DEPARTMENT OF ADMINISTRATION
Title 2, Chapter 10

Amend: R2-10-101, R2-10-102, R2-10-103, R2-10-106, R2-10-107, R2-10-301, R2-10-401

New Section: R2-10-110

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: May 7, 2024

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

FROM: Council Staff

DATE: April 18, 2024

SUBJECT: **DEPARTMENT OF ADMINISTRATION**
Title 2, Chapter 10

Amend: R2-10-101, R2-10-102, R2-10-103, R2-10-106, R2-10-107, R2-10-301, R2-10-401

New Section: R2-10-110

Summary:

This regular rulemaking from the Arizona Department of Administration (Department) seeks to amend seven (7) rules and add one (1) new section in Title 2, Chapter 10, Articles 1, 3, and 4 related to Coverage and Claims Procedure, Insurance: Purchase and Contracts, and Provider Indemnity Program (PIP), respectively. Specifically, the Department indicates this rulemaking is necessary to address the issues identified in the previous Five-Year Review Report approved by the Council in August 2022, establish rules relating to the Cyber Risk Insurance Fund in order to comply with the new requirements of A.R.S. § 41-622, and to amend rules in order to comply with the new requirements of A.R.S. § 41-621.

The Department indicates the proposed rulemaking will amend and add language to clarify definitions, address deficiencies, clarify reporting requirements, and clarify coverage guidelines and limits. Furthemore, the Department indicates the proposed new section R2-10-110 specifies cyber breach coverage and limitations, establishes reporting requirements

for cyber-related losses, outlines the authority of the Director of the Arizona Department of Administration, and establishes a per occurrence deductible for cyber-related losses.

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

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

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

This rulemaking does not establish a new fee or contain a fee increase.

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

The Department indicates it did not review any study relevant to this rulemaking.

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

The Department indicates the proposed rulemaking will amend and add language to clarify definitions, address deficiencies, clarify reporting requirements, and to clarify coverage guidelines and limits. The Department states there are no costs associated with the rulemaking that are not already covered in statute.

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

The Department indicates it considered all rulemaking alternatives. As this rulemaking only clarifies established statutes, the Department states there are no new costs to those who are regulated.

6. What are the economic impacts on stakeholders?

The Department states the rule will have no adverse impact on small business and does not impose any new requirements nor does it amend any existing requirements impacting small business. Furthermore, the Department indicates consumers are not impacted by these rules. Additionally, there is no probable impact on private and public employment in businesses, agencies, and political subdivisions of the state. The Department states statutory changes associated with the rulemaking reduced coverage for providers and clients from unlimited coverage to limited liability, impacting the Arizona Department of Child Safety and the Arizona Department of Economic Security.

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

The Department indicates between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking now before the Council, the following changes were made to the proposed rule language:

- **R2-10-101:** Definition of "claim" removed from rulemaking.
- **R2-10-101:** "Custody or control" replaced with "custody and control."
- **R2-10-101:** Reference to "and/or" changed to "or."
- **R2-10-101:** Definition of "self-insurance" changed from "state-provided loss protection for an agency, employee, or other person or entity who is self-insured by RM, which is funded through RM's revolving fund" to "state-provided loss protection for an agency, employee, or other person or entity who is insured through RM funds."
- **R2-10-102(A):** Removed term "suspected or actual" in reference to the term "data breach."
- **R2-10-102(B):** Removed "or" in the following sentence due to clerical error: "Any agency, officer, or employee, or other person or entity insured pursuant to A.R.S. § 41-621, who receives a claim, notice, summons, complaint or other process by any claimant or representative shall immediately forward the claim to RM."
- **R2-10-103(C):** Reference to "and/or" changed to "or."
- **R2-10-110(A):** Removed term "suspected or actual" in reference to the term "data breach."
- **R2-10-110(C):** Item #5 changed from, "For indemnifying or limiting a contractor's liability for losses as prescribed in A.A.C. R2-10-301B, or" to "For failure to seek Risk Management approval to indemnify or limit a contractor's liability for losses as prescribed in A.A.C. R2-10-301B, or" due to clerical error.
- **R2-10-401(C):** Item #2 changed from, "If more than one provider or client in a custodial-care facility or home is a PIP insured, the liability of all providers and/or clients in such home or facility shall be subject to a single per-claim limit and annual aggregate limit" to "If more than one provider or client in a custodial-care facility or home is a PIP insured, the liability of all providers and clients combined in such home or facility shall be subject to a single per-claim limit."
- **R2-10-401(C):** Reference to "and/or" changed to "or."

Council staff does not believe these changes make the final rules substantially different from the proposed rules pursuant to A.R.S. § 41-1025.

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

The Department received numerous comments related to this rulemaking which are outlined in Section 11 of the Preamble of the Department's Notice of Final Rulemaking along with the Department's responses. Copies of the comments received by the Department and the

Department's responses are provided for the Council's consideration. Council staff believes the Department has adequately addressed public comments related to this rulemaking.

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

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines "general permit" to mean "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The Department indicates the proposed rules do not require issuance of a permit. However, the Department indicates, to the extent the proposed rules implicate other types of agency authorizations, the activities or practices in the class are not substantially similar in nature, and thus general permits would not be appropriate.

Council staff believes the Department is in compliance with A.R.S. § 41-1037.

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

Not applicable. The Department indicates there is no federal law applicable to the subject of these rules.

11. Conclusion

This regular rulemaking from Department seeks to amend seven (7) rules and add one (1) new section in Title 2, Chapter 10, Articles 1, 3, and 4 related to Coverage and Claims Procedure, Insurance: Purchase and Contracts, and Provider Indemnity Program (PIP), respectively. Specifically, the Department indicates this rulemaking is necessary to address the issues identified in the previous Five-Year Review Report approved by the Council in August 2022, establish rules relating to the Cyber Risk Insurance Fund in order to comply with the new requirements of A.R.S. § 41-622, and to amend rules in order to comply with the new requirements of A.R.S. § 41-621.

The Department indicates the proposed rulemaking will amend and add language to clarify definitions, address deficiencies, clarify reporting requirements, and clarify coverage guidelines and limits. Furthemore, the Department indicates the proposed new section

R2-10-110 specifies cyber breach coverage and limitations, establishes reporting requirements for cyber-related losses, outlines the authority of the Director of the Arizona Department of Administration, and establishes a per occurrence deductible for cyber-related losses.

The Board is seeking the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.

Katie Hobbs
Governor

Elizabeth
Alvarado-Thorson
Cabinet Executive Officer
Executive Deputy Director

ARIZONA DEPARTMENT OF ADMINISTRATION

RISK MANAGEMENT DIVISION
100 NORTH FIFTEENTH AVENUE • SUITE 301
PHOENIX, ARIZONA 85007
(602) 542-2182

March 18, 2024

Jessica Klein, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 302
Phoenix, Arizona 85007

RE: Final Rulemaking - 2 A.A.C. 10, Articles 1, 3, and 4

Dear Ms. Klein:

The Arizona Department of Administration submits the accompanying final rule package that amends A.A.C. Title 2, Chapter 10, Articles 1, 3, and 4 for review and approval by the Council.

The following information is provided for your use in reviewing the accompanying rule package:

A. Close of Record Date: The rulemaking record was closed on November 22, 2023.

B. Relation of the rulemaking to a five-year-review report: The rulemaking relates, in part, to a 5-year-rule-review report submitted to the Governor's Regulatory Review Council on May 26, 2022. The agency determined that a course of action was necessary to amend R2-10-101 in order to address potential clarity deficiencies.

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

D. Fee increase: The rulemaking does not contain a fee increase.

E. Immediate effective date: The agency is not requesting an immediate effective date.

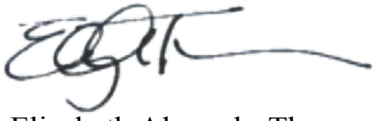
F. Certification regarding studies: I certify that the preamble accurately discloses that the agency did not review or rely on any study in the agency's evaluation of or justification for the rules.

G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of

the rules in this rulemaking will require new full-time employees to implement and enforce the rule. Notification was not provided to JLBC.

H. List of documents enclosed:
   1. Cover letter signed by the agency head.
   2. Notice of final rulemaking, including the preamble, table of contents for the rulemaking, and text of each rule.
   3. Economic, small business, and consumer impact statement containing information required by A.R.S. § 41-1055.
   4. Written comments received by the agency concerning the proposed rule and the response provided, if applicable.
   5. General and specific statutes authorizing the rule.

Sincerely,



Elizabeth Alvarado-Thorson
Cabinet Executive Officer
Executive Deputy Director

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 10. DEPARTMENT OF ADMINISTRATION

RISK MANAGEMENT DIVISION

PREAMBLE

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

R2-10-101	Amend
R2-10-102	Amend
R2-10-103	Amend
R2-10-106	Amend
R2-10-107	Amend
R2-10-110	New Section
R2-10-301	Amend
R2-10-401	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. § 41-703 (3)

Implementing statute: A.R.S. § 41-621 and A.R.S. § 41-622

3. The effective date of the rule:

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

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

The agency does not seek to have the effective date of the rules earlier or later than the 60 day effective date specified in A.R.S. § 41-1032(A).

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: Volume 28, Issue 49 A.A.R. (page 3778)

Notice of Proposed Rulemaking: Volume 29, Issue 43 A.A.R. (page 3377 through 3383)

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

Name:	Misty Sweet	Keith Johnson
Address:	1802 W. Jackson Street #93 Phoenix, Arizona 85007	1802 W. Jackson Street #93 Phoenix, Arizona 85007
Telephone:	(602) 625-8337	(602) 625-8318
Fax:		
E-mail:	Misty.Sweet@azdoa.gov	Keith.Johnson@azdoa.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 rulemaking is necessary in order to address the issues identified in the previous five-year rule review report approved by the Governor's Regulatory Review Council, establish rules relating to the Cyber Risk Insurance Fund in order to comply with the new requirements of A.R.S. §41-622, and to amend rules in order to comply with the new requirements of A.R.S. §41-621.

The proposed rulemaking will amend and add language to clarify definitions, address deficiencies, clarify reporting requirements, and clarify coverage guidelines and limits.

The subject matter of proposed new section R2-10-110 specifies cyber breach coverage and limitations, establishes reporting requirements for cyber-related losses, outlines the authority of the Director of the Arizona Department of Administration, and establishes a per occurrence deductible for cyber-related losses.

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 agency did not utilize a study for evaluating or justifying the 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. Summary of the economic, small business, and consumer impact:

The rule amendments provide clarification to R2-10-101, R2-10-102, R2-10-103, R2-10-106, R2-10-107, and R2-10-301. These rule amendments will have no economic impact to small businesses or state agencies. The rule amendments to add R2-10-110 and to amend R2-10-401 are required in order to support statutory changes that have already taken place. They will have no economic impact to small businesses or state agencies, beyond the impact of the statutory changes.

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

Between the proposed rulemaking and the final rulemaking, the following changes were made to the rulemaking:
R2-10-101: Definition of "claim" removed from rulemaking.
R2-10-101: "Custody or control" replaced with "custody and control."
R2-10-101: Reference to "and/or" changed to "or."
R2-10-101: Definition of "self-insurance" changed from "state-provided loss protection for an agency, employee, or other person or entity who is self-insured by RM, which is funded through RM's revolving fund" to "state-provided loss protection for an agency, employee, or other person or entity who is insured through RM funds."
R2-10-102(A): Removed term "suspected or actual" in reference to the term "data breach."
R2-10-102(B): Removed "or" in the following sentence due to clerical error: "Any agency, officer, or employee, or other person or entity insured pursuant to A.R.S. § 41-621, who receives a claim, notice, summons, complaint or other process by any claimant or representative shall immediately forward the claim to RM."
R2-10-103(C): Reference to "and/or" changed to "or."
R2-10-110(A): Removed term "suspected or actual" in reference to the term "data breach."
R2-10-110(C): Item #5 changed from, "For indemnifying or limiting a contractor's liability for losses as prescribed in A.A.C. R2-10-301B, or" to "For failure to seek Risk Management approval to indemnify or limit a contractor's liability for losses as prescribed in A.A.C. R2-10-301B, or" due to clerical error.

R2-10-401(C): Item #2 changed from, “If more than one provider or client in a custodial-care facility or home is a PIP insured, the liability of all providers and/or clients in such home or facility shall be subject to a single per-claim limit and annual aggregate limit” to “If more than one provider or client in a custodial-care facility or home is a PIP insured, the liability of all providers and clients combined in such home or facility shall be subject to a single per-claim limit.”
R2-10-401(C): Reference to “and/or” changed to “or.”

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

Stakeholder/Public Comment	Agency Response
Consider changing and/or references to either "and" or "or".	All "and/or" references will be reviewed.
Define "ADOA" or add to the definition of "department."	Definition of "department" adequately identifies the ADOA.
Clarify definition of claim and what is meant by demand for damages or money. Currently not clear and can be read as a claim is when a provider is demanding damages.	After further review, the Department is removing the added definition.
Why does the definition of "claim" refer to R2-10-401(C)?	After further review, the reference to R2-10-401(C) is a clerical error. The Department is removing the added definition.
"Care, custody, and control" should be changed to "care, custody, or control" because it would require all three to be in place.	The term will be changed to reflect accurate meaning.
Does the definition of "provider" include or exclude adoptive parents and/or persons who gained legal guardianship of a DCS youth who are now receiving subsidy payments?	Under PIP coverage, adoptive parents and/or persons who gained legal guardianship of a DCS youth, or the youth, even if they are receiving subsidy are not covered. We do not believe these parents and/or persons who gained legal guardianship of a DCS youth who are now receiving subsidy payments would still qualify or make them a "state client", participating in one of these four programs listed under ARS 41-621(B): developmentally disabled, independent living program, transitional independent living program, and extended foster care program.
Definition of "self-insurance" uses the word "self-insured". "Self-insured" should not be used to describe "self-insurance."	Department agrees. "Self-insurance" means state-provided loss protection for an agency, employee, or other person or entity who is insured through RM funds.
Clerical error in reference to A.R.S. symbols.	Clerical errors will be corrected.
R2-10-106 is referring to "100 deductible for those with budgets less than $1M for both Real and Personal property.	Comment is from an old version of the administrative code. It is not the current version.
R2-10-110(C) gives the ADOA Director sole authority to double the deductible if one or more of the qualifiers are met. Would like an appeals process to be placed in this section that would allow an Agency Director to appeal this to an appropriate panel or the Governor's Office.	An agency always has the ability to appeal to the Governor's Office.
“e. For indemnifying or limiting a contractor's liability for losses as prescribed in A.A.C, R2-10-301B" is stating the deductible will apply if we receive approval.	This is a clerical error and will be corrected to read "For failure to seek Risk Management approval to indemnify or limit a contractor's liability for losses as prescribed in A.A.C, R2-10-301B."
What kind of events apply to the deductible in R2-10-110?	This is for cyber related losses.

