecipient is funded and responsible.

B. Selection criteria shall be objective and applied equitably to conform with the intent and requirements of the JTPA, and be consistent with the respective Job Training Plans. The criteria for adult programs shall relate to the potential for increased employment and earnings and reduced welfare dependency.

C. A listing of the selection criteria used shall be made available to any applicant.

D. Enrollment of non-economically disadvantaged participants with substantial barriers to employment, as defined in Section 203(a)(2) of JTPA, shall not exceed 10% of the current and cumulative number of individuals enrolled in all Title II-A, Section 202(a)(1), programs within the respective SDA.

E. Enrollment of Title III participants shall follow priority in order of eligibility categories as identified in R6-11-103.C.4.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-104 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-105. Expired

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-105 adopted as an emergency effective January 6, 1984, now adopted and amended as a permanent rule effective April 5, 1984 (Supp. 84-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 463, effective October 25, 2013 (Supp. 14-1).

R6-11-106. Expired

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). New Section R6-11-106 adopted as a permanent rule effective April 5, 1984 (Supp. 84-2).

Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 463, effective October 25, 2013 (Supp. 14-1).

R6-11-107. Confidentiality

Each subrecipient of JTPA funds shall abide by and ensure compliance with all applicable state and federal statutes, policies and regulations regarding the use and disclosure of information concerning any applicant or participant under JTPA programs.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Correction. Supp. 84-1 should read Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days. Former Section R6-11-107 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-108. Expired

Historical Note

Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-108 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 463, effective October 25, 2013 (Supp. 14-1).

R6-11-109. Expired

Historical Note

Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-109 adopted as an emergency effective January 6, 1984, now adopted and amended as a permanent rule effective April 5, 1984 (Supp. 84-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 463, effective October 25, 2013 (Supp. 14-1).

R6-11-110. Expired

Historical Note

Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-110 adopted as an emergency effective January 6, 1984, now adopted and amended as a permanent rule effective April 5, 1984 (Supp. 84-2). Section expired under A.R.S. § 41-1056(J) at 20 A.A.R. 463, effective October 25, 2013 (Supp. 14-1).

R6-11-111. Complaint resolution procedures

A. Each direct subrecipient of JTPA funds shall maintain a record of complaints and grievances, and shall appoint a grievance officer for the purpose of processing complaints or grievances filed pursuant to Sections 144 and 167 of JTPA, except for complaints of discrimination filed pursuant to Title VI of the Civil Rights Act of 1964.

B. All participants upon enrollment and other interested parties upon request shall be provided a written description of the subrecipient complaint procedures including notification of their right to file a complaint and instructions on how to do so.

C. The procedure should include at a minimum:

1. A requirement that the complaint be in writing;
2. Provide the name and address of the organization or individual against whom the complaint is made;
3. Provide the name, address and signature of the complainant;
4. Provide authorized subrecipient agency signature and date of filing;
5. Written notice of date, time and place of hearing, including notification of the opportunity to present evidence;
6. A record hearing be held within 30 days of the date of the complaint;
7. A written decision issued within 60 days of the date of the complaint.
8. The decision shall include notice of the right to appeal pursuant to Article 2 of these rules.

D. Interested parties seeking to file grievances under JTPA to the Department of Economic Security shall be referred to the nearest appropriate office of the Department.

E. In cases alleging violations of the non-discrimination provisions of JTPA Section 167 which would also be violations of Title VI of the Civil Rights Act of 1964, subrecipients shall immediately advise complainants of their right to file directly with the U.S. Department of Labor, Office of Civil Rights, and provide them with instructions on how to do so.

Historical Note

Adapted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-111 adopted as an emergency effective January 6, 1984, now adopted and amended as a permanent rule effective April 5, 1984 (Supp. 84-2).

ARTICLE 2. JTPA APPEAL PROCESS

R6-11-201. Right to appeal

Any interested party shall have a right to appeal a determination, decision, order, or other action or inaction of either the Department or a JTPA subrecipient.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-201 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-202. Hearing request

A. A request for a hearing is any oral or written communication by an interested party or its legal counsel which expresses a clear intent to appeal an adverse action. The freedom to make such a request must not be limited or interfered with in any way.

If the request is oral, the Department shall prepare a written request on behalf of the individual and obtain the individual's signature on the request.

B. The request for hearing shall be filed in accordance with the following time limits:

1. Within ten days of the date of the adverse decision when the request is an appeal of an adverse decision resulting from a subrecipient grievance procedure;
2. Within ten days of the date that the subrecipient failed to hold a hearing or issue a decision within the required time limit;
3. Within one year of the date of the alleged adverse occurrence in all other cases.

C. The submission of any request for a fair hearing not within the specified statutory or regulatory period shall be considered

timely if it is established to the satisfaction of the Department that the delay in submission was due to Department error or misinformation or to delay caused by the U.S. Postal Service or its successor.

D. The hearing shall be conducted within 30 days of the request unless all interested parties waive the time limit in writing.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-202 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-203. Notice of hearing

A. Advance written notice of the hearing will be provided by regular mail to all interested parties at least ten days prior to the hearing to permit adequate preparation of the case. The notice will include:

1. The time, date and place of the hearing. Hearings shall be held at those regularly established hearing locations most convenient to the interested parties, or, at the discretion of the hearing officer, by telephone.
2. The name, address, and telephone number of the person to notify in the event it is not possible for the party or its legal counsel to attend the scheduled hearing.
3. The hearing procedures, a statement of the issues, and any other information which would provide the party or its legal counsel with an understanding of the proceedings and contribute to the effective presentation of the party's case.
4. An explanation that the party or its legal counsel may examine the case file prior to the hearing.

B. Any interested party may waive, either in writing or on the record, his right to notice.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-203 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-204. Hearing procedures

A. Hearing officer duties.

1. Hearings will be conducted by an impartial official who has no personal involvement in the case and who was not directly involved in the initial determination of the action which is being contested.
2. The hearing official will be a state-level employee designated to conduct hearings and will:
   a. Regulate and conduct the course of the hearing consistent with due process to insure an orderly hearing.
   b. Insure all relevant issues are considered, and evidence not related to the issues is not allowed to become a part of the record.
   c. Administer oaths or affirmations.
   d. Request, receive, and make a part of the record all evidence determined necessary to decide the issues being raised.
   e. Take notice of judicially cognizable facts or generally recognized technical or scientific facts within the agency's specialized knowledge.
   f. Make a recommendation to the Director pursuant to A.R.S. § 41-1992(C).

B. Witnesses and subpoenas.

1. An interested party shall arrange for the presence of his witnesses at a hearing.
2. A notice to attend a hearing, or a subpoena, may be issued by the hearing officer on his own motion.
3. Subpoenas requiring the attendance of witnesses or the production of documentary evidence at a hearing may be issued by the hearing officer on his own motion or upon written application by an interested party. Such request shall contain the name of the individual or documents desired, the address at which the subpoena may be served, and a brief statement of the facts which the applicant expects to prove by the individual or documents requested. The application shall be submitted to the Department in sufficient time prior to the hearing to permit preparation and service of the subpoena before the hearing.
4. Witnesses subpoenaed who attend hearings shall be allowed fees at the same rate as paid by the superior court.

C. Consolidation of cases. When the same or substantially similar evidence is relevant and material to the issues in more than one case, proceedings thereon may be conducted jointly, a single record of the proceedings made and evidence introduced with respect to one case considered as introduced in the others, unless the hearing officer determines that such consolidation would be prejudicial to the interests or rights of any interested party.

D. Hearings. All interested parties shall be ready and present with all witnesses and documents at the time and place specified in the notice of hearing and shall be prepared at such time to dispose of all issues and questions involved in the appeal or petition.

1. Public hearings. All hearings shall be open to the public, but the hearing officer conducting a hearing may close the hearing to other than interested parties to the extent necessary to protect the interests and rights of the interested parties where confidential information as defined or protected by statute is offered into evidence.
2. Hearing rights. A party or its legal counsel must be given adequate opportunity to examine all documents and records to be used during the course of the hearing at a reasonable time before the date of the hearing, as well as during the hearing, and:
   a. Receive a copy, without charge, of relevant portions of the case file if requested.
   b. Present the case or have it presented by legal counsel.
   c. Present witnesses.
   d. Advance arguments without undue influence.
   e. Question or refute any testimony or evidence, including an opportunity to confront and cross-examine adverse witnesses.
   f. Submit evidence to establish all pertinent facts and circumstances in the case.

   The subrecipient which issued the adverse action shall proceed initially and have the burden of proof in presenting the case before the hearing officer.
3. Record of the hearing. A full and complete record, including properly identified exhibits, shall be kept of all proceedings in connection with an appeal or petition, and

such record shall be open for inspection by any interested party. When a transcript of the proceedings is made for the Department's use or for further proceedings, a copy may, upon written request, be furnished to interested parties who shall be charged therefor, or the charge may be waived if evidence of impecunious circumstances is presented.

4. Oral arguments and briefs. At the conclusion of any hearing, the interested parties shall be granted a reasonable opportunity to present argument on all issues of fact and law to be decided. The hearing officer shall afford interested parties an opportunity either to present oral argument or to file briefs, or both. The hearing officer may limit the time of the oral argument.
5. Continuances or reopenings. The hearing officer may, on his own motion or at the request of any interested party, upon a showing of good cause, continue the hearing to a future time or reopen a hearing before a decision is issued to take additional evidence.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-204 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-205. Hearing decisions

A. Decisions.
1. The hearing officer shall issue a recommendation in accordance with A.R.S. § 41-1992.
2. All evidence, including records and documents of the Department which the hearing officer makes a part of the record of the hearing shall be considered in determination of the case. Every decision shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law.
3. The recommendation shall be issued not later than 60 days after the filing of the request for hearing unless the time limit is waived by all interested parties in writing or on the record. A party may request a Director's Review when a recommendation has not been issued within 60 days of the request for hearing and the time limit has not been waived.
3. A copy of such recommendation, together with an explanation of rehearing and reconsideration rights, shall be delivered or mailed to each interested party or its attorney of record.
4. The recommendation of the hearing officer shall become the decision of the Department upon approval by the Director, and the decision shall become final unless a request for reconsideration is filed within ten days after the decision is mailed or otherwise delivered to the interested parties.
6. Prior to approving the recommendation, the Director may remand the case to the hearing officer for review and/or rehearing, specifying the nature of any additional issues to be considered. The Director may issue a decision which differs from the hearing officer's recommendation without remanding the case for review or rehearing.

B. Informal dispositions. An appeal or petition may be informally disposed of without further review on the merits:
1. By withdrawal, if the appellant withdraws the appeal in writing or on the record at any time before the recommendation is issued; or
2. By dismissal, if the appellant fails to file the appeal within the time permitted; or
3. By stipulation, if the parties agree on the record or in writing at any time before the recommendation is issued, subject to approval by the hearing officer; or
4. By default, if the appellant fails to appear or waives appearance at the scheduled hearing.

C. Rehearing
1. Except as provided in paragraph (7), a party may request a rehearing or review by filing a written motion specifying the particular grounds therefor. The motion must be filed within ten days after the recommendation was mailed or otherwise delivered. For purposes of this subsection, a recommendation shall be deemed to have been served when personally delivered or mailed to the party at its last known residence or place of business, or to its attorney of record.
2. A motion for rehearing under this rule may be amended at any time before it is ruled upon by the hearing officer. A response may be filed by any other party within ten days after service of such motion or amended motion. The hearing officer may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
3. A rehearing of the recommendation may be granted for any of the following causes materially affecting the moving party's rights:
   a. Irregularity in the administrative proceedings of the agency or its hearing officer or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
   b. Misconduct of the Department or its hearing officer or the prevailing party;
   c. Accident or surprise which could not have been prevented by ordinary prudence;
   d. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
   e. Excessive or insufficient penalties;
   f. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;
   g. That the recommendation is not justified by the evidence or is contrary to law.
4. The hearing officer may affirm or modify the recommendation or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in paragraph (3). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
5. Not later than ten days after a recommendation is rendered, the hearing officer may on his or her own initiative order a rehearing or review of its recommendation for any reason for which a rehearing might have been granted on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the hearing officer may grant a motion for rehearing for a reason not stated in the motion. In either case, the order granting such a rehearing shall specify the grounds therefore.
6. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party

may within ten days after such service serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days by the hearing officer for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.

7. If in a particular case the hearing officer makes specific findings that the immediate effectiveness of the recommendation is necessary for the immediate preservation of the public peace, health and safety and that a rehearing or reconsideration is impracticable, unnecessary or contrary to the public interest, the recommendation may be issued as a final decision by the Director without an opportunity for rehearing or reconsideration. If a recommendation is issued as a final decision without an opportunity for rehearing or reconsideration, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Department's final decisions.
8. For purposes of this Section the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.
9. To the extent that the provisions of this rule are in conflict with the provisions of any statute providing for rehearing of decisions of the Department such statutory provisions shall govern.

D. Director's reconsideration

1. Except as provided in subsection (C)(7) above, a party may request a Director's reconsideration of an adverse hearing decision within ten calendar days after the decision was mailed or delivered.
2. The request for reconsideration must be in writing. It should set forth a statement of the grounds for reconsideration, and may be filed personally or by mail.
3. Except as provided in subsection (C)(7) above, upon timely filing of such a request, any action pursuant to the original decision shall be stayed until the Director's decision upon reconsideration is issued.
4. After receipt of a request, the Director will:
   a. Remand the case for rehearing, specifying the nature of any additional evidence required and/or issues to be considered, or;
   b. Decide the appeal on the record.
5. The Director's recommendation shall be the final recommendation.
6. A copy of the decision will be distributed to each interested party by regular mail.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-205 adopted as an emergency effective January 6, 1984, now adopted and amended as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-206. Failure of a party to appear

A. If there is no appearance on behalf of an interested party at a scheduled hearing, the hearing officer may adjourn the hearing to a later date or proceed to review the evidence of record and such other evidence as may be presented at the scheduled hearing and make a disposition or recommendation on the merits of the case.

B. If a recommendation is issued adverse to any interested party that failed to appear at a scheduled hearing, that party may request a hearing to determine if good cause exists to reopen the hearing. The request to reopen must be in writing, filed within ten days of the date of mailing of the recommendation or disposition, and shall set forth the reasons for the failure to appear.

C. A hearing shall be held to determine whether there was good cause for the failure to appear and, in the discretion of the hearing officer, to review the merits of the case. Upon a finding of good cause for failure to appear at the scheduled hearing, the disposition or recommendation on the merits shall be vacated and the case reset for hearing.

D. Good cause warranting reopening of a case shall be established upon proof that both the failure to appear and failure to timely notify the hearing officer were beyond the reasonable control of the nonappearing party.

E. When an appellant fails to appear or waives appearance, the hearing officer may enter a default disposition without further right to appeal except as provided in this rule.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-206 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-207. Hearing officer

A. Disqualification for cause. No person shall participate on behalf of the Department in any case in which he is an interested party. Challenges to the interest of any hearing officer may be heard and decided by that hearing officer, or, upon written request, referred to his immediate supervisor.

B. Change of hearing officer. Not later than five days prior to the date set for the hearing, any interested party may file a written request for change of hearing officer. The hearing officer shall immediately transfer the matter to another hearing officer who shall conduct the hearing. No more than one change of hearing officer shall be granted to any one party.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January 6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-207 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

R6-11-208. Postponement of hearing

At the request of a party or on his own initiative, the hearing officer may order, orally or in writing, that a hearing be postponed. A requested postponement shall be granted if:

1. The request is promptly made after the party received the notice of hearing, or after the circumstance requiring postponement arises, and
2. The party has good cause for not attending the hearing at the time and date set. Good cause exists when the circumstances causing the request are beyond the reasonable control of the requesting party, and failure to grant the postponement would result in undue hardship for the requesting party.

Historical Note

Adopted as an emergency effective October 1, 1983, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 83-5). Adopted as an emergency effective January

6, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-1). Former Section R6-11-208 adopted as an emergency effective January 6, 1984, now adopted without change as a permanent rule effective April 5, 1984 (Supp. 84-2).

41-1954. Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:

1. Administer the following services:

(a) Employment services, including manpower programs and work training, field operations, technical services, unemployment compensation, community work and training and other related functions in furtherance of programs under the social security act, as amended, the Wagner-Peyser act, as amended, the federal unemployment tax act, as amended, 33 United States Code, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(b) Individual and family services, which shall include a section on aging, services to children, youth and adults and other related functions in furtherance of social service programs under the social security act, as amended, title IV, except parts B and E, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, the older Americans act, as amended, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.

(c) Income maintenance services, including categorical assistance programs, special services unit, child support collection services, establishment of paternity services, maintenance and operation of a state case registry of child support orders, a state directory of new hires, a support payment clearinghouse and other related functions in furtherance of programs under the social security act, title IV, grants to states for aid and services to needy families with children and for child welfare services, title XX, grants to states for services, as amended, and other related federal acts and titles.

(d) Rehabilitation services, including vocational rehabilitation services and sections for the blind and visually impaired, communication disorders, correctional rehabilitation and other related functions in furtherance of programs under the vocational rehabilitation act, as amended, the Randolph-Sheppard act, as amended, and other related federal acts and titles.

(e) Administrative services, including the coordination of program evaluation and research, interagency program coordination and in-service training, planning, grants, development and management, information, legislative liaison, budget, licensing and other related functions.

(f) Manpower planning, including a state manpower planning council for the purposes of the federal-state-local cooperative manpower planning system and other related functions in furtherance of programs under the comprehensive employment and training act of 1973, as amended, and other related federal acts and titles.

(g) Economic opportunity services, including the furtherance of programs prescribed under the economic opportunity act of 1967, as amended, and other related federal acts and titles.

(h) Intellectual disability and other developmental disability programs, with emphasis on referral and purchase of services. The program shall include educational, rehabilitation, treatment and training services and other related functions in furtherance of programs under the developmental disabilities services and facilities construction act (P.L. 91-517) and other related federal acts and titles.

(i) Nonmedical home and community based services and functions, including department-designated case management, housekeeping services, chore services, home health aid, personal care, visiting nurse services, adult day care or adult day health, respite sitter care, attendant care, home delivered meals and other related services and functions.

2. Provide a coordinated system of initial intake, screening, evaluation and referral of persons served by the department.

3. Adopt rules it deems necessary or desirable to further the objectives and programs of the department.

4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

5. Employ and determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons subject to chapter 4, article 4 and, as applicable, article 5 of this title as may be necessary in the performance of its duties, contract for the services of outside advisors, consultants and aides as may be reasonably necessary and reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business.

6. Make contracts and incur obligations within the general scope of its activities and operations subject to the availability of funds.

7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of its purposes, objectives and programs.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

10. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of its duties subject to the departmental rules on the confidentiality of information.

11. Establish and maintain separate financial accounts as required by federal law or regulations.

12. Advise and make recommendations to the governor and the legislature on all matters concerning its objectives.

13. Have an official seal that is judicially noticed.

14. Annually estimate the current year's population of each county, city and town in this state, using the periodic census conducted by the United States department of commerce, or its successor agency, as the basis for such estimates and deliver such estimates to the economic estimates commission before December 15.

15. Estimate the population of any newly annexed areas of a political subdivision as of July 1 of the fiscal year in which the annexation occurs and deliver such estimates as promptly as is feasible after the annexation occurs to the economic estimates commission.

16. Establish and maintain a statewide program of services for persons who are both hearing impaired and visually impaired and coordinate appropriate services with other agencies and organizations to avoid duplication of these services and to increase efficiency. The department of economic security shall enter into agreements for the utilization of the personnel and facilities of the department of economic security, the department of health services and other appropriate agencies and organizations in providing these services.

17. Establish and charge fees for deposit in the department of economic security prelayoff assistance services fund to employers who voluntarily participate in the services of the department that provide job service and retraining for persons who have been or are about to be laid off from employment. The department shall charge only those fees necessary to cover the costs of administering the job service and retraining services.

18. Establish a focal point for addressing the issue of hunger in this state and provide coordination and assistance to public and private nonprofit organizations that aid hungry persons and families throughout this state. Specifically such activities shall include:

(a) Collecting and disseminating information regarding the location and availability of surplus food for distribution to needy persons, the availability of surplus food for donation to charity food bank organizations, and the needs of charity food bank organizations for surplus food.

(b) Coordinating the activities of federal, state, local and private nonprofit organizations that provide food assistance to the hungry.

(c) Accepting and disbursing federal monies, and any state monies appropriated by the legislature, to private nonprofit organizations in support of the collection, receipt, handling, storage and distribution of donated or surplus food items.

(d) Providing technical assistance to private nonprofit organizations that provide or intend to provide services to the hungry.

(e) Developing a state plan on hunger that, at a minimum, identifies the magnitude of the hunger problem in this state, the characteristics of the population in need, the availability and location of charity food banks and the potential sources of surplus food, assesses the effectiveness of the donated food collection and distribution network and other efforts to alleviate the hunger problem, and recommends goals and strategies to improve the status of the hungry. The state plan on hunger shall be incorporated into the department's state comprehensive plan prepared pursuant to section 41-1956.

(f) Establishing a special purpose advisory council on hunger pursuant to section 41-1981.

19. Establish an office to address the issue of homelessness and to provide coordination and assistance to public and private nonprofit organizations that prevent homelessness or aid homeless individuals and families throughout this state. These activities shall include:

(a) Promoting and participating in planning for the prevention of homelessness and the development of services to homeless persons.

(b) Identifying and developing strategies for resolving barriers in state agency service delivery systems that inhibit the provision and coordination of appropriate services to homeless persons and persons in danger of being homeless.

(c) Assisting in the coordination of the activities of federal, state and local governments and the private sector that prevent homelessness or provide assistance to homeless people.

(d) Assisting in obtaining and increasing funding from all appropriate sources to prevent homelessness or assist in alleviating homelessness.

(e) Serving as a clearinghouse on information regarding funding and services available to assist homeless persons and persons in danger of being homeless.

(f) Developing an annual state comprehensive homeless assistance plan to prevent and alleviate homelessness.

(g) Submitting an annual report to the governor, the president of the senate and the speaker of the house of representatives on the status of homelessness and efforts to prevent and alleviate homelessness. The department shall provide a copy of this report to the secretary of state.

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

21. Exchange information, including case specific information, and cooperate with the department of child safety for the administration of the department of child safety's programs.

B. If the department of economic security has responsibility for the care, custody or control of a child or is paying the cost of care for a child, it may serve as representative payee to receive and administer social security and United States department of veterans affairs benefits and other benefits payable to such child. Notwithstanding any law to the contrary, the department of economic security:

1. Shall deposit, pursuant to sections 35-146 and 35-147, such monies as it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use such monies to defray the cost of care and services expended by the department of economic security for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.

3. Shall maintain separate records to account for the receipt, investment and disposition of funds received for each child.

4. On termination of the department of economic security's responsibility for the child, shall release any funds remaining to the child's credit in accordance with the requirements of the funding source or in the absence of such requirements shall release the remaining funds to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person responsible for the child if the child is a minor and not emancipated.

C. Subsection B of this section does not pertain to benefits payable to or for the benefit of a child receiving services under title 36.

D. Volunteers reimbursed for expenses pursuant to subsection A, paragraph 5 of this section are not eligible for workers' compensation under title 23, chapter 6.

E. In implementing the temporary assistance for needy families program pursuant to Public Law 104-193, the department shall provide for cash assistance to two-parent families if both parents are able to work only on documented participation by both parents in work activities described in title 46, chapter 2, article 5, except that payments may be made to families who do not meet the participation requirements if:

1. It is determined on an individual case basis that they have emergency needs.

2. The family is determined to be eligible for diversion from long-term cash assistance pursuant to title 46, chapter 2, article 5.

F. The department shall provide for cash assistance under temporary assistance for needy families pursuant to Public Law 104-193 to two-parent families for no longer than six months if both parents are able to work, except that additional assistance may be provided on an individual case basis to families with extraordinary circumstances. The department shall establish by rule the criteria to be used to determine eligibility for additional cash assistance.

G. The department shall adopt the following discount medical payment system for persons who the department determines are eligible and who are receiving rehabilitation services pursuant to subsection A, paragraph 1, subdivision (d) of this section:

1. For inpatient hospital admissions and outpatient hospital services the department shall reimburse a hospital according to the rates established by the Arizona health care cost containment system administration pursuant to section 36-2903.01, subsection G.

2. The department's liability for a hospital claim under this subsection is subject to availability of funds.

3. A hospital bill is considered received for purposes of paragraph 5 of this subsection on initial receipt of the legible, error-free claim form by the department if the claim includes the following error-free documentation in legible form:

(a) An admission face sheet.

(b) An itemized statement.

(c) An admission history and physical.

(d) A discharge summary or an interim summary if the claim is split.

(e) An emergency record, if admission was through the emergency room.

(f) Operative reports, if applicable.

(g) A labor and delivery room report, if applicable.

4. The department shall require that the hospital pursue other third-party payors before submitting a claim to the department. Payment received by a hospital from the department pursuant to this subsection is considered payment by the department of the department's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For inpatient hospital admissions and outpatient hospital services rendered on and after October 1, 1997, if the department receives the claim directly from the hospital, the department shall pay a hospital's rate established according to this section subject to the following:

(a) If the hospital's bill is paid within thirty days of the date the bill was received, the department shall pay ninety-nine percent of the rate.

(b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the department shall pay one hundred percent of the rate.

(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the department shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. For medical services other than those for which a rate has been established pursuant to section 36-2903.01, subsection G, the department shall pay according to the Arizona health care cost containment system capped fee-for-service schedule adopted pursuant to section 36-2904, subsection K or any other established fee schedule the department determines reasonable.

H. The department shall not pay claims for services pursuant to this section that are submitted more than nine months after the date of service for which the payment is claimed.

I. To assist in the location of persons or assets for the purpose of establishing paternity, establishing, modifying or enforcing child support obligations and other related functions, the department has access, including automated access if the records are maintained in an automated database, to records of state and local government agencies, including:

1. Vital statistics, including records of marriage, birth and divorce.

2. State and local tax and revenue records, including information on residence address, employer, income and assets.

3. Records concerning real and titled personal property.

4. Records of occupational and professional licenses.

5. Records concerning the ownership and control of corporations, partnerships and other business entities.

6. Employment security records.

7. Records of agencies administering public assistance programs.

8. Records of the motor vehicle division of the department of transportation.

9. Records of the state department of corrections.

10. Any system used by a state agency to locate a person for motor vehicle or law enforcement purposes, including access to information contained in the Arizona criminal justice information system.

J. Notwithstanding subsection I of this section, the department or its agents shall not seek or obtain information on the assets of an individual unless paternity is presumed pursuant to section 25-814 or established.

K. Access to records of the department of revenue pursuant to subsection I of this section shall be provided in accordance with section 42-2003.

L. The department also has access to certain records held by private entities with respect to child support obligors or obligees, or individuals against whom such an obligation is sought. The information shall be obtained as follows:

1. In response to a child support subpoena issued by the department pursuant to section 25-520, the names and addresses of these persons and the names and addresses of the employers of these persons, as appearing in customer records of public utilities, cable operators and video service providers.

2. Information on these persons held by financial institutions.

M. Pursuant to department rules, the department may compromise or settle any support debt owed to the department if the director or an authorized agent determines that it is in the best interest of this state and after considering each of the following factors:

1. The obligor's financial resources.

2. The cost of further enforcement action.

3. The likelihood of recovering the full amount of the debt.

N. Notwithstanding any law to the contrary, a state or local governmental agency or private entity is not subject to civil liability for the disclosure of information made in good faith to the department pursuant to this section.

46-134. Powers and duties; expenditure; limitation

The state department shall:

1. Administer all forms of public relief and assistance except those that by law are administered by other departments, agencies or boards.

2. Develop a section of rehabilitation for the visually impaired that shall include a sight conservation section, a vocational rehabilitation section in accordance with the federal vocational rehabilitation act, a vending stand section in accordance with the federal Randolph-Sheppard act and an adjustment service section that shall include rehabilitation teaching and other social services deemed necessary, and shall cooperate with similar agencies already established. The administrative officer and staff of the section for the blind and visually impaired shall be employed only in the work of that section.

3. Assist other departments, agencies and institutions of the state and federal governments, when requested, by performing services in conformity with the purposes of this title.

4. Act as agent of the federal government in furtherance of any functions of the state department.

5. Carry on research and compile statistics relating to the entire public welfare program throughout this state, including all phases of dependency and defectiveness.

6. Cooperate with the superior court in cases of delinquency and related problems.

7. Develop plans in cooperation with other public and private agencies for the prevention and treatment of conditions giving rise to public welfare and social security problems.

8. Make necessary expenditures in connection with the duties specified in paragraphs 5, 6, 7, 13 and 14 of this subsection.

9. Have the power to apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this chapter.

10. Make rules, and take action necessary or desirable to carry out the provisions of this title, that are not inconsistent with this title.