R2-10-102-reporting within 72 hours or when the agency should have reasonably known is a concern because the term "reasonably" can cause unnecessary issues. Consider changing it to "after 72 hours."	Department does not want to limit the reporting time to just 72 hours if there is an instance where an agency may not have known about the incident within 72 hours. We want to allow more time to report covered losses. Through an investigation, it should be determined when the agency, board, or commission first knew of the loss. The purpose is to drive notification in a reasonable amount of time so that we can take action within a reasonable period of time. The Department has determined that the term "reasonably known" is appropriate. We have removed "suspected or actual." Agencies, boards, and commissions should refer to the definition of data breach, security system breach, and security incident.
The 72-hour window in R2-10-102 allows the deductible in R2-10-110 to be doubled; however the term "reasonably known" is subjective. This should be cleared up.	This is the decision of the ADOA Director. ADOA is not looking to double the deductible unless the agency's actions are problematic.
In R2-10-110, when does ADOA want to actually get notified? If agencies notify ADOA of all suspected breaches, there will be a lot of notifications, or do you want agencies to do some due diligence first and notify when we believe there is an actual data breach. This affects the fidelity of what kind of reporting is wanted. Encourage looking at how to get the language right so that ADOA gets exactly the level of fidelity with regard to a confirmed breach.	Consideration should be given to the probability that a particular incident could be a claim, to which you would be looking for payment or reimbursement under the States cyber insurance program. Those incidents that you believe have this potential should be reported timely. We do not believe we can remove this decision making process by changing or adding anything to the administrative code under review.
R2-10-110(B) - Was this by design due to this being a new program to leave it more open-ended as opposed to laying out what the process is if that discretion is exercised?	Driven from prior inquiries to possibly not participate in certain programs, Under the cyber coverage, we are giving the option for those agencies, boards, and commissions to request exclusion.

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

None

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

The proposed rules do not require permits. To the extent the proposed rules implicate other types of agency authorizations, the activities or practices in the class are not substantially similar in nature, and thus general permits would not be appropriate.

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

There are no federal rules applicable to the subject of this 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:

A competitive business analysis was not received by the Department

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

None

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

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

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 10. DEPARTMENT OF ADMINISTRATION - RISK MANAGEMENT DIVISION

ARTICLE 1. COVERAGE AND CLAIMS PROCEDURE

Section

ARTICLE 3. INSURANCE: PURCHASE AND CONTRACTS

Section

ARTICLE 4. PROVIDER INDEMNITY PROGRAM (PIP)

Section

ARTICLE 1. COVERAGE AND CLAIMS PROCEDURE

R2-10-101. Definitions

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

1. "Agency" means a state department, board, or commission.
2. "Agency loss prevention committee" means a panel of individuals established by the head of an agency to develop and oversee the agency's loss prevention program.
3. "Agency loss prevention coordinator" means an individual chosen by the head of an agency to implement the agency's loss prevention program and who is the agency's liaison with Risk Management.
4. "Attorney General's Office" means the Liability Management Section of the Attorney General's Office assigned to defend claims covered by A.R.S. § 41-621.
5. "Client" means an individual in custodial care of a provider through contract or court order with a state agency through programs listed in A.R.S. § 41-621(B).
6. "Confined space" has the meaning of 29 CFR 1910.146(b) Occupational Safety and Health Standards for General Industry, The Industrial Commission of Arizona, Division of Occupational Safety and Health, February 1, 1998, which is incorporated by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporation by reference are available for inspection at the Industrial Commission of Arizona, 800 West Washington, Phoenix, Arizona and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.
7. "Contaminant" means a substance that is radioactive, infectious, carcinogenic, toxic, irritant, corrosive, sensitizer or an agent that damages the lungs, skin, eyes, mucous membranes, and other body organs.
8. "Data Breach" means any theft, loss, or unauthorized acquisition, unauthorized access to, or unauthorized disclosure of nonpublic data or information or hardware containing nonpublic data or information, in the insured's care, custody, or control, that does or may compromise the privacy, security, confidentiality, or integrity of such data or information.

~~8.~~ 9. "Deductible" means the amount of a loss that the agency will pay before Risk Management is obligated to pay anything.

~~9.~~ 10. "Department" means the Department of Administration, an agency of the State of Arizona.

~~10.~~ 11. "Emergency" means an immediate health threat.

~~11.~~ 12. "Environment" means navigable waters, surface waters, groundwater, drinking water supply, land surface or subsurface strata, and ambient air, within or bordering on this state.

~~12.~~ 13. "Environmental Contractor" means a company hired by the state to conduct environmental site investigations and remediation work.

~~13.~~ 14. "Environmental property claim" means a demand or payment resulting from chemical or biological damage to the environment.

~~14.~~ 15. "Ergonomics" means a science of the relationship between human capability and the work environment, which the Department uses to design a job, task, equipment, or tool to conform comfortably within the limits of human capability.

~~15.~~ 16. “Feasibility study” means a remediation plan based upon a site investigation to clean up a contaminated site by an environmental contractor.

~~16.~~ 17. “Geophysical survey” means a radar, magnetic, electric, gravity, thermal, or seismic survey.

~~17.~~ 18. “Groundwater” means water beneath the ground in sediments or permeable bedrock.

~~18.~~ 19. “Hazardous substance or waste” means hazardous waste as defined in A.R.S. § 49-921(5).

~~19.~~ 20. “Health threat” means evidence that exposure to a specific type and concentration of contaminant is harmful to human health. This evidence shall be based on at least 1 study conducted by the National Institute of Occupational Safety and Health or the Environmental Protection Agency in accordance with established scientific principles.

~~20.~~ 21. “Incident” means an event involving an agency employee, facility, or equipment that results in an occupational injury or illness, personal injury, or loss of or damage to state property, or an event involving the public that exposes the state to a liability loss.

~~21.~~ 22. “Loss prevention” means any action or plan intended to reduce the frequency and severity of property, liability, or workers’ compensation losses.

~~22.~~ 23. “Occurrence” means an accident, incident or a series of accidents or incidents arising out of a single event or originating cause and includes all resultant or concomitant insured losses.

~~23.~~ 24. “Passenger van” means any motor vehicle designed, modified, or otherwise capable of being configured to carry not less than 8 passengers and no more than 15 passengers.

~~24.~~ 25. “Personal protective equipment” means any clothing, material, device, or equipment worn to protect a person from exposure to, or contact with, any harmful material or force.

~~25.~~ 26. “Provider” means an individual or entity ~~licensed~~ authorized to provide services to state clients as outlined in A.R.S. § 41-621(B) that is not contractually required to indemnify and hold the state harmless.

~~26.~~ 27. “Remedial action” or “remediation” means the process of cleaning up a hazardous substance or waste site by an environmental contractor.

~~27.~~ 28. “Risk Manager” means the Administrator for the State Risk Management Program.

~~28.~~ 29. “Risk Management” or “RM” means the State Risk Management Program.

30. “Security Incident” means an event that creates a reasonable suspicion that nonpublic data or information, or hardware containing nonpublic data or information, in the insured’s care, custody, or control, may have been compromised, or that measures put in place to protect such data or information may have failed.

31. “Security System Breach” means any unauthorized access to, unauthorized use or misuse of, damage, deletion, or modification to, or denial of authorized access to, a computer system within the care, custody, or control of the insured, by cyber-attacks, through any electronic means, including malware, viruses, worms, and Trojan horses, spyware and adware, zero-day attacks, hacker attacks, and denial of service attacks.

~~29.~~ 32. “Self-insurance” means state-provided loss protection for an agency, ~~or~~ employee, or other person or entity who is insured ~~funded~~ through RM~~’s revolving~~ funds.

~~30.~~ 33. “Site assessment” means the process of completing and assessing a site investigation and a feasibility study.

~~31.~~ 34. “Site investigation” means a detailed examination by an environmental contractor of an area of a building or ground suspected of being contaminated with a hazardous substance or waste.

R2-10-102. Reporting Procedures

A. ~~An~~ Any agency~~,~~ ~~or~~ provider, or other person or entity insured pursuant to A.R.S. § 41-621 shall report a property loss, liability claim, or incident that may give rise to a claim under A.R.S. § 41-621 to RM as follows:

1. A physical injury within 1 day of the incident orally, in writing, or by electronic means.
2. Property damage expected to exceed $10,000 within 1 day of the incident orally, in writing, or by electronic means.
3. Property loss expected to exceed $10,000 within 1 day of the incident orally, in writing, or by electronic means.
4. Except for the Board of Regents and State Universities, a data breach, security system breach or security incident orally or in writing to the ADOA Chief Information Officer within 72 hours of the incident or when the agency should have reasonably known of the incident. For the Board of Regents and State Universities, a data breach, security system breach or security incident orally or in writing to the ADOA Risk Manager within 72 hours of the incident or when the agency should have reasonably known of the incident.

~~4.~~ 5. All other claims or incidents within 10 days of the incident in writing or by electronic means.

B. ~~An~~ Any agency, officer, ~~agent, or~~ employee ~~of the state receiving~~, or other person or entity insured pursuant to A.R.S. § 41-621, who receives a claim, notice, summons, complaint or other process by any claimant or representative shall immediately forward the claim to RM. This applies to all claims for injuries or damages whether the reporting party believes there to be a factual basis for the claim, but excludes contract lawsuits or other matters not covered under A.R.S. § 41-621.

C. ~~An agency officer, agent, or employee~~ Anyone who is insured pursuant to A.R.S. § 41-621 shall cooperate ~~under~~ in accordance with A.R.S. § ~~41-621(M)~~ 41-621(N) with RM~~;~~ and the Attorney General's office ~~and their representatives and shall provide~~ or other counsel appointed by the Attorney General to represent the insured, including providing all information and materials ~~RM requests~~ requested to investigate and resolve a claim.

D. An agency shall submit a report of a loss on the following RM forms:

1. A loss involving a state-owned vehicle or a state driver on the "Automobile Loss Report". Information required includes: the agency involved, facts of the incident, the vehicles involved, description of injuries to individuals, names of witnesses, and the police agency that investigated the incident.
2. A loss involving private property damage, or injury to a member of the public as a result of alleged ~~negligence~~ acts or omissions of a state officer, ~~agent or~~ employee, or other person insured pursuant to A.R.S. § 41-621, other than a loss arising out of use of a motor vehicle, on a "General Liability Report". Information including the agency and employees involved, facts of the incident, name of the claimant, and description of the claimant's injuries, witnesses to the incident, and the name of the police agency that investigated the incident.
3. A loss to state property, whether personal property (other than motor vehicles) or real property, on the "Property Loss Report". Information includes the agency and employees involved, facts of the incident, description of the damaged property, the party responsible for the loss, names of witnesses, and the police agency investigating the loss.
4. A loss to employee-owned property covered under A.R.S. § 41-621(A)(4) on the "Property Loss Report". Information necessary to document the loss and calculate the actual dollar value of the claim is required. In addition, the employee shall submit a copy of any written agreement between the employee and the employing state agency

authorizing the use of the employee-owned property on the job, and a copy of the Personal Property Inventory form (PROPINV) maintained by the employing state agency.

R2-10-103. Liability Claim Procedures

A. RM shall investigate all reported liability claims to determine coverage. RM shall notify the appropriate insurance carrier, if applicable, and evaluate the merits of self-insured claims and coordinate defense and settlements under A.R.S. § 41-621.

B. State employees shall direct all contacts concerning any liability claim against the state, its agencies, officers, agents, or employees by a third party to RM, the Attorney General's office, or an independent contractor representing either of those offices.

C. Unless authorized by law, an agency, officer, or employee shall obtain prior approval from the Risk Manager~~;~~ or Attorney General's office before ~~disclosure of~~ disclosing oral discussions, written reports of claims, or lawsuits to anyone other than state-authorized personnel. Prior permission for each discussion or report is necessary to comply with this subsection.

R2-10-106. State-owned Property Coverage and Limitations

A. The Department provides property loss coverage for state-owned buildings on a replacement-cost basis for items actually replaced or repaired. Property loss coverage for state-owned personal property is replacement cost less depreciation. For agencies with a total appropriated and non-appropriated budget of less than $1 million, property claims will be subject to a $100 per occurrence deductible. A property deductible of $2,500 per occurrence shall apply to all other agencies.

a. Subrogation collections shall reimburse the fund from which a deductible was paid up to the amount of the deductible and on a primary basis.

b. No deductible shall apply to property loss coverage afforded in accordance with A.R.S. § 41-621(B).

B. RM shall not include the cost of labor in property loss reimbursement if state employee labor cost for repair or replacement is allocated from appropriated funds. RM shall determine whether to use state employees or contractors for repair work based upon availability.

C. Property loss coverage includes all state-owned property except: roads, bridges, tunnels, dams, dikes, and retaining walls.

D. Property loss coverage includes coverage for necessary business interruption losses resulting from an insured direct physical loss or damage to property that is self-insured pursuant to A.R.S. § 41-621.

R2-10-107. Liability Coverage and Limitations

A. The following coverage and limitations apply in this Chapter:

1. The Department provides liability coverage within the limitations of A.R.S. § 41-621 for ~~an~~ a state officer~~, agent,~~ or employee while driving a state-owned or other vehicle in the course and scope of employment.
   a. Coverage shall be on a primary basis for a state-owned, leased, or rented vehicle and on an excess basis for any other vehicle.
   b. The state shall not provide coverage for damage or loss of a personal vehicle.

2. ~~An~~ A state officer~~, agent,~~ or employee operates a state-owned vehicle within the course and scope of employment if driving:
    a. On authorized state business,
    b. To and from work,
    c. To and from lunch on a working day,
    d. To and from meals while on out-of-town travel.
3. ~~An~~ A state officer~~, agent,~~ or employee does not operate a personal vehicle within the course and scope of employment when driving:
    a. To and from work,
    b. To and from lunch in the area of employment and not on authorized state business,
    c. On other than state-authorized business.

B. A volunteer acting at the direction of a state official, within the course and scope of state-authorized activities, is covered under A.R.S. § 41-621.

C. A claim alleging a civil rights violation is covered through RM, unless otherwise excluded, except there is no coverage for payment of that portion of a settlement or judgment for position status adjustments.

D. The state shall cover ~~an agent,~~ a state officer, ~~or~~ employee, or other person self-insured pursuant to A.R.S. § 41-621, for liability on an excess basis while using ~~the agent, officer, or employee's~~ such insured's personal aircraft within the course and scope of employment with the state ~~under~~ subject to the following ~~guidelines~~ conditions:

1. ~~An agent,~~ A state officer, ~~or~~ employee, or other person self-insured pursuant to A.R.S. § 41-621 shall carry a minimum of $1,000,000 in aircraft liability coverage.
2. ~~RM shall approve an agent,~~ Any state officer, ~~or~~ employee pilot, or other pilot self-insured pursuant to A.R.S. § 41-621, must obtain approval prior to flying on state business. To obtain this approval, ~~an agent, officer, or employee~~ such insured pilot shall complete an RM pilot application form that requests the pilot's name, airman's certificate number, driver's license number, aircraft description, rating, and flying hours, and submit it to RM for review with a certificate of insurance evidencing the required limits of coverage on a personal aircraft. To maintain RM approval, ~~an agent, officer, or employee~~ such insured pilot shall submit an updated pilot application form and certificate of insurance annually.
3. RM shall send a letter to ~~an agent, officer, or employee~~ the pilot self-insured pursuant to A.R.S. § 41-621 approving or rejecting an application to fly a personal aircraft on state business. The approval letter shall be presented to the appropriate department head and a copy sent to the agency's loss prevention coordinator.
4. ~~An agent, officer, or employee~~ Every pilot self-insured pursuant to A.R.S. § 41-621 shall maintain a current FAA pilot certification.
5. ~~An agent, officer, or employee~~ Every pilot self-insured pursuant to A.R.S. § 41-621 shall meet the pilot warranties in the aircraft insurance policy owned by the state.
6. ~~An agent, officer, or employee~~ Every pilot self-insured pursuant to A.R.S. § 41-621 shall hold all licenses, certificates, endorsements, and other qualifications, including proficiency checks and recent experience, required by

the FAA or other federal, state, or local statutes and rules to act as pilot-in-command or as a required crew member for the aircraft being flown. The pilot-in-command shall meet current requirements for carrying passengers.

7. Course and scope of employment with the state does not include:
   a. Personal use of an aircraft;
   b. An aircraft for hire, reward or commercial use;
   c. Agricultural operations;
   d. Carrying external loads;
   e. Performing aerial acrobatics.
8. ~~An agent, officer, or employee~~ No pilot self-insured pursuant to A.R.S. § 41-621 shall carry ~~no~~ more passengers on an aircraft than the number defined in the aircraft insurance policy purchased by RM.
9. The Department shall not cover damage or loss of the agent, officer, or employee-owned aircraft.
10. The ~~guidelines~~ requirements in this Section apply to a non-state employee pilot flying on behalf of an agent, officer, or employee on authorized state business.
11. All aircraft used for state business shall comply with all statutes and rules of the FAA and other federal, state, and local jurisdictions for flight.

R2-10-110. Cyber Breach Coverage and Limitations

A. To meet the requirement of A.R.S. § 41-621(A), the Arizona Department of Administration shall provide insurance for all the following:

1. Investigation, response and crisis management for data breaches, security system breaches or security incidents.
2. Data restoration.
3. Business interruption and extra expense.
4. Network security liability.
5. Privacy liability.
6. Regulatory defense and associated fines and penalties if not prohibited by law.
7. Media content liability.
8. Payment Card Industry Data Security Standards defense and associated fines and penalties if not prohibited by law.
9. Investigation of a security incident.
10. Other exposures where insurance may be required to protect this state and its departments, agencies, boards and commissions to the extent it is determined necessary and in the best interest of the state.

B. The Director of the Department of Administration shall determine which agencies will be afforded coverage or limited coverage as prescribed in A.R.S. § 41-621(A). The Director may consider any of the following circumstances in denying or limiting coverage to selected agencies, boards, commissions and any such other insured;

1. An agency, board, or commission specifically requests exclusion from coverage. If the Director of the Department of Administration grants such an exclusion from coverage, then this exclusion shall include an exclusion from any self-insurance provided by ADOA Risk Management and any excess insurance that ADOA Risk Management may have purchased.
2. Securing coverage for a specific agency, board, or commission will prejudice the Department's ability to secure coverage for other state agencies, boards and commissions.

C. Notwithstanding R2-10-106, a deductible shall be applied for each occurrence covered by the Department as provided for in A.R.S. § 41-621(F). For agencies with a total appropriated and non-appropriated budget of less than $2 million, a per occurrence deductible of 5% of the total appropriated and non-appropriated budget shall apply. A deductible of $100,000 per occurrence shall apply to all other agencies. If the Director determines that an agency, board, or commission has one or more of the following circumstances, the deductible as calculated in this section shall be double:

1. For failure to timely report as prescribed in A.A.C. R2-10-102 A.4,
2. For failure to produce timely underwriting information when requested by the Department,
3. For failure to act timely on a known security issue,
4. For failure to cooperate with the Arizona Department of Administration information technology security team,
5. For failure to seek Risk Management approval to indemnify or limit a contractor's liability for losses as prescribed in A.A.C, R2-10-301B, or
6. For any other action or non-action that prejudiced the Department in securing insurance, increased insurance costs, limited insurance coverage, or exposed the state to increased exposure as provided for in A.R.S. § 41-621(F).

ARTICLE 3. INSURANCE: PURCHASE AND CONTRACTS

R2-10-301. Insurance: Purchase and Contracts

A. An agency seeking to purchase property, liability, or workers' compensation insurance shall request RM's approval in writing at least 90 days before the desired effective date of coverage. RM shall not reimburse an agency for the purchase of property, liability, or workers' compensation insurance that has not been approved by RM.

B. An agency shall submit a written request for approval to RM before the agency does one or more of the following:

1. Names ~~a non-state~~ or agrees to name any person or entity as an additional insured ~~in a contract~~ under the state's self-insurance or any other insurance obtained by or with RM's approval;
2. Provides or agrees to provide a Certificate of Insurance;
3. ~~Indemnifies~~ Agrees to indemnify, ~~hold~~s hold harmless, or ~~limits~~ limit the liability of any party to a contract, lease, or other written agreement; or
4. Waives or agrees to waive the state's or the agency's right to subrogate with regard to any party to a contract, lease, or other written agreement.

C. The written request prescribed in subsection (B) shall be signed by the agency director and include all of the following:

1. The circumstances of the request;
2. Whether the party to the contract, lease, or written agreement is a sole source for the state;
3. The level or additional risk of loss to the state resulting from the requested action;
4. Whether the requested action helps the agency accomplish the agency's mission; and
5. An explanation of why the action to be approved is in the best interest of the state.

D. If a contract requires the state to be named as an additional insured, the contracting agency shall ~~place~~ ensure that the name of the contracting agency and the state are included on the applicable additional insured endorsement(s).

ARTICLE 4. PROVIDER INDEMNITY PROGRAM (PIP)

R2-10-401. Coverages and Limitations

A. The Department of Administration shall purchase insurance or self-insure the parties and programs as set forth in A.R.S. § 41-621(B) for losses caused by an occurrence or wrongful act which is the result of either the actions of a state client or ~~the actions of~~ an individual provider ~~while providing direct or incidental care of~~ within the course and scope of activities as a state client or individual provider.

B. Coverages which shall apply under this program are as follows:

1. Liability coverage for providers and clients for damages resulting from acts and omissions within the course and scope of activities as a provider or client is provided pursuant to A.R.S. § ~~41-621(A)~~ 41-621(B). The amount that the Department will pay on behalf of an insured provider or client is limited as described in R2-10-401(C).
2. Coverage is provided on a replacement-cost-less-depreciation basis for the loss of or damage to real or personal property owned by a provider as a result of the actions of a client.

C. Limits of Liability Coverage:

1. The maximum amount of liability coverage that will be paid on behalf of an insured provider or client is $1,000,000 per claim, including related claims, and $2,000,000 in the aggregate for all claims first made against that provider or client during a single fiscal year of the State, July 1 through June 30, regardless of the number of:
   a. Claims made; or
   b. Persons making such claims or on whose behalf such claims are made; or
   c. Causes of action asserted.
2. If more than one provider or client in a custodial-care facility or home is a PIP insured, the liability of all providers and clients combined in such home or facility shall be subject to a single per-claim limit.
3. For purposes of R2-10-401(C), a claim is "made" on the date that it was sent to the insured provider or client or, if a lawsuit, the date that the lawsuit was filed against the insured provider or client.
4. As used in R2-10-401(C), "related claims" means all claims based upon, arising from, or resulting from the same or related acts, omissions, facts, circumstances or events or the same or related series of acts, omissions, facts, circumstances or events, regardless of when such acts, omissions, facts, circumstances or events occur.
5. If two or more related claims are made against an insured provider or client in different state fiscal years, all such related claims shall be deemed to have been made when the first such related claim was made.
6. The payment of defense costs will not affect the per-claim or annual aggregate limit. However, once the annual aggregate limit has been paid, whether based upon settlement or a judgment, there will be no duty to defend that insured against any other claim to which that particular annual aggregate limit would apply.

~~C.~~ **D.** ~~Coverages that~~ The following are excluded from ~~this program include~~ the Provider Indemnity Program coverage:

1. Mysterious disappearance of property;
2. ~~Intentional, unlawful or illegal acts except claims pursuant to A.R.S. § 12-661;~~
3. ~~3.~~ 2. Automobile physical damage resulting from permissive use by a client;
4. ~~4.~~ 3. Benefits covered under any workers' compensation, unemployment compensation, or disability benefits law; and
5. ~~5.~~ 4. All claims ~~or lawsuits, including defense costs, which result~~ , injuries, and damages that A.R.S. §41-621 excludes from coverage, including, without limitation, injury or damage that is expected or intended from the standpoint of the insured, including any such expected or intended injury or damage resulting from physical abuse, sexual abuse or sexual molestation ~~except claims pursuant to A.R.S. § 12-661~~.

Economic, Small Business and Consumer Impact Summary

2 A.A.C. 10, Article 1: R2-10-101 through R2-10-103, R2-10-106 through R2-10-107, and R2-10-110
2 A.A.C. 10, Article 3: R2-10-301
2 A.A.C. 10, Article 4: R2-10-401

The rule amendments provide clarification to R2-10-101, R2-10-102, R2-10-103, R2-10-106, R2-10-107, and R2-10-301. These rule amendments will have no economic impact to small businesses or state agencies. The rule amendments to add R2-10-110 and to amend R2-10-401 are required in order to support statutory changes that have already taken place. They will have no economic impact to small businesses or state agencies, beyond the impact of the statutory changes.

Economic, Small Business and Consumer Impact Statement

2 A.A.C. 10, Article 1: R2-10-101 through R2-10-103, R2-10-106 through R2-10-107, and R2-10-110
2 A.A.C. 10, Article 3: R2-10-301
2 A.A.C. 10, Article 4: R2-10-401

Identification of the Proposed Rulemaking

1. The existing version of R2-10-101 defines terms and phrases used in the Department's rules whose meanings in this context are not self-evident or are technical in nature.

   The proposed rule changes will address deficiencies within the rule definitions.

2. The existing version of R2-10-102 summarizes the procedures for agencies to follow when reporting a claim made against the state. It also delineates the time frame that is acceptable to report the claim after the incident occurs and how to report the loss to Risk Management.

   The proposed rule changes will add the timely reporting requirement for data breaches, security system breaches, or security incidents, that could result in a claim against the State.

3. The existing version of R2-10-103 establishes the responsibility of Risk Management for the investigation of claims and the determination of whether it is self-insured or should be reported to one of the state's excess insurance carriers. In addition, the rule directs that all contracts concerning these claims be made to Risk Management, or the Attorney General's Office or the designated independent counsel.

   The proposed rule changes will clarify the obligation to obtain written permission before disclosing confidential information

4. The existing version of R2-10-106 establishes the valuation basis for personal and real property coverage. The rule also establishes the procedure for determining the method of repair or replacement of covered property and lists the types of property that are excluded from coverage provided by the state's self-insurance.

The proposed rule changes will clarify coverage for necessary business interruption losses resulting from an insured direct physical loss or damage to a property that is self-insured.

5. The existing version of R2-10-107 describes the limitations of liability coverage provided to state employees and describes the conditions that must be met before coverage applies.

The proposed rule changes will update language due to clarity deficiencies, clarify coverage for claims alleging civil rights violations, clarify the parameters of who is classified as insured, and update language to include other insured pilots.

6. The addition of R2-10-110 establishes the Cyber Risk Insurance Fund for the purchase of insurance and payment of self-insured losses pursuant to A.R.S. §41-621. The legislature amended statutes when it enacted House Bill 2857, Chapter 308, and the rulemaking will amend the Department's rules to be consistent with the statutory changes. The proposed rule changes will define a data breach, specify cyber breach coverage and limitations, establish reporting requirements for cyber-related losses, establish a per occurrence deductible for cyber-related losses, and will provide the Director of the Arizona Department of Administration (ADOA) with authority to determine which agencies will be afforded coverage or limited coverage should an agency, board, or commission specifically requests exclusion from coverage, and/or if securing coverage for a specific agency, board, or commission will prejudice the Department's ability to secure coverage for other state agencies, boards, and commissions.

7. The existing version of R2-10-301 prescribes the approval procedures for state agencies to follow when seeking insurance or entering into contractual agreements that expand the state's liabilities.

The proposed rule changes will update language to clarify the State's ability to name other parties as additional insured.

8. The existing version of R2-10-401 establishes property & liability coverage and limitations pursuant to A.R.S. § 41-621(B) to a) individual providers while caring for a state client, and b) a state client. The legislature amended statutes when it enacted House Bill 2081, Chapter 239, and the rulemaking will amend the Department's rules to be consistent with the statutory changes.

The proposed rule changes will update language to clarify coverage for providers and clients, limit liability coverage to $1,000,000 per claim and $2,000,000 aggregate, clarify

coverage limitations and claim submission guidelines, strike unnecessary language, and clarify coverage exclusions.

A. <u>The conduct and its frequency of occurrence that the rule is designed to change:</u>

Until the rulemaking is complete, the Agency's rules will not be consistent with statute.

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

It is not good government practice for an agency to have rules that are inconsistent with statute.

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

When the rulemaking is complete, the Agency's rules will be consistent with statute.

Entities Directly Impacted

The rule will have no adverse impact on small business and does not impose any new requirements nor does it amend any existing requirements impacting small business. Consumers are not impacted by these rules.

The rule changes support the statutory changes previously enacted. They do not serve to limit coverage to providers or clients any more than what is already in statute. However, it should be noted, the statutory changes reduced coverage for providers and clients from unlimited coverage, to limited liability coverage of $1,000,000 per claim and $2,000,000 in the aggregate. The impacted agencies are the Arizona Department of Child Safety (ADCS) and the Arizona Department of Economic Security (ADES).

Potential Costs and Benefits of the Proposed Rules

As the rule change does not limit provider and client coverage anymore than what is already in statute, there is no need for a cost benefit analysis.

General Description of the Probable Impact

There is no probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking.