11. Administer any additional welfare functions required by law.

12. If a tribal government elects to operate a cash assistance program in compliance with the requirements of the United States department of health and human services, with the review of the joint legislative budget committee, provide matching monies at a rate that is consistent with the applicable fiscal year budget and that is not more than the state matching rate for the aid to families with dependent children program as it existed on July 1, 1994.

13. Furnish a federal, state or local law enforcement officer, at the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that the recipient is a fugitive felon or a probation, parole or community supervision violator or has information that is necessary for the officer to conduct the official duties of the officer and the location or apprehension of the recipient is within these official duties.

14. In conjunction with Indian tribal governments, request a federal waiver from the United States department of agriculture that will allow tribal governments that perform eligibility determinations for temporary assistance for needy families programs to perform the food stamp eligibility determinations for persons who apply for services pursuant to section 36-2901, paragraph 6, subdivision (a). If the waiver is approved, the state shall provide the

state matching monies for the administrative costs associated with the food stamp eligibility based on federal guidelines. As part of the waiver, the department shall recoup from a tribal government all federal fiscal sanctions that result from inaccurate eligibility determinations.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 22, Article 13

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 2, 2024

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

FROM: Council Staff

DATE: **March 8, 2024**

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 22, Article 13

Summary

This Five Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) or (Agency) covers six (6) rules in Title 9, Chapter 22, Article 13 related to Children's Rehabilitative Services (CRS). These rules were first implemented in 2013.

- R9-22-1301 defines terms and provides cross references to eligibility regulations.
- R9-22-1302 explains the eligibility requirements for Children's Rehabilitative Services
- R9-22-1303 provides a list of medical conditions that qualify for the CRS program and those that do not qualify for the CRS program. The medical conditions that qualify for the program are all inclusive and the list of the conditions that do not is not exclusive.
- R9-22-1304 describes the process for referring an individual for a CRS medical eligibility determination.
- R9-22-1305 outlines how continued eligibility for CRS services shall be redetermined
- R9-22-1307 states when the Agency will cover medically necessary services.

Proposed Action

The Agency did not provide a proposed course of action in 2018 and does not do so now. The Agency states that since the federal regulatory framework has not changed, here is no proposed course of action at this time.

1. **Has the agency analyzed whether the rules are authorized by statute?**

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Administration indicates that the rule provides information related to Children's Rehabilitative Services provided by AHCCCS and that is has reviewed the rule and proposes no changes to the rule as written. Stakeholders include AHCCCS and people who utilize AHCCCS 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 Administration believes the rule is the most cost effective and efficient method of complying with federal law and state law as well as the State's fiduciary responsibility to Arizona taxpayers.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Agency states it has not received written criticism over the rules in the past five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

   The Agency states the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

   The Agency states the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

   The Agency states the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

   The Agency 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 Agency states the rules are not more stringent than corresponding federal law.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Agency indicates that this subsection does not apply.

11. **Conclusion**

This Five Year Review Report from the Arizona Health Care Cost Containment System covers six rules in Title 9, Chapter 22, Article 13 related to Children's Rehabilitative Services. As indicated above, the rules are clear, concise, and understandable, effective in achieving its objective, and enforced as written. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

AHCCCS
Arizona Health Care Cost Containment System

Katie Hobbs, Governor
Carmen Heredia, Cabinet Executive Officer
and Executive Deputy Director

September 18, 2023

VIA EMAIL: grrc@azdoa.gov

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

RE: AHCCCS Title 9, Chapter 22, Article 13;

Dear Ms. Sornsin:

Please find enclosed AHCCCS's Five-Year Review Report for Title 9, Chapter 22, Article 13.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Sladjana Kuzmanovic at 602-417-4232 or sladjana.kuzmanovic@azahcccs.gov.

Sincerely,
Nicole Fries
Deputy General Counsel

Attachments

Arizona Health Care Cost Containment System

(AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 22, Article 13

September 2023

1. **Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. § 36-2904 and 36-2903.01

Specific Statutory Authority: A.R.S. § 36-261

2. **The objective of each rule:**

Rule	Objective
R9-22-1301	This rule provides definitions for terms related to Children's Rehabilitative Services offered by AHCCCS.
R9-22-1302	This rule explains the eligibility requirements for Children's Rehabilitative Services by AHCCCS.
R9-22-1303	This rule explains the medical eligibility requirements for CRS by AHCCCS.
R9-22-1304	This rule outlines the referral and disposition process of CRS Medical Eligibility by AHCCCS.
R9-22-1305	This rule outlines how continued eligibility for CRS services shall be redetermined by AHCCCS.
R9-22-1307	This rule explains the covered services provided by the AHCCCS administration.

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:**

No changes proposed.

9. **Has the agency received any business competitiveness analyses of the rules?** **Yes** __ **No** X_

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Yes.

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:

No changes proposed.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X__

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Not applicable.

14. Proposed course of action

These rules were updated in 2018 and no changes have been made since 2018. Federal regulatory framework has not changed, therefore, there is no proposed course of action at this time.

3. Medication;
4. Monitoring, administration, and adjustment for psychotropic medication and related medications;
5. Respite care as described within subsection (J);
6. Behavioral health therapeutic home care services provided by a RBHA in a professional foster home defined in 6 A.A.C. 5, Article 58 or in an adult behavioral health therapeutic home as defined in 9 A.A.C. 10, Article 1;
7. Other support services to maintain or increase the member's self-sufficiency and ability to live outside an institution.

I. Transportation services. Transportation services are covered under R9-22-211.

J. Limited Behavioral Health services. Respite services are limited to no more than 600 hours per benefit year.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed, new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 5480, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by exempt rulemaking at 17 A.A.R. 1870, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

R9-22-1206. Repealed

Historical Note

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective September 30, 1993 (Supp. 93-3). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed, new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Repealed by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

R9-22-1207. General Provisions for Payment

A. Claims submissions.

1. A provider of behavioral health services shall submit a claim for non-emergency behavioral health services provided to a member to the appropriate RBHA.
2. A provider of behavioral health services shall submit a claim for non-inpatient emergency behavioral health services provided to a member to the appropriate RBHA.
3. A provider of behavioral health services shall submit a claim for non-inpatient emergency behavioral health services provided to a member enrolled in a TRBHA to the Administration.
4. A provider of behavioral health services shall submit a claim for non-emergency behavioral health services provided to a member enrolled in a TRBHA to the Administration.
5. A provider of emergency behavioral health services, that are the responsibility of ADHS/DBHS or a contractor, shall submit a claim to the entity responsible for emergency behavioral health services under R9-22-210.01(A).
6. A provider shall comply with the time-frames and other payment procedures in Article 7 of this Chapter, if applicable, and A.R.S. § 36-2904.
7. ADHS/DBHS or a contractor, whichever entity is responsible for covering behavioral health services, shall cost avoid any behavioral health service claims if it establishes the existence or probable existence of first-party liability or third-party liability.

B. Prior authorization. Payment to a provider for behavioral health services or items requiring prior authorization may be denied if a provider does not obtain prior authorization from a RBHA, ADHS/DBHS, a TRBHA, the Administration or a contractor.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Amended under an exemption from A.R.S. Title 41, Ch. 6, pursuant to Laws 1995, Ch. 204, § 11, effective October 1, 1995; filed with the Secretary of State September 29, 1995 (Supp. 95-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 13 A.A.R. 836, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

R9-22-1208. Repealed

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 11 A.A.R. 5480, effective December 6, 2005 (Supp. 05-4).

ARTICLE 13. CHILDREN'S REHABILITATIVE SERVICES (CRS)

Article 13, consisting of Sections R9-22-1301 through R9-22-1306, made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).

Article 13, consisting of Sections R9-22-1301 through R9-22-1306, made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Exemption to promulgate rules repealed under Laws 2012, Chapter 299, Section 7 (Supp. 13-3).

Article 13, consisting of Sections R9-22-1301 through R9-22-

1309, repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004. The subject matter of Article 13 is now in 9 A.A.C. 34 (Supp. 04-1).

R9-22-1301. Children's Rehabilitative Services (CRS) related Definitions

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Article have the following meanings unless the context explicitly requires another meaning:

"Active treatment" means there is a current need for treatment of the CRS qualifying condition(s) or it is anticipated that treatment or evaluation for continuing treatment of the CRS qualifying condition(s) will be needed within the next 18 months from the last date of service for treatment of any CRS qualifying condition.

"CRS application" means a submitted form with any additional documentation required by the Administration to determine whether an individual is medically eligible for CRS.

"CRS condition" means a list of medical condition(s) in R9-22-1303 and which are referred to as covered conditions in A.R.S. § 36-2912.

"Functionally limiting" means a restriction having a significant effect on an individual's ability to perform an activity of daily living as determined by a provider.

"Medically eligible" means meeting the medical eligibility requirements of R9-22-1303.

"Redetermination" means a decision made by the Administration regarding whether a member continues to meet the requirements in R9-22-1302.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2022, effective October 1, 2015 (Supp. 15-3).

R9-22-1302. Children's Rehabilitative Services (CRS) Eligibility Requirements

Beginning October 1, 2013, an AHCCCS member who needs active treatment for one or more of the qualifying medical condition(s) in R9-22-1303 shall be given a CRS Designation. An American Indian member can choose to receive CRS services through an American Indian Health Plan or a contractor. A member enrolled in CMDP shall obtain CRS services through CMDP. The contractor shall provide covered services necessary to treat the condition(s) and other services described within the contract. The effective date of the CRS Designation shall be as specified in contract.

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 24 A.A.R. 2855, effective November 16, 2018 (Supp. 18-3).

R9-22-1303. Medical Eligibility

The following lists identify those medical condition(s) that do qualify for CRS services as well as those that do not qualify for CRS services. The list of condition(s) that qualify for a CRS Designation is all inclusive. The list of condition(s) that do not qualify for a CRS Designation is not an all-inclusive list.

1. Cardiovascular System
   a. CRS condition(s) that qualify for CRS medical eligibility:
      i. Arrhythmia,
      ii. Arteriovenous fistula,
      iii. Cardiomyopathy,
      iv. Conduction defect,
      v. Congenital heart defect other than isolated small Ventricular Septal Defects (VSD), Patent Ductus Arteriosus (PDA), Atrial Septal Defects (ASD),
      vi. Coronary artery and aortic aneurysm,
      vii. Renal vascular hypertension,
      viii. Rheumatic heart disease, and
      ix. Valvular disorder.
   b. Condition(s) not medically eligible for CRS:
      i. Arteriovenous fistula that is not expected to cause cardiac failure or threaten loss of function;
      ii. Benign heart murmur;
      iii. Branch artery pulmonary stenosis;
      iv. Essential hypertension;
      v. Patent foramen ovale (PFO);
      vi. Peripheral pulmonary stenosis;
      vii. Postural orthopedic tachycardia; and
      viii. Premature atrial, nodal or ventricular contractions that are of no hemodynamic significance.
2. Endocrine system:
   a. CRS condition(s) that qualify for CRS medical eligibility:
      i. Addison's disease,
      ii. Adrenogenital syndrome,
      iii. Cystic fibrosis (including atypical cystic fibrosis),
      iv. Diabetes insipidus,
      v. Hyperparathyroidism,
      vi. Hyperthyroidism,
      vii. Hypoparathyroidism, and
      viii. Panhypopituitarism.
   b. Condition(s) not medically eligible for CRS
      i. Diabetes mellitus,
      ii. Hypopituitarism associated with a malignancy and requiring treatment of less than 90 days,
      iii. Isolated growth hormone deficiency, and
      iv. Precocious puberty.
3. Genitourinary system medical condition(s):
   a. CRS condition(s) that qualify for CRS medical eligibility:
      i. Ambiguous genitalia,
      ii. Bladder extrophy,
      iii. Deformity and dysfunction of the genitourinary system secondary to trauma 90 days or more after the trauma occurred,

iv. Ectopic ureter,
v. Hydronephrosis, that is not resolved with antibiotics,
vi. Polycystic and multicystic kidneys,
vii. Pyelonephritis when treatment with drugs or biologicals has failed to cure or ameliorate and surgical intervention is required,
viii. Ureteral stricture, and
ix. Vesicoureteral reflux, at a grade 3 or higher.

b. Condition(s) not medically eligible for CRS:
i. Enuresis,
ii. Hydrocele,
iii. Hypospadias,
iv. Meatal stenosis,
v. Nephritis, infectious or noninfectious,
vi. Nephrosis,
vii. Phimosis, and
viii. Undescended testicle.

4. Ear, nose, or throat medical condition(s):
a. CRS condition(s) that qualify for CRS medical eligibility:
i. Cholesteatoma,
ii. Congenital/Craniofacial anomaly that is functionally limiting,
iii. Deformity and dysfunction of the ear, nose, or throat secondary to trauma, 90 days or more after the trauma occurred,
iv. Mastoiditis that continues 90 days or more after the first diagnosis of the condition,
v. Microtia that requires multiple surgical interventions,
vi. Neurosensory hearing loss, and
vii. Significant conductive hearing loss due to an anomaly in one ear or both ears equal to or greater than a pure tone average of 30 decibels that despite medical treatment, requires a hearing aid.

b. Condition(s) not medically eligible for CRS:
i. A craniofacial anomaly that is not functionally limiting,
ii. Adenoiditis,
iii. Cranial or temporal mandibular joint syndrome,
iv. Hypertrophic lingual frenum,
v. Isolated preauricular tag or pit,
vi. Nasal polyp,
vii. Obstructive apnea,
viii. Perforation of the tympanic membrane,
ix. Recurrent otitis media,
x. Simple deviated nasal septum,
xi. Sinusitis,
xii. Tonsillitis, and
xiii. Uncontrolled salivation.

5. Musculoskeletal system medical condition(s):
a. CRS condition(s) that qualify for CRS medical eligibility:
i. Achondroplasia,
ii. Arthrogryposis (multiple joint contractures),
iii. Bone infection that continues 90 days or more after the initial diagnosis,
iv. Chondrodysplasia,
v. Chondroectodermal dysplasia,
vi. Clubfoot,
vii. Collagen vascular disease, including but not limited to, ankylosis spondylitis, polymyositis, dermamyositis, polyarteritis nodosa, psoriatic arthritis, scleroderma, rheumatoid arthritis and lupus,
viii. Congenital or developmental cervical spine abnormality,
ix. Congenital spinal deformity,
x. Diastrophic dysplasia,
xi. Enchondromatosis,
xii. Femoral anteversion and tibial torsion,
xiii. Fibrous dysplasia,
xiv. Hip dysplasia,
xv. Hypochondroplasia,
xvi. Joint infection that continues 90 days or more after the initial diagnosis,
xvii. Juvenile rheumatoid arthritis,
xviii. Kyphosis (Scheurmann's Kyphosis) 50 degrees or over,
xix. Larsen syndrome,
xx. Leg length discrepancy of two centimeters or more,
xxi. Legg-Calve-Perthes disease,
xxii. Limb amputation or limb malformation,
xxiii. Metaphyseal and epiphyseal dysplasia,
xxiv. Metatarsus adductus,
xxv. Muscular dystrophy,
xxvi. Orthopedic complications of hemophilia,
xxvii. Osgood Schlatter's disease that requires surgical intervention,
xxviii. Osteogenesis imperfecta,
xxix. Rickets,
xxx. Scoliosis when 25 degrees or greater, or when there is a need for bracing or surgery,
xxxi. Seronegative spondyloarthropathy such as Reiters, psoriatic arthritis, and ankylosing spondylitis,
xxxii. Slipped capital femoral epiphysis,
xxxiii. Spinal muscle atrophy,
xxxiv. Spondyloepiphyseal dysplasia, and
xxxv. Syndactyly.

b. Condition(s) not medically eligible for CRS:
i. Back pain with no structural abnormality,
ii. Benign bone tumor,
iii. Bunion,
iv. Carpal tunnel syndrome,
v. Deformity and dysfunction secondary to trauma or injury,
vi. Ehlers Danlos,
vii. Flat foot,
viii. Fracture,
ix. Ganglion cyst,
x. Ingrown toenail,
xi. Kyphosis under 50 degrees,
xii. Leg length discrepancy of less than two centimeters at skeletal maturity,
xiii. Polydactyly without bone involvement,
xiv. Popliteal cyst,
xv. Trigger finger, and
xvi. Varus and valgus deformities.

6. Gastrointestinal system medical condition(s):
a. CRS condition(s) that qualify for CRS medical eligibility:
i. Anorectal atresia,

ii. Biliary atresia,
iii. Cleft lip,
iv. Cleft palate,
v. Congenital atresia, stenosis, fistula, or rotational abnormalities of the gastrointestinal tract,
vi. Deformity and dysfunction of the gastrointestinal system secondary to trauma, 90 days or more after the trauma occurred,
vii. Diaphragmatic hernia,
viii. Gastroschisis,
ix. Hirschsprung's disease,
x. Omphalocele, and
xi. Tracheoesophageal fistula.

b. Condition(s) not medically eligible for CRS:
i. Celiac disease,
ii. Crohn's disease,
iii. Hernia other than a diaphragmatic hernia,
iv. Intestinal polyp,
v. Malabsorption syndrome, also known as short bowel syndrome,
vi. Pyloric stenosis,
vii. Ulcer disease, and
viii. Ulcerative colitis.

7. Nervous system medical condition(s):
a. CRS condition(s) that qualify for CRS medical eligibility:
i. Benign intracranial tumor,
ii. Benign intraspinal tumor,
iii. Central nervous system degenerative disease,
iv. Central nervous system malformation or structural abnormality,
v. Cerebral palsy,
vi. Craniosynostosis requiring surgery,
vii. Deformity and dysfunction secondary to trauma in an individual that continues 90 days or more after the incident,
viii. Hydrocephalus,
ix. Muscular dystrophy or other myopathy,
x. Myelomeningocele, also known as spina bifida,
xi. Myoneural disorder, including but not limited to, amyotrophic Lateral Sclerosis or ALS, myasthenia gravis, Eaton-Lambert syndrome, muscular dystrophy, troyer sclerosis, polymyositis, dermamyositis, progressive bulbar palsy, polio,
xii. Neurofibromatosis,
xiii. Neuropathy/polyneuropathy, hereditary or idiopathic,
xiv. Residual dysfunction that continues 90 days or more after a vascular accident, inflammatory condition, or infection of the central nervous system,
xv. Residual dysfunction that continues 90 days or more after near drowning,
xvi. Residual dysfunction that continues 90 days or more after the spinal cord injury, and
xvii. Uncontrolled seizure disorder, in which there have been more than two seizures with documented compliance of one or more medications.

b. Condition(s) not medically eligible for CRS:
i. Central apnea secondary to prematurity,
ii. Febrile seizures,
iii. Headaches,
iv. Near sudden infant death syndrome,
v. Plagiocephaly, and
vi. Spina bifida occulta.

8. Ophthalmology:
a. CRS condition(s) that qualify for CRS medical eligibility:
i. Cataracts,
ii. Disorder of the iris, ciliary bodies, retina, lens, or cornea,
iii. Disorder of the optic nerve,
iv. Glaucoma,
v. Non-malignant enucleation and post-enucleation reconstruction, and
vi. Retinopathy of prematurity.

b. Condition(s) not medically eligible for CRS:
i. Astigmatism,
ii. Ptosis,
iii. Simple refraction error, and
iv. Strabismus.

9. Respiratory system medical condition(s):
a. CRS condition(s) that qualify for CRS medical eligibility:
i. Anomaly of the larynx, trachea, or bronchi that requires surgery, and
ii. Nonmalignant obstructive lesion of the larynx, trachea, or bronchi.

b. Condition(s) not medically eligible for CRS:
i. Allergies,
ii. Asthma,
iii. Bronchopulmonary dysplasia,
iv. Chronic obstructive pulmonary disease,
v. Emphysema, and
vi. Respiratory distress syndrome.

10. Dermatological system medical condition(s):
a. CRS condition(s) that qualify for CRS medical eligibility:
i. A burn scar that is functionally limiting,
ii. A hemangioma that is functionally limiting that requires laser or surgery,
iii. Complicated nevi requiring multiple procedures,
iv. Cystic hygroma such as lymphangioma, and
v. Malocclusion that is functionally limiting.

b. Condition(s) not medically eligible for CRS:
i. A deformity that is not functionally limiting,
ii. Ectodermal dysplasia,
iii. Isolated malocclusion that is not functionally limiting,
iv. Pilonidal cyst,
v. Port wine stain,
vi. Sebaceous cyst,
vii. Simple nevi, and
viii. Skin tag.

11. Metabolic CRS condition(s) that qualify for CRS medical eligibility:
a. Amino acid or organic acidopathy,
b. Biotinidase deficiency,
c. Homocystinuria,
d. Inborn error of metabolism,
e. Maple syrup urine disease,
f. Phenylketonuria, and

g. Storage disease.
12. Hemoglobinopathies CRS condition(s) that qualify for CRS medical eligibility:
a. Sickle cell anemia, and
b. Thalassemia.
13. Additional medical/behavioral condition(s) which are not medically eligible for CRS:
a. Allergies,
b. Anorexia nervosa or obesity,
c. Attention deficit disorder,
d. Autism,
e. Cancer,
f. Depression or other mental illness,
g. Developmental delay,
h. Dyslexia or other learning disabilities,
i. Failure to thrive,
j. Hyperactivity, and
k. Immunodeficiency, such as AIDS and HIV.

Historical Note
Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2022, effective October 1, 2015 (Supp. 15-3). Amended by final rulemaking at 24 A.A.R. 2855, effective November 16, 2018 (Supp. 18-3).

R9-22-1304. Referral and Disposition of CRS Medical Eligibility Determination

A. To refer an individual for a CRS medical eligibility determination a person shall submit to the Administration the following information:
1. CRS application;
2. Documentation from a specialist who diagnosed the individual, stating the individual's diagnosis;
3. Diagnostic test results that support the individual's diagnosis; and
4. Documentation of the individual's need for specialized treatment of the CRS condition through medical, surgical, or therapy modalities.

B. The Administration shall notify the CRS applicant, member or authorized representative of the outcome of the determination within 60 days of receipt of information required under subsection (A). The member may appeal the determination under Chapter 34.

Historical Note
Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2022, effective October 1, 2015 (Supp. 15-3).

R9-22-1305. CRS Redetermination

A. Continued eligibility for CRS services shall be redetermined by verifying active treatment status of the CRS qualifying medical condition(s) as follows:
1. The contractor is responsible for notifying the AHCCCS Administration of the date when a member with a CRS Designation is no longer in active treatment for the qualifying condition(s).
2. The Administration may request, at any time, that the contractor submit the medical documentation to the Administration for a CRS medical redetermination within the specified time-frames in contract.
3. The Administration shall notify the member or authorized representative of the outcome of the redetermination.

B. If the Administration determines that a member is no longer medically eligible for a CRS Designation, the Administration shall provide the member or authorized representative a written notice that informs the member that the Administration is ending the member's CRS Designation. The member may appeal the redetermination under A.A.C. Title 9, Chapter 34.

C. Upon reaching his or her 21st birthday, the member's CRS Designation will be ended.

Historical Note
Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 24 A.A.R. 2855, effective November 16, 2018 (Supp. 18-3).

R9-22-1306. Repealed

Historical Note
Adopted effective September 9, 1998 (Supp. 98-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3). Repealed by final rulemaking at 24 A.A.R. 2855, effective November 16, 2018 (Supp. 18-3).

R9-22-1307. Covered Services

The Administration will cover medically necessary services as described within Article 2 unless otherwise specified in contract.

Historical Note
Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1). Section made by exempt rulemaking at 18 A.A.R. 2074, effective August 1, 2012 (Supp. 12-3). Rulemaking exemption repealed by Laws, 2012, Ch. 299, Section 7; therefore a new Section was made by final rulemaking at 19 A.A.R. 2954, effective November 10, 2013 (Supp. 13-3).

R9-22-1308. Repealed

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

R9-22-1309. Repealed

Historical Note

Adopted effective September 9, 1998 (Supp. 98-3). Amended by final rulemaking at 6 A.A.R. 3317, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 808, effective April 3, 2004 (Supp. 04-1).

ARTICLE 14. AHCCCS MEDICAL COVERAGE FOR HOUSEHOLDS

R9-22-1401. General Information

A. Scope. This Article contains eligibility criteria to determine whether a household or individual is eligible for AHCCCS medical coverage. Eligibility criteria described under Article 3 applies to this Article.

B. Definitions. In addition to definitions contained in R9-22-101 and A.R.S. § 36-2901, the words and phrases in this Article, Article 3 and Article 15 have the following meanings unless the context explicitly requires another meaning:

"Burial plot" means a space reserved in a cemetery, crypt, vault, or mausoleum for the remains of a deceased person.

"Caretaker relative" means:

A parent of a dependent child with whom the child is living;

When the dependent child does not live with a parent or the parent in the home is incapacitated, another relative of the child by blood, adoption, or marriage in the home who assumes primary responsibility for the child's care; or

A woman in her third trimester of pregnancy with no other dependent children.

"Cash assistance" means a program administered by the Department that provides assistance to needy families with dependent children under 42 U.S.C. 601 et seq.

"Dependent child" means a child under the age of 18, or if age 18 is a full-time student in secondary school or equivalent vocational or technical training, if reasonably expected to complete such school or training before turning age 19.

"MAGI – based income" means Modified Adjusted Gross Income as defined under 42 CFR 435.603(e).

"Medical expense deduction" or "MED" means the cost of the following expenses if incurred in the United States:

A medical service or supply that would be covered if provided to an AHCCCS member of any age under Articles 2 and 12 of this Chapter;

A medical service or supply that would be covered if provided to an Arizona Long-term Care System member under 9 A.A.C. 28, Articles 2 and 11;

Other necessary medical services provided by a licensed practitioner or physician;

Assistance with daily living if the assistance is documented in an individual plan of care by a nurse, social service worker, registered therapist, or dietitian under the supervision of a physician except when provided by the spouse of an applicant or the parent of a minor child;

Medical services provided in a licensed nursing home or in an alternative HCBS setting under R9-28-101;

Purchasing and maintaining an animal guide or service animal for the assistance of a member of the MED family unit under R9-22-1436; and

Health insurance premiums, deductibles, and coinsurance, if the insured is a member of the MED family unit.

"Monthly income" means the gross countable income received or projected to be received during the month or the monthly equivalent.

"Monthly equivalent" means a monthly countable income amount established by averaging, prorating, or converting a person's income.

"Spendthrift restriction" means a legal restriction on the use of a resource that prevents a payee or beneficiary from alienating the resource.

"Tax dependent" is described under 42 CFR 435.4.

"Taxpayer" means a person who expects to file a tax return, and does not expect to be claimed as a tax dependent by another person.

"Title IV-D" means Title IV-D of the Social Security Act, 42 U.S.C. 651-669, the statutes establishing the child support enforcement and paternity program.

"Title IV-E" means Title IV-E of the Social Security Act 42 U.S.C. 670-679, the statutes establishing the foster care and adoption assistance programs.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1). Punctuation error corrected with a parenthesis added at the beginning of the definition "Caretaker" (Supp. 20-4).

R9-22-1402. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed; new Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

§ 36-261. Children who have a chronic illness or physical disability; program

Subject to the availability of monies, the department shall establish and administer a program for children who have a chronic illness or physical disability or who are suffering from a condition that leads to a chronic illness or physical disability. The program shall provide for:

1. The development, extension and improvement of services for locating these children.

2. The evaluation of needs.

3. The gathering of statistical information.

4. A statewide information and referral service for children who have a chronic illness or physical disability to link those children and their families with local service providers.

History:

Amended by L. 2015, ch. 204,s. 4, eff. 7/2/2015. Amended by L. 2014, ch. 215,s. 95, eff. 7/24/2014.

§ 36-2904. Prepaid capitation coverage; requirements; long-term care; dispute resolution; award of contracts; notification; report

A. The administration may expend public funds appropriated for the purposes of this article and shall execute prepaid capitated health services contracts, pursuant to section 36-2906, with group disability insurers, hospital and medical service corporations, health care services organizations and any other appropriate public or private persons, including county-owned and operated facilities, for health and medical services to be provided under contract with contractors. The administration may assign liability for eligible persons and members through contractual agreements with contractors. If there is an insufficient number of qualified bids for prepaid capitated health services contracts for the provision of hospitalization and medical care within a county, the director may:

1. Execute discount advance payment contracts, pursuant to section 36-2906 and subject to section 36-2903.01, for hospital services.

2. Execute capped fee-for-service contracts for health and medical services, other than hospital services. Any capped fee-for-service contract shall provide for reimbursement at a level of not to exceed a capped fee-for-service schedule adopted by the administration.

B. During any period in which services are needed and no contract exists, the director may do either of the following:

1. Pay noncontracting providers for health and medical services, other than hospital services, on a capped fee-for-service basis for members and persons who are determined eligible. However, the state shall not pay any amount for services that exceeds a maximum amount set forth in a capped fee-for-service schedule adopted by the administration.

2. Pay a hospital subject to the reimbursement level limitation prescribed in section 36-2903.01.

If health and medical services are provided in the absence of a contract, the director shall continue to attempt to procure by the bid process as provided in section 36-2906 contracts for such services as specified in this subsection.

C. Payments to contractors shall be made monthly or quarterly and may be subject to contract provisions requiring the retention of a specified percentage of the payment by the director, a reserve fund or other contract provisions by which adjustments to the payments are made based on utilization efficiency, including incentives for maintaining quality care and minimizing unnecessary inpatient services. Reserve funds withheld from

contractors shall be distributed to contractors who meet performance standards established by the director. Any reserve fund established pursuant to this subsection shall be established as a separate account within the Arizona health care cost containment system fund.

D. Except as prescribed in subsection E of this section, a member defined as eligible pursuant to section 36-2901, paragraph 6, subdivision (a) may select, to the extent practicable as determined by the administration, from among the available contractors of hospitalization and medical care and may select a primary care physician or primary care practitioner from among the primary care physicians and primary care practitioners participating in the contract in which the member is enrolled. The administration shall provide reimbursement only to entities that have a provider agreement with the administration and that have agreed to the contractual requirements of that agreement. Except as provided in sections 36-2908 and 36-2909, the system shall only provide reimbursement for any health or medical services or costs of related services provided by or under referral from the primary care physician or primary care practitioner participating in the contract in which the member is enrolled. The director shall establish requirements as to the minimum time period that a member is assigned to specific contractors in the system.

E. For a member defined as eligible pursuant to section 36-2901, paragraph 6, subdivision (a), item (v) the director shall enroll the member with an available contractor located in the geographic area of the member's residence. The member may select a primary care physician or primary care practitioner from among the primary care physicians or primary care practitioners participating in the contract in which the member is enrolled. The system shall only provide reimbursement for health or medical services or costs of related services provided by or under referral from a primary care physician or primary care practitioner participating in the contract in which the member is enrolled. The director shall establish requirements as to the minimum time period that a member is assigned to specific contractors in the system.

F. If a person who has been determined eligible but who has not yet enrolled in the system receives emergency services, the director shall provide by rule for the enrollment of the person on a priority basis. If a person requires system covered services on or after the date the person is determined eligible for the system but before the date of enrollment, the person is entitled to receive these services in accordance with rules adopted by the director, and the administration shall pay for the services pursuant to section 36-2903.01 or, as specified in contract, with the contractor pursuant to the subcontracted rate or this section.

G. The administration shall not pay claims for system covered services that are initially submitted more than six months after the date of the service for which payment is claimed or after the date that eligibility is posted, whichever date is later, or that are submitted as clean claims more than twelve months after the date of service for which payment is claimed or after the date that eligibility is posted, whichever date is later, except for claims submitted for reinsurance pursuant to section 36-2906, subsection C, paragraph 6. The administration shall not pay claims for system covered services that are submitted by contractors for reinsurance after the time period specified in the contract. The director may adopt rules or require contractual provisions that prescribe requirements and time limits for submittal of and payment for those claims. Notwithstanding any other provision of this article, if a claim that gives rise to a contractor's claim for reinsurance or deferred liability is the subject of an administrative grievance or appeal proceeding or other legal action, the contractor shall have at least sixty days after an ultimate decision is rendered to submit a claim for reinsurance or deferred liability. Contractors that contract with the administration pursuant to subsection A of this section shall not pay claims for system covered services that are initially submitted more than six months after the date of the service for which payment is claimed or after the date that eligibility is posted, whichever date is later, or that are submitted as clean claims more than twelve months after the date of the service for which payment is claimed or after the date that eligibility is posted, whichever date is later. For the purposes of this subsection:

1. "Clean claims" means claims that may be processed without obtaining additional information from the subcontracted provider of care, from a noncontracting provider or from a third party but does not include claims under investigation for fraud or abuse or claims under review for medical necessity.

2. "Date of service" for a hospital inpatient means the date of discharge of the patient.

3. "Submitted" means the date the claim is received by the administration or the prepaid capitated provider, whichever is applicable, as established by the date stamp on the face of the document or other record of receipt.

H. In any county having a population of five hundred thousand or fewer persons, a hospital that executes a subcontract other than a capitation contract with a contractor for the provision of hospital and medical services pursuant to this article shall offer a subcontract to any other contractor providing services to that portion of the county and to any other person that plans to become a contractor in that portion of the county. If such a hospital executes a subcontract other than a capitation contract with a contractor for

the provision of hospital and medical services pursuant to this article, the hospital shall adopt uniform criteria to govern the reimbursement levels paid by all contractors with whom the hospital executes such a subcontract. Reimbursement levels offered by hospitals to contractors pursuant to this subsection may vary among contractors only as a result of the number of bed days purchased by the contractors, the amount of financial deposit required by the hospital, if any, or the schedule of performance discounts offered by the hospital to the contractor for timely payment of claims.

I. This subsection applies to inpatient hospital admissions and to outpatient hospital services on and after March 1, 1993. The director may negotiate at any time with a hospital on behalf of a contractor for services provided pursuant to this article. If a contractor negotiates with a hospital for services provided pursuant to this article, the following procedures apply:

1. The director shall require any contractor to reimburse hospitals for services provided under this article based on reimbursement levels that do not in the aggregate exceed those established pursuant to section 36-2903.01 and under terms on which the contractor and the hospital agree. However, a hospital and a contractor may agree on a different payment methodology than the methodology prescribed by the director pursuant to section 36-2903.01. The director by rule shall prescribe:

(a) The time limits for any negotiation between the contractor and the hospital.

(b) The ability of the director to review and approve or disapprove the reimbursement levels and terms agreed on by the contractor and the hospital.

(c) That if a contractor and a hospital do not agree on reimbursement levels and terms as required by this subsection, the reimbursement levels established pursuant to section 36-2903.01 apply.

(d) That, except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of subdivision (f) on initial receipt of the legible, error-free claim form by the contractor if the claim includes the following error-free documentation in legible form:

(i) An admission face sheet.

(ii) An itemized statement.

(iii) An admission history and physical.

(iv) A discharge summary or an interim summary if the claim is split.

(v) An emergency record, if admission was through the emergency room.

(vi) Operative reports, if applicable.

(vii) A labor and delivery room report, if applicable.

(e) That payment received by a hospital from a contractor is considered payment by the contractor of the contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third party payors or in situations covered by title 33, chapter 7, article 3.

(f) That a contractor shall pay for services rendered on and after October 1, 1997 under any reimbursement level according to paragraph 1 of this subsection subject to the following:

(i) If the hospital's bill is paid within thirty days of the date the bill was received, the contractor shall pay ninety-nine per cent of the rate.

(ii) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the contractor shall pay one hundred per cent of the rate.

(iii) If the hospital's bill is paid any time after sixty days of the date the bill was received, the contractor shall pay one hundred per cent of the rate plus a fee of one per cent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

2. In any county having a population of five hundred thousand or fewer persons, a hospital that executes a subcontract other than a capitation contract with a provider for the provision of hospital and medical services pursuant to this article shall offer a subcontract to any other provider providing services to that portion of the county and to any other person that plans to become a provider in that portion of the county. If a hospital executes a subcontract other than a capitation contract with a provider for the provision of hospital and medical services pursuant to this article, the hospital shall adopt uniform criteria to govern the reimbursement levels paid by all providers with whom the hospital executes a subcontract.

J. If there is an insufficient number of, or an inadequate member capacity in, contracts awarded to contractors, the director, in order to deliver covered services to members enrolled or expected to be enrolled in the system within a county, may negotiate and award, without bid, a contract with a health care services organization holding a certificate of authority pursuant to title 20, chapter 4, article 9. The director shall require a health care services organization contracting under this subsection to comply with section 36-2906.01. The term of the contract shall not extend beyond the next bid and

contract award process as provided in section 36-2906 and shall be no greater than capitation rates paid to contractors in the same county or counties pursuant to section 36-2906. Contracts awarded pursuant to this subsection are exempt from the requirements of title 41, chapter 23.

K. A contractor may require that a subcontracting or noncontracting provider shall be paid for covered services, other than hospital services, according to the capped fee-for-service schedule adopted by the director pursuant to subsection A, paragraph 2 of this section or subsection B, paragraph 1 of this section or at lower rates as may be negotiated by the contractor.

L. The director shall require any contractor to have a plan to notify members of reproductive age either directly or through the parent or legal guardian, whichever is most appropriate, of the specific covered family planning services available to them and a plan to deliver those services to members who request them. The director shall ensure that these plans include provisions for written notification, other than the member handbook, and verbal notification during a member's visit with the member's primary care physician or primary care practitioner.

M. The director shall adopt a plan to notify members of reproductive age who receive care from a contractor who elects not to provide family planning services of the specific covered family planning services available to them and to provide for the delivery of those services to members who request them. Notification may be directly to the member, or through the parent or legal guardian, whichever is most appropriate. The director shall ensure that the plan includes provisions for written notification, other than the member handbook, and verbal notification during a member's visit with the member's primary care physician or primary care practitioner.

N. The director shall prepare a report that represents a statistically valid sample and that indicates the number of children age two by contractor who received the immunizations recommended by the national centers for disease control and prevention while enrolled as members. The report shall indicate each type of immunization and the number and percentage of enrolled children in the sample age two who received each type of immunization. The report shall be done by contract year and shall be delivered to the governor, the president of the senate and the speaker of the house of representatives no later than April 1, 2004 and every second year thereafter.

O. If the administration implements an electronic claims submission system it may adopt procedures pursuant to subsection I, paragraph 1 of this section

requiring documentation different than prescribed under subsection I, paragraph 1, subdivision (d) of this section.

§ 36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

(a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

(b) Establish performance measures and incentives for the department.

(c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

(d) Establish eligibility quality control reviews by the administration.

(e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

(f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system,

including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

(g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

(h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.

4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months after the date that eligibility is posted or within sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the

support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:

(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its

1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the capped fee-for-service schedule or the statewide cost-to-charge ratio established pursuant

to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:

(a) An admission face sheet.

(b) An itemized statement.

(c) An admission history and physical.

(d) A discharge summary or an interim summary if the claim is split.

(e) An emergency record, if admission was through the emergency room.

(f) Operative reports, if applicable.

(g) A labor and delivery room report, if applicable.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:

(a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.

(b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.

(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital

market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or

for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.

(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903,

subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.

2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.

2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:

(a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.

(b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

(c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning

October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.

2. A copayment of five dollars for each physician office visit.

3. A copayment of ten dollars for each urgent care visit.

4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.

History:

Amended by L. 2015, ch. 14,s. 4, eff. 7/2/2015. Amended by L. 2014, ch. 11,s. 2, eff. 7/24/2014. Amended by L. 2013SP1, ch. 10,s. 6, eff. 9/12/2013. Amended by L. 2013, ch. 202,s. 3, eff. 9/12/2013. L12, ch 122, sec 7 & ch 321, sec. 84.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 28, Article 8

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 2, 2024

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

FROM: Council Staff

DATE: **March 8, 2024**

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 28, Article 8

Summary

This Five Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) or (Agency) covers seven (7) rules in Title 9, Chapter 28, Article 8 related to TEFRA Liens and Recoveries. The rules in this Article support the operations and practices of the Arizona Long Term Care System (ALTCS) with respect to the imposition and recovery of liens authorized pursuant to the federal Tax Equity and Fiscal Responsibility Act (TEFRA) of 1982. The ALTCS program is authorized by Title XIX of the Social Security Act. This program is a federal and state funded program for persons aged 65 years and over, persons who are blind, and persons who are disabled who also require an institutional level of care.

TEFRA gives AHCCCS the authority to file liens on the real property of certain Medicaid members who are determined to be permanently institutionalized (PI) and cannot return home. The regulations allow AHCCCS to place a lien on the member's real property before the death of the member, and secures the Agency's future recovery of expenses paid for the cost of health care to the member. If there is an intention to sell or transfer the real property before the death of the member, the TEFRA lien must be satisfied first. Implementing TEFRA liens protects the State's interest and right of recovery against real property owned by the member at the time of application to the ALTCS program and increases the likelihood that AHCCCS will be able to recover payments for ALTCS services when compared to pursuing recovery without the existence of a TEFRA lien.

AHCCCS last conducted a full review of all rules in this Article in 2014. The 5YRR for all rules except for sections 804 and 805 were rescheduled under ARS § 41-1056(H), when AHCCCS conducted a rulemaking that was approved by Council March 6, 2018.

Proposed Action

AHCCCS did not propose a course of action in their report approved by Council in 2019, and does not do so now as the federal and state regulatory framework for these rules has not changed since 2019.

1. **Has the agency analyzed whether the rules are authorized by statute?**

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

   The Administration indicates that the rule provides information related to TEFRA liens and that it has reviewed the rule and proposes no changes to the rule as written. "TEFRA lien" means a lien under 42 U.S.C. 1396p of the Tax Equity and Fiscal Responsibility Act of 1982. This type of lien is placed on an AHCCCS member's interest in any real property before the member is deceased. Stakeholders include AHCCCS and people who utilize AHCCCS 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 Administration states that they propose no changes to this rule as it still imposes the least burden and cost to regulated persons under this federal and state regulatory framework.

4. **Has the agency received any written criticisms of the rules over the last five years?**

   The Agency has not received written criticism over the rules in the past five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

   The Agency states the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

   The Agency states the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

   The Agency states the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Agency 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 Agency states the rules are not more stringent than corresponding federal law.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Agency indicates this subsection is not applicable.

11. **Conclusion**

This Five Year Review Report from the Arizona Health Care Cost Containment System covers seven rules in Title 9, Chapter 28, Article 8 related to TEFRA Liens and Recoveries. As indicated above the Agency states the rules are clear, concise, and understandable, effective in achieving their objectives, and enforced as written. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

AHCCCS
Arizona Health Care Cost Containment System

Katie Hobbs, Governor
Carmen Heredia, Cabinet Executive Officer
and Executive Deputy Director

September 28, 2023

VIA EMAIL: grrc@azdoa.gov

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

RE: AHCCCS Title 9, Chapter 28, Article 8;

Dear Ms. Sornsin:

Please find enclosed AHCCCS's Five-Year Review Report for Title 9, Chapter 28, Article 8.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Sladjana Kuzmanovic at 602-417-4232 or sladjana.kuzmanovic@azahcccs.gov.

Sincerely,
Nicole Fries
Deputy General Counsel

Attachments

Arizona Health Care Cost Containment System

(AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 28, Article 8

September 2023

1. **Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. § 36-2932.

Specific Statutory Authority: A.R.S. §§ 36-2935 and 36-2956.

2. **The objective of each rule:**

Rule	Objective
R9-28-801	This rule describes definitions related to TEFRA liens.
R9-28-802	This rule describes Administration's right to file a TEFRA lien against the real property of all members who are receiving ALTCS services and are permanently institutionalized.
R9-28-803	This rule lists prohibitions and instances in which Administration is prohibited to file a TEFRA lien.
R9-28-804	This rule describes the Administration's notification requirements when intending to file a TEFRA lien, giving the member the opportunity to file a request for an exemption.
R9-28-805	This rule provides state fair hearing rights and timeframes for requesting a hearing as a result of a TEFRA lien.
R9-28-806	This rule describes the recovery process for the amount of the medical assistance provided to a member, outlines when Administration is prohibited from seeking to recover a TEFRA lien.
R9-28-807	This rule describes timeframe and instances in which Administration shall issue release of a TEFRA lien.

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:

No changes proposed.

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?

No prior course of action.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

No changes proposed as this rule still imposes the least burden and costs to regulated persons under this federal and state regulatory framework.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X__

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Not applicable.

14. Proposed course of action

All of the rules in R9-28-8 were updated in a rulemaking in 2019 except for R9-28-804 and R9-28-805. The federal and state regulatory framework has not changed since 2019, therefore, there is no proposed course of action at this time.

final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1).

R9-28-711. Repealed

Historical Note
Adopted effective November 5, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

R9-28-712. County of Fiscal Responsibility

A. General requirements.
1. The Administration shall determine the county of fiscal responsibility under A.R.S. § 36-2913 for an applicant or member who is elderly or physically disabled.
2. A program contractor shall cover services and provisions specified in 9 A.A.C. 22, Articles 2 and 7 and Article 11 of this Chapter.

B. Criteria for determining county of fiscal responsibility for an applicant.
1. If the applicant resides in the applicant's own home, the county of fiscal responsibility is the county where the applicant currently resides.
2. This applies only if subsection (B)(3) does not apply. If the applicant is residing in a NF or alternative HCBS setting, the county of fiscal responsibility is the county in which the applicant last resided in the applicant's own home.
3. If the applicant moves from another state directly into a NF or alternative HCBS setting in this state, the county of fiscal responsibility is the county in which the person currently resides.
4. If the applicant moves from the Arizona State Hospital (ASH) into a NF or alternative HCBS setting, or is an inmate of a public institution moving from the public institution into a NF or alternative HCBS setting, the county of fiscal responsibility is the county in which the applicant resided in the applicant's own home prior to admission to ASH or the public institution.

C. Criteria for determining if there is a change in county of fiscal responsibility for a member moving from one county to another county.
1. No change in the county of fiscal responsibility. There is no change in the county of fiscal responsibility for a member if:
   a. The member moves from a NF to another NF in a different county,
   b. The member moves from a NF to an alternative HCBS setting in a different county,
   c. The member moves from an alternative HCBS setting to another alternative HCBS setting in a different county,
   d. The member moves from an alternative HCBS setting to a NF in a different county,
   e. The member moves from the member's own home to an alternative HCBS setting in a different county,
   f. The member moves from the member's own home to a NF in a different county,
   g. The member moves from a NF or alternative HCBS setting into ASH, or
   h. The member moves from ASH to a NF or alternative HCBS setting.
2. Change in the county of fiscal responsibility. If a member moves from one county to another, the county of fiscal of responsibility changes to the new county if the member moves from:
   a. An alternative HCBS setting to the member's own home in a different county,
   b. A NF to the member's own home in a different county,
   c. The member's own home to the member's own home in a different county, or
   d. ASH to the member's own home.
3. Transfers between program contractors. The county of fiscal responsibility changes if the Administration transfers a member from one program contractor to a different program contractor and if:
   a. Both program contractors agree, or
   b. The Administration determines that it is in the best interest of the member.

Historical Note
Adopted effective November 4, 1998 (Supp. 98-4). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3).

R9-28-713. Repealed

Historical Note
New Section adopted by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

R9-28-714. Repealed

Historical Note
New Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

R9-28-715. Repealed

Historical Note
New Section made by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Section repealed by final rulemaking at 13 A.A.R. 458, effective April 7, 2007 (Supp. 07-1).

ARTICLE 8. TEFRA LIENS AND RECOVERIES

R9-28-801. Definitions Related to TEFRA Liens

In addition to the definitions in A.R.S. §§ 36-2901 and 36-2931, 9 A.A.C. 22, Article 1, and 9 A.A.C. 28, Article 1, the following definitions apply to this Article:

"Consecutive days" means days following one after the other without an interruption resulting from a discharge.

"File" means the date that AHCCCS receives a request for a State Fair Hearing under R9-28-805, as established by a date stamp on the request or other record of receipt.

"Home" means property in which a member has an ownership interest and that serves as the member's principal place of residence. This property includes the shelter in which a member resides, the land on which the shelter is located, and related outbuildings.

"Recover" means that AHCCCS takes action to collect from a claim.

"TEFRA lien" means a lien under 42 U.S.C. 1396p of the Tax Equity and Fiscal Responsibility Act of 1982. This type of lien is placed on an AHCCCS member's interest in any real property before the member is deceased.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 24 A.A.R. 670, effective May 5, 2018 (Supp. 18-1).

R9-28-801.01. Repealed

Historical Note

New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3). Repealed by final rulemaking at 24 A.A.R. 670, effective May 5, 2018 (Supp. 18-1).

R9-28-802. TEFRA Liens – Filings

A. Except for members under R9-28-803, AHCCCS shall file a TEFRA lien against the real property of all members who are:
1. Receiving ALTCS services, and
2. Permanently institutionalized.

B. A rebuttable presumption exists that a member is permanently institutionalized if the member has continually resided in a nursing facility, Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), or other medical institution defined in 42 CFR 435.1010 for 90 or more consecutive days. A member may rebut the presumption by providing a written opinion from a treating physician, rendered to a reasonable degree of medical certainty, that the member's condition is likely to improve to the point that the member will be discharged from the medical institution and will be capable of returning home by a date certain.

C. A TEFRA lien may also be imposed against the property of a member where a court judgment determined that benefits were incorrectly paid on behalf of the member.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 24 A.A.R. 670, effective May 5, 2018 (Supp. 18-1).

R9-28-803. TEFRA Liens – Prohibitions

AHCCCS shall not file a TEFRA lien against a member's home if one of the following individuals is lawfully residing in the member's home:
1. Member's spouse;
2. Member's child who is under the age of 21;
3. Member's child who is blind or disabled under 42 U.S.C. 1382c; or
4. Member's sibling who has an equity interest in the home and who was residing in the member's home for at least one year immediately before the date the member was admitted to a nursing facility, ICF/IID, or other medical institution as defined under 42 CFR 435.1010.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed; new Section adopted effective August 11, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 24 A.A.R. 670, effective May 5, 2018 (Supp. 18-1).

R9-28-804. TEFRA Liens – AHCCCS Notice of Intent

A. Time-frame. At least 30 days before filing a TEFRA lien, AHCCCS shall send the member or member's representative a Notice of Intent.

B. Content of the Notice of Intent. The Notice of Intent shall include the following information:
1. A description of a TEFRA lien and the action that AHCCCS intends to take,
2. How a TEFRA lien affects a member's property,
3. The legal authority for filing a TEFRA lien,
4. The time-frames and procedures involved in filing a TEFRA lien, and
5. The member's right to request an exemption.

C. Request for exemption. A member or a member's representative may request an exemption. To request an exemption the member or the member's representative shall submit a written statement to AHCCCS within 30 days from the receipt of the Notice of Intent describing the factual basis for a claim that the property should be exempt from placement of a TEFRA lien or from recovery of lien based on R9-28-802, R9-28-803, or R9-28-806. AHCCCS shall respond to the member or member's representative in writing within 30 days of receiving a request for exemption, unless the parties mutually agree to a longer period of time.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective April 25, 1990 (Supp. 90-2). Section repealed effective August 11, 1997 (Supp. 97-3). New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-805. TEFRA Liens and Estate Recovery – Member's Request for a State Fair Hearing

A. If the member or member's representative does not request an exemption under R9-28-804(C), the Administration shall send the member or representative a Notice of TEFRA Lien. The member or representative may file a request for a State Fair Hearing within 30 days of the receipt of the Notice of TEFRA Lien.

B. If the member requests an exemption and the request is denied, the Administration shall send the member or representative a Denial of a Request for Exemption. The member or representative may file a request for a State Fair Hearing within 30 days of the receipt of the Denial of Request for Exemption.

After the 30-day time-frame to file a State Fair Hearing, the member or representative is sent a Notice of a TEFRA Lien.

C. Hearings regarding TEFRA liens shall be conducted under 9 A.A.C. 34.

Historical Note
New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-806. TEFRA Liens – Recovery

A. AHCCCS shall seek to recover a TEFRA lien for the amount of the medical assistance provided up to the amount of the sale upon the sale or transfer of the real property subject to the lien made prior to the member's death.

B. After the member's death, AHCCCS shall seek to recover a TEFRA lien for the amount of the medical assistance received by the member at the age of 55 years or older from the member's estate after the sale or transfer of the real property subject to the lien. However, AHCCCS shall not seek to recover the TEFRA lien or attempt recovery against any real property subject to the TEFRA lien so long as the member is survived by the member's:
1. Spouse;
2. Child under the age of 21; or
3. Child who receives benefits under either Title II or Title XVI of the Social Security Act as blind or disabled, as defined under 42 U.S.C. 1382c.

C. AHCCCS shall not seek to recover a TEFRA lien on an individual's home if the member is survived by:
1. A sibling of the member who currently resides in the deceased member's home and who has resided in the member's home on a continuous basis since at least one year immediately before the date of the member's admission to the nursing facility, ICF/IID, or other medical institution as defined under 42 CFR 435.1010 and has; or
2. A child of the member who resides in the deceased member's home and who:
   a. Was residing in the member's home for a period of at least two years immediately before the date of the member's admission to the nursing facility, ICF/IID, or other medical institution as defined under 42 CFR 435.1010;
   b. Provided care to the member that allowed the member to reside at home rather than in an institution; and
   c. Has resided in the member's home on a continuous basis since the admission of the deceased member to the medical institution.

D. To determine whether a child of the member provided care under subsection (B)(2), AHCCCS shall require the following information:
1. A physician's written statement that describes the member's physical condition and service needs for the previous two years before the member's death;
2. Verification that the child actually lived in the member's home;
3. A written statement from the child providing the services that describes and attests to the services provided;
4. A written statement, if any, made by the member prior to death regarding the services received; and
5. A written statement from physician, friend, or relative as witness to the care provided.

Historical Note
New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 24 A.A.R. 670, effective May 5, 2018 (Supp. 18-1).

R9-28-807. TEFRA Liens – Release

AHCCCS shall issue a release of a TEFRA lien within 30 days of:
1. Satisfaction of the lien; or
2. Notice that the member has been discharged from the nursing facility, ICF/IID, or other medical institution, defined under 42 CFR 435.1010, and the member has returned home and is physically residing in the home with the intention of remaining in the home. Discharge to an alternative HCBS setting defined at R9-28-101 does not constitute a return to the home.

Historical Note
New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 24 A.A.R. 670, effective May 5, 2018 (Supp. 18-1).

ARTICLE 9. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

R9-28-901. Definitions

In addition to the definitions in A.R.S. §§ 36-2901 and 36-2931, 9 A.A.C. 22, Article 1, and 9 A.A.C. 28, Article 1, the following definitions apply to this Article:

"Estate" has the meaning in A.R.S. § 14-1201.

"Member" means a person eligible for AHCCCS-covered services under A.R.S. Title 36, Chapter 29, Article 2.

"Recover" means that AHCCCS takes action to collect from a claim.

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 7, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-902. General Provisions

The provisions in A.A.C. R9-22-1002 apply to this Section.

Historical Note
Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Amended effective November 7, 1997 (Supp. 97-4). Amended by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-903. Cost Avoidance

The provisions in A.A.C. R9-22-1003 apply to this Section.

Historical Note
New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-904. Member Participation

The provisions in A.A.C. R9-22-1004 apply to this Section.

36-2932. Arizona long-term care system; powers and duties of the director; expenditure limitation

A. The Arizona long-term care system is established. The system includes the management and delivery of hospitalization, medical care, institutional services and home and community based services to members through the administration, the program contractors and providers pursuant to this article together with federal participation under title XIX of the social security act. The director in the performance of all duties shall consider the use of existing programs, rules and procedures in the counties and department where appropriate in meeting federal requirements.

B. The administration has full operational responsibility for the system, which shall include the following:

1. Contracting with and certification of program contractors in compliance with all applicable federal laws.

2. Approving the program contractors' comprehensive service delivery plans pursuant to section 36-2940.

3. Providing by rule for the ability of the director to review and approve or disapprove program contractors' requests for proposals for providers and provider subcontracts.

4. Providing technical assistance to the program contractors.

5. Developing a uniform accounting system to be implemented by program contractors and providers of institutional services and home and community based services.

6. Conducting quality control on eligibility determinations and preadmission screenings.

7. Establishing and managing a comprehensive system for assuring the quality of care delivered by the system as required by federal law.

8. Establishing an enrollment system.

9. Establishing a member case management tracking system.

10. Establishing and managing a method to prevent fraud by applicants, members, eligible persons, program contractors, providers and noncontracting providers as required by federal law.

11. Coordinating benefits as provided in section 36-2946.

12. Establishing standards for the coordination of services.

13. Establishing financial and performance audit requirements for program contractors, providers and noncontracting providers.

14. Prescribing remedies as required pursuant to 42 United States Code section 1396r. These remedies may include the appointment of temporary management by the director, acting in collaboration with the director of the department of health services, in order to continue operation of a nursing care institution providing services pursuant to this article.

15. Establishing a system to implement medical child support requirements, as required by federal law. The administration may enter into an intergovernmental agreement with the department of economic security to implement this paragraph.

16. Establishing requirements and guidelines for the review of trusts for the purposes of establishing eligibility for the system pursuant to section 36-2934.01 and posteligibility treatment of income pursuant to subsection L of this section.

17. Accepting the delegation of authority from the department of health services to enforce rules that prescribe minimum certification standards for adult foster care providers pursuant to section 36-410, subsection B. The administration may contract with another entity to perform the certification functions.