Probable Impact of the Proposed Rules on Small Businesses

There will be no impact on small businesses.

Potential Effects on State Revenues

There will be no impact on State revenues.

Less intrusive or less costly alternative methods considered

All rulemaking alternatives were considered.

Risk Management Division | Oral Proceeding | Nov 28, 2023

Attendees:

First name	Last name	Email
Kome	Akpolo	kome**@***.com
Michael	Anderson	mjan*********@***.com
Karen	Caterino	alli**********@***.com
Patti	Hageman	Patti.Hageman@azdoa.gov
Keith	Johnson	keith.johnson@azdoa.gov
Donna	Kidwell	dkki****@***.edu
Ben	Mitsuda	benm******@***.com
Todd	Paschal	tpaschal@azgfd.gov
Kristy	Sanchez	ksanchez@azgfd.gov
Misty	Sweet	misty.sweet@azdoa.gov
Dalton	Thompson	dthompson@azdot.gov
Michelle	Wilkerson	michelle.wilkerson@azdoa.gov
Gene	Young	gene********@***.com
Rex Jorgensen		
+1 602-***-**00		

Comments:

Name: Todd Paschal (Game and Fish)
Rule: General Comment
Comment: Determine whether the "and/or" references are either "and" or "or." That language can be problematic should an agency find themselves in court.
Response: All “and/or” references have been reviewed.

Name: Angelica Trevino (DCS)
Rule: Definition-ADOA
Comment: Is “ADOA” defined or can it be added to definition of “Department”
Response: No changes will be made to the definition of “Department”, we feel it adequately identifies the “Arizona Department of Administration”.

Name: Becky McGaugh (NAU)
Rule: Definition-Claim
Comment: I am reviewing the attached proposed changes and am curious why the definition of claim was changed from: “Claim,” means a written demand for damages or money, including a lawsuit seeking the payment of damages and a written offer to accept the payment of money as settlement of a potential claim.” in the original set that was sent to us, to: “Claim,” as used in R2-10-401(C), means a written demand for damages or money, including a lawsuit seeking the payment of damages and a written offer to accept the payment of money as settlement of a potential claim.” Why does it now refer to R2-10-401(C)?
Response: After further review, the Department is removing the added definition.

Name: Angelica Trevino (DCS)
Rule: Definition-Claim

Comment: Regarding the definition of "claim", while I do understand what you mean, it may be helpful to a 'provider' to clarify (elaborate) what is meant by demand for damages or money. I am not sure if "demand for damages is clear". The way the definition is written it can be read as saying a claim is when a provider is demanding damages. Also, I am not sure I understand why it is saying as used in R2-10-401(C). Does it mean to include as used or only as used in 401C?
Response: After further review, the Department is removing the added definition.

Name: Gene Young (ASU)
Rule: Definition-Data Breach
Comment: Care, custody, and control should be changed to care, custody, "or" control. This is because it would require all 3 to be in place.
Response: The Definition will be changed to include "or" only.

Name: Mark Ewy (DCS)
Rule: Definitions-Provider
Comment: Would this include or exclude adoptive parents and/or persons who gained legal guardianship of a DCS youth who are now receiving subsidy payments. We are curious whether the youth would still be considered a "state client" because the family is receiving subsidy payments? If it excludes them (or the youth whose family is receiving subsidy is not considered a 'state client'), then I have no changes to suggest for this definition
Response: Under PIP coverage, adoptive parents and/or persons who gained legal guardianship of a DCS youth, or the youth, even if they are receiving subsidy are not covered. We do not believe these parents and/or persons who gained legal guardianship of a DCS youth who are now receiving subsidy payments would still qualify or make them a "state client", participating in one of these four programs listed under ARS 41-621(B): developmentally disabled, independent living program, transitional independent living program, and extended foster care program.

Name: Gene Young (ASU)
Rule: Definition-Security Incident
Comment: Care, custody, and control should be changed to care, custody, "or" control. This is because it would require all 3 to be in place.
Response: The Definition will be changed to include "or" only.

Name: Dalton Thompson (ADOT)
Rule: Definition-Self-insurance
Comment: Definition for self-insurance uses the word self-insured. Should not be used.
Can we revise that instead of using self-insured to describe what self-insured is? I've never seen the term being defined, used in the definition.
Response: Agree and will revise to read: "Self-insurance" means state-provided loss protection for an agency, employee, or other person or entity who is insured through RM funds.

Name: Angelica Trevino (DCS)
Rule: R2-10-102
Comment: R2-10-102 (A): Just a minor technicality --- Add a space between the symbol and #. A.R.S. §41-621

Response: The space will be added between the symbol and numbers in A.R.S. §41-621. (A.R.S. § 41-621).

Name: Dalton Thompson (ADOT)
Rule: R2-10-106
Comment: R2-10-106 is referring to both Real and Personal property and there are also two categories based on a budget greater than $1M and those less than $1M. How I read this section is that those with greater than $1M will have a $2,500 deductible for "property" claim. However, those with less than $1M will only have a $100 (one hundred) deductible. From the original ACC, the $100 is supposed to be for "personal" claims. Here is the specific quote "Personal Property claims less than $100 are not covered." As I've written below, I think it can be clearer by placing the word "personal" in that sentence. Also, if the $100 deductible is for budgets less than $1M, what is the deductible for personal property for agencies greater than $1M? I am asking this because it seems to me that it can be clearer in calling out Real and Personal property deductibles.

FOR CONSIDERATION:
R2-10-106. State-owned Property Coverage and Limitations
A. The Department provides property loss coverage for state-owned buildings on a replacement-cost basis for items actually replaced or repaired. Property loss coverage for state-owned personal property is replacement cost less depreciation. For agencies with a total appropriated and non-appropriated budget of less than $1 million, personal property claims will be subject to a $100 per occurrence deductible. A property deductible of $2,500 per occurrence shall apply to all other agencies.

a. Subrogation collections shall reimburse the fund from which a deductible was paid up to the amount of the deductible and on a primary basis.
b. No deductible shall apply to property loss coverage afforded in accordance with A.R.S § 41-621(B).

Response: The quote above is from an old version of the administrative code, "Personal Property claims less than $100 are not covered." It is not in the current version, which is dated 09/30/2022, which you have quoted correctly under "FOR CONSIDERATION", which does not have this quote. It was removed in 2018, when the $2500 deductible was created.

Although that said, any damages below the deductible are not covered, whether it be $2500 or $100. The applicable deductibles apply to all "State-owned Property" claims, not just "personal" property. The distinction between "real" and "personal" property is on how it is valued, as stated below.

R2-10-106. State-owned Property Coverage and Limitations
A. The Department provides property loss coverage for state-owned buildings on a replacement-cost basis for items actually replaced or repaired. Property loss coverage for state-owned personal property is replacement cost less depreciation.

Name: Angelica Trevino (DCS)
Rule: R2-10-107

Comment: R2-10-107 (all in D): Just a minor technicality --- Add a space between the symbol and #. A.R.S. §41-621
Response: The space will be added between the symbol and numbers in A.R.S. §41-621. (A.R.S. § 41-621)

Name: Todd Paschal (Game and Fish)
Rule: R2-10-110C
Comment: Gives the ADOA Director sole authority, in his/her opinion, to double the deductible if one or more of the qualifiers are met. I would like for consideration an appeals process to be placed in this section that would allow an Agency Director to appeal this to an appropriate panel or the Governor's Office.
Response: Agency always has the ability to appeal to the Governor's Office.

Name: Becky McGaugh (NAU)
Rule: R2-10-110
Comment: Will the deductible of $100K for cyber coverage double even if we received approval to indemnify a contractor? That is how it reads, I wanted to be sure that is the intent.
"e. For indemnifying or limiting a contractor's liability for losses as prescribed in A.A.C, R2-10-301B,"
Response: This is not the intent. The following changes will be made: e. For failure to seek Risk Management approval to indemnify or limit a contractor's liability for losses as prescribed in A.A.C, R2-10-301B.

Name: Jimmy Arwood on behalf of Arizona Lottery
Rule: R2-10-110
Comment: The deductible prescribed in this rule change - what kinds of events apply to this deductible? Does it include workers compensation, or is this for things such as Cyber and Property?
Response: The $100k deductible is for cyber related losses.

Name: Dalton Thompson (ADOT)
Rule: R2-10-110, R2-10-102
Comment: Re: agency should have reasonably known. Consider leaving it at "after 72 hours". The term "reasonably" can cause some unnecessary issues. The fact that the deductible can be doubled and reporting within 72 hours is a concern.
Reasonably known and suspected data breach: Language needs tightened up so that multiple incidents aren't reported daily. If agencies have to report every suspected breach, there will be a lot. They typically do due diligence before reporting.
Response: We do not want to limit the reporting time to just 72 hours if there's an instance where an agency may not have known about the incident within 72 hours. We want to allow more time to report covered losses, if the agency, board, or commission may not have known of the loss within 72 hours. Through an investigation it should be determined when the agency, board, or commission first knew of the loss.

Name: Ben Mitsuda (ASU), Donna Kidwell (ASU)
Rule: R2-10-110

Comments:
Ben Mitsuda: I think I agree with what Dalton was saying. We go to more of a 72 hours of from when there's actual knowledge of the incident. Because usually you see this kind of language in insurance policy to give the insurer an ability to deny a claim so they can come back later and say you should have known about this earlier and you didn't tell us but if we didn't actually have knowledge of the incident at that point, we can't obviously notify you of it.
Donna Kidwell: My concern is not so much if it is a known breach and we are actively working on it. We would start appropriate notifications in order to rally our forces very quickly. I think my concerns are more with suspected or actual breach because we could be unclear if this is a breach or is an operational challenge that looks like a breach, and it can take a long time to do forensics to understand. Among the CISO's, we're trying to get better language around breach notification disclosures and what that suspected language looks like.
Ben Mitsuda: I think this goes back to the definition of security incident, which is a reasonable suspicion. It's not just actual incidents. It's a reasonable suspicion that there's an incident and would require a reporting of it.
Response: The purpose is to drive notification in a reasonable amount of time so that we can take action within a reasonable period of time. RMD has determined that the term "reasonably known" is appropriate. The rule states that it is 72 hours "or" reasonably known, giving agencies, boards, and commissions additional time to report.

We have removed "suspected or actual." Agencies, boards, and commissions should refer to the definition for data breach, security system breach, and security incident.

Name: Todd Paschal (Game and Fish)
Rule: R2-10-110
Comments:
Todd Paschal: The 72-hour window is one of those criteria that allows them to double our deductible and using the term "reasonably known" is very subjective. When one individual has the ability to say you either did or should have known and you have the ability to raise a deductible by a hundred thousand dollars, I think this probably does need to be cleared up.
Response: It's a decision for the director of ADOA. ADOA is not looking to double the deductible unless the agency's actions are problematic.

Name: Ben Mitsuda (ASU), Donna Kidwell (ASU)
Rule: R2-10-110
Comments:
Ben Mitsuda: In order to understand, when do you all want to actually get notified? If the intent is to say we want you to tell us if you even suspect there's been an issue versus we want you to do some due diligence first and really only tell us of things where you suspect there was an actual breach. There's a lot of incidents daily that, maybe there is something there, but turns out not to be an actual suspected incident. I agree though the language as it's currently written as I read it as an attorney would say to be safe we ought to be reporting everything and if you want less of the suspected and more of the actual incidents, we probably need to tighten up this language.
Donna Kidwell: The question I have would be about the fidelity of what kind of reporting you want. And if we were to tell you every suspected thing, it would be a lot. We've had to develop

quite a lot of internal capabilities just to understand the threshold of when we start worrying about something and what investigations trigger that. I encourage looking at how to get the language right so that you get exactly the level of fidelity with regard to a confirmed breach
Response: Consideration should be given to the probability that a particular incident could be a claim, to which you would be looking for payment or reimbursement under the States cyber insurance program. Those incidents that you believe have this potential should be reported timely. We do not believe we can remove this decision making process by changing or adding anything to the administrative code under review.

Name: Michael Anderson (ASU)
Rule: R2-10-110
Comment: Going back to the Cyber coverage exclusion or limitation where you talked about the discretion of ADOA to do either of those was that kind of by design because it's such a new program to leave it a little bit more open-ended at this juncture as opposed to kind of laying out what the process is if that discretion is exercised in a timeline of events. Is this because it needs to be open-ended due to the program being new?
Response: It was driven from some prior inquiries to possibly not participate in certain programs. In response, under the cyber coverage, we are giving the option for those agencies boards and commissions to request exclusion.

Name: Angelica Trevino (DCS)
Rule: R2-10-401
Comment: R2-10-401 C. 1. a-c: is the list an “and” or an “or”?
Response: The list has been revised to say “or”.

Arizona Administrative CODE
www.azsos.gov
Office of the Secretary of State
ADMINISTRATIVE RULES DIVISION

TITLE 2. ADMINISTRATION

CHAPTER 10. DEPARTMENT OF ADMINISTRATION - RISK MANAGEMENT DIVISION

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

This Chapter contains rules that were filed to be codified in the *Arizona Administrative Code* between the dates of July 1, 2022 through September 30, 2022

Questions about these rules? Contact:

Department:	Department of Administration Risk Management Division
Address:	100 North 15th Ave., 3rd Fl., Ste. 301 Phoenix, AZ 85007
Website:	https://doa.az.gov/divisions
Telephone:	(602) 542-2182
Fax:	(602) 382-2364

The release of this Chapter in Supp. 22-3 replaces Supp. 17-4, 1-10 pages.
Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

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

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

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

THE ADMINISTRATIVE CODE

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

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

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each Chapter.

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2022 is cited as Supp. 22-1. Supplements are traditionally released three to four weeks after the end of the quarter because filings are accepted until the last day of the quarter.

Please note: The Office publishes by Chapter, not by individual rule Section. Therefore there might be only a few Sections codified in each Chapter released in a supplement. This is why the Office lists only updated codified Sections on the previous page.

RULE HISTORY

Refer to the HISTORICAL NOTE at the end of each Section for the effective date of a rule. The note also includes the *Register* volume and page number in which the notice was published (A.A.R.) and beginning in supplement 21-4, the date the notice was published in the *Register*.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate Chapters of the *Code* in Supp. 18-1 to comply with A.R.S. §§ 41-1012(B) and A.R.S. § 41-5505.

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

HOW TO USE THE CODE

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

ARIZONA REVISED STATUTE REFERENCES

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

SESSION LAW REFERENCES

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

EXEMPTIONS FROM THE APA

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

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

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

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

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

PERSONAL USE/COMMERCIAL USE

This Chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

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

Arizona Administrative Code Publisher Department of State Office of the Secretary of State Administrative Rules Division	Published electronically under the authority of A.R.S. § 41-1012. Authentication authorized under Arizona Revised Statutes, Chapter 54, Uniform Electronic Legal Material Act.	Mailing Address: Administrative Rules Division Office of the Secretary of State 1700 W. Washington Street, Fl. 2 Phoenix, AZ 85007

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 2. ADMINISTRATION

CHAPTER 10. DEPARTMENT OF ADMINISTRATION - RISK MANAGEMENT DIVISION

Authority: A.R.S. § 41-621 et seq.

Supp. 22-3

CHAPTER TABLE OF CONTENTS

Chapter heading revised at request of Department, Office File No. M11-239, filed July 8, 2011 (Supp. 11-3).

Laws 1983, Ch. 98, 121, transferred authority for Risk Management Services to the Director of Administration effective July 27, 1983.

Article 1 consisting of Sections R2-10-101 through R2-10-105; Article 2 consisting of Sections R2-10-201 through R2-10-204; Article 3 consisting of Sections R2-10-301 through R2-10-304 adopted effective July 27, 1983.

Former Sections R2-10-01 through R2-10-05, R2-10-50 through R2-10-53, R2-10-100 through R2-10-103 renumbered and readopted with conforming changes.

ARTICLE 1. COVERAGE AND CLAIMS PROCEDURE

R2-10-101. Definitions

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

1. "Agency" means a state department, board, or commission.
2. "Agency loss prevention committee" means a panel of individuals established by the head of an agency to develop and oversee the agency's loss prevention program.
3. "Agency loss prevention coordinator" means an individual chosen by the head of an agency to implement the agency's loss prevention program and who is the agency's liaison with Risk Management.
4. "Attorney General's Office" means the Liability Management Section of the Attorney General's Office assigned to defend claims covered by A.R.S. § 41-621.
5. "Client" means an individual in custodial care of a provider through contract or court order with a state agency through programs listed in A.R.S. § 41-621(B).
6. "Confined space" has the meaning of 29 CFR 1910.146(b) Occupational Safety and Health Standards for General Industry, The Industrial Commission of Arizona, Division of Occupational Safety and Health, February 1, 1998, which is incorporated by reference in this rule. This incorporation by reference does not include any later amendments or editions. Copies of the incorporation by reference are available for inspection at the Industrial Commission of Arizona, 800 West Washington, Phoenix, Arizona and in the Office of the Secretary of State, Public Service Department, 1700 West Washington, Phoenix, Arizona.
7. "Contaminant" means a substance that is radioactive, infectious, carcinogenic, toxic, irritant, corrosive, sensitizer or an agent that damages the lungs, skin, eyes, mucous membranes, and other body organs.
8. "Deductible" means the amount of a loss that the agency will pay before Risk Management is obligated to pay anything.
9. "Department" means the Department of Administration, an agency of the State of Arizona.
10. "Emergency" means an immediate health threat.
11. "Environment" means navigable waters, surface waters, groundwater, drinking water supply, land surface or subsurface strata, and ambient air, within or bordering on this state.
12. "Environmental Contractor" means a company hired by the state to conduct environmental site investigations and remediation work.
13. "Environmental property claim" means a demand or payment resulting from chemical or biological damage to the environment.
14. "Ergonomics" means a science of the relationship between human capability and the work environment, which the Department uses to design a job, task, equipment, or tool to conform comfortably within the limits of human capability.
15. "Feasibility study" means a remediation plan based upon a site investigation to clean up a contaminated site by an environmental contractor.
16. "Geophysical survey" means a radar, magnetic, electric, gravity, thermal, or seismic survey.
17. "Groundwater" means water beneath the ground in sediments or permeable bedrock.
18. "Hazardous substance or waste" means hazardous waste as defined in A.R.S. § 49-921(5).
19. "Health threat" means evidence that exposure to a specific type and concentration of contaminant is harmful to human health. This evidence shall be based on at least 1 study conducted by the National Institute of Occupational Safety and Health or the Environmental Protection Agency in accordance with established scientific principles.
20. "Incident" means an event involving an agency employee, facility, or equipment that results in an occupational injury or illness, personal injury, or loss of or damage to state property, or an event involving the public that exposes the state to a liability loss.
21. "Loss prevention" means any action or plan intended to reduce the frequency and severity of property, liability, or workers' compensation losses.
22. "Occurrence" means an accident, incident or a series of accidents or incidents arising out of a single event or originating cause and includes all resultant or concomitant insured losses.
23. "Passenger van" means any motor vehicle designed, modified, or otherwise capable of being configured to carry not less than 8 passengers and no more than 15 passengers.
24. "Personal protective equipment" means any clothing, material, device, or equipment worn to protect a person from exposure to, or contact with, any harmful material or force.
25. "Provider" means an individual or entity licensed to provide services to state clients as outlined in A.R.S. § 41-621(B) that is not contractually required to indemnify and hold the state harmless.
26. "Remedial action" or "remediation" means the process of cleaning up a hazardous substance or waste site by an environmental contractor.
27. "Risk Manager" means the Administrator for the State Risk Management Program.
28. "Risk Management" or "RM" means the State Risk Management Program.
29. "Self-insurance" means state provided loss protection for an agency or employee funded through RM's revolving fund.
30. "Site assessment" means the process of completing and assessing a site investigation and a feasibility study.
31. "Site investigation" means a detailed examination by an environmental contractor of an area of a building or ground suspected of being contaminated with a hazardous substance or waste.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-10-101 repealed, new Section R2-10-101 adopted effective June 12, 1989 (Supp. 89-2). Amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended effective September 15, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2). Amended by final rulemaking at 23 A.A.R. 3239, effective January 8, 2018 (Supp. 17-4).

R2-10-102. Reporting Procedures

A. An agency or provider shall report a property loss, liability claim, or incident that may give rise to a claim under A.R.S. § 41-621 to RM as follows:

1. A physical injury within 1 day of the incident orally, in writing, or by electronic means.
2. Property damage expected to exceed $10,000 within 1 day of the incident orally, in writing, or by electronic means.
3. Property loss expected to exceed $10,000 within 1 day of the incident orally, in writing, or by electronic means.
4. All other claims or incidents within 10 days of the incident in writing or by electronic means.

B. An agency, officer, agent, or employee of the state receiving a claim, notice, summons, complaint or other process by any claimant or representative shall immediately forward the claim to RM. This applies to all claims for injuries or damages whether the reporting party believes there to be a factual basis for the claim, but excludes contract lawsuits or other matters not covered under A.R.S. § 41-621.

C. An agency officer, agent, or employee shall cooperate under A.R.S. § 41-621(M) with RM, the Attorney General's office and their representatives and shall provide all information and materials RM requests to investigate and resolve a claim.

D. An agency shall submit a report of a loss on the following RM forms:

1. A loss involving a state-owned vehicle or a state driver on the "Automobile Loss Report". Information required includes: the agency involved, facts of the incident, the vehicles involved, description of injuries to individuals, names of witnesses, and the police agency that investigated the incident.
2. A loss involving private property damage, or injury to a member of the public as a result of alleged negligence of a state officer, agent or employee other than a loss arising out of use of a motor vehicle, on a "General Liability Report". Information including the agency and employees involved, facts of the incident, name of the claimant, and description of the claimant's injuries, witnesses to the incident, and the name of the police agency that investigated the incident.
3. A loss to state property, whether personal property (other than motor vehicles) or real property, on the "Property Loss Report". Information includes the agency and employees involved, facts of the incident, description of the damaged property, the party responsible for the loss, names of witnesses, and the police agency investigating the loss.
4. A loss to employee-owned property covered under A.R.S. § 41-621(A)(4) on the "Property Loss Report". Information necessary to document the loss and calculate the actual dollar value of the claim is required. In addition, the employee shall submit a copy of any written agreement between the employee and the employing state agency authorizing the use of the employee-owned property on the job, and a copy of the Personal Property Inventory form (PROPINV) maintained by the employing state agency.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Amended effective June 12, 1989 (Supp. 89-2). Amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2).

R2-10-103. Liability Claim Procedures

A. RM shall investigate all reported liability claims to determine coverage. RM shall notify the appropriate insurance carrier, if applicable, and evaluate the merits of self-insured claims and coordinate defense and settlements under A.R.S. § 41-621.

B. State employees shall direct all contacts concerning any liability claim against the state, its agencies, officers, agents, or employees by a third party to RM, the Attorney General's office, or an independent contractor representing either of those offices.

C. Unless authorized by law, an agency, officer, or employee shall obtain prior approval from the Risk Manager, Attorney General's office before disclosure of oral discussions, written reports of claims, or lawsuits to anyone other than state-authorized personnel. Prior permission for each discussion or report is necessary to comply with this subsection.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Amended effective June 12, 1989 (Supp. 89-2). Amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2).

R2-10-104. Self-insured Property Claim Procedures

A. RM shall not cover a property loss covered under the terms of the state's self-insurance program for state agencies if the loss is not reported to RM as required by R2-10-102(A), or is reported later than 90 days following discovery of the incident. RM shall cover a property loss only if there is proper documentation as to the cause and dollar amount of the loss. RM shall only cover those claims with documentation submitted to RM within 1 year of the date of discovery. If a loss to a building or structure requires more than one year to repair or replace, the Risk Manager may grant an extension of time to document the amount of the loss. An agency shall submit a request for an extension in writing to the Risk Manager no later than 11 months from the date of loss. The request shall contain clear justification for the delay, and a projected date of completion.

B. RM shall investigate all reported property claims to determine coverage (and notify the appropriate excess insurance carrier if applicable) and coordinate settlements under A.R.S. § 41-621.

C. RM or, upon request, the agency involved, shall obtain competitive bids for the necessary repairs or replacement. RM shall authorize and approve all repair or replacement.

D. RM shall review and approve consulting services, when required of a architect or engineer who are advising the state on the repair, replacement, or construction of state buildings that have been partially or totally damaged and that are to be paid for by RM funds.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Amended effective June 12 1989 (Supp.89-1). Amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2).

R2-10-105. Employment Discrimination Claim Procedures

A. Upon receipt of a notice of discrimination charge, the agency or employee shall:

1. Within 7 days, send a copy of the charge to RM and the Attorney General's office.

2. Contact the Attorney General's office for any required legal assistance during the administrative process.
3. Provide to RM a completed copy of any response, prior to filing. RM shall review the information contained in the response and assist in resolution during administrative process.

B. The agency shall provide a copy of a decision or Right to Sue Letter to RM within 7 days.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Amended effective June 12, 1989 (Supp. 89-2). Former Section R2-10-105 renumbered to Sections R2-10-106 and R2-10-107, new Section R2-10-105 renumbered from R2-10-106 and amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2).

R2-10-106. State-owned Property Coverage and Limitations

A. The Department provides property loss coverage for state-owned buildings on a replacement-cost basis for items actually replaced or repaired. Property loss coverage for state-owned personal property is replacement cost less depreciation. For agencies with a total appropriated and non-appropriated budget of less than $1 million, property claims will be subject to a $100 per occurrence deductible. A property deductible of $2,500 per occurrence shall apply to all other agencies.
   a. Subrogation collections shall reimburse the fund from which a deductible was paid up to the amount of the deductible and on a primary basis.
   b. No deductible shall apply to property loss coverage afforded in accordance with A.R.S § 41-621(B).

B. RM shall not include the cost of labor in property loss reimbursement if state employee labor cost for repair or replacement is allocated from appropriated funds. RM shall determine whether to use state employees or contractors for repair work based upon availability.

C. Property loss coverage includes all state-owned property except: roads, bridges, tunnels, dams, dikes, and retaining walls.

Historical Note

Adopted effective June 12, 1989 (Supp. 89-2). Former Section R2-10-106 renumbered to R2-10-105, new Section R2-10-106 renumbered from R2-10-105(A) and (B) and amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2). Amended by final rulemaking at 23 A.A.R. 3239, effective January 8, 2018 (Supp. 17-4).

R2-10-107. Liability Coverage and Limitations

A. The following coverage and limitations apply in this Chapter:
   1. The Department provides liability coverage within the limitations of A.R.S. § 41-621 for an officer, agent, or employee while driving a state-owned or other vehicle in the course and scope of employment.
      a. Coverage shall be on a primary basis for a state-owned, leased, or rented vehicle and on an excess basis for any other vehicle.
      b. The state shall not provide coverage for damage or loss of a personal vehicle.
   2. An officer, agent, or employee operates a state-owned vehicle within the course and scope of employment if driving:
      a. On authorized state business,
      b. To and from work,
      c. To and from lunch on a working day,
      d. To and from meals while on out-of-town travel.
   3. An officer, agent, or employee does not operate a personal vehicle within the course and scope of employment when driving:
      a. To and from work,
      b. To and from lunch in the area of employment and not on authorized state business,
      c. On other than state-authorized business.

B. A volunteer acting at the direction of a state official, within the course and scope of state-authorized activities, is covered under A.R.S. § 41-621.

C. A claim alleging a civil rights violation is covered through RM, except there is no coverage for payment of that portion of a settlement or judgment for position status adjustments.

D. The state shall cover an agent, officer, or employee for liability on an excess basis while using the agent, officer, or employee's personal aircraft within the course and scope of employment with the state under the following guidelines:
   1. An agent, officer, or employee shall carry a minimum of $1,000,000 in aircraft liability coverage.
   2. RM shall approve an agent, officer, or employee pilot prior to flying on state business. To obtain this approval, an agent, officer, or employee shall complete an RM pilot application form that requests the pilot's name, airman's certificate number, driver's license number, aircraft description, rating, and flying hours, and submit it to RM for review with a certificate of insurance evidencing the required limits of coverage on a personal aircraft. To maintain RM approval, an agent, officer, or employee pilot shall submit an updated pilot application form and certificate of insurance annually.
   3. RM shall send a letter to an agent, officer, or employee approving or rejecting an application to fly a personal aircraft on state business. The approval letter shall be presented to the appropriate department head and a copy sent to the agency's loss prevention coordinator.
   4. An agent, officer, or employee shall maintain a current FAA pilot certification.
   5. An agent, officer, or employee shall meet the pilot warranties in the aircraft insurance policy owned by the state.
   6. An agent, officer, or employee shall hold all licenses, certificates, endorsements, and other qualifications, including proficiency checks and recent experience, required by the FAA or other federal, state, or local statutes and rules to act as pilot-in-command or as a required crew member for the aircraft being flown. The pilot-in-command shall meet current requirements for carrying passengers.
   7. Course and scope of employment with the state does not include:
      a. Personal use of an aircraft;
      b. An aircraft for hire, reward or commercial use;
      c. Agricultural operations;
      d. Carrying external loads;
      e. Performing aerial acrobatics.
   8. An agent, officer, or employee shall carry no more passengers on an aircraft than the number defined in the aircraft insurance policy purchased by RM.