18. Assessing civil penalties for improper billing as prescribed in section 36-2903.01, subsection K.

C. For nursing care institutions and hospices that provide services pursuant to this article, the director shall contract periodically as deemed necessary and as required by federal law for a financial audit of the institutions and hospices that is certified by a certified public accountant in accordance with generally accepted auditing standards or conduct or contract for a financial audit or review of the institutions and hospices. The director shall notify the nursing care institution and hospice at least sixty days before beginning a periodic audit. The administration shall reimburse a nursing care institution or hospice for any additional expenses incurred for professional accounting services obtained in response to a specific request by the administration. On request, the director of the administration shall provide a copy of an audit performed pursuant to this subsection to the director of the department of health services or that person's designee.

D. Notwithstanding any other provision of this article, the administration may contract by an intergovernmental agreement with an Indian tribe, a tribal council or a tribal organization for the provision of long-term care services pursuant to section 36-2939, subsection A, paragraphs 1, 2, 3 and 4 and the home and community based services pursuant to section 36-2939, subsection B, paragraph 2 and subsection C, subject to the restrictions in section 36-2939, subsections D and E for eligible members.

E. The director shall require as a condition of a contract that all records relating to contract compliance are available for inspection by the administration subject to subsection F of this section and that these records are maintained for five years. The director shall also require that these records are available on request of the secretary of the United States department of health and human services or its successor agency.

F. Subject to applicable law relating to privilege and protection, the director shall adopt rules prescribing the types of information that are confidential and circumstances under which that information may be used or released, including requirements for physician-patient confidentiality. Notwithstanding any other law, these rules shall provide for the exchange of necessary information among the program contractors, the administration and the department for the purposes of eligibility determination under this article.

G. The director shall adopt rules to specify methods for the transition of members into, within and out of the system. The rules shall include provisions for the transfer of members, the transfer of medical records and the initiation and termination of services.

H. The director shall adopt rules that provide for withholding or forfeiting payments made to a program contractor if it fails to comply with a provision of its contract or with the director's rules.

I. The director shall:

1. Establish by rule the time frames and procedures for all grievances and requests for hearings consistent with section 36-2903.01, subsection B, paragraph 4.

2. Apply for and accept federal monies available under title XIX of the social security act in support of the system. In addition, the director may apply for and accept grants, contracts and private donations in support of the system.

3. Not less than thirty days before the administration implements a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

J. The director may apply for federal monies available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state monies appropriated for

the administration of the system may be used as matching monies to secure federal monies pursuant to this subsection.

K. The director shall adopt rules that establish requirements of state residency and qualified alien status as prescribed in section 36-2903.03. The administration shall enforce these requirements as part of the eligibility determination process. The rules shall also provide for the determination of the applicant's county of residence for the purpose of assignment of the appropriate program contractor.

L. The director shall adopt rules in accordance with the state plan regarding posteligibility treatment of income and resources that determine the portion of a member's income that shall be available for payment for services under this article. The rules shall provide that a portion of income may be retained for:

1. A personal needs allowance for members receiving institutional services of at least fifteen per cent of the maximum monthly supplemental security income payment for an individual or a personal needs allowance for members receiving home and community based services based on a reasonable assessment of need.

2. The maintenance needs of a spouse or family at home in accordance with federal law. The minimum resource allowance for the spouse or family at home is twelve thousand dollars adjusted annually by the same percentage as the percentage change in the consumer price index for all urban consumers (all items; United States city average) between September 1988 and the September before the calendar year involved.

3. Expenses incurred for noncovered medical or remedial care that are not subject to payment by a third party payor.

M. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection may consider the differences between rural and urban conditions on the delivery of services.

N. The director shall not adopt any rule or enter into or approve any contract or subcontract that does not conform to federal requirements or that may cause the system to lose any federal monies to which it is otherwise entitled.

O. The administration, program contractors and providers may establish and maintain review committees dealing with the delivery of care. Review committees and their staff are subject to the same requirements, protections, privileges and immunities prescribed pursuant to section 36-2917.

P. If the director determines that the financial viability of a nursing care institution or hospice is in question, the director may require a nursing care institution and a hospice providing services pursuant to this article to submit quarterly financial statements within thirty days after the end of its financial quarter unless the director grants an extension in writing before that date. Quarterly financial statements submitted to the department shall include the following:

1. A balance sheet detailing the institution's assets, liabilities and net worth.

2. A statement of income and expenses, including current personnel costs and full-time equivalent statistics.

Q. The director may require monthly financial statements if the director determines that the financial viability of a nursing care institution or hospice is in question. The director shall prescribe the requirements of these statements.

R. The total amount of state monies that may be spent in any fiscal year by the administration for long-term care shall not exceed the amount appropriated or authorized by section 35-173 for that purpose. This article shall not be construed to impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

36-2935. Estate recovery program; liens

A. The director shall adopt rules in accordance with state and federal law to allow the administration to file a claim against a member's estate to recover paid assistance. The administration is also entitled to a lien on a member's property to recover paid assistance the member receives.

B. A member's personal representative must notify the administration of the member's estate or property within three months after the member's death if the member was at least fifty-five years of age and the administration has not already filed a statement of claim in the estate proceedings.

C. As nearly as is possible, the administration shall recover charges pursuant to the procedures prescribed in sections 36-2915 and 36-2916. If both the administration and a county have valid liens for paid assistance provided to the same member, or if both the administration and a special health care district have valid claims for paid assistance provided to the same member, the value of the property shall be divided between the administration, the special health care district and the county pro rata according to the amounts of their respective liens.

D. The administration shall impose liens in a manner consistent with federal law.

E. This section also applies to persons who are eligible pursuant to section 36-2901, paragraph 6, subdivision (a) and who receive medical assistance under article 1 of this chapter.

36-2956. Liens on damages for injuries; notification

A. The administration is entitled to a lien for the charges for hospital, medical or long-term care and treatment of an injured person for which the administration or a program contractor is responsible pursuant to this article, on any and all claims for damages accruing to the person to whom hospital or medical service is rendered, or to the legal representative of such person, on account of injuries giving rise to such claims and which necessitated such hospital or medical care and treatment. Recovery of charges pursuant to this section shall be in a manner as nearly as possible the same as the procedures prescribed in sections 36-2915 and 36-2916.

B. The member or the member's legal representative must provide written notice to the administration within twenty calendar days after the commencement of a civil action or other proceeding to establish the liability of any third party or to collect monies payable from accident insurance, liability insurance, workers' compensation, health insurance, medical payment insurance, underinsured coverage, uninsured coverage or any other first or third party source.

DEPARTMENT OF AGRICULTURE
Title 3, Chapter 3, Article 1-5

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: April 2, 2024

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

FROM: Council Staff

DATE: **March 11, 2024**

SUBJECT: **DEPARTMENT OF AGRICULTURE**
Title 3, Chapter 3, Articles 1-5

Summary

This Five Year Review Report (5YRR) from the Department of Agriculture (Department) covers thirty-five (35) rules, one (1) table, and one (1) appendix in Title 3, Chapter 3, Articles 1-5 related to the Environmental Services Division. Specifically, Article 1 relates to General Provisions; Article 2 relates to Permits, Licenses, and Certifications; Article 3 relates to Pesticide Use, Sale, and Equipment; Article 4 relates to Recordkeeping and Reporting; and Article 5 relates to Non Exclusive List of Serious, Non Serious, and De Minimus Violations.

The Department is required to certify qualified and trained individuals in the safe, and proper use and handling of restricted use pesticides. Additionally, the Department is required to comply with federal regulatory requirements, pursuant to 40 CFR §§ 171.1 *et seq.*, to maintain primacy delegation under a federal program and to align with the federal regulations under 40 CFR §§ 170 *et seq,* 172 *et seq.*, 14 CFR §§ 107.1, 137, and 48.1, and 21.171, *et seq.*, as they pertain to pesticide use and handling certification.

Proposed Action

The Department's prior proposed course of action was completed in a rulemaking approved by Council on January 3, 2024. The Department is not proposing any additional course of action at this time.

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 statutory purpose of the rules is to certify qualified and trained individuals in the safe, and proper use and handling of restricted use pesticides, including investigative provisions and penalties for issues of non-compliance, as well as to ensure compliance with federal requirements. As a result of this five-year review, the Department has provided suggestions to include technical corrections, updated federal regulations, the removal of certain rules, and other content changes to several rules; however, the Department has determined that the economic impact of the rules has not differed significantly from what was projected in the previous economic impact statement, where it was determined that the benefits of the rules outweigh the costs of those directly affected. It was postulated that businesses benefit from the rules because of the inclusion of a pesticide certification process.

Stakeholders are identified as the Department, pest control advisors, pesticide applicators, pesticide dealers and the public.

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

The Department has determined that the rules impose the least burden and costs to the regulated persons by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department has not received written criticism over the rules in the past 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:

- Article 1: 101 and Table 1 should have updated references and definitions;
- Article 2: 202-204; 206-208; and 11 should have updated references, terms, and definitions; examination and permitting clarifications;
- Article 3: 301 and 306 should have updated terms and definitions;
- Article 4: 401, 402, and 404 should have updated references, terms, and definitions;
- Article 5: 502 and 503 should have updated criteria for violations

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Department states the rules in Article 1, 3, 4 and 5 are consistent with other rules and statutes The Department says Article 2 is generally consistent with other rules and statutes with the following exceptions:

- 201, 205, 207, and 208 are not consistent with A.R.S. § 41-1080
- 204 is not consistent with R3-8-211(E) or A.R.S. § 41-1080

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department states the rules are generally effective in achieving their objectives with the following exceptions:

- 301: definitions and incorporated references are outdated or not included
- 202: federal core examination requirements in 40 CFR § 171.103 should be incorporated by reference
- 204: information regarding drone pilot licenses should be included
- 206: information regarding drone aircraft tag should be included
- 208: reciprocal license information should be included
- 212: information regarding those who are not exempt from a federal experimental use permit should be included
- Appendix A: federal testing categories in 40 CFR § 171.101 should be incorporated by reference
- 301 and 302: federal regulations in 40 CFR § 171.201 should be incorporated by reference
- 303: the rule should be simplified and redundant information removed
- 307: information regarding drone aircraft usage should be included
- 403: information on who to contact after a bulk release of a pesticide should be included
- 502: additional violations should be included
- 503: addition of violations for Certified applicators that fail to obtain the proper CEU credits should be included
- 505: addition of penalties for persons who knowingly commits a violation should be included

8. **Has the agency analyzed the current enforcement status of the rules?**

The Department enforces Article 1 and 4 as written. The Department generally enforces the rules in Article 2, 3, and 5 as written with the following exceptions:

- 211: cross reference to Rule 208(F)(1) is incorrect
- 301: exception listed in subsection (C)(3) does not accurately reflect experimental use exemptions
- 305: rule fails to allow for sales to other licensed sellers
- 502: Subsection (A)(7) refers to pesticides not registered with EPA. Subsection (B)(2) and (F)(1) refer to not providing pesticides to a regulated grower without a permit, but this is only enforced with respect to restricted use pesticides.
- 506: fails to address assessing points before a hearing a settlement hearing is requested

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

The Department states the rules are not more stringent than corresponding federal law.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The permits and certifications issued under Articles 2 through 4 are compliant with the requirements of A.R.S. § 41-1037, but do not qualify for a general permit as qualifying information and documentation, qualifying conditions, or education and training requirements must be satisfied prior to the issuance of a license, permit or certification.

11. **Conclusion**

This Five Year Review Report from the Department of Agriculture covers thirty-five rules, one table, and one appendix in Title 3, Chapter 3, Articles 1-5 related to the Environmental Services Division. The Department completed its prior course of action in January of 2024. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

KATIE HOBBS
Governor

PAUL E. BRIERLEY
Director

Arizona Department of Agriculture

postal: 1802 W. Jackson Street, #78 Phoenix, Arizona 85007 ~ physical: 1110 W. Washington Street, Phoenix, AZ 85007
P: (602) 542-0994 F: (602) 542-1004

October 26, 2023

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, Arizona 85007

RE: Five-Year Rule Review Report for A.A.C. Title 3, Chapter 3, Articles 1-5

Dear Ms. Sornsin:

Enclosed, please find the Arizona Department of Agriculture's ("Department") five-year rule review report for A.A.C. Title 3, Chapter 3, Articles 1 through 5. The Department reviewed all the rules in Articles 1 through 5. The Department does not intend for any rules to expire under A.R.S. § 41-1056(J). The Department certifies it is in compliance with A.R.S. § 41-1091.

Please contact Jack Peterson at (602) 542-3575 or jpeterson@azda.gov with any questions about this report.

Sincerely,

Paul E. Brierley
Director

cc: Jack Peterson, Associate Director

Arizona Department of Agriculture

5 YEAR REVIEW REPORT

Title 3. Agriculture

Chapter 3. Department of Agriculture - Environmental Services Division

Articles 1-5

October 27, 2023

1. **Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. § 3-107(A)(1)
Specific Statutory Authority: A.R.S. §§ 3-264, 3-343, 3-363, 3-366(A),

2. **The objective of each rule:**

Rule	Objective
R3-3-101	This rule sets forth the definitions of particular terms used within Articles 1-5.
R3-3-102	This rule sets forth the general provisions for administrative completeness and substantive reviews of license or permit applications related to pesticides, commercial feed, fertilizers, agricultural safety, and native plants.
Table 1.	This rule prescribes specific time-frames for processing applications for licenses and permits issued under this chapter.
R3-3-201	This rule prescribes the requirements for obtaining a regulated grower permit, as well as application requirements, fees, and terms of validity.
R3-3-202	This rule sets forth the requirements for taking and passing the core examination, as well as subjects covered in the examination.
R3-3-203	This rule sets forth the requirement to obtain a seller permit, the information needed on the application and the application fee, the permit term, and the need to designate a responsible individual for each location where restricted use pesticides are sold.
R3-3-204	This rule sets forth the qualifications for obtaining an agricultural aircraft pilot license, the application and examination requirements, the license fee, the terms of validity, and the renewal requirements.
R3-3-205	This rule sets forth the conditions for obtaining a custom applicator license, the application requirements, the license fee, the term of the license, the examination requirements, and the renewal requirements.
R3-3-206	This rule sets forth when an equipment tag is needed, how to display the tag, the tag application requirements, the fee, the term, and the requirements related to transferring a tag.
R3-3-207	This rule sets forth the requirement to obtain a Pest Control Advisor ("PCA") license, the application requirements, the testing requirements, the educational prerequisites, the fee, the term of the license, the renewal requirements, and the exemptions from licensure.
R3-3-208	This rule sets forth when certification is required, how to apply for certification, the special requirements for fumigation certification, the fee, the term of the certification, the examination requirements, certification categories, and renewal requirements.
R3-3-209	This rule sets forth exemptions from the requirement to have an Article 2 license, permit, or certification from the Department and, in the case of government employees who act as PCAs and apply restricted use pesticides, exemption from the fee for a PCA license or commercial applicator certification.
R3-3-210	This rule sets forth grounds for suspending or revoking a license, permit or certification

	issued under Article 2 and notes the applicable hearing rights.
R3-3-211	This rule sets forth the submission requirements to have a course approved for Continuing Education Credits ("CEU") credit, allows the Department to adjust the allowable CEU credits if the course varies significantly from that approved by the Department, sets out the approved topics of instruction, and provides that 1 hour of credit results from 50 minutes of instruction.
R3-3-212	The objective of this rule is to identify who needs an experimental use permit and what a person needs to do to obtain one.
Appendix A.	This rule details the type of knowledge required for applicator certification, including category specific knowledge for commercial applicator certification.
R3-3-301	The purposes of this rule are to (i) require people to follow the pesticide labeling in using a pesticide while allowing certain actions not prohibited by the labeling, (ii) require pesticides to be registered with limited exceptions, (iii) prohibit direct releases and drift that causes any unreasonable effect, (iv) impose duties on regulated growers to keep people and livestock outside of the application area during the application and not harvest or allow livestock to graze in the field until permitted by the labeling, (v) limit people involved in government sponsored emergency pest control to apply the pesticide to the application site, (vi) instruct pilots to fly crosswind and at the downwind side of the field, (vii) limit application of highly toxic pesticides, and (viii) allow application to buffer zones.
R3-3-302	The purposes of this rule are to set forth the requirements for preparing a Form 1080 before pesticide applications by a custom applicator, the requirement to follow the directions in the Form 1080 unless it conflicts with the pesticide label, the requirement to notify a regulated grower of the application date, and the requirement to verifying the Form 1080 after a pesticide application.
R3-3-303	The purpose of this rule is to describe information that a person must provide to the Department before using an experimental use pesticide and to require that the pesticide be used as approved by the Department.
R3-3-304	The purpose of this rule is to set out the criteria for designating a pesticide management area.
R3-3-305	The purpose of this rule is to ensure that restricted use pesticides and pesticides being used for an agricultural purpose are only sold to someone authorized to use the pesticide.
R3-3-306	The purpose of this rule is to ensure that any person purchasing restricted use pesticides without applicator certification has proof that the restricted use pesticide will be applied by a certified applicator or under the supervision of a certified applicator.
R3-3-307	The purpose of this rule is to set out, in regards to the use of aircraft to apply pesticides, the licensing requirements for the aircraft and for the pilot.
R3-3-308	The purpose of this rule is to ensure that pesticides are stored in a secure location, that pesticides are not discharged into the environment contrary to label directions and the law, that pesticide containers are not confused with food containers; that pesticide service containers are labeled with key information about the pesticide; and that pesticides in containers do not become a hazard to people, animals, or property.
R3-3-309	The purpose of this rule is to allow pesticide containers whose label allows for recycling or reconditioning to be sent for recycling or reconditioning provided that the container is kept in a secure, inaccessible for use, location until shipping for recycling or reconditioning.
R3-3-310	The purpose of this rule is to require that a fumigant be used by a certified person or under the person's immediate supervision and to provide for warning signs during fumigation use where the fumigant label does not specify warning requirements.
R3-3-401	The objective of this rule is to require sellers to keep records of agricultural use and restricted use pesticide sales, including information about the purchaser, the applicable permit numbers, and the date and quantity sold.

R3-3-402	The objective of this rule is to require private pesticide applicators and golf pesticide applicators to keep records of their use of restricted use pesticides, emergency use pesticides, and experimental use pesticides.
R3-3-403	The objective of this rule is to require applicators to immediately notify the Department of Agriculture, and as applicable the Department of Public Safety, of any bulk release of pesticides and to provide a written report to the Department of Agriculture of the details of the release and clean up.
R3-3-404	The objective of this rule is to require custom pesticide applicators and regulated growers to provide reports of their pesticide use to the Department on a form called a 1080, to set when the 1080s are due, and to set a retention period of custom applicators to keep copies of the 1080s.
R3-3-405	The objective of this rule is to require applicators to report to the Department the amount of agricultural use pesticide concentrate disposed of and the date, method and location of the disposal.
R3-3-501	The objective of this rule is to list examples of pesticide violations considered serious violations as defined by A.R.S. § 3-361(9).
R3-3-502	The objective of this rule is to list examples of pesticide violations considered nonserious violations as defined by A.R.S. § 3-361(4).
R3-3-503	The objective of this rule is to list examples of pesticide violations considered de minimis violations as defined by A.R.S. § 3-361(2).
R3-3-504	The objective of this rule is to set out circumstances under which a serious violation will be treated as a nonserious violation and a nonserious violation will be treated as a de minimis violation.
R3-3-505	The objective of this rule is to explain how a violation level will be determined for violations of law that are not specifically listed in rules 501, 502 and 503.
R3-3-506	The objective of this rule is to explain how civil penalties will be calculated for pesticide violations.

3. Are the rules effective in achieving their objectives? **Yes ___ No X**

Except for rule R3-3-101 the rules in Article 1 are achieving their objective. Except for rule R3-3-202, 204, 206, 208, 212, and Appendix A, the rules in Article 2 are achieving their objective. Rules 304, 305 and 306 in Article 3 are effective in achieving their objective. Except for rule 403, the rules in Article 4 are achieving their objective. Rules 501, 504 and 506, in Article 5 are achieving their objective.

Rule	Why is the rule not effective in achieving its objective?
R3-3-101	The rule is mostly achieving its objective. However, some of the definitions and incorporated references are outdated or not included, and are not entirely achieving the objective of the rule.
R3-3-202	The is mostly achieving its objective but would be more effective if the rule was repealed and the federal core examination requirements in 40 CFR § 171.103 were incorporated by reference.
R3-3-204	The is mostly achieving its objective but would be more effective if the inclusion of a drone pilot license was included to modernize the rule with industry practices.
R3-3-206	The is mostly achieving its objective but would be more effective if the inclusion of an equipment tag for drone aircraft.
R3-3-208	The is mostly achieving its objective but would be more effective if the inclusion of a reciprocal license for individuals have an equivalent certification issued by another state, federal, or tribal agency.
R3-3-212	This rule is only partially effective in achieving its objective. The rule specifically addresses what a person needs to do if the person is exempt from the need to obtain a federal experimental use permit. This rule does not address, however, what a person needs to do who is not exempt from having a federal experimental use permit. Instead,

	those requirements are encapsulated in rule R3-3-303 only, which creates some confusion since a state issued experimental use permit is still needed and that is what this rule is supposed to cover.
Appendix A	The is mostly achieving its objective but would be more effective if the rule was repealed and the federal testing categories in 40 CFR § 171.101 were incorporated by reference.
R3-3-301	The is mostly achieving its objective but would be more effective by including requirements for the direct supervision of a non-certified applicator by incorporating federal regulations in 40 CFR § 171.201.
R3-3-302	The is mostly achieving its objective but would be more effective by including requirements for the non-certified applicator record keeping requirements by incorporating federal regulations in 40 CFR § 171.201.
R3-3-303	The rule would be more effective by simplifying the rule and by removing redundant requirements for an experimental use pesticide that are prescribed in Rule R3-3-212.
R3-3-307	The is mostly achieving its objective but would be more effective if the inclusion of a drone aircraft usage to modernize the rule with industry practices.
R3-3-403	The rule is mostly achieving its objective, but would be more effective if information was provided on who to contact after a bulk release of a pesticide.
R3-3-502	The rule is mostly effective in achieving its objective. The Department believes the rule would be more effective with the addition of a few violations. The Department believes it would be useful to list as a nonserious violation using a restricted use pesticide without being certified or acting under the direct supervision of a certified person and using a fumigant without being fumigation certified or acting under the supervision of a person with fumigation certification. The rule would also be more effective by including provisions for drone pilot violations.
R3-3-503	The rule is mostly effective in achieving its objective. The Department believes the rule would be more effective with the addition of a violation for Certified applicators that fail to obtain the proper CEU credits.
R3-3-505	The rule is partially achieving its objective. The Department believes the rule would be more effective with the addition of penalties for a person who knowingly commits a violation.

4. **Are the rules consistent with other rules and statutes?** **Yes___**No **X**

The rules in Articles 1, 3, 4, and 5 are consistent with other rules and statutes. Except for rules 201, 204, 205, 207, and 208 the rules in Article 2 are consistent with other rules and statutes.

Rule	Why is the rule not consistent with other rules and statutes?
R3-3-201	The rule in mostly consistent with other rules and statues. It would be more consistent with A.R.S. § 41-1080 by prescribing requirements to comply with the state's lawful presence requirements when receiving public benefits.
R3-3-204	R3-8-211(E) prescribes the number of times a person may retake an exam, two times in a 6 month period. Rule R3-3-204 prescribes three times in a 12-month period. Provisions in rule R3-8-211, allows the number of times a person can take the exam to 6 times in a year versus four. It would also be more consistent with A.R.S. § 41-1080 by prescribing requirements to comply with the state's lawful presence requirements when receiving public benefits.
R3-3-205	The rule in mostly consistent with other rules and statues. It would be more consistent with A.R.S. § 41-1080 by prescribing requirements to comply with the state's lawful presence requirements when receiving public benefits.
R3-3-207	The rule in mostly consistent with other rules and statues. It would be more consistent with A.R.S. § 41-1080 by prescribing requirements to comply with the state's lawful presence requirements when receiving public benefits.

R3-3-208	The rule in mostly consistent with other rules and statues. It would be more consistent with A.R.S. § 41-1080 by prescribing requirements to comply with the state's lawful presence requirements when receiving public benefits.

5. **Are the rules enforced as written?** **Yes ___ No** X__

The rules under Articles 1 and 4 are enforces as written. Except for rule R3-3-211, the rules in Article 2 are enforced as written. Except for rules R3-3-301 and 305, the rules in Article 3 are enforced as written. Except for rules R3-3-502 and 506, the rules in Article 5 are enforced as written.

Rule	Why is the rule not enforced as written?
R3-3-211	The Department mostly enforces this rule as written, except for subsection (B)(1). Rule 208(F)(1) was amended in 2012, so the cross-reference to that rule is no longer valid. The Department enforces that part of this rule as though former rule 208(F)(1) were still in effect.
R3-3-301	The Department mostly enforces the rules as written. The exception listed in subsection (C)(3) does not accurately reflect experimental use exemptions; it is too narrow. A person may use a pesticide under a state-issued experimental use permit without EPA registration outside of a college or company-owned research facility. Also, experiments at a college or company-owned research facility are exempt from the experimental use permit and registration requirements. See R3-3-212. A person may also use a pesticide without EPA registration if the person has a federal experimental use permit or if the use is exempt from the need to have a federal experimental use permit. See 40 CFR § 172.3. The Department enforces subsection (C)(3) as described here, which is in accordance with state and federal law. The rule also does not prevent a person from selling or distributing an altered or repackaged pesticide.
R3-3-305	The Department mostly enforces this rule as written. The Department notes that the rule inadvertently fails to allow for sales to other licensed sellers. This was not the intent of the rule, and the Department allows sellers to sell to other licensed sellers.
R3-3-502	This rule is mostly enforced as written. Subsection (A)(7) refers to pesticides not registered with EPA. Pesticides covered by an experimental use permit do not have to be registered with EPA, and it is not a violation to use an experimental use permit that is not EPA registered. Subsection (B)(2) refers to not providing pesticides to a regulated grower without a permit, but this is only enforced with respect to restricted use pesticides and pesticides intended to be used for an agricultural purpose. See R3-3-201(A) & R3-3-305(A). Subsection (F)(1) suffers from the same issue as subsection (B)(2) and is enforced in the same way.
R3-3-506	This rule is mostly enforced as written. The opening paragraph of subsection (A) refers to a judge assessing points or the Associate Director assessing points when entering a settlement after an informal settlement conference, but fails to speak about assessing points before a hearing is requested. In practice, when the Department finds a violation, the Associate Director assesses points and notifies the respondent of the opportunity to contest the matter. If the respondent requests a hearing, then the judge affirms, modifies or rejects the points assessed by the Associate Director.

6. **Are the rules clear, concise, and understandable?** **Yes __ No** X__

Except for Rule R3-3-101 and Table 1., the rules in Article 1 are clear, concise and understandable. In Article 2, rules R3-3-201, 205, 209, and 212 and Appendix A are clear, concise and understandable. Except for rules 301 and 306, the rules in Article 3 are clear, concise and understandable. Rules 403 and 405 in Article 4 are clear, concise and understandable. Except for rules 502 and 503, the rules in Article 5 are clear, concise and understandable.

Rule	Why is the rule not clear, concise, or understandable?

R3-3-101	The rule is mostly clear, concise and understandable. The rule would be clearer and more concise with changes to the definitions in the rule.
Table 1.	The rule is mostly clear, concise and understandable. The rule would be clearer with updated references to rules that are associated to the licensing time-frames and updated license type abbreviations.
R3-3-202	The rule is partially clear, concise and understandable. It is confusing to list agricultural aircraft pilot as a category requiring a core exam because a commercial applicator's certification is required to obtain an agricultural aircraft pilot's license and the core exam is taken as part of the commercial applicator certification. There is not a separate core exam that pilots take in addition to the core exam for commercial applicator certification. The rule also does not make clear that the core exam for custom applicators is different from the core exam for pest control advisors, which is different from the core exam for certified applicators.
R3-3-203	The phrase "pesticide for an agricultural purpose" does not match the language used in the definition of seller, which refers to "other type of pesticide intended to be used for an agricultural purpose."
R3-3-204	The rule is mostly clear, concise and understandable. The federal references are outdated and would be more concise with changes to update the federal references in the rule.
R3-3-206	The rule is mostly clear, concise and understandable. The rule would be clearer by updating the term “licensed piece of equipment” with “equipment with a valid tag”.
R3-3-207	The rule is mostly clear, concise and understandable. The rule would be clearer by indicating what is an acceptable passing score for an examination.
R3-3-208	The rule would be clearer and more concise by indicating the age requirement for becoming a certified applicator and requiring the individual indicates on the application which categories the individual seeks certification. It would also be more concise if the examination categories and competency standards were incorporated by reference from the federal regulations under 40 CFR §§ 171.103 and 171.105.
R3-3-211	The rule is mostly clear, concise and understandable. The rule would be clearer by indicating that the Department shall provide adequate information to an applicant for CEU subject approval. The rule would be more concise by indicating that a license, permit or certification may be denied or suspend after an opportunity for an admirative hearing.
R3-3-301	The rule is mostly clear concise and understandable. The rule would be clearer by indicating that an “application site” is the area regulated, not just a “field”.
R3-3-306	The rule is mostly clear concise and understandable. The rule would be clearer by indicating that a seller must have on file the relationship of an “immediate family member” if applicable, to the certified applicator obtaining a restricted use pesticide.
R3-3-401	The rule is mostly clear concise and understandable. The rule would be clearer by updating out dated terms and references
R3-3-402	The rule is mostly clear concise and understandable. The rule would be clearer by updating language to align with other sections of the Article. The rule would be more concise by correctly requiring township information as township, range and section.
R3-3-404	The rule is mostly clear concise and understandable. The rule would be more concise by updating the reference to ADEQ's groundwater protection list to A.A.C. R18-6-301.
R3-3-502	The rule is mostly clear concise and understandable. The rule would be more concise by providing information on what criteria does not apply to general violations for using a pesticide and by expanding the explanation on what a regulated person shall not do.
R3-3-503	The rule is mostly clear concise and understandable. The rule would be more concise by providing information on what criteria applies to determine de minimis violations for using a pesticide and by expanding the explanation on what a regulated person shall not do.

7. **Has the agency received written criticisms of the rules within the last five years?Yes _ No _X_**

8. Economic, small business, and consumer impact comparison:

The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

9. **Has the agency received any business competitiveness analyses of the rules? Yes __ No _X_**

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

The agency has not completed the course of action as indicated in the previous five-year rule review. However, the agency is in the process of completing the course of action in the previous five-year rule review for Articles 1 through 5 under a notice of proposed rulemaking that closed on July 5, 2023 and is expecting to be completed prior to February 15, 2024.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:

The Department has determined that the 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 the regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws? Yes ____ No _X_**

Federal laws 7 U.S.C. §§ 136 *et seq.* (Federal Insecticide, Fungicide and Rodenticide Act), applies to the subject of the rules R3-3-120, 210, 212, 301, 302, 306, 401, 402, and 505. These rules are not more stringent to federal law. Federal law 49 U.S.C. § 40101, while not referenced in the rules, applies to the subject of the rules R3-3-204, 205, 206, and 307 as they relate to federal laws for air commerce and safety. These rules are not more stringent to federal law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The permits and certifications issued under Articles 2 through 4 are compliant with the requirements of A.R.S. § 41-1037. The licenses and certifications issued under Articles 2 through 4 do not qualify as a general permit under A.R.S. § 41-1037 since qualifying information and documentation, qualifying conditions, or education and training requirements must be satisfied prior to the issuance of a license, permit or certification.

14. Proposed course of action

The Department plans to complete the proposed course of action by March, 2024 for Articles 1 through 5, with the adoption of revised rules that are in the rulemaking process under a Notice of Proposed Rulemaking that the close of record occurred on July 5, 2023.

Rule	Proposed course of action for the rule.

R3-3-101	The Department proposes to make changes that will update antiquated federal references, include new definitions to align with current practices, federal regulations and provide clarification for other amended areas of the Chapter.
R3-3-102	There is no proposed course of action for this rule.
Table 1.	The Department proposes to make changes for the licensing time-frames that will update the authority references for clarity and will remove any outdated licenses that are no longer provided by the Department or that are covered under other certification types. Changes will also add the licensing time-frames for a "Drone Pilot License". Abbreviations for license types will be updated and include the complete authority references.
R3-3-201	The Department proposes to make technical corrections and include provisions for complying with the lawful presence requirements under A.R.S. § 41-1080.
R3-3-202	The Department proposes to repeal this rule, and federal core testing standards will be incorporated by reference in other parts of the Chapter.
R3-3-203	The Department proposes to make changes that will align with federal regulations under 40 CFR Part 170, make technical changes, and remove antiquated provisions.
R3-3-204	The Department proposes changes that will update federal references. It will clarify provisions for complying with the lawful presence requirements under A.R.S. § 41-1080. Changes will also prescribe the requirements for obtaining a drone pilot license for the application of a pesticide using pilotless aircraft that is register with the FAA.
R3-3-205	The Department proposes changes that will make technical corrections to the rule, update federal references, and clarify provisions for complying with the lawful presence requirements under A.R.S.§ 41-1080.
R3-3-206	The Department proposes changes that will update provisions to comply with the addition of drone equipment and make other technical changes.
R3-3-207	The Department proposes changes that will clarify provisions for complying with the lawful presence requirements under A.R.S.§ 41-1080, make technical changes, and provide clarification on obtaining CEUs, and on the renewal application process, and on the fees that are required by the Department within the specified time-period.
R3-3-208	The Department proposes changes that will update federal references, include provisions to comply with federal regulations under 40 CFR Part 171, make technical corrections, clarify provisions for complying with the lawful presence requirements under A.R.S.§ 41-1080, and remove irrelevant sub-sections. Another change to this rule includes guidelines on the Department's requirements to obtain reciprocal certifications.
R3-3-209	The Department proposes to repeal this rule. The updated license and fee exemption language will be incorporated into other sections of the Article.
R3-3-210	The Department proposes changes to this rule that will make technical corrections and incorporate federal requirements for the suspension or revocation of a license, permit, or certification.
R3-3-211	The Department proposes changes to this rule that will include clarification language for CEU subject approval, update a rule reference, and make technical corrections.
R3-3-212	The Department proposes changes to this rule that will ensure compliance with federal regulations regarding experimental use permits for pesticide use.
Appendix A.	The Department proposes to repeal this rule, and federal testing categories for certification are incorporated by reference in other sections of the Article.
R3-3-301	The Department proposes changes to this rule that will make technical changes and prescribe restrictions for altered or repackaged pesticides. Proposed changes also include the requirements for the supervision of noncertified pesticide applicators.
R3-3-302	The Department proposes changes to this rule that will include technical changes and incorporate recordkeeping requirements for non-certified applicators to comply with federal regulations under 40 CFR § 171.201.

R3-3-303	The Department proposes changes to this rule to remove many of the provisions that are initially prescribed in rule R3-3-212 and incorporate them by reference. Proposed changes also simplify the reporting process for an experimental use pesticide.
R3-3-304	There is no proposed course of action for this rule.
R3-3-305	The Department proposes changes to align with federal requirements for pesticide sales including the requirement to have a valid certification and the requirement that restricted use pesticides shall only be sold to a properly licensed person.
R3-3-306	The Department proposes changes to make technical corrections and align with federal regulations.
R3-3-307	The Department proposes changes to update the federal regulation that is incorporated by reference, 14 CFR §§ 21.171 et seq. and 14 CFR § 48.1 include provisions for drone operations.
R3-3-308	There is no proposed course of action for this rule.
R3-3-309	There is no proposed course of action for this rule.
R3-3-310	There is no proposed course of action for this rule.
R3-3-401	The Department proposes changes that will make technical corrections and update terms.
R3-3-402	The Department proposes changes make technical corrections to align with the rulemaking.
R3-3-403	The Department proposes changes that will update the emergency reporting reference with ADEQ.
R3-3-404	The Department proposes changes that will make technical corrections to align with references to ADEQ's groundwater protection list.
R3-3-405	There is no proposed course of action for this rule.
R3-3-501	There is no proposed course of action for this rule.
R3-3-502	The Department proposes changes make technical corrections to align with the rulemaking.
R3-3-503	The Department proposes changes make technical corrections to align with the rulemaking.
R3-3-504	There is no proposed course of action for this rule.
R3-3-505	The Department proposes changes that will add provisions that relate to the classification of unlisted violations to align with federal requirements, including penalties for violations that could harm the economy, environment, or human or animal health. Proposed changes will also prescribe provisions for the Director to deny, suspend or revoke an applicator certification for specific violations.
R3-3-506	The Department proposes changes make technical corrections to align with the rulemaking.

§ R3-3-101. Definitions

In addition to the definitions in A.R.S. §§3-341 and 3-361, the following terms apply to this Chapter:

"Acute toxicity" means adverse physiological effects that result from a single dose or single exposure to a chemical; or any poisonous effect produced by a single dose or single exposure to a chemical within a short period of time, usually less than 96 hours.

"ADEQ" means the Arizona Department of Environmental Quality

"Adulterate" means to change a pesticide so that:

Its strength or purity falls below the standard of quality stated on the labeling under which it is sold,

Any substance has been substituted wholly or in part for the pesticide, or

Any constituent of the pesticide has been wholly or in part abstracted.

"Agricultural aircraft pilot" or "AAP" means any individual who pilots an agricultural aircraft to apply a pesticide.

"Agricultural commodity" means any plant, animal, plant product, or animal product produced for commercial or research purposes.

"Agricultural establishment" means any farm, ranch, forest, nursery, or greenhouse.

"Agricultural purpose" means use of a pesticide on an agricultural commodity. It excludes the sale or use of pesticides, in properly labeled packages or containers, for either home use, or use in swimming pools or spas.

"Agricultural use pesticide" means a pesticide product bearing a label requiring compliance with the Worker Protection Standard, and as prescribed by the agricultural use requirements on the label.

"Aircraft" means any mechanism used in flight.

"ALJ" means, according to A.R.S. §41-1092, an individual or the Director who sits as an administrative law judge, who conducts administrative hearings in a contested case or an appealable agency action, and who makes decisions regarding the contested case or appealable agency action.

"Animal" means all vertebrate and invertebrate species, including, but not limited to, humans and other mammals, birds, fish and shellfish. A.R.S. §3-341(3)

"Application site" means the specific location, crop, object, field, or other area to which a pesticide is or is intended to be applied.

"Applicator" means any individual who applies, or causes to have applied, any pesticide on an agricultural establishment or golf course.

"Associate Director" means the Associate Director of the Environmental Services Division.

"Authorized activities" means, for compliance with A.R.S. §3-365(D), any organized activities scheduled at a school or child care facility that use the school or child care facility or the school or child care grounds and for which the sponsors or organizers of the activity have received the written approval of a responsible administrative official of the school or child care facility.

"Buffer zone" means an area of land that allows pesticide deposition and residues to decline to a level that poses a reasonable certainty of no harm to a defined area.

"Bulk release" means the release of any pesticide or mixture of pesticides that poses a potential risk to property, human health, or the environment in volumes greater than those prescribed by the pesticide label for the application site. A pesticide dripping from a spray nozzle or minor splashing during mixing is not a bulk release.

"Certification plan" means an EPA authorized plan under 40 CFR §171.303 (82 FR 1042, January 4, 2017, https://www.ecfr.gov/cur-rent/title-40/chapter-I/subchapter-E/part-171/subpart-D/section-171.303) for the certification of pesticide applicators to comply with the provisions of FIFRA. This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

"Certified applicator" means any individual who is certified by the Department to use or supervise the use of any restricted use pesticide as a private, golf or commercial applicator.

"CEU" means continuing education unit.

"Child care facility" means any facility in which child care is regularly provided for compensation for five or more children not related to the proprietor and is licensed as a child care facility by the Arizona Department

of Health Services. A.R.S. §36-881(3). Child care facilities are commonly known as day care centers.

"Commercial applicator" or "PUC" means a certified applicator (whether or not the applicator is a private applicator with respect to some uses) who uses or supervises the use of a restricted use pesticide for any purpose or on any property other than for producing an agricultural commodity on property owned or controlled by:

The applicator;

The applicator's employer; or

Another person, if the application is performed without compensation, other than trading of personal services between producers of agricultural commodities.

"Contamination" means a concentration of pesticide sufficient to violate state or federal water, soil, food, feed, or air contamination standards, except if legally applied.

"Continued pesticide application" means the continuance of an interrupted application of the same pesticide to the same application site within the same section, township, and range within the same reporting period.

"Custom application equipment" means aircraft, drones, remote-controlled equipment, and ground equipment used for pesticide application by a custom applicator.

"Custom applicator" or "CAL" means any person, except a person regulated by the PMD, who applies pesticides for hire, by drone, or by aircraft.

"Defoliation" means killing or artificially accelerating the drying of plant tissue with or without causing abscission.

"Device" means any instrument or contrivance that is intended to be used for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life, other than a human being and a bacterium, virus, or other microorganism on or in a living human being or other living animal. Device does not include firearms, mechanical traps, or equipment used for the application of pesticides if the application equipment is sold separately.

"Diluent" means any substance added to a pesticide before application to reduce the concentration of the active ingredient in the mixture.

"Direct release" means to apply a pesticide outside the boundaries of an application site, at the time of application, while the valve controlling the normal flow of pesticide from the application device is in the open position and the application device is not within the confines of the application site. Direct release does not mean the drift or discharge of a pesticide caused by a mechanical malfunction of the application device that is beyond the control of the operator. Direct release does not mean a release caused by accident, or done to avoid an accident that would have resulted in greater harm than that caused by the pesticide release.

"Disposal" means discarding a pesticide or pesticide container that results in the deposit, dumping, burning, or placing of the container or unused pesticide on land or into the air or water.

"Drift" means the physical movement of pesticide through the air at the time of a pesticide application from the application site to any area outside the boundaries of the application site. Drift does not include movement of a pesticide or associated degradation compounds to any area outside the boundaries of an application site if the movement is caused by erosion, run off, migration, volatility, or windblown soil particles that occur after application, unless specifically addressed on the pesticide label with respect to drift control requirements.

"Drone" means a remote-controlled pilotless aircraft or small flying device used to apply pesticides.

"Drone Pilot License" or "DPL" means any individual who pilots a drone to apply a pesticide.

"EPA" means the United States Environmental Protection Agency.

"Experimental use permit" means a permit issued by the EPA, or the Department according to A.R.S. §3-350.01, to a person for the purpose of experimentation, which includes the accumulation of information necessary for the registration of a pesticide.

"Exposure" means the inhalation or ingestion of a pesticide, or eye or skin contact with a pesticide.

"FAA" means the Federal Aviation Administration

"FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§136 et seq. (as amended P.L. 117"" 328, December 29, 2022, https://www.govinfo.gov/content/pkg/COMPS-10326/uslm/COMPS-10326.xml). This material is incorporated by reference throughout the

Chapter, is on file with the Department and includes no later amendments or editions.

"Fumigant" means a substance or mixture of substances that produces gas vapor or smoke intended to control a pest in stored agricultural commodities or to control burrowing rodents.

"Golf applicator" or "PUG" means an applicator who uses or supervises the use of a restricted use pesticide for the maintenance of the ornamental and turf areas of the golf course that is owned or controlled by the applicator or the applicator's employer.

"Handler" means any person, including a self-employed person:

Who is employed for any type of compensation by an agricultural establishment or commercial pesticide handling establishment to which this Article applies and who is:

Mixing, loading, transferring, or applying pesticides.

Disposing of pesticides or pesticide containers.

Handling opened containers of pesticides.

Acting as a flagger.

Cleaning, adjusting, handling, or repairing the parts of mixing, loading, or application equipment that may contain pesticide residues.

Assisting with the application of pesticides.

Entering a greenhouse or other enclosed area after the application and before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established under 40 CFR §170.110(c)(3) of the Worker Protection Standard (August 21, 1992, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-170/subpart-B/section-170.110) The incorporated reference is on file with the Department and does not include any later amendments or editions, or in the labeling has been met:

To operate ventilation equipment.

To adjust or remove coverings used in fumigation.

To monitor air levels.

Entering a treated area outdoors after application of any soil fumigant to adjust or remove soil coverings such as tarpaulins. Performing tasks as a crop advisor:

During any pesticide application.

Before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established under 40 CFR §170.110(c)(3) of the Worker Protection Standard (August 21, 1992, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-170/subpart-B/section-170.110), or in the labeling has been met. The incorporated reference is on file with the Department and does not include any later amendments or editions.

During any restricted-entry interval.

The term does not include any person who is only handling pesticide containers that have been emptied or cleaned according to pesticide product labeling instructions or, in the absence of such instructions, have been subjected to triple-rinsing or its equivalent.

"Health care institution" means any institution that provides medical services, nursing services, health screening services, and other health-related services, and is licensed by the Arizona Department of Health Services.

"Highly toxic pesticide" means a pesticide with an acute oral LD_{50} of 50 milligrams per kilogram of body weight or less, dermal LD_{50} of 200 milligrams per kilogram of body weight or less, or inhalation LD_{50} of 0.2 milligrams per liter of air or less, and the label bears the signal words "danger" and "poison" and shows a skull and crossbones.

"Immediate family" includes only spouse, children, stepchildren, foster children, parents, stepparents, foster parents, brothers, and sisters.

"Individual" means a human being.

"Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, and flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes and wood lice. A.R.S. §3-341(14)

"Integrated Pest Management" or "IPM" means a sustainable approach to managing pests that uses any combination of biological, chemical, cultural, genetic, manual, or mechanical tools or techniques in a way that minimizes health, environmental, and economic risks.

"Label" means the written, printed or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if there is any, of the pesticide or device. A.R.S. §3-341(15)

"Labeling" means all labels and other written, printed or graphic matter:

Upon the pesticide or device or any of its containers or wrappers.

Accompanying the pesticide or device at any time.

To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, non-misleading reference is made to current official publications of the United States departments of agriculture or interior, the United States public health service, state experiment stations, state agricultural colleges or other similar federal institutions or official agencies of the state or other states authorized by law to conduct research in the field of pesticides. A.R.S. §3-341(16).

"LD_{50}" means a statistically derived estimate of a single dose of pesticide that can be expected to cause death in 50 percent of laboratory test animals as determined by an EPA approved procedure. The LD50 value is expressed in terms of weight of test substance per unit weight of the test animal (mg/kg)

"Livestock" means clovenhoofed animals, horses, mules, or asses.

"PCA" or "agricultural pest control advisor" means any individual who, as a requirement of, or incidental to, the individual's employment or occupation:

Offers a written recommendation to a regulated grower or to any public or private agency concerning the control of any agricultural pest,

Claims to be an authority or general advisor on any agricultural pest or pest condition, or

Claims to be an authority or general advisor to a regulated grower on any agricultural pest.

"Person" means any individual, partnership, association, corporation or organized group of persons whether incorporated or not. A.R.S. §3-341(19)

"Pest" means:

Any weed, insect, vertebrate pest, nematode, fungus, virus, bacteria or other pathogenic organisms.

Any other form of terrestrial or aquatic plant or animal life, except virus, bacteria or other microorganism on or in living humans or other living animals, which the director declares to be a pest for the purpose of enforcement of this Article. A.R.S. §3-341(20) (b)

"Pesticide" means any substance or mixture of substances intended to be used for defoliating plants or for preventing, destroying, repelling or mitigating insects, fungi, bacteria, weeds, rodents, predatory animals or any form of plant or animal life which is, or which the director may declare to be, a pest which may infest or be detrimental to vegetation, humans, animals or households or which may be present in any environment. A.R.S. §3-361(6)

"Pesticide container" means any container with an interior surface that is in direct contact with a pesticide.

"Pesticide Grower Permit" or "PGP" means a permit issued by the Department that allows a qualifying person to act as a regulated grower.

"Pesticide use" means the sale, processing, storing, transporting, handling or applying of a pesticide and disposal of pesticide containers. A.R.S. §3-361(7)

"PMD" means the Pest Management Division of the Arizona Department of Agriculture.

"Private applicator" or "PUP" means a certified applicator who uses or supervises the use of a restricted use pesticide for producing an agricultural commodity on property owned or controlled by:

The applicator;

The applicator's employer; or

Another person, if the pesticide is applied without compensation, other than trading of personal services between producers of agricultural commodities.

"Property boundary" means the legal boundary of the land on which a child care facility, health care institution, residence, or school sits, unless another boundary is established by a written agreement with the owner of the child care facility, health care institution, residence, or school. Under a written

agreement, the parties shall not establish a boundary that is less than ten feet from the child care facility, health care institution, residence, or school.

"Ready-to-use" means a registered pesticide, in the manufacturer's original container, that does not require dilution by the end user. "Regulated grower" means a person who acquires or purchases pesticides or contracts for the application of pesticides to agricultural commodities, onto an agricultural establishment, or onto a golf course as a part of the person's normal course of employment or activity as an owner, lessee, sublessee, sharecropper, or manager of the land to which the pesticide is applied.

"Reporting period" means no later than the Thursday following the calendar week in which an application is completed.

"Residence" means a dwelling place where one or more individuals are living.

"Responsible individual" means an individual at a seller's location who is a certified applicator or is licensed as a PCA in Arizona by the Department, that has demonstrated competency in safe pesticide handling, and is aware they are designated by the seller under R3-3-203.

"Restricted use pesticide" means a pesticide classified as such by the EPA. A.R.S. §3-361(8).

"School" means a public institution established for the purposes of offering instruction to pupils in programs for preschool children with disabilities, kindergarten programs or any combination of grades one through twelve. A.R.S. §15-101(19). School includes a private institution with membership in the North Central Association of Colleges and Schools serving students in kindergarten programs or any combination of grades one through twelve.

"Seller" means any person selling or offering for sale a restricted use pesticide or other type of pesticide intended to be used for an agricultural purpose.

"Service container" means a container filled with a pesticide by an applicator and is transported to an application site where the pesticide will be applied. A service container is not intended to be used as a container for the sale or distribution of a pesticide, and is not intended for the long-term storage of a pesticide, except for cases of an emergency where the integrity of the original packaging of a pesticide is compromised that would lead to a bulk release of a pesticide.

"Small scale test" means a test using a pesticide on land or water acreage as described at 40 CFR §172.3(c)(1) or (2) (59 FR 45611, Sept. 1, 1994, as

amended at 71 FR 35546, June 21, 2006; 73 FR 75599, Dec. 12, 2008, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-172/subpart-A/section-172.3). This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

"Spot application" means a treatment in an area other than a greenhouse or nursery operation that is restricted to an area of an application site that is less than the entire application site.

"Tag" means a custom application equipment license issued by the Department to a custom applicator licensee.

"Triple rinse" means to flush out a container at least three times, each time using a volume of water, or other diluent as specified on the label, equal to a minimum of 10 percent of the container's capacity or a procedure allowed by the label that produces equivalent or better results.

"Unreasonable adverse effect" means any unreasonable risk to a human being or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or a human dietary risk from residues that result from a use of a pesticide in or on any food as documented by the Department through its investigation.

"Weed" means any plant which grows where not wanted. A.R.S. §3-341(24)

"Worker Protection Standard" or "WPS" means the regulations as prescribed in 40 CFR §§170.1 et seq., excluding 40 CFR §§170.401(c)(4) and 170.501(c)(4) (as amended October 30, 2020, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-170). This material is incorporated by reference, on file with the Department and does not include any later amendments of editions.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-101 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013. Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-102. Licensing Time-frames

A. Overall time-frame. The Department shall issue or deny a license within the overall time-frames listed in Table 1 after receipt of the complete application. The overall time-frame is the total of the number of days provided for the administrative completeness review and the substantive review.

B. Administrative completeness review.

1. The administrative completeness review time-frame established in Table 1 begins on the date the Department receives the application. The Department shall notify the applicant in writing within the administrative completeness review time-frame whether the application or request is incomplete. The notice shall specify what information is missing. If the Department does not provide notice to the applicant within the administrative completeness review time-frame, the Department considers the application complete.

2. An applicant with an incomplete license application shall supply the missing information within the completion request period established in Table 1. The administrative completeness review time-frame is suspended from the date the Department mails the notice of missing information to the applicant until the date the Department receives the information.

3. If the applicant fails to submit the missing information before the expiration of the completion request period, the Department shall close the file, unless the applicant requests an extension. An applicant whose file has been closed may obtain a license by submitting a new application.

C. Substantive review. The substantive review time-frame established in Table 1 shall begin after the application is administratively complete.

1. If the Department makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review time-frame is suspended from the date of the Department request until the information is received by the Department. If the applicant fails to provide the information identified in the written request within the additional information period, the Department shall deny the license.

2. The Department shall issue a written notice granting or denying a license within the substantive review time-frame. If the application is denied, the Department shall send the applicant written notice explaining the reason for the denial with citations to supporting statutes or rules, the applicant's right

to seek a fair hearing, and the time period in which the applicant may appeal the denial.

History:

Adopted effective October 8, 1998 (Supp. 98-4).

TABLE 1. [Effective until 3/4/2024] Time-frames (Calendar Days)

License	Authority	AdministrativeCompletenessReview	Response toCompletionReque
Regulated Grower Permit	A.R.S. §3-363	14	14
Seller Permit	A.R.S. §3-363	14	14
Agricultural Aircraft Pilot License	A.R.S. §3-363	14	14
Custom Applicator License	A.R.S. §3-363	14	14
Application Equipment Tag	A.R.S. §3-363	14	14
Agricultural Pest Control Advisor (PCA) License	A.R.S. §3-363	14	14
Commercial Applicator Certification (PUC)	A.R.S. §3-363	14	14
Private Applicator Certification (PUP)	A.R.S. §3-363	14	14
Private	A.R.S. §3-	14	14

Fumigation Certification	363		
Golf Applicator Certification (PUG)	A.R.S. §3-363	14	14
Experimental Use Permit	A.R.S. §3-350.01	14	14
Pesticide Registration	A.R.S. §3-351	14	14
License to Manufacture or Distribute Commercial Feed	A.R.S. §3-2609	14	14
Commercial Fertilizer License Specialty Fertilizer Registration	A.R.S. §3-272	14 14	14 14
Agricultural Safety Trainer Certification	A.R.S. §3-3125	28	14
ARIZONA NATIVE PLANTS			
Notice of Intent Confirmation Notice of Intent	A.R.S. §3-904	14	14

* Salvage Assessed Native Plant Permits * Salvage Restricted Native Plant Permits * Scientific Permits	A.R.S. §3-906	14 14 14	14 14 14
Movement Permits	A.R.S. §3-906	14	14
Annual Permits for Harvest-Restricted Native Plants	A.R.S. §3-907	14	14

History:

Adopted effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 2663, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013. Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

TABLE 1. [Effective 3/4/2024] Time-frames (Calendar Days)

License	Authority	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response Addition Informati
Pesticide Grower Permit (PGP)	A.R.S. §3-363 A.A.C. R3-3-201	14	14	56	14
Pesticide Seller Permit (PSP)	A.R.S. §3-363 A.A.C. R3-3-203	14	14	56	14
Agricultural Aircraft Pilot License (AAP)	A.R.S. §3-363 A.A.C. R3-3-204	14	14	56	14
Drone Pilot License (DPL)	A.R.S. §3-363 A.A.C. R3-3-204	14	14	56	14
Custom Applicator License (CAL)	A.R.S. §3-363 A.A.C. R3-3-205	14	14	63	14
Application Equipment Tag	A.R.S. §3-363 A.A.C. R3-3-206	14	14	56	14

Agricultural Pest Control Advisor (PCA) License	A.R.S. §3-363 A.A.C. R3-3-207	14	14	63	14
Commercial Applicator Certification (PUC)	A.R.S. §3-363 A.A.C. R3-3-208	14	14	63	14
Private Applicator Certification (PUP)	A.R.S. §3-363 A.A.C. R3-3-208	14	14	63	14
Golf Applicator Certification (PUG)	A.R.S. §3-363 A.A.C. R3-3-208	14	14	63	14
Experimental Use Permit	A.R.S. §3-350.01 A.A.C. R3-3-212	14	14	28	14
Pesticide Registration	A.R.S. §3-351 A.A.C. R3-3-702	14	14	91	14
License to Manufacture or Distribute Commercial	A.R.S. §3-2609 A.A.C. R3-3-902	14	14	42	14

Feed					
Commercial Fertilizer License Specialty Fertilizer Registration	A.R.S. §3-272 A.A.C. R3-3-802	14 14	14 14	42 56	14 14
Agricultural Safety Trainer Certification	A.R.S. §3-3125 A.A.C. R3-3-1003	28	14	28	14

ARIZONA NATIVE PLANTS						
Notice of Intent Confirmation Notice of Intent	A.R.S. §3-904 A.A.C. R3-3-1102	14	14	14	14	28
* Salvage Assessed Native Plant Permits * Salvage Restricted Native Plant Permits * Scientific Permits	A.R.S. §3-906 A.A.C. R3-3-1104	14 14 14	14 14 14	14 14 14	14 14 14	28 28 28
Non-commercial salvage	A.R.S. §3-906	14	14	14	14	28
Annual Permits for Harvest-Restricted Native Plants	A.R.S. §3-907 A.A.C. R3-3-1104	14	14	14	14	28

History:

Adopted effective October 8, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 2663, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 14 A.A.R. 811, effective May 3, 2008 (Supp. 08-1). Amended by exempt rulemaking at 19 A.A.R. 3130,

effective September 16, 2013. Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-200. General; Applications; Renewals; Fees; Examinations; Exemptions

A. An applicant for certification, license or permit shall submit the appropriate completed application to the Department accompanied by the appropriate fee prescribed in the table following, for each year or portion of the year during which the certification, license or permit is valid.