9. The Department shall not cover damage or loss of the agent, officer, or employee-owned aircraft.
10. The guidelines in this Section apply to a non-state employee pilot flying on behalf of an agent, officer, or employee on authorized state business.
11. All aircraft used for state business shall comply with all statutes and rules of the FAA and other federal, state, and local jurisdictions for flight.

Historical Note

Renumbered from R2-10-105(C) through (J) and amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Section corrected to reflect amendment on file with the Office of the Secretary of State effective January 12, 1995 (Supp. 97-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2). Amended by final rulemaking at 23 A.A.R. 3239, effective January 8, 2018 (Supp. 17-4).

R2-10-108. Deductibles and Waivers

A. Agency Claim Settlement or Judgment More Than $150,000.
1. The Department shall charge each agency a deductible of not more than $10,000 on each claim settlement or judgment approved for payment of more than $150,000.
2. RM shall waive the deductible if the agency provides a response to RM containing an agency action plan to be taken to eliminate or limit similar future risk to the state, and:
   a. The agency action plan is submitted to RM within 60 days of the agency's notification of claim approval or payment. The agency action plan shall include the following;
      i. Findings outlining the cause or causes of the claim;
      ii. Actions that will be implemented to prevent recurrence of similar losses or claims;
      iii. Development of action items and time lines for completion; and
      iv. Appointment of an agency contact to act as a liaison for all matters relating to the plan.
   b. RM approves the agency action plan as reasonable and effective; and
   c. The agency implements the plan within 30 days of RM approval, and provides periodic status reports as outlined in the approved Agency Action Plan.
3. If the agency fails to comply with all the conditions outlined in subsection (A)(2), RM shall charge a deductible of $10,000 on the subject judgment or claim payment as well as each subsequent claim resulting from that cause or exposure until the agency fully complies with subsection (A)(2).

B. RM may waive any deductible to any agency for just cause. Just cause may exist when the application of a deductible is not warranted due to the circumstances of the claim, or is in the best interest of the state.

C. If a dispute arises between RM and the agency pertaining to this Section, one or more meetings shall be held at progressively upward, incremental Department of Administration management levels until the agency and RM reach a solution.

Historical Note

Adopted effective September 15, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2). Amended by final rulemaking at 12 A.A.R. 4384, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 23 A.A.R. 3239, effective January 8, 2018 (Supp. 17-4).

R2-10-109. Computation of Time

In computing any period of time prescribed or allowed in this Chapter, the day from which the designated period begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal state holiday. When the period of time is less than 7 days, intermediate Saturdays, Sundays, and legal state holidays shall be excluded in the computation.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2).

ARTICLE 2. LOSS PREVENTION

R2-10-201. Submission of Building Plans

If an agency anticipates the cost to construct, alter, or repair a state-owned or leased building to exceed $100,000, the agency shall submit building plans to RM prior to a pre-planning conference with an architect to allow RM to offer recommendations for loss prevention measures.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Amended effective June 12, 1989 (Supp. 89-1). Amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2). Amended by final rulemaking at 23 A.A.R. 3239, effective January 8, 2018 (Supp. 17-4).

R2-10-202. Purchase of Specialized Hazard Control Equipment

A. An agency shall notify the RM Loss Prevention Manager prior to starting the procurement process for any specialized safety or security equipment or system exceeding $50,000. RM shall assist each agency to determine whether the equipment or system will adequately perform its specialized function and is in compliance with applicable codes.

B. RM shall submit any comments or recommendations regarding specialized safety or security equipment or system to the agency within 10 days from the date RM receives notification of a planned procurement.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Amended effective June 12, 1989 (Supp. 89-2). Amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2). Amended by final rulemaking at 23 A.A.R. 3239, effective January 8, 2018 (Supp. 17-4).

R2-10-203. Hazard Reporting

Any agency, officer, agent, or employee shall advise a supervisor, loss prevention coordinator, or loss prevention committee chairperson of any suspected or potential hazards that may require inspection, investigation, or requires action to correct. A supervisor shall report an identified hazard that cannot be corrected to the agency head. The agency head shall notify RM of any hazard that cannot be corrected by the agency or that requires further evaluation and assessment before corrective action can be taken.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Amended effective June 12, 1989 (Supp. 89-2). Amended effective

December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2).

R2-10-204. RM Loss Prevention Consultative Services

A. The Risk Manager shall schedule, evaluate, and assess each state agency's loss prevention programs and facilities to identify program deficiencies or hazardous conditions that might lead to loss. Following an evaluation or assessment, RM shall submit a written report to the agency head and loss prevention coordinator, with recommendations to eliminate or control physical hazards or correct unsafe practices and procedures.

B. An agency shall respond in writing to RM recommendations detailing the agency's corrective action plan within 60 days. The agency shall review the recommendations to determine cost feasibility and integration into agency plans. The agency shall notify RM of the corrective action it intends to take. An agency shall report in writing every 30 days until the agency completes corrective action or Risk Management determines the agency has taken all reasonable corrective action.

C. Subsection (B) does not apply to an RM recommendation in response to an agency request for a hazard assessment.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Amended effective June 12, 1989 (Supp. 89-2). Amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2).

R2-10-205. Development and Implementation of Agency Loss Prevention Programs

A. An agency head shall develop and implement an agency loss prevention program that integrates loss prevention and safety policy into all agency activities. The agency shall incorporate into the loss prevention program the requirements of this Section, applicable state and federal standards, state worker and property protection measures, and programs, practices, and procedures to protect the state from third-party liability claims.

B. An agency head, in coordination with RM, shall develop and implement policies, practices, and procedures to reduce the frequency and severity of a future incident if:

1. The agency has or may have a loss; and
2. Federal or state rules, or National Consensus Standards have not been developed, or do not apply to protect the state from such losses.

C. RM shall publish criteria and program information as guidance for an agency to use in its loss prevention program and shall interpret and explain state, federal, and National Consensus Standards.

Historical Note

Adopted effective Aug. 12, 1985 (Supp. 85-4). Amended effective June 12, 1989 (Supp. 89-2). Section repealed, new Section adopted effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2).

R2-10-206. Agency Loss Prevention Program Management

A. An agency shall issue a policy letter to all agency employees that expresses the agency commitment to prevent or control losses. The letter shall solicit the support of agency personnel to the goals and objectives of loss prevention. The agency shall include the letter in the agency loss prevention program document, which shall be available for review by all agency personnel.

B. An agency head shall appoint a qualified management level or professional employee as loss prevention coordinator. The loss prevention coordinator shall conduct and coordinate the agency's loss prevention program. The loss prevention coordinator shall be an ex-officio member of the agency's loss prevention committee and report to the agency head on matters pertaining to administration of the loss prevention program and safety within the agency. The loss prevention coordinator interprets and applies policies and procedures, chairs and coordinates the agency safety committee, reviews agency loss claims, and makes recommendations to prevent future losses. The loss prevention coordinator shall provide technical information to employees and agency management concerning Arizona Department of Safety and Health (ADOSH) and Arizona Department of Environmental Quality (ADEQ) requirements as well as RM policies, procedures, and the rules in this Chapter.

C. Each agency head shall establish an agency loss prevention committee to develop, implement and monitor the agency's loss prevention program. The agency shall appoint to the committee management level personnel representing each major division within the agency. An agency with multi-level organizational structures shall ensure that committee membership is representative of the functional and geographical divisions of the agency.

Historical Note

Adopted effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2).

R2-10-207. Agency Loss Prevention Program Elements

Each agency loss prevention committee or individuals designated by the agency head shall develop, implement, and monitor the following loss prevention program elements of an occupational health and safety program (as applicable to their agency):

1. New employee and continuous in-service training programs that include:
   a. Safety and loss prevention education regarding property protection, liability exposure, and workplace safety;
   b. Agency-specific safety training regarding emergency plans, actions, and first-aid; and
   c. Job-specific safety training to employees performing tasks where:
      i. Frequent or severe accidents have occurred; or
      ii. There is a potential for frequent or severe accidents.
2. Documentation and recordkeeping of employee training;
3. An emergency plan for each agency location that establishes procedures to follow in the event of serious injury, fire, or other emergency that can be reasonably foreseen at the specific agency location. The emergency plan shall:
   a. Designate an employee responsible for formulating, implementing, testing, and maintaining the emergency plan;
   b. Contain procedures for notification of emergency response personnel and safe evacuation of personnel from the location, including an evacuation diagram that shall be visibly posted throughout each location;

c. Contain procedures for obtaining first-aid, medical treatment, and emergency transportation in the event of serious injury; and
d. Require that the plan be periodically tested and evaluated and identified deficiencies corrected;

4. Procedures for scheduled safety inspections of buildings, grounds, equipment, and machinery. An agency shall document the results of each inspection and forward notice of any deficiencies to the loss prevention coordinator for corrective action. The agency loss prevention committee or coordinator shall follow-up on inspection recommendations to ensure action is taken to remedy a noted deficiency. The agency loss prevention committee or coordinator shall bring an uncorrected deficiency to the attention of the agency head;
5. Procedures for accident and incident investigations:
   a. An agency shall develop procedures for reporting an accident or incident involving personnel, property, automobile, liability, industrial injury, environmental damage, and a mishap or near miss to the agency's loss prevention coordinator or loss prevention committee. The loss prevention coordinator and loss prevention committee shall review the accident and incident reports and identify the corrective action necessary to prevent recurrence;
   b. Procedures for reporting, investigating, and recording maintenance of a work-related accident or incident shall include:
      i. Timely and accurate reporting of each work-related accident or incident;
      ii. Investigation of each accident or incident to gather pertinent information, determine cause, and recommend a solution to prevent recurrence of a similar accident or incident;
      iii. Compiling, analyzing, and evaluating all data derived from the investigation to determine the frequency, severity, and location of an accident or incident and communicating the information to appropriate agency personnel; and
      iv. Maintaining records of employee injury under A.A.C. R20-5-629;
6. A maintenance program for state-owned vehicles, equipment, and grounds under the control of that agency that includes:
   a. A preventive maintenance program with a written schedule of routine inspection, adjustment, cleaning, lubrication, and testing of equipment including boilers and machinery, fire protection, security and emergency equipment, and motor vehicles;
   b. Safety procedures such as "lock-out-tagout" and "buddy procedures" for jobs subject to a serious accident such as those involving working in a confined space, operating dangerous equipment and machinery, and working on electrical equipment; and
   c. Personal protective equipment for a specific job or area including training on proper fit, use, care, maintenance, inspection, cleaning, and storage;
7. A fire protection program that complies with the Arizona State Fire Code, located in A.A.C. Title 4, Chapter 36. This program shall incorporate best practices and standards that protect state of Arizona employees, the general public, and resources entrusted to the agency.
8. Systems and procedures to protect the personal security of each employee and prevent loss of or damage to state property, including:
   a. Security escorts, exterior lighting, identification badges, and electronic access systems;
   b. Labeling systems, inventory control procedures, property removal procedures, and key control systems; and
   c. Building and ground security systems, alarms systems, electronic surveillance, perimeter fencing, and security patrol services.
9. A land, facility, equipment, or process environmental protection program that includes:
   a. Procedures to ensure compliance with all applicable local, state, and federal environmental laws;
   b. Identification of equipment, processes, and practices that may cause water pollution, air pollution, or land and property contamination;
   c. Procedures to prevent or control emissions and discharges in excess of local, state, and federal laws and rules; and
   d. Procedures to investigate, report, and remediate any discharge or contamination in excess of local, state, or federal laws and rules;
10. An industrial hygiene program that encompasses an existing or potential health hazard within an agency, or that agency personnel may be exposed to during the course of work. The program shall include a documented survey of agency facilities and work practices to identify areas of concern such as noise, air contamination, ergonomic factors, lighting and confined spaces. The program shall include procedures to notify employees of health hazards, medical monitoring when applicable, and personal protective equipment requirements including training, fit testing, and care. The industrial hygiene program shall include the following program elements as applicable:
    a. Hazard communication;
    b. Laboratory safety (Chemical Hygiene Plan);
    c. Hearing conservation;
    d. Confined space entry;
    e. Handling and disposing of hazardous waste;
    f. Back protection;
    g. Ergonomics;
    h. Asbestos management;
    i. Building air quality;
    j. Chemical exposure assessment;
    k. Personal protective equipment;
    l. Respiratory protection;
    m. Bloodborne pathogen protection; and
    n. Tuberculosis protection;
11. Motor vehicle safety program. For the purpose of this Section, an authorized driver is an employee whose job position description questionnaire or similar document requires the use of a vehicle; an employee who operates a state vehicle; or an employee who operates a leased, rented or personal vehicle where the state provides 100% of that vehicle lease, rental or operational costs.
    a. Standards: Each agency shall develop standards to ensure that an authorized driver who drives on state business is capable of operating a motor vehicle in a safe manner. At a minimum, the program shall include the following standards:

i. An authorized driver shall use and ensure use of seat belts by all occupants, as required by law.
ii. An authorized driver shall possess a valid driver's license of the appropriate class with any required endorsements.
iii. An authorized driver who operates a personally owned vehicle on state business shall maintain the statutorily required liability insurance.

b. Defensive driver training: The agency shall develop and implement programs and procedures to ensure that authorized drivers attend defensive driver training no later than three months from initial hire date or appointment to a position requiring the operation of a motor vehicle. All other authorized drivers who have not attended defensive driver training within the 36 months prior to August 5, 2007 shall attend defensive driver training within 12 months of this date. Defensive driver training and defensive driver refresher training shall cover, at a minimum, the following topics:
i. Defensive driving techniques,
ii. Traffic and vehicle regulations,
iii. Driver and passenger restraints,
iv. Inclement weather and night-vision driving hazards,
v. Dealing with emergencies,
vi. Alcohol and drug use hazards and laws,
vii. Vehicle insurance and financial responsibility, and
viii. Motor Vehicle Record (MVR) Check.
RM may provide Defensive Driver/Van Safety training assistance or coordination upon request of the agency or the agency may elect to develop and implement agency-specific training.

c. Records: The agency shall ensure records are maintained regarding training under subsections (b), (c) and (e) that reflect topics, date of training, instructor name and qualifications of instructor, length of training, location of training, participant's name, and job title.

d. Passenger van and specialty vehicle training: In addition to subsection (b), the agency shall include a training element for drivers of passenger or cargo vans that are designed, modified, or could otherwise be configured for an occupancy of nine to 15 persons (including the driver). The training component for vans shall include: classroom instruction, behind-the-wheel instruction (on the road, on a closed course or using a driving simulator) and a certificate or card of completion. For a motorized specialty vehicle or specialty mobile equipment, the agency shall ensure that instruction is conducted before initial operation of the vehicle or equipment. The instruction shall be based on nationally recognized industry standards and training time lines or manufacturer's operator instructions. For the purpose of this subsection, a motorized "specialty vehicle" or "specialty mobile equipment" means a conveyance designed for the transport of people or cargo that is not licensed or intended for use on public roadways.

e. Vehicle incident review: An agency shall ensure that the motor fleet safety program includes a vehicle incident review element. A Vehicle Incident Review Committee shall conduct a review of each incident that involves collision or damage to determine the cause and preventability of the incident, and recommend any corrective action to prevent recurrence. If the committee determines the incident was preventable, the driver shall attend defensive driver refresher training within three months of committee determination. Based on the circumstances, the agency head may direct additional corrective action. An authorized driver involved in any motor vehicle collision on state business shall promptly notify the authorized driver's immediate supervisor.

f. Driving record review: An agency shall develop and implement procedures for the review of an authorized driver's record maintained by the Motor Vehicle Division (MVD) of the Arizona Department of Transportation (ADOT). The agency shall establish a schedule for reviewing driving records based on agency-specific exposures and RM claims history data. The agency shall ensure that the driving record of each authorized driver is reviewed at least annually. The review shall cover the most recent 39-month period. For driving record reviews, each authorized driver shall, upon request, provide name, driver license number, expiration date and date of birth. A copy of a driving record release form is available upon request from RM. An authorized driver shall promptly notify the authorized driver's immediate supervisor of any license suspension, revocation, or restriction placed on the driver's license or privilege to drive a motor vehicle. If the license of an authorized driver is suspended or revoked, authorization to drive on state business is suspended on the date of driver's license suspension or revocation and remains suspended until the date of driver's license reinstatement. If a review of a driving record reveals one or more convictions totaling six or more points for the 39-month period, the appropriate agency management shall be notified. The driver shall attend defensive driver training or similar action designed to improve the person's driving skills. For the purpose of this Section, RM considers similar action to be successful completion of the MVD Traffic Survival School within 12 months of the record review.

g. Driving record review guidelines and criteria: Agencies may develop criteria that meet or exceed the requirements of this Section relating to accumulated MVD points or driving behavior. At a minimum, the following criteria are to be followed when evaluating a 39-month driving record and recommending agency action:
i. 5 or fewer points = Acceptable record: Continue annual driving record and driver insurance status checks.
ii. 6 to 7 points = Conditional record: Conduct driving record and driver insurance status checks at least twice a year. Driver attends defensive driver training or similar action designed to improve driving skill.
iii. 8 or more points = High-risk record: Request that the agency head limit driving on state business. If an agency head allows the authorized

driver to drive on state business, the agency head shall provide to the driver, in writing, the limitations and the duration of the authorization to drive. An agency head shall not circumvent an order or action of the Motor Vehicle Division or any court.

12. A safety and security standard for a construction site where state employees work, that includes:
    a. Site-specific safety rules and procedures for the type of risks expected to be encountered on the site;
    b. Routine inspection of construction sites to ensure compliance with local, state, and federal safety laws and rules;
    c. Training of each employee in safe practices and procedures;
    d. Availability of first-aid, medical, and emergency equipment and services at the construction site, including arrangements for emergency transportation;
    e. Procedures to prevent theft, vandalism, and other losses at the construction site; and
    f. Periodic testing and evaluation of the plan and correction of identified deficiencies.

Historical Note

Adopted effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 1717, effective April 20, 2000 (Supp. 00-2). Amended by final rulemaking at 13 A.A.R. 2043, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 23 A.A.R. 3239, effective January 8, 2018 (Supp. 17-4).

ARTICLE 3. INSURANCE: PURCHASE AND CONTRACTS

R2-10-301. Insurance: Purchase and Contracts

A. An agency seeking to purchase property, liability, or workers' compensation insurance shall request RM's approval in writing at least 90 days before the desired effective date of coverage. RM shall not reimburse an agency for the purchase of property, liability, or workers' compensation insurance that has not been approved by RM.

B. An agency shall submit a written request for approval to RM before the agency does one or more of the following:
1. Names a non-state entity as an additional insured in a contract;
2. Provides a Certificate of Insurance;
3. Indemnifies, holds harmless, or limits the liability of any party to a contract, lease, or other written agreement; or
4. Waives the state's right to subrogate with regard to any party to a contract, lease, or other written agreement.

C. The written request prescribed in subsection (B) shall be signed by the agency director and include all of the following:
1. The circumstances of the request;
2. Whether the party to the contract, lease, or written agreement is a sole source for the state;
3. The level or additional risk of loss to the state resulting from the requested action;
4. Whether the requested action helps the agency accomplish the agency's mission; and
5. An explanation of why the action to be approved is in the best interest of the state.

D. If a contract requires the state to be named as an additional insured, the contracting agency shall place the name of the contracting agency and the state on the additional insured endorsement.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Amended effective June 12, 1989 (Supp. 89-2). Amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1). Amended by final rulemaking at 11 A.A.R. 5453, effective February 4, 2006 (Supp. 05-4).

R2-10-302. Repealed

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Amended effective June 12, 1989 (Supp. 89-2). Repealed effective December 18, 1992 (Supp. 92-4).

R2-10-303. Repealed

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-10-303 repealed, new Section R2-10-303 adopted effective June 12, 1989 (Supp. 89-2). Repealed effective December 18, 1992 (Supp. 92-4).

R2-10-304. Repealed

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Amended effective June 12, 1989 (Supp. 89-4). Repealed effective December 18, 1992 (Supp. 92-4).

ARTICLE 4. PROVIDER INDEMNITY PROGRAM (PIP)

R2-10-401. Coverages and Limitations

A. The Department of Administration shall purchase insurance or self-insure the parties and programs as set forth in A.R.S. § 41-621(B) for losses caused by an occurrence or wrongful act which is the result of either the actions of a state client or the actions of an individual provider while providing direct or incidental care of a state client.

B. Coverages which shall apply under this program are as follows:
1. Liability coverage for providers and clients is provided pursuant to A.R.S. § 41-621(A).
2. Coverage is provided on a replacement-cost-less-depreciation basis for the loss of or damage to real or personal property owned by a provider as a result of the actions of a client.

C. Coverages that are excluded from this program include:
1. Mysterious disappearance of property;
2. Intentional, unlawful or illegal acts except claims pursuant to A.R.S. § 12-661;
3. Automobile physical damage resulting from permissive use by a client;
4. Benefits covered under any workers' compensation, unemployment compensation, or disability benefits law; and
5. All claims or lawsuits, including defense costs, which result from physical abuse, sexual abuse or sexual molestation except claims pursuant to A.R.S. § 12-661.

Historical Note

Adopted effective June 12, 1989 (Supp. 89-2). Amended effective December 18, 1992 (Supp. 92-4). Amended effective January 12, 1995 (Supp. 95-1).

R2-10-402. Repealed

Historical Note

Adopted effective June 12, 1989 (Supp. 89-2). Repealed

effective December 18, 1992 (Supp. 92-4).

R2-10-403. Repealed

Historical Note
Adopted effective June 12, 1989 (Supp. 89-2). Repealed effective December 18, 1992 (Supp. 92-4).

R2-10-404. Repealed

Historical Note
Adopted effective June 12, 1989 (Supp. 89-2). Repealed effective December 18, 1992 (Supp. 92-4).

R2-10-405. Repealed

Historical Note
Adopted effective June 12, 1989 (Supp. 89-2). Repealed effective December 18, 1992 (Supp. 92-4).

R2-10-406. Repealed

Historical Note
Adopted effective June 12, 1989 (Supp. 89-2). Repealed effective December 18, 1992 (Supp. 92-4).

ARTICLE 5. ENVIRONMENTAL LOSSES

R2-10-501. Investigation, Feasibility Study, and Remediation of the Release of Hazardous Substances

A. RM will provide funding for a site investigation, feasibility study, and remediation of any hazardous materials, operations, or wastes which have resulted in or may result in environmental damage and/or a health threat associated with property and/or facilities owned or operated by the state or at which such operations are conducted or materials/wastes are located.

B. RM will provide funding to determine the horizontal and vertical extent of the hazardous substance/waste discovered during the site investigation. This will include:
1. Sample collection and analysis of laboratory results from:
   a. Soil boring samples
   b. Trenching samples
   c. Bedrock core samples
   d. Groundwater monitoring well samples
   e. Structural facilities
2. Geophysical surveys
3. If a feasibility study indicates remediation is necessary, RM will provide funding to the agency for an environmental remediation contractor as explained in R2-10-502.

C. RM shall not pay for site investigations and feasibility studies for agencies planning to obtain property by any means including lease, purchase, and gift, where there may be potential damage to the air, water, or soil.

Historical Note
Adopted effective January 12, 1995 (Supp. 95-1).

R2-10-502. Expired

Historical Note
Adopted effective January 12, 1995 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 28 A.A.R. 2061 (August 19, 2022), effective March 1, 2022 (Supp. 22-3).

R2-10-503. Site Maintenance

RM shall, if the agency so requests, provide funding for site maintenance of closed hazardous substance/waste sites where remediation has been complete as required by the Arizona Department of Environmental Quality (ADEQ) or the Environmental Protection Agency (EPA).

Historical Note
Adopted effective January 12, 1995 (Supp. 95-1).

R2-10-504. Expired

Historical Note
Adopted effective January 12, 1995 (Supp. 95-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 448, effective January 11, 2017 (Supp. 17-1).

ARTICLE 6. COMPUTATION OF INTEREST ON APPEALED JUDGEMENTS

R2-10-601. Computation Procedures

A. Interest payable on judgments against the state that are appealed shall be computed by averaging the investment yields on three-month and six-month Treasury Bills as reported in the Federal Reserve's H 15 statistical release of selected interest rates for the period of time the case is on appeal.

B. Averages are calculated for each individual month of the appeal period and then averaged for the total months of the appeal period, excluding those months in which the case was on appeal for less than 15 days.

Historical Note
Adopted effective January 12, 1995 (Supp. 95-1).

A COPY OF THE GENERAL AND SPECIFIC STATUTES AUTHORIZING THE RULES

A.A.C. Title 2, Chapter 10
Arizona Department of Administration
Risk Management Division

41-703. Duties of director

The director shall:

1. Be directly responsible to the governor for the direction, control and operation of the department.
2. Provide assistance to the governor and legislature as requested.
3. Adopt rules the director 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, determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons as may be necessary in the performance of the department's duties and contract for the services of outside advisors, consultants and aides as may be reasonably necessary.
6. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.
7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of the department's purposes, objectives and programs.
8. Accept and disburse grants, gifts, donations, matching monies 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.
9. Establish and maintain separate financial accounts as required by federal law or regulations.
10. Advise and make recommendations to the governor and the legislature on all matters concerning the department's objectives.
11. Delegate the administrative functions, duties and powers as the director deems necessary to carry out the efficient operation of the department.

41-621. Purchase of insurance; coverage; limitations; exclusions; definitions

A. The department of administration shall obtain insurance against loss, to the extent it is determined necessary and in the best interests of this state as provided in subsection G of this section, on the following:

1. All state-owned buildings, including those of the universities, excluding buildings of community colleges, whether financed in whole or in part by state monies or buildings in which the state has an insurable interest as determined by the department of administration.

2. Contents in any buildings owned, leased or rented, in whole or in part, by or to this state, excluding buildings of community colleges, and reported to the department of administration.

3. This state and its departments, agencies, boards and commissions and all officers and employees thereof and such others as may be necessary to accomplish the functions or business of the state and its departments, agencies, boards and commissions against liability for acts or omissions of any nature while acting in authorized governmental or proprietary capacities and in the course and scope of employment or authorization except as prescribed by this chapter.

4. All personal property reported to the department of administration, including vehicles and aircraft owned by the state and its departments, agencies, boards and commissions and all nonowned personal property that is under the clear responsibility of this state because of written leases or other written agreements.

5. This state and its departments, agencies, boards and commissions against casualty, use and occupancy and liability losses of every nature except as prescribed by this chapter.

6. Workers' compensation and employers' liability insurance.

7. Design and construction of buildings, roads, environmental remediations and other construction projects.

8. Other exposures to loss where insurance may be required to protect this state and its departments, agencies, boards and commissions and all officers and employees acting in the course and scope of employment or authorization except as prescribed by this chapter.

9. Actual or suspected data breaches, security system breaches or security incidents for select agencies, boards and commissions.

B. To the extent it is determined necessary and in the best interests of this state, the department of administration shall obtain insurance or provide for state self-insurance against property damage caused by clients and liability coverage resulting from the direct or incidental care of clients participating in programs of this state and its departments, agencies, boards or commissions relating to custodial care. The insurable programs shall include foster care, programs for persons with developmental disabilities, an independent living program pursuant to section 8-521, a transitional independent living program pursuant to section 8-521.01, an

extended foster care program pursuant to section 8-521.02 and respite-sitter service programs. The department shall obtain insurance or provide for state self-insurance pursuant to this subsection to protect the clients participating in these programs and individual providers of these program services on behalf of this state and its departments, agencies, boards or commissions. The state self-insurance claims or other insurance that is provided or obtained pursuant to this subsection may not be more than $1,000,000 per claim, including related claims, and $2,000,000 in the aggregate per year. The limits may be adjusted pursuant to rules adopted by the department of administration. Insurance and state self-insurance as prescribed in this section do not apply to providers who are contractually required to indemnify this state or a state department or agency for some or all of the liability of this state or a department or agency of this state. The insurance provided under this subsection does not include medical or workers' compensation coverage for providers. The department may include in its annual budget request pursuant to section 41-622, subsection D a charge for the insurance or self-insurance provided in this subsection. To assist in carrying out this subsection, the department shall establish a seven-member advisory board in accordance with the following provisions:

1. The board shall consist of three members appointed by the director of the department of administration, at least one of whom shall be a foster parent, one member appointed by the director of the department of economic security, one member appointed by the director of the department of child safety, one member appointed by the director of the state department of corrections, and one member appointed by the administrative director of the courts.

2. The board shall elect a chairman from among its members.

3. The board shall hold at least two meetings a year or shall meet at the call of the chairman.

4. Board members shall serve for three-year terms.

5. Board members are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

6. The board shall provide advice to the department regarding coverage and administration of this subsection and shall assist the department in coordinating its activities pursuant to this subsection with state departments, agencies, boards and commissions.

C. To the extent it is determined necessary and in the best interests of this state, the department of administration may obtain insurance or provide for state self-insurance against losses for any agents of this state or its departments, agencies, boards or commissions that are not insured pursuant to subsection A of this section. The coverage shall be limited to liability for acts or omissions while acting in the course and scope of employment or authorization by this state or its departments, agencies, boards or commissions and subject to any other terms and conditions that the department of administration determines are in the best interests of this state.