License	Administrative Rule	Fee
Pesticide Grower Permit (PGP)	R3-3-201	$20 per year
Pesticide Seller Permit (PSP)	R3-3-203	$100 per year
Agriculture Aircraft Pilot License (AAP)	R3-3-204	$50 per year
Drone Pilot License (DPL)	R3-3-204	$50 per year
Custom Applicator License (CAL)	R3-3-208(E)	$100 per year
Agriculture Pest Control Advisor (PCA)	R3-4-207	$50 per year
Certified Applicator (PUP, PUC & PUG)	R3-3-208	$50 per year

B. Applicants for a PGP, PSP, AAP, DPL, CAL, PCA or Certified Applicator are not transferable, and expire on December 31.

C. Certifications, Licenses, or Permits are:

1. Valid for the year issued for new Certified Applicator or PCA applicants, except for those issued between October 1 and December 31 which are valid until December 31 of the next calendar year;

2. Valid for one or two years, for all other applicants depending on the renewal period selected by the applicant; and

3. Renewed for all categories of certification for the same renewal period.

D. Education and CEU Requirements.

1. Prior to submitting a new application for a PCA license, applicants shall complete the educational requirements according to R3-3-207.

2. Prior to submitting a renewal application for a PCA license or certified applicator, applicants shall complete any CEU requirements pertinent to the category or categories in which renewal is being applied for.

3. It is the applicant's responsibility to take CEUs pertinent to the category or categories for which the applicant is seeking to renew certification.

4. The Department may screen renewal applications to ensure the CEU courses taken by the applicant are pertinent to the category or categories for which the applicant is seeking to renew licensure.

E. Examinations. In addition to the specific requirements found in R3-3-203 through R3-3-208, the following general provisions apply to this Article:

1. The Department shall administer examinations required under this Article by appointment at every Environmental Services office.

2. An applicant shall demonstrate knowledge and understanding by scoring at least 75 percent on a written examination for each examination taken under this Article.

3. An individual who fails an examination may retake it no more than two times in a six-month period and shall not retake an examination until at least seven days have elapsed from the date of the last examination.

4. The Director may deny a certification or license after an opportunity for an administrative hearing is given, for any individual who is found cheating during the examination process and shall be prohibited from re-taking any examination required under this Article for no less than one year.

5. The Director may revoke a certification or license after an opportunity for an administrative hearing is given, for an individual who is found cheating on an examination and shall be prohibited from re-taking any examination required under this Article for no less than one year.

6. Cheating includes one or more of the following:

a. Computer or mobile device usage to search for answers to exam questions or to copy exam questions;

b. Use of copied exam answers in any form; or

c. Any other means in which the answers to the exam questions are obtained without using the knowledge of the exam taker.

F. Renewal; expired license or certification.

1. An applicant may renew an expired license without retaking the written examinations under R3-3-207 provided the applicant:

a. Within the licensing period, complies with the CEU requirements in R3-3-207;

b. Submits a completed application within 11 months after the expiration date of the license;

c. Does not provide any pest control-related service from the date the license expired until the date the renewal is effective;

d. Pays the license fee plus a $10 late fee for each month the certification has been expired, with the late fee not exceeding $110 (11 months); and

e. Obtains the required CEU's while the license is active.

2. An applicant may renew an expired certification without retaking the written examinations under R3-3-208 provided the applicant:

a. Has satisfied the CEU requirements in R3-3-208(E)(3), within the current certification period;

b. Submits a completed renewal application within 11 months after the expiration date;

c. Does not provide any pesticide-related service from the date the certification expired until the date the renewal is effective;

d. Pays the renewal fee plus a $10 late fee for each month, with the penalty not to exceed $110 (11 months); and

e. Obtains the required CEU's while the certification is current.

3. Applicants with expired certifications greater than 11 months shall complete the requirements for initial certification, including retaking and passing the applicable written examinations prescribed in this Section.

4. Notwithstanding R3-3-200 (F)(1) or (2), in addition to any penalties or fines imposed for committing a violation according to Section R3-3-502(C)(1) or (G)(4), for operating with an expired license or certification, the

applicant shall take any written examinations required to renew a PCA license or Certified Applicator.

G. License and Fee Exemptions

1. A person who applies pesticides in buildings or for structural pest control purposes is not required to apply for or possess any license or certification from the Department under this Article.

2. A person who sells, offers for sale, delivers, or offers for delivery a general use pesticide, to be used for private, noncommercial use in or around the home or a person who sells general use pesticides for swimming pool or spa maintenance is not required to apply for or possess a seller's permit from the Department.

3. A state, federal, tribal, or other governmental employee, who makes pest control recommendations or applies or supervises the use of restricted use pesticides while engaged in the performance of official duties shall meet the requirements of this Article, but is not required to pay a fee for any agricultural license, certification, or permit under this Article when used solely for work related purposes.

4. A person who only furnishes information concerning label requirements governing a registered pesticide is not required to apply for or possess a PCA license from the Department.

History:

Adopted by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-201. Pesticide Grower Permit (PGP)

In addition to the provisions found under R3-3-200, the following apply to this Section.

A. A regulated grower shall not order, purchase, take delivery of, use, or recommend the use of any pesticide for an agricultural purpose or golf course without a valid Pesticide grower permit (PGP), issued by the Department.

B. A person applying for a PGP, initial or renewal, shall provide the following information on a form obtained from the Department:

1. Name and signature of the applicant;

2. Date of the permit application;

3. Name, address, e-mail address, if applicable, and daytime telephone number of the company or agricultural establishment where the applicant may be reached;

4. Permit renewal period;

5. Sections, townships, ranges, and acres of the land where pesticides may be applied;

6. The names and certification numbers of certified private or golf applicators, or commercial applicators acting as private applicators, who are employed by the PGP; and

7. For individual applicants, information and documentation concerning lawful presence required under ARS §41-1080, if not on file.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013. Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-202. [Repealed]

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-201 (Supp. 91-4). Former Section R3-3-202 renumbered to R3-3-203; new R3-3-202made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013. Repealed by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-203. Pesticide Seller Permit (PSP); Responsible Individual

In addition to the provisions found under R3-3-200, the following apply to this Section.

A. A person shall not act as a Pesticide seller without a valid Pesticide Seller Permit (PSP), issued by the Department.

B. A seller shall obtain a PSP for each physical location where the seller sells or offers for sale any restricted use pesticide or agricultural use pesticide.

C. A person applying for a PSP, initial or renewal, shall provide the following information on a form obtained from the Department:

1. Name and signature of the responsible individual, and certification or license number;

2. Date of the permit application;

3. Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the location selling a restricted use pesticide or a pesticide for an agricultural purpose;

4. Permit renewal period;

5. Name, e-mail address, and daytime telephone number of the Arizona contact for each out-of-state seller, if applicable;

6. Address where records required to be maintained under R3-3-401 will be kept;

7. Whether the applicant has had a similar license, permit, or certification revoked, suspended, or denied in this or any other jurisdiction during the three years before the date of application; and

8. The current seller permit number, if applicable.

D. The Department shall not renew a seller permit unless the seller is in compliance with the provisions established in subsection (E), if applicable.

E. A seller shall designate a different responsible individual for each physical location in this state that sells or offers for sale any restricted use pesticide or agricultural use pesticide. If a responsible individual terminates employment at an assigned location, the seller shall designate another responsible individual within 30 calendar days and notify the Department of the replacement.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-203 (Supp. 91-4). Former Section R3-3-203 renumbered to R3-3-204; new R3-3-203 renumbered from R3-3-202and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-204. Agricultural Aircraft Pilot License (AAP); Drone Pilot License (DPL)

In addition to the provisions found under R3-3-200, the following apply to this Section.

A. An individual shall not act as an agricultural aircraft pilot or drone pilot without:

1. A valid agricultural aircraft pilot license (AAP) for aircraft pilots, or drone pilot license (DPL) for drone, issued under this Section, and

2. If application work will be done for hire or exchange of services, a valid commercial applicator certification issued under R3-3-208.

B. The Department shall not issue or renew an AAP or DPL, and an existing AAP or DPL is invalid unless the applicant or license holder:

1. has a valid commercial pilot's certificate issued by the FAA as prescribed under 14 CFR §§137.1 et seq. (amended March 5, 2018, https://www.ecfr.gov/current/title-14/chap-ter-I/subchapter-G/part-137). This material is incorporated by reference, is on file with the Department and does not include any later amendments or editions; or

2. has a valid drone pilot's certificate for a DPL that has been issued by the FAA under 14 CFR §§107.1 et seq. (amended January 15, 2021, https://www.ecfr.gov/current/title-14/chapter-I/subchapter-F/part-107/subpart-A) This material is incorporated by reference, is on file with the Department and does not include any later amendments or editions.

C. An individual applying for an AAP or DPL, initial or renewal, shall provide the following information on a form obtained from the Department:

1. Name and signature of the applicant;

2. Date of application;

3. Address, e-mail address, and daytime telephone number of the applicant;

4. License renewal period;

5. Name, physical address, mailing address, e-mail address, and daytime telephone number of the applicant's employer, if applicable;

6. As applicable, a current copy of the applicant's:

a. commercial pilot certificate issued by the FAA for an AAP applicant, if not previously filed with the Department; or

b. drone pilot's certificate issued by the FAA for a DPL applicant, if not previously filed with the Department.

7. Applicant's commercial applicator certification number;

8. Whether the applicant has had a similar certification or license revoked, suspended, or denied in this or any other jurisdiction during the three years before the date of application and the nature of the violation; and

9. Information and documentation indicating that the individual's presence in the United States is authorized under federal law according to A.R.S. §41-1080, if not on file.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-204 (Supp. 91-4). Former Section R3-3-204 renumbered to R3-3-205; new R3-3-204 renumbered from R3-3-203and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-205. Custom Applicator License (CAL)

In addition to the provisions found under R3-3-200, the following apply to this Section.

A. A person shall not act as a custom applicator without a valid CAL issued by the Department.

B. A person applying for a CAL, initial or renewal, shall provide the following information on a form obtained from the Department:

1. Name and signature of the applicant;

2. Date of the license application;

3. Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the business;

4. License renewal period;

5. Whether the application is for ground or air custom application, or both;

6. Names and current certification numbers of the commercial applicators employed by the business;

7. Evidence of insurance coverage, showing the name of the insurance carrier, policy number, policy term, policy limits, and any applicable exclusions;

8. Whether the applicant has had a similar license revoked, suspended, or denied in this or any other jurisdiction during the last three years, and the nature of the violation;

9. The name and contact information for a contact person at the business if different than the applicant; and

10. For individual applicants, information and documentation indicating that the individual's presence in the United States is authorized under federal law according to A.R.S. §41-1080, if not on file.

C. The Department shall not issue or renew a CAL and an existing CAL is invalid unless the applicant or license holder:

1. Is a commercial applicator or employs at least one individual who is certified as a commercial applicator under R3-3-208; and

2. Maintains or the business that employs the applicator or license holder maintains public liability, drift, and property damage insurance coverage with an aggregate amount of at least $300,000 during the licensing period. The applicant or license holder shall provide evidence of insurance coverage to the Department upon initial application, for each renewal, or upon request of the Department;

D. A CAL holder may:

1. Temporarily relinquish a CAL if the custom applicator:

a. Advises the Department of termination of the insurance prescribed in subsection (C)(2), and the effective date of termination; and

b. Ceases to act as a custom applicator on the termination date.

2. Reinstate the CAL within the same licensing time period, without again paying the fee as prescribed in subsection (E), if the custom applicator:

a. Purchases insurance as prescribed in subsection (C)(2), and

b. Notifies the Department of the effective date of the insurance.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-205 (Supp. 91-4). Former Section R3-3-205 renumbered to R3-3-206; new R3-3-205 renumbered from R3-3-204and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-206. Custom Application Equipment Tag; Fee

In addition to the provisions found under R3-3-200, the following apply to this Section.

A. A custom applicator shall not use custom application equipment unless the equipment has a valid tag. The custom applicator licensee shall place and maintain a valid tag so that it is prominently displayed on the pesticide application equipment.

B. A person applying for a tag shall provide the following information on a form obtained from the Department:

1. Name and signature of the applicant;

2. Date of the application;

3. Address, e-mail address, if applicable, and daytime telephone number of the applicant;

4. Name, physical address, mailing address, e-mail address, if applicable, and daytime telephone number of the business, if applicable;

5. Manufacturer, make, model and serial number, and if an aircraft or drone, the FAA registration number ("N" number for aircraft, or drone with an operating weight of over 55 lbs. total, including payload; or "FA" number for drone with an operating weight up to 55 lbs. total, including payload) of the application equipment; and

6. The name and contact information for a contact person at the business if different than the applicant,

C. The Department shall not issue or renew a tag and an existing tag is invalid if the custom applicator license is invalid.

D. An applicant shall submit the completed application to the Department, accompanied by a $25 fee for each piece of equipment, for each year or portion of the year during which the tag is valid.

E. A tag expires on December 31, and is valid for the same time period as the custom applicator license.

F. A custom applicator licensee shall not transfer a tag except as follows:

1. If equipment with a valid tag, is destroyed, rendered unusable, or transferred out of the state, the custom applicator licensee may transfer the tag to another piece of equipment.

2. If equipment with a valid tag, is leased, sold, or traded, the custom applicator licensee shall transfer the tag with the equipment to the lessee or new owner.

3. Before transferring a tag, the custom applicator licensee shall notify the Department that the equipment with the valid tag is being transferred and identify the person to whom the equipment with the valid tag is being transferred or identify the piece of equipment to which the tag is being transferred, or the tag is invalid.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-206 (Supp. 91-4). Former Section R3-3-206 renumbered to R3-3-207; new R3-3-206 renumbered from R3-3-205and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-207. Agricultural Pest Control Advisor (PCA) License; Exemption

In addition to the provisions found under R3-3-200, the following apply to this Section.

A. An individual shall not act as a PCA without a valid PCA license issued by the Department. To advise in any of the categories listed in subsection (I), a PCA shall pass the specific examination associated with the category.

B. An individual, without a valid PCA license, applying for a PCA license shall provide the following information on a form obtained from the Department:

1. The applicant's name, address, e-mail address, daytime telephone number, social security number, and signature;

2. Date of the application;

3. Name, physical address, mailing address, e-mail address, and daytime telephone number of the applicant's employer, if applicable;

4. Examinations that the applicant has passed by category;

5. Whether the applicant has had a similar license revoked, suspended, or denied in this or any other jurisdiction during the last three years, and the nature of the violation resulting in the revocation, suspension, or denial; and

6. Information and documentation indicating that the individual's presence in the United States is authorized under federal law according to A.R.S. §41-1080, if not on file.

C. An individual applying for a PCA license, except an individual who holds or has held a PCA license in this state within the previous five years shall meet one of the following five sets of qualifications:

1. College degree.

a. Possess a bachelor's degree (B.A. or B.S.), master's degree or doctorate degree in any subject; and

b. Have completed 42 semester hours (63 quarter units) of college-level curricula as specified in subsection (D).

2. Master's degree in a biological science.

a. Possess a master's degree in a biological science;

b. Have 12 months of work experience related to a core area listed in subsection (D); and

c. Have a letter from the institution, a faculty member, or a supervisor where the individual obtained the work experience certifying the time spent and describing the type of experience obtained by the individual.

3. Doctorate degree in a biological science.

a. Possess a doctorate degree in a biological science; and either

b. Meet the qualifications in subsection (C)(2)(b) and (C)(2)(c); or

c. Have a letter of recommendation from the faculty member that supervised the dissertation or the division head of the discipline.

4. Other education with unlicensed experience.

a. Have completed 42 semester hours (63 quarter units) of college-level curricula as specified in subsection (D);

b. Have 24 months of work experience related to a core area listed in subsection (D); and

c. Have a letter from the institution, a faculty member, or a supervisor where the individual obtained the work experience certifying the time spent and describing the type of experience obtained by the individual.

5. Other education with licensed experience.

a. Be currently licensed as a pest control advisor (PCA) or equivalent in another state; and

b. Have completed 42 semester hours (63 quarter units) of college-level curricula as specified in subsection (D), except that each year of verifiable licensed experience under subsection (C)(5)(a) within the previous 5 years qualifies for two semester hours up to 10 hours. The semester hours based on licensed experience do not reduce the minimum hours required from each individual core area.

c. The applicant shall provide proof of the equivalency of a license from another state.

D. The 42 semester hours (63 quarter units) of college-level curricula specified in subsection (C) shall come from the core areas shown in the following table, with at least the minimum indicated hours (or units) coming from each individual core area. A single course shall not count toward the

minimum hours of more than one core area. At least one course from the pest management systems and methods core area shall emphasize integrated pest management principles. Each course completed must be awarded credit with a minimum passing grade of a "C" or a 2.0 GPA, or a passing score if taken on a pass or fail basis.

Core Area	Examples of Subjects	Sem. Hours	Qtr. Units
Physical, biological, and earth sciences, and mathematics	Inorganic chemistry; organic chemistry; biochemistry; plant biology or botany; general ecology; biology; genetics; plant physiology; zoology; post-algebra mathematics	12	18
Crop health	Soils and irrigation; vegetation management or weed science; plant pathology; entomology; plant nutrition or fertility; nematology; vertebrate management	6	9
Pest management systems and methods	Applied courses in entomology, plant pathology, vegetation management or weed science, and other pest management disciplines; pesticides or use of pesticides; pest control equipment systems; alternative cropping systems; sustainable or organic agricultural systems; biological control	3	4.5
Production systems	Horticulture; viticulture; forestry; agronomy; crop, vegetable, fruit or animal sciences; other production systems (e.g., wildlife production, cattle production)	3	4.5

E. Alternative curricula credits.

1. A current crop advisor certificate issued by the American Society of Agronomy qualifies for three semester hours in one of the following core areas: physical, biological and earth sciences and mathematics; crop health; or production systems.

2. Non-traditional courses such as a senior project, an internship, cooperative work experience, independent study, a dissertation or a thesis qualify for three semester hours in one of the core areas of crop health, pest management systems and methods, or production systems, as applicable.

3. For applicants with a bachelor's, master's, or doctorate degree, at least one year of full-time related work experience qualifies for three semester hours in one of the core areas of pest management systems and methods or production systems, as applicable.

F. In addition to the information required by subsection (B), an applicant shall submit to the Department:

1. An official transcript verifying the courses completed and the degrees granted to the applicant;

2. Documentation verifying alternative curricula relied on under subsection (E). Documentation of subsection (E)(2) and (E)(3) shall include a letter certifying completion and describing the activity from the institution, a faculty member or supervisor; and

3. If applicable, the letter required for licensure under subsection (C).

G. Renewal.

1. The Department shall not renew a PCA license unless, before the expiration of the current license, the licensee completes 15 CEUs for each year of the renewal period or passes any applicable examination prescribed in subsection (I). The licensee shall complete CEU credit during the calendar years the current license is in effect. CEUs earned that are in excess of the requirements do not carry forward for use with future renewals.

2. To obtain credit, the applicant shall provide the Department with documentation of completion of the CEU course.

3. For license renewal, the license may only be renewed if the required CEUs are obtained and the renewal application and fees are received by the Department within the specified time period.

H. Examinations.

1. In addition to the core examination as prescribed in R3-3-208(D), an applicant shall demonstrate knowledge and understanding of integrated pest management in any of the following categories:

a. Weed control,

b. Invertebrate control,

c. Nematode control,

d. Plant pathogen control,

e. Vertebrate pest control,

f. Plant growth regulators, or

g. Defoliation.

I. Exemption. An individual operating in an official capacity for a college or university, providing recommendations in a not-for-profit capacity, or merely furnishing information concerning general and labeling usage of a registered pesticide is not considered an authority or general advisor for the purposes of this Chapter.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-207 (Supp. 91-4). Former Section R3-3-207 repealed; new R3-3-207 renumbered from R3-3-206and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 3855, effective January 4, 2014. Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-208. Applicator Certification (PUP, PUG, PUC); Categories; Competency; Examination; Renewal

In addition to the provisions found under R3-3-200, the following applies to this Section.

A. An individual shall not act as a private (PUP), golf (PUG), or commercial (PUC) applicator unless the individual is 18 years of age and certified by the Department.

B. An individual shall take and pass both the core exam and the appropriate category exam, or exams, they are seeking to show competency to become a certified applicator.

C. Application. An individual applying for either PUP, PUG, or PUC applicator certification shall pay the applicable fee as prescribed in R3-3-200(A) and submit a completed application to the Department containing the following information on a form obtained from the Department:

1. The applicant's name, address, e-mail address if applicable, daytime telephone number, Social Security number, date of birth, and signature;

2. Date of the application;

3. If applicable, name, physical address, mailing address, e-mail address, and daytime telephone number of the applicant's employer;

4. Whether the application is for a PUP, PUG, or PUC applicator certification;

5. Which category or categories the individual seeks certification;

6. Whether the applicant has had a similar certification revoked, suspended, or denied in this or any other jurisdiction during the last three years, and the nature of the violation; and

7. Information and documentation indicating that the individual's presence in the United States is authorized under federal law according to A.R.S. §41-1080, if not on file.

D. Examinations and Competency Standards.

1. The Department shall ensure that the core examination tests the knowledge and understanding of 40 CFR §171.103 for a PUC or PUG applicator license, or 40 CFR §171.105 for a PUP applicator license (As amended January 4, 2017, https:// www.ecfr.gov/current/title-40/chapter-

I/subchapter-E/part-171) This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

2. Exam Categories and Competency Standards:

a. For commercial applicators:

i. The exam categories shall be as prescribed in 40 CFR §171.101(a) through (e), and (i) through (o) (39 FR 36449, October 9, 1974 as amended by 82 FR 1029, January 4, 2017, https://www.ecfr.gov/current/title-40/chapter-I/subchap-ter-E/part-171). This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

ii. Notwithstanding subsection (D)(5)(a)(i), the exam categories as prescribed in 40 CFR §171.101(a)(2), (k), (l), and (m) shall not be mandatory for certification until January 1, 2026 (39 FR 36449, October 9, 1974 as amended by 82 FR 1029, January 4, 2017, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-171). This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

iii. Notwithstanding 40 CFR §171.103(e), the competency standards shall be as prescribed in 40 CFR §171.103(a)(2), (b), (c), (d)(1) through (5) and (9) through (15) (39 FR 36449, October 9, 1974 as amended by 82 FR 1029, January 4, 2017, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-171). This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

iv. Notwithstanding subsection (D)(5)(a)(iii), the competency standards prescribed in 40 CFR §171.103(d)(1)(ii), and (11) through (13) shall not be mandatory for certification until January 1, 2026, (39 FR 36449, October 9, 1974 as amended by 82 FR 1029, January 4, 2017, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-171). This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

b. For private applicators:

i. The categories shall be as prescribed in 40 CFR §171.105(a)(11) and (b) through (e), (39 FR 36449, October 9, 1974 as amended by 82 FR 1029, January 4, 2017, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-171) This material is incorporated by reference, on file

with the Department, and does not include any later amendments or editions.

ii. Notwithstanding subsection (D)(5)(b)(i), the competency standards prescribed in 40 CFR §171.105(b) through (d) shall not be mandatory for certification until January 1, 2026, 39 FR 36449, October 9, 1974 as amended by 82 FR 1029, January 4, 2017, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-171). This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

c. For golf applicators:

i. The categories shall be as prescribed in 40 CFR §171.101(c), (e), and (n), (39 FR 36449, October 9, 1974 as amended by 82 FR 1029, January 4, 2017, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-171) This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions; and

ii. The competency standards shall be prescribed in 40 CFR §171.103(c) and (d)(3), (5), and (14), (39 FR 36449, October 9, 1974 as amended by 82 FR 1029, January 4, 2017, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-171). This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

3. Certifications issued or renewed under this Article prior to February 6, 2023 are not required to comply with the examination and competency standards until the individual is renewing a private, golf, or commercial applicator certification. This provision shall expire on December 31, 2026.

E. Renewal; CEU requirements.

1. An applicant for renewal of an applicator certification shall select a one or two-year renewal period.

2. An applicant shall submit the completed application accompanied by the applicable fee for a one-year renewal or double the fee for a two-year renewal.

3. CEU requirements.

a. The Department shall not renew a private applicator or golf applicator certification unless, prior to the expiration of the current certification, the applicator completes three CEUs pertinent to the category or categories for

which the applicant is seeking to renew licensure for each year of the renewal period.

b. The Department shall not renew a commercial applicator certification unless, prior to expiration of the current certification, the applicator completes six CEUs pertinent to the category or categories for which the applicant is seeking to renew for each year of the renewal period.

c. All CEU credit requirements shall be completed during the certification period, prior to renewal. CEU credits earned in excess of the requirements do not carry forward for use in subsequent renewals.

d. To obtain credit, the Department shall be provided with documentation of completion of the CEU course.

F. Reciprocal Certification

1. The Director may waive the examination requirements in whole or in part for an individual who is certified as an applicator by another State, Federal, or Tribal agency under an approved EPA certification plan.

a. A applicant must apply for Arizona reciprocal certification.

i. The applicant shall provide the information as prescribed in R3-4-208(B).

ii. The applicant shall submit the Department required form to their state, federal, or tribal agency for verification of certification.

iii. Upon verification of the competency standards for each category of certification requested, the Department may issue a like category applicator license.

iv. The Department shall terminate an applicator's certification upon notification that the applicator's original certification has been terminated in the originating state, for any reason.

v. The applicant may request a hearing if the Department denies an application for a reciprocal certification based on the competencies approved by another state, federal, or tribal agency.

2. Anyone certified through reciprocal certification must notify the Department of termination of the originating-state's certification. Failure to notify the Department within three business days after the effective date of termination may result in revocation of the Arizona certification, and the applicant may not reapply for Arizona certification for a twelve-month period.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-208 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 18 A.A.R. 2481, effective November 10, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013. Amended by final rulemaking at 22 A.A.R. 367, effective 4/5/2016. Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-209. [Repealed]

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-209 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Repealed by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-210. Additional Grounds for Revocation, Suspension, or Denial of a License, Permit, or Certification

A. The Director may deny, or after an opportunity for an administrative hearing, suspend or revoke a license, permit, or certification of any person who:

1. Fails to demonstrate sufficient reliability, expertise, integrity, and competence in engaging in pesticide use, which is considered misuse and is a violation of state laws or regulations relevant to the State certification plan;

2. Submits an inaccurate application for a license, permit, or certification;

3. Has had a similar license, permit, or certification revoked, suspended, or denied in this or any other jurisdiction during the three years before the date of application;

4. Fails to pay fines, penalties and fees;

5. Falsifies records required to be maintained by the certified applicator;

6. Is convicted of a criminal charge under Section 14(b) of FIFRA;

7. Is ordered to pay a civil penalty under Section 14(a) of FIFRA; or

8. Commits a violation of any of the following: A.R.S. §§ Title 3, Chapter 2, Articles 5 and 6 and Chapter 17 or A.A.C. Title 3, Chapter 3, Articles 1-5 and 10 which are relevant to the State certification plan.

B. Upon notice of a denial, the applicant may request, in writing, that the Director provide an administrative hearing under A.R.S. Title 41, Chapter 6, Article 10 to appeal the denial of the license, permit, or certification.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-210 (Supp. 91-4). Former Section R3-3-210 repealed; new R3-3-210 renumbered from R3-3-211and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-211. CEU Course Approval; Subject Approval

A. CEU course approval.

1. A person who wishes to have the Department determine whether a course qualifies for CEU credit shall submit the following information to the Department:

a. Name, address, e-mail address, if applicable, and telephone number of the course's sponsor;

b. Signature of the sponsor or the sponsor's representative;

c. Course outline, listing the subjects and indicating the amount of time allocated for each subject;

d. Brief description of the information covered within each subject;

e. Brief biography of the presenter, demonstrating the presenter's qualifications;

f. Fees charged for attending the course;

g. Date and location of each session; and

h. Whether the course is open to the public.

2. A person who requires prior notification of the number of CEUs that can be earned by completing an approved course before it is held shall submit the information required in subsection (A)(1) to the Department at least 14 business days before the course is held.

3. The Department may modify the number of CEUs earned for a CEU course if the CEU course varies significantly in content or length from the approved curriculum. If the Department modifies the number of CEUs earned, the Department shall send a letter of modification to the course organizer, who shall be requested to inform all individuals who attended the course.

B. Subject approval. The Department shall provide enough information so that the applicator can determine if the CEUs are pertinent to the categories in which they are seeking renewal. The Department shall grant one hour of CEU credit for every 50 minutes of actual instruction in an approved program relating to agricultural pest control or any of the following subjects:

1. Those listed in R3-4-208(D);

2. IPM; or

3. Any other pesticide or pesticide use subject approved by the Associate Director.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-211 (Supp. 91-4). Former Section R3-3-211 renumbered to R3-3-210; new R3-3-211 renumbered from R3-3-212and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-212. Experimental Use Permit

A. Definitions

1. "For the purpose of experimentation" means for research or testing purposes, including research or testing performed in order to accumulate information necessary to register under Section 3 of FIFRA and the regulations thereunder a pesticide not currently registered or a registered pesticide for a use not previously approved in the registration of the pesticide.

2. "Research agency" means any organization engaged in research pertaining to the use of pesticides, including for the purpose of experimentation.

3. "Structural pest management application" means a pesticide application covered by A.R.S. §§3-3601 et seq.

B. A research agency or educational institution may use a pesticide that is not federally registered or use a federally registered pesticide for a use not previously approved in the registration of the pesticide for the purpose of experimentation:

1. Under a valid experimental use permit issued by the Department, or

2. If the testing will only occur on the grounds of a college or university agricultural center or campus or a research agency owned research facility, then a permit is not required.

C. An applicant for an experimental use permit shall provide the following information to the Department:

1. A copy of the EPA-approved experimental use permit issued according to Section 5 of FIFRA or, for applicants exempt from the requirement of a federal experimental use permit under 40 CFR §172.3 (59 FR 45611, Sept. 1, 1994, as amended at 71 FR 35546, June 21, 2006; 73 FR 75599, Dec. 12, 2008, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-172/sub-part-A/section-172.3). This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions;

2. A statement of which federal exemption applies and an affidavit certifying that the experimental use will be in compliance with the applicable exemption;

3. A statement of the purpose for which the experimental use permit will be used;

4. Name, address, e-mail address, and daytime telephone number of the person supervising the experimental use application;

5. Name, address, e-mail address, and daytime telephone number of the PGP and PCA, or the qualifying party if it is a structural pest management application, that are involved in the application of the experimental use pesticide;

6. County, section, township, range, and field description, if needed, of the intended application site, or the street address if it is a structural pest management application;

7. The crop and acreage to be treated, the amount (quantity, weight, volume or other appropriate unit of measure) of the agricultural commodity to be treated, or the number of structures if it is a structural pest management application;

8. Total amount of active ingredient to be applied in this state;

9. Application rate of formulation per acre or other appropriate measure for a structural pest management application;

10. Method of application;

11. Name, address, e-mail address, and telephone number of the applicator applying the pesticide;

12. Time period during which the application will be made; and

13. Any special experimental use permit conditions imposed by the EPA, if applicable.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-212 (Supp. 91-4). Former Section R3-3-212 renumbered to R3-3-211; new R3-3-212made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

APPENDIX A. [Repealed effective 3/4/2024] Testing Categories

TESTING CATEGORIES

A. Commercial Applicator Certification, 40 CFR 171.4(b)(i) -(viii).

1. Label & labeling comprehension.

a. The general format and terminology of pesticide labels and labeling;

b. The understanding of instructions, warnings, terms, symbols, and other information commonly appearing on pesticide labels;

c. Classification of the product, general or restricted; and

d. Necessity for use consistent with the label.

2. Safety. Factors including:

a. Pesticide toxicity and hazard to man and common exposure routes;

b. Common types and causes of pesticide accidents;

c. Precautions necessary to guard against injury to applicators and other individuals in or near treated areas;

d. Need for and use of protective clothing and equipment;

e. Symptoms of pesticide poisoning;

f. First aid and other procedures to be followed in case of a pesticide accident; and

g. Proper identification, storage, transport, handling, mixing procedures and disposal methods for pesticides and used pesticide containers, including precautions to be taken to prevent children from having access to pesticides and pesticide containers.

3. Environment. The potential environmental consequences of the use and misuse of pesticides as may be influenced by such factors as:

a. Weather and other climatic conditions;

b. Types of terrain, soil or other substrate;

c. Presence of fish, wildlife and other non-target organisms; and

d. Drainage patterns.

4. Pests. Factors such as:

a. Common features of pest organisms and characteristics of damage needed for pest recognition;

b. Recognition of relevant pests; and

c. Pest development and biology as it may be relevant to problem identification and control.

5. Pesticides. Factors such as:

a. Types of pesticides;

b. Types of formulations;

c. Compatibility, synergism, persistence and animal and plant toxicity of the formulations;

d. Hazards and residues associated with use;

e. Factors which influence effectiveness or lead to such problems as resistance to pesticides; and

f. Dilution procedures.

6. Equipment. Factors including:

a. Types of equipment and advantages and limitations of each type; and

b. Uses, maintenance and calibration.

7. Application techniques. Factors including:

a. Methods of procedure used to apply various formulations of pesticides, solutions, and gases, together with a knowledge of which technique of application to use in a given situation;

b. Relationship of discharge and placement of pesticides to proper use, unnecessary use, and misuse; and

c. Prevention of drift and pesticide loss into the environment.

8. Laws and regulations. Applicable State and Federal laws and regulations.

B. Commercial Certification Categories, 40 CFR 171.4(c)(1) through (6) and (8) through (10).

1. Agricultural pest control.

a. Plant. Applicators must demonstrate practical knowledge of crops grown and the specific pests of those crops on which they may be using restricted use pesticides. The importance of such competency is amplified by the extensive areas involved, the quantities of pesticides needed, and the ultimate use of many commodities as food and feed. Practical knowledge is required concerning soil and water problems, pre-harvest intervals, re-entry intervals, phytotoxicity, and potential for environmental contamination, non-target injury and community problems resulting from the use of restricted use pesticides in agricultural areas.

b. Animal. Applicators applying pesticides directly to animals must demonstrate practical knowledge of such animals and their associated pests. A practical knowledge is also required concerning specific pesticide toxicity and residue potential, since host animals will frequently be used for food. Further, the applicator must know the relative hazards associated with such factors as formulation, application techniques, age of animals, stress and extent of treatment.

2. Forest pest control. Applicators shall demonstrate practical knowledge of types of forests, forest nurseries, and seed production in this state and the pests involved. They shall possess practical knowledge of the cyclic occurrence of certain pests and specific population dynamics as a basis for programming pesticide applications. A practical knowledge is required of the relative biotic agents and their vulnerability to the pesticides to be applied. Because forest stands may be large and frequently include natural aquatic habitats and harbor wildlife, the consequences of pesticide use may be difficult to assess. The applicator must therefore demonstrate practical knowledge of control methods which will minimize the possibility of secondary problems such as unintended effects on wildlife. Proper use of specialized equipment must be demonstrated, especially as it may relate to meteorological factors and adjacent land use.

3. Seed-treatment. Applicators shall demonstrate practical knowledge of types of seeds that require chemical protection against pests and factors such as seed coloration, carriers, and surface active agents which influence pesticide binding and may affect germination. They must demonstrate practical knowledge of hazards associated with handling, sorting and mixing, and misuse of treated seed such as introduction of treated seed into food and feed channels, as well as proper disposal of unused treated seeds.

4. Aquatic pest control. Applicators shall demonstrate practical knowledge of the secondary effects which can be caused by improper application rates, incorrect formulations, and faulty application of restricted use pesticides

used in this category. They shall demonstrate practical knowledge of various water use situations and the potential of downstream effects. Further, they must have practical knowledge concerning potential pesticide effects on plants, fish, birds, beneficial insects and other organisms which may be present in aquatic environments. These applicators shall demonstrate practical knowledge of the principles of limited area application.

5. Right-of-way pest control. Applicators shall demonstrate practical knowledge of a wide variety of environments, since rights-of-way can traverse many different terrains, including waterways. They shall demonstrate practical knowledge of problems on runoff, drift, and excessive foliage destruction and ability to recognize target organisms. They shall also demonstrate practical knowledge of the nature of herbicides and the need for containment of these pesticides within the right-of-way area, and the impact of their application activities in the adjacent areas and communities.

6. Public health pest control. Applicators shall demonstrate practical knowledge of vector-disease transmission as it relates to and influences application programs. A wide variety of pests is involved, and it is essential that they be known and recognized, and appropriate life cycles and habitats be understood as a basis for control strategy. These applicators shall have practical knowledge of a great variety of environments ranging from streams to those conditions found in buildings. They shall also have practical knowledge of the importance and employment of such non-chemical control methods as sanitation, waste disposal, and drainage.

7. Regulatory pest control. Applicators shall demonstrate practical knowledge of regulated pests, applicable laws relating to quarantine and other regulation of pests, and the potential impact on the environment of restricted use pesticides used in suppression and eradication programs. They shall demonstrate knowledge of factors influencing introduction, spread, and population dynamics of relevant pests. Their knowledge shall extend beyond that required by their immediate duties, since their services are frequently required in other areas of the country where emergency measures are invoked to control regulated pests and where individual judgments must be made in new situations.

8. Demonstration and research pest control. Persons demonstrating the safe and effective use of pesticides to other applicators and the public will be expected to meet comprehensive standards reflecting a broad spectrum of pesticide uses. Many different pest problems situations will be encountered in the course of activities associated with demonstration, and practical knowledge of problems, pests, and population levels occurring in each demonstration situation is required. Further, they shall demonstrate an understanding of a pesticide-organism interaction and the importance of

integrating pesticide use with other control methods. In general, it would be expected that applicators doing demonstration pest control work possess a practical knowledge of all of the standards detailed in (G)(1). In addition, they shall meet the specific standards required for subsections (c)(1) through (7) of this subsection as may be applicable to their particular activity.

C. Private Certification, 40 CFR 171.5(a)(1) through (5).

1. Recognize common pests to be controlled and damage caused by them.

2. Read and understand the label and labeling information, including the common name of pesticides the applicator applied; pest(s) to be controlled, timing and methods of application; safety precautions; any pre-harvest or re-entry restrictions; and any specific disposal procedures.

3. Apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticide to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation.

4. Recognize local environmental situations that must be considered during application to avoid contamination.

5. Recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

History:

New Appendix made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Appendix A subsection (B) CFR citation corrected from 40 CFR.4 to 40 CFR 171.4at the request of the Department, Office File No. M09-448, filed December 8, 2009 (Supp. 09-4). Repealed by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-301. General

A. A person shall not use, apply, or instruct another to apply a pesticide in a manner or for a use inconsistent with the pesticide labeling except that:

1. A pesticide may be applied at a dosage, concentration, or frequency less than that specified on the pesticide labeling unless the labeling specifically prohibits deviation from the specified dosage, concentration, or frequency.

2. A pesticide may be applied against any target pest not specified on the labeling if the application is to an application site specified on the pesticide labeling, unless the labeling specifically prohibits use against the pest.

3. A pesticide may be applied by any method of application not prohibited by the pesticide labeling unless the labeling specifically states that the pesticide may be applied only by the methods specified on the labeling.

4. A pesticide may be mixed with a fertilizer if the labeling does not prohibit the mixture.

5. A pesticide may be used in any manner that is consistent with Sections 5, 18, or 24 of FIFRA.

B. A person shall not use, apply, or store or instruct another to use, apply, or store a pesticide unless the pesticide is:

1. Registered with the Department and the EPA,

2. Previously registered with the Department and the EPA and cancelled or suspended by the EPA with a current end-use provision in effect, or

3. Registered with the Department for FIFRA 25(b) products.

C. Subsection (B) does not apply to a:

1. Pesticide registrant that temporarily stores pesticides produced for shipment out of the state;

2. Person who uses a pesticide in Arizona under an Arizona issued experimental use permit; or

3. Person who is using a pesticide for experimental purposes on the grounds of a college or university agricultural center or campus, or a company-owned research facility.

D. A person shall not sell, offer for sale, barter or otherwise supply any pesticide:

1. That has been altered, diluted, or mixed;

2. That has been repackaged at an establishment not registered with the EPA; or

3. Is not registered with the Department according to Article 7 of this Chapter.

E. A person shall not allow drift that causes any unreasonable adverse effect.

F. A person shall not cause the direct release of a pesticide and an individual shall not instruct an applicator in a manner to cause the direct release of a pesticide causing any unreasonable adverse effect.

G. Regulated grower responsibility.

1. After a pesticide is applied to an application site on an agricultural establishment, the regulated grower shall not harvest a crop from the application site, or permit livestock to graze the application site in violation of any provision of the pesticide labeling.

2. Before a pesticide application, a regulated grower shall ensure that all individuals and livestock subject to the regulated grower's control are outside the application site.

H. Emergency pest control measures. A person acting under a government-sponsored emergency program, shall not apply, cause, or authorize another to apply or cause a pesticide to come into contact with an individual, animal, or property outside the boundaries of the application site.

I. If possible when applying pesticides by aircraft or drone, a pilot shall fly crosswind, unless an obstacle does not permit it, and shall begin the application at the downwind side of the application site so that the pesticide is dispersed on the return swathe.

J. A person shall not apply a highly toxic pesticide, other than a pesticide registered by the EPA for ultra-low volume application, in a volume that is less than one gallon per acre in the final spray form. The content of that gallon shall be at least 50 percent water.

K. A buffer zone may receive direct application or drift of pesticides as permitted by law.

L. Requirements for Direct Supervision of Noncertified Applicators by Certified Applicators. Supervision of noncertified applicators shall be as prescribed in 40 CFR §171.201 (39 FR 36449, Oct. 9, 1974, as amended by

FR 1040, January 4, 2018, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-171/subpart-C/section-171.201). This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-301 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-302. Form 1080; Requirement for Written Recommendation

A. Effective January 1, 2026 all Form 1080s must be on a form approved by the Department, made available by the Department, or electronically submitted through the Department's Form 1080 internet portal. A PCA or regulated grower shall provide the following information in sequential order as indicated in subsections (A)(1) through (25):

1. Name and permit number of the seller;

2. Date the recommendation is written;

3. Name and permit number of the PGP upon whose application site the pesticide will be applied;

4. County where the application site is located;

5. Pest conditions present;

6. Whether the application site is within a pesticide management area under R3-3-304;

7. Anticipated date of harvest;

8. Restricted entry interval;

9. Label days to harvest;

10. Date recommended for the pesticide application;

11. Specific application site being treated;

12. Township, range, and section of the application site;

13. Number of acres or application sites in each section being treated;

14. Additional field description, if any;

15. Brand name and EPA registration number of the pesticide to be applied or number of the pesticide regulated under Section 18 of FIFRA to be applied;

16. Rate and unit of measure per acre or dilution per 100 gallons;

17. Total quantity of pesticide concentrate to be applied;

18. Total acres to be treated and total volume per acre or total number of application sites to be treated;

19. Whether the application includes an active ingredient that appears on the ADEQ groundwater protection list and is soil-applied as defined in A.A.C. R18-6-301;

20. Whether a supplemental label is required;

21. Method of pesticide application;

22. Label restrictions or special instructions, if any;

23. Name of the custom applicator making the application;

24. Anticipated pesticide delivery location; and

25. Signature of the regulated grower or PCA and credential number of the PGP or PCA making the recommendation.

B. A custom applicator shall not apply a pesticide unless the custom applicator has received a signed copy of the recommendation from the PCA or the regulated grower on the Form 1080 before the application. The custom applicator shall apply the pesticide according to the recommendation on the Form 1080 unless the recommendation conflicts with the pesticide label or labeling, in which case the custom applicator shall note these deviations on the Form 1080 and apply the pesticide according to the pesticide label or labeling, or as provided in R3-3-301(A).

C. Before the application of a pesticide recommended by a PCA, the PCA shall notify the regulated grower, or the regulated grower's representative, of the scheduled application date. If the application date or time changes from that scheduled with the regulated grower, the custom applicator shall notify the regulated grower of the revised date and time of the application.

D. After completing the application, the custom applicator shall sign the pesticide application report portion of Form 1080 to verify that the pesticide was applied according to the recommendation and provide the following information in writing on the form:

1. Date and start and end time of each application;

2. Date and time of the first and last spot application and a general description of the location, if applicable;

3. Wind direction and velocity;

4. Tag number, if applicable;

5. Name and credential number of the grower or custom applicator business;

6. Signature and credential number of the applicator; or name of the application equipment operator, and if a restricted use pesticide is applied, the signature and credential number of the certified applicator; and

7. Any deviation from the recommendation.

E. Reporting shall be as prescribed in R3-3-404.

F. Non-certified applicator records. When supervising a non-certified private, golf, or commercial applicator of a restricted use pesticide, records shall be kept as required in 40 CFR §171.201(e) (39 FR 36449, Oct. 9, 1974 as amended by 82 FR 1040, January 4, 2018, https://www.ecfr.gov/current/title-40/chapter-I/subchapter-E/part-171/subpart-C/section-171.201). This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-302 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-303. Experimental Use

A. At least 24 hours before the application, the person supervising the application shall provide the Department with the following information:

1. Exact date, time and location of the intended application by calling and leaving a message on the pesticide hotline answering machine, 1-800-423-8876; and

2. Any changes to the experimental permit information that was provided according to R3-3-212.

B. An applicator shall not apply an experimental use pesticide in a manner other than that specified by the experimental use permit or other Department-approved labeling that is provided to the applicator. The applicator shall ensure that the labeling is at the application site when the application occurs.

C. An applicator involved in an experimental use pesticide application shall comply with R3-3-302 as applicable.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-303 (Supp. 91-4). Section repealed; new Section renumbered from R3-3-306and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-304. Pesticide Management Areas; Criteria for Designation

A. The Associate Director shall annually publish a list of all locations within the state that are designated as pesticide management areas under A.R.S. §3-366. The list is available at every Environmental Services Division office.

B. The Director shall designate a location as a pesticide management area if all of the following evaluation criteria are met:

1. The distance between the application site and the property boundary of any residence, school, child care facility, or health care institution is less than 1/4 mile;

2. A pesticide is applied by aircraft;

3. A pesticide complained about under subsection (B)(4) is highly toxic or odoriferous; and

4. The Department receives complaints alleging pesticide misuse within a 12-month period from at least five or five percent, whichever is greater, of the residences located less than 1/4 mile from the application site or a complaint from any school, child care facility, or health care institution located less than 1/4 mile from the application site.

C. If, upon a written request from a person, or upon the Department's initiative, the Director determines that a pesticide management area no longer meets all of the criteria listed in subsection (B), the Director may remove the pesticide management area from the Department's annual list.

D. A person may petition the Department at any time to add or delete an area to or from the list of pesticide management areas. The petitioner shall address all of the criteria listed in subsection (B). The Director shall make a decision on each petition no later than 90 days from the date the petition was submitted.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-304 (Supp. 91-4). Section repealed; new Section renumbered from R3-3-308 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

§ R3-3-305. Pesticide Sales

A. A seller shall only sell, offer for sale, deliver, or offer for delivery any restricted use pesticide to a person who:

1. Has a valid private, golf or commercial applicator certification issued by the Department for the use of a restricted use pesticide in the appropriate category;

2. Works under the direct supervision of a person who has a valid private, golf or commercial applicator certification issued by the Department for the use of a restricted use pesticide in the appropriate category; or

3. Has a valid certification from California, Nevada, Utah, Colorado, New Mexico or from an Arizona Indian tribe that allows the person to use a restricted use pesticide.

B. If a pesticide is sold for an agricultural purpose, in Arizona, the seller shall only sell, offer for sale, deliver, or offer for delivery any pesticide for an agricultural purpose after determining that the pesticide will be used by a person who has a PGP issued by the Department.

C. If a pesticide is sold for an agricultural purpose, the seller shall write the permit numbers of the seller and PGP on each sale and delivery ticket or invoice, and on each pesticide container or carton. If a pallet is delivered to an individual purchaser, the seller may write the seller and PGP numbers on the outside of the shrink-wrapped pallet.

D. A seller shall register with the Department the name and address of each salesperson and PCA employed for the purpose of selling pesticides in this state.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-305 (Supp. 91-4). Section repealed; new Section renumbered from R3-3-309and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013. Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-306. Receipt of Restricted Use Pesticides by Noncertified Persons

A. A person shall not sell, offer for sale, deliver, or offer for delivery a restricted use pesticide to another person other than a certified applicator without having first obtained written documentation from a certified applicator or a noncertified recipient that the material is to be applied by or under the supervision of a certified applicator.

B. The seller shall obtain one of the following types of written documentation to satisfy the requirement in subsection (A):

1. A photocopy or fax of the certificate issued to the certified applicator who will be applying or supervising application of the restricted use pesticide and:

a. A statement signed by the certified applicator, authorizing and identifying the noncertified individual to purchase or receive the restricted use pesticide for the certified applicator; or

b. A copy of a signed contract or agreement, authorizing and identifying the noncertified person to receive the restricted use pesticide for the certified applicator; or

2. A form on file with the seller that contains the following information:

a. Name of any individual authorized to receive the restricted use pesticides for the certified applicator;

b. Relationship of an authorized individual to the certified applicator (partner, employee, co-worker, or immediate family);

c. List of the restricted use pesticides an authorized individual is allowed to receive, specifying the trade name and:

i. EPA registration number;

ii. State special local need registration number issued by the Department; or

iii. Emergency exemption number, issued by the EPA under Section 18 of FIFRA, if applicable.

d. Signature of the authorized individual and the date signed; and

e. Certified applicator's full name, signature, work address, work phone number, certification number, and certification categories.

C. A seller shall request proof of identification from any noncertified individual accepting restricted use pesticides on behalf of a certified applicator if the individual is unknown to the seller.

D. A noncertified individual who receives a restricted use pesticide on behalf of a certified applicator shall sign all sale documents for restricted use pesticides.

E. If, at the time of the sale of the restricted use pesticide, the noncertified individual receiving the pesticide satisfies the requirements of subsection (B) by presenting a signed statement, contract, or agreement, the seller shall maintain on file a copy of the signed statement, contract, or agreement.

F. The seller shall retain records of all sales or deliveries made and maintain the documents required by this Section for at least two years from the date of sale.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-306 (Supp. 91-4). Former Section R3-3-306 renumbered to R3-3-303; new R3-3-306 renumbered from R3-3-310and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-307. Aircraft and Drones; Agricultural Aircraft and Drone Pilots

A. A person shall not operate an aircraft to apply pesticides in this state unless the aircraft has a valid tag issued under R3-3-206 and a valid Federal Aviation Administration airworthiness certificate issued according to 14 CFR §§21.171 et seq. (29 FR 14569, October 24, 1964, as amended by 74 FR 53384, Oct. 16, 2009, https://www.ecfr.gov/current/title-14/chapter-I/subchapter-C/part-21/subpart-H . This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.).

B. A person shall not operate a drone to apply a pesticide in this state unless the drone has a valid tag issued under R3-3-206 and a valid registration issued according to 14 CFR §48.1 (80 FR 78645, Dec. 16, 2015, as amended by Doc. No. FAA-2018-1084, 84 FR 3673, Feb. 13, 2019, https://www.ecfr.gov/current/title-14/chapter-I/subchapter-C/part-48 . This material is incorporated by reference, on file with the Department, and does not include any later amendments or editions.).

C. A custom applicator shall not permit an individual who does not hold a valid agricultural aircraft pilot license and a valid commercial applicator certification to apply pesticides by aircraft.

D. A custom applicator shall not permit an individual who does not hold a valid agricultural drone pilot license and a valid commercial applicator certification to apply pesticides by drone.

History:

Adopted effective January 17, 1989 (Supp. 89-1). Renumbered from R3-10-307 (Supp. 91-4). Former Section R3-3-307 repealed; new R3-3-307 renumbered from R3-3-312and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-308. Pesticide Containers and Pesticides; Storage and Disposal

A. Each person storing pesticides or non-triple rinsed pesticide containers shall:

1. Provide a secure, well-ventilated storage location;

2. Verify that the containers are nonleaking and closed if not in use; and

3. Conspicuously post a sign at the entrance to the storage area warning others that pesticides are stored inside.

B. A person shall not place misleading wording or markings on a service container that are not related to the pesticide in the container.

C. A person using a service container to store or transport a pesticide concentrate or registered ready-to-use pesticide, shall place a durable and legible label or tag on the service container that lists:

1. Name, e-mail address, if applicable, and telephone number of the applicator or custom applicator using the pesticide;

2. Brand or trade name of the pesticide;

3. EPA registration number;

4. Name and percentage of the active ingredient;

5. Dilution, if any, in the service container;

6. EPA-assigned signal word (danger, warning, or caution) for the registered label; and

7. The phrase "KEEP OUT OF REACH OF CHILDREN."

D. A person shall not store or transport any pesticide in a container that has been used for food, feed, beverages, drugs, or cosmetics, or, because of shape, size, or marking is identified with food, feed, beverages, drugs, or cosmetics.

E. A person shall not dump, negligently store, or leave unattended any pesticide, service container, or pesticide container or part of a container, at any place or under any condition that will create a hazard to an individual, an animal, or property.

F. A person shall not dispose of any pesticide or pesticide container except according to label directions and all applicable laws.

G. Before a person disposes of any pesticide container, the person shall ensure that the following steps are taken:

1. After emptying each pesticide container other than a pressurized container, a paper bag, or a container designed for reuse with the same pesticide and described in R3-3-309, the container is triple rinsed and:

a. The rinsate is not discharged into the environment unless the discharge is performed according to label directions, and applicable laws;

b. The rinsate is placed into a service container or the application equipment for use on an application site, or the rinsate is disposed as allowed by the label;

c. Each container is punctured or crushed after it is triple rinsed to render the container incapable of holding any material; and

2. A pesticide container that is a combustible bag or package is thoroughly emptied and either:

a. Folded and tied into bundles or otherwise secured, or

b. Enclosed securely in a secondary container that is labeled as containing pesticide residue.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-308 (Supp. 91-4). Former Section R3-3-308 renumbered to R3-3-304; new R3-3-308 renumbered from R3-3-313 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

§ R3-3-309. Returnable, Reusable, Recyclable, and Reconditionable Pesticide Containers

A. A pesticide container, as defined in R3-3-101, labeled as a returnable, reusable container, or for which the label contains provisions for recycling or reconditioning, may be shipped according to label directions to a dealer, distributor, formulator, or a reconditioning or recycling facility that is operated in accordance with applicable laws.

B. If a pesticide container is being held for shipment under subsection (A), the person holding the container shall, immediately after use, place it in a secure environment, inaccessible for any use other than shipment according to label directions.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-309 (Supp. 91-4). Former Section R3-3-309 renumbered to R3-3-305; new R3-3-309 renumbered from R3-3-314 and amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

§ R3-3-310. Fumigation Use

A. An individual shall not perform a fumigation unless the individual is a certified fumigant applicator or a certified fumigant applicator is physically present in the immediate vicinity supervising the individual performing the fumigation.

B. An individual storing, handling, or applying a fumigant shall follow all label requirements. If the label does not specify warning requirements, the individual shall comply with the following provisions:

1. Before the fumigation begins, warning signs shall be posted in visible locations on or in the immediate vicinity of all entrances to and on every side of the space or area being fumigated.

2. Warning signs shall be printed in red on white background and shall:

a. State the English and Spanish words "DANGER/PELIGRO";

b. Contain a skull and crossbones symbol if shown on the product label;

c. State "Area or commodity under fumigation. DO NOT ENTER/NO ENTRE"; and

d. State the name of the fumigant, the date and time the fumigant was injected, and the name, e-mail address, if applicable, and telephone number of the certified applicator.

C. A certified fumigant applicator who engages in or who supervises another in the fumigation process shall ensure that the label requirements are followed, including requirements relating to the use of personal protective equipment and posting required warning signs.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-310 (Supp. 91-4). Former Section R3-3-310 renumbered to R3-3-306; new R3-3-310 made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

§ R3-3-311. [REPEALED]

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-311 (Supp. 91-4). Section repealed by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

§ R3-3-312. Renumbered

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-312 (Supp. 91-4). Section renumbered to R3-3-307 by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

§ R3-3-313. Renumbered

History:

Adopted effective January 17, 1989 (Supp. 89-1). Renumbered from R3-10-313 (Supp. 91-4). Section renumbered to R3-3-308 by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

§ R3-3-314. Renumbered

History:

Adopted effective January 17, 1989 (Supp. 89-1). Renumbered from R3-10-314 (Supp. 91-4). Section renumbered to R3-3-309 by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

§ R3-3-401. Pesticide Seller Records

A. A seller of any restricted use pesticide, or any agricultural use pesticide shall maintain all records showing the receipt, sale, delivery, or other disposition of the pesticide or device sold for at least two years from the date of sale. If a seller intends to change the location of the records, the seller shall file a signed statement with the Department before the move stating the new address.

B. When any agricultural use pesticide, or a restricted use pesticide is sold, delivered, or otherwise disposed of, a seller shall maintain the following records and information:

1. Bill of lading or other similar record of the receipt of the pesticide at the selling establishment;

2. Seller's dated sales receipt, delivery receipt, or invoice of the transaction, delivery, or other disposition of the pesticide;

3. Name and address of the purchaser;

4. PGP number, or the PMD license number of the purchaser, if applicable;

5. State special local need registration number issued under Section 24 of FIFRA, if applicable;

6. Emergency exemption permit number granted by the EPA under Section 18 of FIFRA, if applicable;

7. Experimental use permit number, if applicable;

8. Pesticide brand name and the EPA registration number; and

9. Quantity of the pesticide sold to the purchaser.

C. In addition to the information required in subsection (B), when a restricted use pesticide is sold, delivered, or otherwise disposed of for use by a certified applicator, a seller shall maintain records that contain the following information:

1. Name and address of the residence or principal place of business of each person to whom the restricted use pesticide is sold, delivered, or otherwise disposed of, and any records required under R3-3-306;

2. Certified applicator's name, address, certification number, and the expiration date of the applicator's certification; and

3. Categories in which the applicator is certified, if applicable.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-401 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013. Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-402. Private and Golf Applicator Records; Restricted Use Pesticide

A. Following an application to an application site of a restricted use pesticide, a pesticide registered under Section 18 of FIFRA, or an experimental use permitted pesticide, a private applicator shall complete an application record on a form approved by the Department, which includes the following:

1. Name of the private applicator and the applicator's certification number; as required,

2. Name and permit number of the seller;

3. Name of the pesticide applied and its EPA registration number;

4. Date and time of application;

5. Name of regulated grower;

6. Method of application;

7. Crop name or site and the number of acres treated with the pesticide;

8. Rate per acre of the active ingredient or formulation of the pesticide;

9. Total volume of pesticide used per acre; and

10. County, township, range, and section of the field that received the application.

B. Following an application to a non-field of a restricted use pesticide, a pesticide registered under Section 18 of FIFRA, or an experimental use permitted pesticide, a private applicator or golf applicator shall complete an application record on a form approved by the Department, that includes the following:

1. The information requested under subsection (A)(1) through (A)(6);

2. Item treated;

3. Rate per item treated;

4. Total volume used in the application; and

5. Application site location by county, township, range and section, or by physical address.

C. A private applicator and golf applicator shall retain records required by this Section for at least two years from the date of the private application.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-402 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013. Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-403. Bulk Release Report

A. An applicator shall notify the Department at the Pesticide Hotline, 1-800-423-8876, as soon as practical after a bulk release, but no later than three hours after the bulk release. If the bulk release is on a public highway or railway, or results in the death of an individual, the applicator shall immediately call 911, then report the incident to the ADEQ's Environmental Emergency Response Unit by calling (602) 390-7894, within 24 Hours.

B. Within 30 days after a bulk release, the applicator shall provide a written report to the Department listing all details of the release, including:

1. Location and cause of the release;

2. Disposition of the pesticide released;

3. Measures taken to contain the bulk release;

4. Name and EPA registration number of the pesticide released;

5. Name, e-mail address, if applicable, and telephone number of the applicator's contact person;

6. Date and time of the release;

7. Specific environment into which the release occurred;

8. Known human exposure to the pesticide, if observed; and

9. Estimated amount of pesticide or pesticide mixture released.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-403 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-404. Form 1080; Reports to the Department

A. A custom applicator shall submit to the Department, by mail or fax, a completed and signed Form 1080, as prescribed in R3-3-302.

B. A regulated grower shall submit to the Department, by mail or fax, a completed and signed Form 1080, as prescribed in R3-3-302, for application of a pesticide containing an active ingredient that appears on the ADEQ groundwater protection list, and is soil-applied, as defined in A.A.C. R18-6-301.

C. A custom applicator or regulated grower may report continued pesticide applications and spot applications within the same reporting period on a single Form 1080.

D. A custom applicator or a regulated grower shall submit the Form 1080 to the Department during the reporting period.

E. A PCA or custom applicator shall retain a copy of each Form 1080 for at least two years from the date of the application.

History:

Adopted effective January 17, 1989 (Supp. 89-1). Renumbered from R3-10-404 (Supp. 91-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-405. Disposal Records; Agricultural Pesticide Concentrate

An applicator shall maintain the following information for two years:

1. EPA registration number, product name, active ingredient, and amount of agricultural pesticide concentrate disposed of;

2. Date of disposal;

3. Method of disposal; and

4. Specific location of the disposal site, or name of licensed disposal contractor.

History:

New Section made by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

§ R3-3-501. Serious Violations

The following is a nonexclusive list of acts that are serious violations if exposure to the pesticide produces a substantial probability that death or serious physical harm could result, unless the violator did not, and could not with the exercise of reasonable diligence, as documented in the investigative record, know of such safety or human health risk, in which case the violation is nonserious:

1. Storing a pesticide or pesticide container improperly,

2. Dumping or disposing a pesticide or pesticide container in violation of this Chapter,

3. Leaving a pesticide or pesticide container unattended,

4. Spraying or applying a pesticide in a manner inconsistent with labeling instructions, or

5. Adulterating a pesticide.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-501 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

§ R3-3-502. Nonserious Violations

A. General violations. The following is a nonexclusive list of acts that are nonserious violations if the violation has a direct or immediate relationship to safety, health, or property damage, but does not constitute a de minimis violation or a serious violation, unless the violator did not, and could not with the exercise of reasonable diligence, know of such safety, health, or property damage risk in which case the violation is de minimis. A person shall not:

1. Improperly store, dump, or leave unattended any pesticide, pesticide container or part of a pesticide container, or service container.

2. Make a false statement or misrepresentation in an application for a permit, license, or certification, or a permit, license, or certification renewal.

3. Falsify any records or reports required to be made under Articles 2 through 4 of this Chapter.

4. Operate an aircraft, drone, or ground equipment in a faulty, careless, or negligent manner during the application of a pesticide.

5. Apply or instruct another to apply a pesticide so that it comes into contact with:

a. An individual;

b. An animal; or

c. Property, other than the application site being treated.

6. Use, apply, or instruct another to apply a pesticide in a manner or for a use inconsistent with its pesticide label or labeling except as provided by R3-3-301(A).

7. Unless being used under an approved EUP or being used on research facility, use, sell, apply, store, or instruct another to use, sell, apply, or store a pesticide:

a. That is not registered with the Department and the EPA, or

b. Outside the EPA authorized end-use provision if previously registered with the Department and the EPA and cancelled or suspended by the EPA.

8. Fail to provide accurate or approved labeling when registering a pesticide.

9. Using a restricted use pesticide without proper certification, or under the direct supervision of a properly certified applicator, when allowed.

B. Seller violations. A seller shall not:

1. Sell pesticides without a valid seller's permit issued by the Department according to R3-3-203;

2. Provide a restricted use pesticide to a regulated grower or applicator who does not have a valid applicator certification;

3. Fail to maintain records required under Articles 2 through 4 of this Chapter;

4. Fail to maintain complete sales records of restricted use pesticides required under Articles 3 and 4 of this Chapter;

5. Adulterate a pesticide;

6. Make false or misleading claims about a pesticide to any person;

7. Modify a label or labeling without proper authorization;

8. Provide a pesticide to a person not authorized according to R3-3-306; or

9. Provide an agricultural use pesticide to a person who does not have a valid PGP.

C. PCA violations. A PCA shall not:

1. Act as a PCA without a valid agricultural pest control advisor license issued by the Department according to R3-3-207,

2. Make a false or fraudulent statement in any written recommendation about the use of a pesticide,

3. Make a recommendation regarding the use of a pesticide in a specific category in which the individual is not licensed, or

4. Make a written recommendation for the use of a pesticide in a manner inconsistent with its pesticide label or the exceptions as provided in R3-3-301(A).

D. Agricultural aircraft pilot and drone pilot violations. A pilot or drone pilot shall not apply a pesticide by aircraft or drone without a valid agricultural aircraft pilot license or drone pilot license, as applicable, issued by the Department according to A.A.C. R3-3-204.

E. Custom applicator violations. A custom applicator shall not:

1. Allow application equipment to be operated in a careless or reckless manner during the application of a pesticide,

2. Make a custom application without a valid custom applicator's license issued by the Department according to R3-3-205,

3. Make a custom application of a restricted use pesticide without supervision by a person with a valid commercial applicator certification issued by the Department according to R3-3-208,

4. Allow an aircraft or drone to be operated during the application of a pesticide by an individual who does not have a valid agricultural aircraft pilot license (APL) or drone pilot license (DPL), as applicable, issued by the Department according to R3-3-204, or

5. Apply a pesticide without a written Form 1080 as prescribed in R3-3-302(A).

F. Regulated grower violations. A regulated grower shall not:

1. Purchase, apply, or use an agricultural use pesticide without a valid Pesticide Grower Permit (PSP) issued by the Department according to R3-3-201;

2. Purchase, store, or apply a restricted use pesticide without being a certified applicator in the appropriate category;

3. Purchase, store, or apply any restricted use pesticide on a golf course without being a golf applicator; or

4. Allow a pesticide application on a golf course without having the proper protective equipment required by the label available to the applicator.

G. Certified applicator violations. A certified applicator shall not:

1. Allow the unsupervised application of a restricted use pesticide,

2. Fail to maintain complete records required under Articles 2 through 4 of this Chapter, or

3. Use a restricted use pesticide without a valid commercial applicator, private applicator, or golf applicator restricted use pesticide certification issued by the Department according to R3-3-208.

4. Use a restricted use pesticide without restricted use pesticide certification in the proper category.

H. Exemptions. The following incidents are not pesticide use violations under this Section:

1. Exposure of an individual involved in the application who is wearing proper protective clothing and equipment;

2. Exposure of an unknown trespassing individual, animal, or property that the applicator, working in a prudent manner, could not anticipate being at the application site; or

3. Exposure of a person, animal, or property if the application is made according to a government-sponsored emergency program.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-502 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by exempt rulemaking at 19 A.A.R. 3130, effective September 16, 2013. Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-503. De Minimis Violations

A. Seller violations. It is a de minimis violation if a seller:

1. Fails to record seller and PGP numbers on containers, cartons, and delivery tickets;

2. Fails to register the seller's responsible individual; or

3. Fails to maintain complete records as required under Articles 2 through 4 of this Chapter.

B. PCA violations. It is a de minimis violation if a PCA:

1. Fails to put recommendations in writing as prescribed at R3-3-302(A),

2. Fails to provide complete information required on written recommendations under R3-3-302,

3. Fails to maintain complete records as required under Articles 2 through 4 of this Chapter, or

4. Fails to obtain CEU credits pertinent to the categories license renewal is sought.

C. Custom applicator violations. It is a de minimis violation if a custom applicator:

1. Fails to maintain complete records required under Articles 2 through 4 of this Chapter, or

2. Fails to file reports as required under Articles 3 and 4 of this Chapter.

D. Regulated grower violations. It is a de minimis violation if a regulated grower:

1. Fails to maintain complete records as required under Articles 2 through 4 of this Chapter; or

2. Fails to file reports as required under Article 4 of this Chapter including whether the application includes a pesticide containing an active ingredient that appears on the ADEQ groundwater protection list, and is soil-applied, as defined in A.A.C. R18-6-301.

E. Certified applicator violations. A certified applicator shall not:

1. Fail to file reports as required under Articles 3 and 4 of this Chapter; or

2. Fail to obtain CEU credits pertinent to the categories that certification renewal is sought.

F. A third de minimis violation in a three-year period is a nonserious violation.

G. Exemptions. The following incidents are not a violation under this Section:

1. Exposure of an individual involved in the application who is wearing proper protective clothing and equipment;

2. Exposure of an unknown trespassing individual, animal, or property that the applicator, working in a prudent manner, could not anticipate being at the application site; or

3. Exposure of a person, animal, or property if the application is made according to a government-sponsored emergency program.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-503 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-504. Mitigation

A. A violation listed in R3-3-501 is a nonserious violation if:

1. The violator did not, and could not with the exercise of reasonable diligence, know of the safety or human health risk involved; or

2. The release is done to avoid an accident that would have resulted in greater harm than that caused by the pesticide release or is caused by mechanical malfunction beyond the control of the operator.

B. A violation listed in R3-3-502 is a de minimis violation if:

1. The violator did not, and could not with the exercise of reasonable diligence, know of the safety, health, or property damage risk involved; or

2. The release is done to avoid an accident that would have resulted in greater harm than that caused by the pesticide release or is caused by mechanical malfunction beyond the control of the operator.

History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-504 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1).

§ R3-3-505. Unlisted Violations

A. The Department shall classify a violation of Articles 2 through 4 of this Chapter or of A.R.S. Title 3, Chapter 2, Article 6 that is not listed in R3-3-501, R3-3-502, or R3-3-503 as a serious, nonserious, or de minimis violation depending upon the specific factual circumstances surrounding the violation.

B. A third de minimis violation of the same or similar type in a three-year period is a nonserious violation.

C. According to A.R.S. §3-370, in addition to the civil penalties prescribed by the section, a person who knowingly or willfully commits a violation of this Article may be charged as follows:

1. For any nonserious violation of this Article that results in the harm to the environment or economy that results in the loss of $10,000 or less may be found guilty of a class 1 misdemeanor; or

2. For any serious violation of this Article that results in the harm to human or animal health, the environment, or the economy of $10,000 or more may be found guilty of a class 6 felony.

D. In addition, the Director may deny, suspend or revoke am applicator certification for one or more of the following violations:

1. Misuse of a pesticide;

2. Falsifying records as required under Article 4 of this Chapter;

3. A criminal conviction under section 14(b) of FIFRA;

4. A final order imposing a civil penalty under section 14(a) of FIFRA; or

5. A violation of State laws or regulation relevant to the State certification plan.

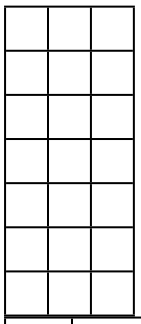
History:

Adopted effective November 20, 1987 (Supp. 87-4). Renumbered from R3-10-505 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ R3-3-506. Penalty and Fine Point System

A. The ALJ shall assess points, as applicable, against a violator for the violation of each pesticide rule or statute, or the Associate Director shall assess points, as applicable, for the violation of each pesticide rule or statute upon entering into a negotiated settlement as a result of an informal settlement conference under A.R.S. §41-1092.06, in accordance with the following point system. From each of subsections (A)(1) through (6), one choice shall be selected, unless otherwise appropriate, based upon supporting evidence in the record of the proceeding before the ALJ or Associate Director. Points shall be totaled for the violation of each pesticide rule or statute.

1. Health effects.



a.	No evidence of human exposure to pesticides and no evidence of the substantial probability of human exposure to pesticides.	0
b.	Substantial probability of human exposure to pesticides but treatment not required by a physician, nurse, paramedic, or physician's assistant.	5-10
c.	Evidence of human exposure to pesticides but treatment not required by a physician, nurse, paramedic, or physician's assistant.	11-20
d.	Human exposure to pesticides that required treatment by a physician, nurse, paramedic, or physician's assistant, but which did not result in pesticide poisoning.	21-30
e.	Human exposure to pesticides that required either hospitalization for less than 12 hours or treatment as an outpatient for five consecutive days or less by a physician, nurse, paramedic, or physician's assistant for pesticide	31-45

	poisoning.	
f.	Human exposure to pesticides that required either hospitalization for 12 hours or longer, or treatment as an outpatient for more than five consecutive days by a physician, nurse, paramedic, or physician's assistant for pesticide poisoning.	46-100
g.	Human exposure to pesticides resulting in death from pesticide poisoning (serious violation unless otherwise documented in the investigative record).	101-180

2. Environmental consequences and property damage. (Select one or more as evidence indicates.)

a.	No evidence of substantial probability of environmental or property damage.	0
b.	Substantial probability of water contamination.	5-10
c.	Evidence of water source contamination.	11-20
d.	Substantial probability of soil contamination causing economic damage.	5-10

e.	Evidence of soil contamination causing economic damage.	11-20
f.	Substantial probability of nontarget bird kills.	5-10
g.	Evidence of nontarget bird kills.	11-20
h.	Substantial probability of nontarget fish kills.	5-10
i.	Evidence of nontarget fish kills.	11-20
j.	Nontarget kills involving game or furbearing animals as defined by A.R.S. §17-101(B).	10-20
k.	Any property damage (nonserious violation only under A.R.S. §3-361(4)).	10-20
l.	Air contamination causing official evacuation by federal, state, or local authorities.	10-20
m.	Killing one or more threatened or endangered species.	15-20
n.	Killing one or more domestic animals.	15-20

3. Culpability

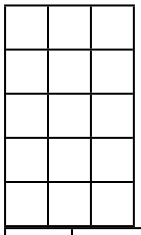
a.	Knowing. Knew or reasonably should have known of the safety, health or property damage risk.	5-10
b.	Willfully. Actual knowledge or belief that the conduct would violate the law but engages in misconduct.	20-50

4. Prior violations or citations. Violations or citations within three years from the date the violation was committed. (Select one or more as evidence indicates.)

Prior violation history	Current violation Non-serious	Current violation Serious
None	0	0
One or more De minimis	5	0
One Nonserious	10	5
One Nonserious, same or substantially similar to current violation	20	10
Two Nonserious	30	15
Two Nonserious, same or substantially similar to current violation	40	20
Three Nonserious	60	30
Three Nonserious, same or substantially similar to current violation	70	35
Additional Nonserious: same or substantially similar to current violation, points per each additional violation beyond three	10	5
One Serious	20	10
One Serious, same or substantially similar to current violation	40	20
Two Serious	60	30
Two Serious, same or substantially similar to current violation	80	40
Three Serious	120	60

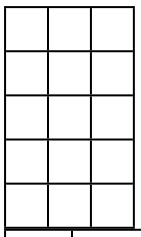
Three Serious, same or substantially similar to current violation	140	70
Additional Serious: same or substantially similar to current violation, points per violation	20	10

5. The length of time a violation has been allowed to continue by the violator after notification by the Department.



a.	Less than one day.	0
b.	One day but less than one week.	1-10
c.	One week but less than one month.	11-20
d.	One month but less than two months.	21-30
e.	Two months or more.	31-40

6. Wrongfulness of conduct



a.	Conduct resulting in a violation that does not cause any immediate damage to public health, safety, or property.	4-5
b.	Conduct resulting in a violation that the evidence establishes may have a substantial probability of an immediate effect upon public health, safety, or property.	6-8

c.	Conduct resulting in a violation that the evidence establishes had an immediate effect upon public health, safety, or property, but does not fall within subsection (6)(e).	9-10
d.	Conduct causing the substantial probability of serious physical injury, hospitalization, or sustained medical treatment for an individual, or degrading the pre-existing environmental quality of the air, water, or soil so as to cause a substantial probability of a threat to the public health, safety, or property.	20-35
e.	Conduct resulting in serious physical injury, hospitalization, or sustained medical treatment for an individual, or degrading the pre-existing environmental quality of the air, water, or soil so as to cause a substantial probability of a threat to the public health, safety, or property.	36-50

B. The ALJ or Associate Director, after determining points according to subsection (A) shall assess a fine or penalty, or fine and penalty, for each violation in accordance with the following schedules:

1. Nonserious violation as defined under A.R.S. §3-361.

a. 53 points or less. A fine of $50 to $150; a penalty of one to three months' probation, with a condition of violating probation being one to three hours of continuing education.

b. 54 to 107 points. A fine of $151 to $300; a penalty of four to six months' probation with a condition of violating probation being one to 10 days' suspension.

c. 108 points or more. A fine of $301 to $500; a penalty of seven to 12 months' probation with a condition of violating probation being 15 to 30 days' suspension or revocation for a period of up to one year.

2. Serious violation as defined under A.R.S. §3-361.

a. 46 points or less. A fine of $1,000 to $2,000; a penalty of one to three months' probation with a condition of violating probation being five to 10 days' suspension for a nonserious violation or 15 to 30 days' suspension for a serious violation.

b. 47 to 93 points. A fine of $2,001 to $5,000; a penalty of four to six months' probation with a condition of violating probation being 15 to 30

days' suspension for a nonserious violation and 31 to 90 days' suspension for a serious violation.

c. 94 points or more. A fine of $5,001 to $10,000; a penalty of probation for seven to 12 months with a condition of violating probation being two to four months' suspension for a nonserious violation and four to 12 months' suspension for a serious violation, or revocation for the remainder of the license year and an additional period of one to three years.

3. The first de minimis violation is not considered a violation of probation.

History:

Adopted effective September 13, 1989 (Supp. 89-3). Renumbered from R3-10-506 (Supp. 91-4). Amended by final rulemaking at 10 A.A.R. 276, effective March 6, 2004 (Supp. 04-1). Amended by final rulemaking at 30 A.A.R. 89, effective 3/4/2024.

§ 3-107. Organizational and administrative powers and duties of the director

A. The director shall:

1. Formulate the program and policies of the department and adopt administrative rules to effect its program and policies.

2. Ensure coordination and cooperation in the department in order to achieve a unified policy of administering and executing its responsibilities.

3. Subject to section 35-149, accept, expend and account for gifts, grants, devises and other contributions of money or property from any public or private source, including the federal government. All contributions shall be included in the annual report under paragraph 6 of this subsection. Monies received under this paragraph shall be deposited, pursuant to sections 35-146 and 35-147, in special funds for the purpose specified, which are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

4. Contract and enter into interagency and intergovernmental agreements pursuant to title 11, chapter 7, article 3 with any private party or public agency.

5. Administer oaths to witnesses and issue and direct the service of subpoenas requiring witnesses to attend and testify at or requiring the production of evidence in hearings, investigations and other proceedings.

6. Not later than September 30 each year, issue a report to the governor and the legislature of the department's activities during the preceding fiscal year. The report may recommend statutory changes to improve the department's ability to achieve the purposes and policies established by law. The director shall provide a copy of the report to the Arizona state library, archives and public records.

7. Establish, equip and maintain a central office in Phoenix and field offices as the director deems necessary.

8. Sign all vouchers to expend money under this title, which shall be paid as other claims against this state out of the appropriations to the department.

9. Coordinate agricultural education efforts to foster an understanding of Arizona agriculture and to promote a more efficient cooperation and understanding among agricultural educators, producers, dealers, buyers, mass media and the consuming public to stimulate the production, consumption and marketing of Arizona agricultural products.

10. Employ staff subject to title 41, chapter 4, article 4 and terminate employment for cause as provided by title 41, chapter 4, article 5.

11. Conduct hearings on appeals by producers regarding the assessed actual costs of the plow up and the penalty of one hundred fifty per cent for unpaid costs pursuant to section 3-204.01. The director may adopt rules to implement this paragraph.

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

B. The director may:

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

2. Construct and operate border inspection stations or other necessary facilities in this state and cooperate by joint agreement with an adjoining state in constructing and operating border inspection stations or other facilities within the boundaries of this state or of the adjoining state.

3. Cooperate with agencies of the United States and other states and other agencies of this state and enter into agreements in developing and administering state and federal agricultural programs regarding the use of department officers, inspectors or other resources in this state, in other states or in other countries.

4. Cooperate with the office of tourism in distributing Arizona tourist information.

5. Enter into compliance agreements with any person, state or regulatory agency. For the purposes of this paragraph, "compliance agreement" means any written agreement or permit between a person and the department for the purpose of enforcing the department's requirements.

6. Abate, suppress, control, regulate, seize, quarantine or destroy any agricultural product or foodstuff that is adulterated or contaminated as the result of an accident at a commercial nuclear generating station as defined in section 26-301, paragraph 1. A person owning an agricultural product or foodstuff that has been subject to this paragraph may request a hearing pursuant to title 41, chapter 6, article 10.

7. Engage in joint venture activities with businesses and commodity groups that are specifically designed to further the mission of the department, that comply with the constitution and laws of the United States and that do not compete with private enterprise.

8. Sell, exchange or otherwise dispose of personal property labeled with the "Arizona grown" trademark. Revenues received pursuant to this paragraph shall be credited to the commodity promotion fund established by section 3-109.02.

History:

Amended by L. 2013, ch. 161,s. 1, eff. 9/13/2013. L12, ch 321, sec 1.

§ 3-264. Enforcement and administrative powers

A. The associate director may refuse to license or may cancel the license of any distributor who violates any provision of this article. The director shall review the associate director's action on request of any person adversely affected by the action.

B. The director may, after an opportunity for a hearing:

1. Determine and publish at least annually the values per unit of weight of nitrogen, phosphorus and potassium in commercial fertilizers in the state for the purpose of assessing penalties on commercial fertilizers under the provisions of section 3-276.

2. Adopt rules that the director deems necessary for the efficient administration and enforcement of this article, including the collection and examination of samples of fertilizer materials, and rules pertaining to composition and use of fertilizer materials, including, without limiting the foregoing general terms, the establishment of tolerances, deficiencies and penalties where not specifically provided for in this article.

3. Prohibit the sale or use in fertilizer materials of any substance proven to be detrimental to agriculture.

4. Provide for incorporating into commercial fertilizers other substances as pesticides and provide for proper labeling of the mixture.

5. Prescribe the information which shall appear on the tag, other than as specifically set forth in this article.

§ 3-343. Enforcement and administrative powers

A. This article shall be administered and its provisions and all rules adopted under this article shall be enforced by the associate director.

B. The director may, after a hearing:

1. Declare as a pest any form of plant or animal life or virus which is injurious to plants, humans, domestic animals, articles or substances.

2. Determine whether or not pesticides present an unreasonable risk to humans.

3. Determine standards of coloring or discoloring for pesticides, and subject pesticides to the requirements of section 3-352.

C. The director may, after a hearing, make rules concerning safety in the distribution and sale of pesticides or devices.

D. All rules adopted under authority of this article shall be divided into two classes to be known as "technical rules" and "administrative rules", such rules to be filed in the office of the secretary of state and subject to judicial review.

E. The director may adopt administrative and technical rules deemed necessary to effectuate the purposes of this article, but only after a hearing.

§ 3-363. Rules

The director shall adopt rules to regulate pesticides that include provisions to:

1. Administer and implement this article.

2. Prescribe measures to control, monitor, inspect and govern pesticide use.

3. Prohibit or restrict pesticide use.

4. Restrict the areas in which pesticide use may occur.

5. Prescribe minimum qualifications for all persons who engage in pesticide use, including, as appropriate, requirements that the persons have valid licenses, permits or certificates, have adequate training, including continuing education requirements, and meet financial responsibility standards.

6. Prescribe appropriate recordkeeping and reporting requirements regarding pesticide use, except that the recordkeeping and reporting requirements for growers and certified private applicators who apply pesticides shall be equivalent to, but not more stringent than, the requirements prescribed under the federal insecticide, fungicide and rodenticide act (61 Stat. 163) and the food, agriculture, conservation and trade act of 1990 (P.L. 101-624; 104 Stat. 3359).

7. Prohibit pesticide use that is inconsistent with the pesticide label as required under the federal insecticide, fungicide and rodenticide act (61 Stat. 163).

8. Exempt from regulation under this article pesticide use that is regulated in chapter 20 of this title.

9. Issue licenses, permits and certificates for pesticide use, as appropriate, having terms of one or more years.

10. Charge and collect the following fees for each permit, license and certification under this article:

(a) Not more than twenty dollars per year for a grower permit.

(b) Not more than one hundred dollars per year for a seller permit.

(c) Not more than one hundred dollars per year for a custom applicator license.

(d) Not more than fifty dollars per year for a pilot license.

(e) Not more than fifty dollars per year for a pest control advisor license.

(f) Not more than twenty-five dollars per year for a piece of equipment used to apply pesticides by a custom applicator.

(g) Not more than fifty dollars per year for restricted use certification.

(h) Not more than the amount set by the director by rule for a license or certificate for pesticide use on golf courses.

11. Establish a nonexclusive list of acts and omissions that constitute serious, nonserious and de minimis violations of this article.

12. Establish a system of administrative penalties and fines for violations of this article and any rules adopted under this article. Under this system:

(a) Violators shall be assessed a number of points for each violation, depending on such factors as:

(i) Potential and actual consequences of the violation on public and worker health and safety and the environment.

(ii) The wrongfulness of the conduct.

(iii) The degree of culpability of the violator.

(iv) The duration of the violation.

(v) Prior violations or citations.

(b) Penalties shall be assessed depending on the number of points accrued by the violator.

History:

Amended by L. 2016, ch. 221,s. 2, eff. 8/5/2016. Amended by L. 2013, ch. 64,s. 1, eff. 9/13/2013.

§ 3-366. Pesticide management areas

A. The director shall designate pesticide management areas. Pesticide management areas may be urban areas that are adjacent to farmlands and have a history of concerns known by the department regarding nearby aerial pesticide applications. The director may adopt rules for designating pesticide management areas.

B. If possible at least twenty-four hours before applying a pesticide listed by the director under section 3-362, subsection A, paragraph 3 by aircraft in a pesticide management area the applicator shall notify the department. In any event, every reasonable attempt shall be made to notify the department before every application of pesticide in a pesticide management area.