D. The department of administration may obtain insurance against loss, to the extent it is determined necessary and in the best interests of this state as provided in subsection G of this section for the professional liability of individual physicians and psychiatrists who provide

services under a contract with the state department of corrections. Coverage is limited to acts and omissions committed inside a state department of corrections facility while in the performance of the contract and to individual physicians and psychiatrists who demonstrate to the satisfaction of the state department of corrections that they cannot otherwise obtain professional liability coverage for the services required by the contract. The director of the department of administration may impose on the state department of corrections a deductible for each loss that arises out of a professional liability claim pursuant to this subsection. Any changes in deductible amounts established by the director shall be subject to review by the joint legislative budget committee.

E. The department of administration may obtain property, liability, disability or workers' compensation insurance, self-insure or develop risk retention pools to provide for payment of property loss or casualty claims or disability insurance claims against contractors of this state with the approval of the joint legislative budget committee. With respect to insurance, self-insurance or risk retention pools for contractors licensed and contracted to do work for this state, the coverage afforded applies with respect to the conduct of the business entity of that contractor. The pool is available to all contractors regardless of the amount that the state-contracted work bears in relation to the amount of nonstate contracted work. The contractor shall be terminated from the pool if the contractor ceases to be a state contractor.

F. The department of administration may determine, in the best interests of this state, that state self-insurance is necessary or desirable and, if that decision is made, shall provide for state self-insurance for losses arising out of state property, liability or workers' compensation claims or for losses arising out of actual or suspected data breaches, security system breaches or security incidents prescribed by subsections A, C, D and E of this section. If the department of administration provides state self-insurance as prescribed in this section, such coverage shall be excess over any other valid and collectible insurance, notwithstanding any other insurance clause provided in the policy of the other valid and collectible insurance. If state self-insurance and any other valid and collectible insurance are determined to be primary insurance, the department of administration and other insurers shall contribute equal amounts until the applicable limit of insurance has been paid or none of the loss remains, whichever occurs sooner. The director of the department of administration may impose on state departments, agencies, boards and commissions a deductible for each loss that arises out of a property, liability or workers' compensation claim, actual or suspected data breach, security system breach or security incident pursuant to this subsection. Any changes in deductible amounts established by the director shall be subject to review by the joint legislative budget committee.

G. In carrying out this chapter, the department of administration shall establish and provide the state with some or all of the necessary risk management services, or shall contract for risk management services pursuant to chapter 23 of this title, as the director of the department of administration deems necessary in the best interest of the state, and in addition to other specifications of such coverage as deemed necessary, may determine self-insurance to be established. Chapter 23 of this title does not apply to the department of administration's procurement of insurance to cover losses arising out of state property or liability claims prescribed in this section or excess loss insurance for the state's workers' compensation liability for individual or aggregate claims, or both, in such amounts and at such primary retention levels

as the department of administration deems in the best interest of this state. In purchasing insurance to cover losses arising out of property or liability claims prescribed by this section, the department of administration is not subject to title 20, chapter 2, article 5.

H. A successful bidder for risk management services pursuant to this section is not entitled to receive directly or indirectly any sales commission, contingent commission, excess profit commission, or other commissions, or anything of value, as payment for the risk management services except those amounts received directly from this state as payment for the risk management services.

I. The department of administration shall pay for purchased risk management services, premiums for insurance on state property and state liability and workers' compensation pursuant to this chapter.

J. A state officer, agent or employee acting in good faith, without wanton disregard of statutory duties and under the authority of an enactment that is subsequently declared to be unconstitutional, invalid or inapplicable, is not personally liable for an injury or damage caused thereby except to the extent that the officer, agent or employee would have been personally liable had the enactment been constitutional, valid and applicable.

K. A state officer, agent or employee, except as otherwise provided by statute, is not personally liable for an injury or damage resulting from an act or omission in a public official capacity where the act or omission was the result of the exercise of the discretion vested in the officer, agent or employee and if the exercise of the discretion was done in good faith without wanton disregard of statutory duties.

L. This state and its departments, agencies, boards and commissions are immune from liability for losses arising out of a judgment for wilful and wanton conduct resulting in punitive or exemplary damages.

M. The following exclusions shall apply to subsections A, B and F of this section:

1. Losses against and liabilities of a person who is provided insurance coverage pursuant to this chapter that arise out of and are directly attributable to an act or omission by the person that a court determines to be a felony.

2. Losses and liabilities arising out of contractual breaches.

3. Injury or damages expected or intended from the standpoint of the person insured pursuant to this chapter. This exclusion does not apply to law enforcement activities or operations, correctional activities or operations or injury or damages resulting from the use of reasonable force to protect an individual or property.

N. If self-insurance coverage is determined to exist, the attorney general, with funds provided by the department of administration, shall provide for the defense, either through the attorney general's office or by appointment of outside legal counsel, of this state and its departments,

agencies, boards and commissions and all officers, agents and employees thereof and such others as are insured by the department of administration for or on account of their acts or omissions covered pursuant to this chapter. All state departments, agencies, boards and commissions, all officers, agents and employees thereof and such others as are insured by the department of administration shall cooperate fully with the attorney general and department of administration in the defense of claims arising pursuant to this chapter.

O. A claim for liability damages made pursuant to this chapter may be settled and payment made up to the amount of $100,000 or such higher limit as may be established by the joint legislative budget committee with the approval of the director of the department of administration. A claim may be settled and payment made over the amount of $100,000 up to $250,000 or such higher limit as may be established by the joint legislative budget committee with the approval of the director of the department of administration and the attorney general. Any claim may be settled and payment made over the amount of $250,000 or such higher limit as may be established by the joint legislative budget committee with the approval of the director of the department of administration, the attorney general and the joint legislative budget committee. If it is in the best interest of this state, the joint legislative budget committee may establish higher settlement limits. Any settlements involving amounts in excess of $250,000 or such higher limit as may be established by the joint legislative budget committee shall be approved by the department of administration, the attorney general and the joint legislative budget committee pursuant to the authority granted. The settlement of liability claims shall be solely the authority of the department of administration, the attorney general and the joint legislative budget committee. No state department, agency, board or commission or any officer, agent or employee of this state may voluntarily make any payment, assume any obligation, incur any expense or maintain the individual right of consent for liability claims made pursuant to this chapter except as provided by this section.

P. Neither the authority provided by this section to insure, nor the exercise of such authority, shall:

1. Impose any liability on this state or the departments, agencies, boards and commissions or any officers, agents and employees of this state unless such liability otherwise exists.

2. Impair any defense this state or the departments, agencies, boards and commissions or any officers, agents and employees of this state otherwise may have.

Q. Except as otherwise prescribed by this chapter and subject to any limit of state self-insurance and the terms of any insurance obtained by the department of administration, the department of administration shall pay, on behalf of any state officer, employee or person who is provided state self-insurance pursuant to this section, any damages, excluding punitive damages, for which the individual becomes legally responsible if the acts or omissions resulting in liability were within the individual's course and scope of employment. The department of administration may pay for all damages however designated that the officer, agent or employee becomes legally responsible for if the acts or omissions resulting in liability are determined by the director of the department of administration to be within the person's course and scope of employment.

R. The department of administration shall adopt such rules as are deemed necessary to carry out, implement and limit this chapter.

S. For the purposes of determining whether a state officer, agent or employee is entitled to coverage under this chapter, "within the course and scope of employment or authorization" means:

1. The acts or omissions that the state officer, agent or employee is employed or authorized to perform.

2. The acts or omissions of the state officer, agent or employee occur substantially within the authorized time and space limit.

3. The acts or omissions are activated at least in part by a purpose to serve this state or its departments, agencies, boards or commissions.

T. To the extent it is determined necessary and in the best interest of this state, the department of administration may obtain design and construction insurance or provide for self-insurance against property damage caused by this state, its departments, agencies, boards and commissions and all officers and employees of this state in connection with the construction of public works projects. Workers' compensation liability insurance may be purchased to cover both general contractors and subcontractors doing work on a specific contracted worksite. The department may include in its annual budget request, pursuant to section 41-622, subsection D, the cost of the insurance purchased or provided. In connection with the construction of public works projects, the department of administration may also use an owner-controlled or wrap-up insurance program if all of the following conditions are met:

1. The total cost of the project is over $50,000,000.

2. The program maintains completed operations coverage for a term during which coverage is reasonably commercially available as determined by the director of the department of insurance and financial institutions, but in no event for less than three years.

3. Bid specifications clearly specify for all bidders the insurance coverage provided under the program and the minimum safety requirements that shall be met.

4. The program does not prohibit a contractor or subcontractor from purchasing any additional insurance coverage that a contractor believes is necessary for protection from any liability arising out of the contract. The cost of the additional insurance shall not be passed through to this state on a contract bid.

5. The program does not include surety insurance.

U. The state may purchase an owner-controlled or wrap-up policy that has a deductible or self-insured retention as long as the deductible or self-insured retention does not exceed $1,000,000.

V. Notwithstanding any other statute the department of administration may:

1. Limit the liability of a person who contracts to provide goods, software or other services to this state.

2. Allow the person to disclaim incidental or consequential damages.

3. Indemnify or hold harmless any party to the contract.

W. The department of administration may intervene in a lawsuit against a person insured pursuant to this section to assert a defense on behalf of the person that the claimant failed to comply with section 12-821.01 or that a portion or all of the action is barred by section 12-821. The department is not required to exercise its right to intervene to claim that a portion or all of an insured person's liability is not for acts or omissions for which the person is afforded coverage pursuant to this section.

X. For the purposes of subsections T and U of this section:

1. "Owner-controlled or wrap-up insurance" means a series of insurance policies issued to cover this state and all of the contractors, subcontractors, architects and engineers on a specified contracted worksite for purposes of general liability, property damage and workers' compensation.

2. "Specific contracted worksite" means construction being performed at one site or a series of contiguous sites separated only by a street, roadway, waterway or railroad right-of-way, or along a continuous system for the provision of water and power.

Y. For the purposes of this section, "breach", "security system breach" and "security incident" have the same meanings prescribed in section 18-551.

41-622. Risk management revolving fund; construction insurance fund; cyber risk insurance fund; self-insured losses and administrative costs; budget requests

A. The risk management revolving fund, the construction insurance fund and the cyber risk insurance fund are established in the department of administration for the purchase of insurance, risk management services including loss prevention services, payment of self-insured losses pursuant to section 41-621, subsections A, B, C, D, E and F and administrative costs necessary to carry out risk management services prescribed by section 41-621. The department of administration shall pay for claims processing costs, including adjusting costs, legal defense costs and attorney fees, for any portion of claims falling within state self-insurance coverage pursuant to this chapter.

B. The risk management revolving fund in the department of administration shall exclude any property loss arising from damage due to mechanical or electrical breakdown, ordinary wear and tear or obsolescence, nonserviceability, mysterious disappearance or inventory shortage. Mysterious disappearance does not include a loss if there is a reasonable presumption of theft. The department of administration, subject to chapter 23 of this title, may advance or disburse monies to contractors who rebuild state property as a result of self-insured losses or to persons who supply goods or services in replacing self-insured losses. The department of administration shall pay for claims processing costs, including adjusting costs, legal defense costs and attorney fees, for any portion of claims falling within state self-insurance coverage pursuant to this chapter.

C. To qualify for payment for loss by theft or burglary of state-owned personal property, an agency, department, board or commission must show evidence of forcible entry or that threat of violence was used in the taking of the property or there must be a reasonable presumption of theft.

D. The department of administration shall present to the legislature not later than September 1 of each year, in accordance with section 35-113, a budget request based on the actuarial needs for liability losses, workers' compensation liability losses, property losses, replenishment of the cyber risk insurance fund and risk management administrative costs. The budget request shall be broken down to reflect the amount of monies to be charged to each of the state departments, agencies, boards and commissions and any others insured under this chapter. Any state department, agency, board or commission that has an amount for insurance included in its appropriation, whether specifically stated or not, and any state department, agency, board or commission or others insured under this chapter that receive funds other than those appropriated shall be billed for the proportionate share of the charges for insurance or self-insurance by the department of administration. In collecting the agency billings for risk management charges, the director of the department of administration may transfer the entire amount of the billing for appropriated insurance from the agency account into the fund designated in subsection A of this section at the start of the fiscal year or in periodic payments during the fiscal year if necessitated by cash flow restrictions. Those entities or persons insured under this chapter that are not state agencies, departments, boards, commissions or employees or that do not receive funding from state sources shall pay annually the amount required by risk management to the risk management revolving fund or construction insurance fund before the coverage continues for existing claims

or begins for new claims made. The construction insurance fund shall receive monies necessary to pay the cost of purchasing insurance, providing self-insurance or administering the fund as authorized by section 41-621, subsection T from each capital construction project budget at rates established by the department of administration and reviewed by the joint committee on capital review. These amounts shall be included in the budget request. All monies received from all billings shall be deposited in the funds as identified in subsection A of this section.

E. All monies recovered by the state pursuant to litigation, recovery, salvage value of damaged property, proportionate share monies from any other existing state funds, or otherwise, for damages relating to either a liability, property or workers' compensation loss for which monies from the risk management revolving fund or construction insurance fund have been or will be paid shall be deposited in the respective fund.

F. If a revolving fund is projected to be exhausted while the legislature is in session, a special appropriation may be requested by the department of administration for monies to meet the needs of the funds. If the funds are exhausted at a time when the legislature is not in session, any final judgment shall accrue interest and shall be payable on appropriation in the next succeeding regular session of the legislature. Interest on any judgment against this state paid for out of the risk management revolving fund or the cyber risk insurance fund, regardless of whether the funds are self-insured or funded by excess insurance, shall accrue at the average yield offered by United States treasury bills during the course of the appeal and shall be paid in accordance with this section. If the appeal is lost by this state, the judgment amount plus interest at the rate prescribed in this subsection shall be paid.

G. All monies deposited in the risk management revolving fund and the cyber risk insurance fund are subject to annual legislative appropriation to the department of administration for use pursuant to this section. Monies in the construction insurance fund are continuously appropriated for the fund purposes. The funds established by subsection A of this section are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

H. A $10,000 death benefit shall be paid from the risk management revolving fund to the estate of a deceased volunteer, who is registered as a volunteer by the agency, board or commission, or to an employee who is not subject to section 38-651.02, on proof of death while in the course and scope of duties as prescribed in section 41-621, subsection Q for any state agency, board or commission.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 22, Article 18

New Section: Article 18, R9-22-1801, R9-22-1802, R9-22-1803, R9-22-1804, R9-22-1805, R9-22-1806

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: May 7, 2024

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

FROM: Council Staff

DATE: **April 10, 2024**

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 22, Article 18

New Section: Article 18, R9-22-1801, R9-22-1802, R9-22-1803, R9-22-1804, R9-22-1805, R9-22-1806

Summary:

This regular rulemaking from the Arizona Health Care Cost Containment System (Agency) or (AHCCCS) seeks to add seven (7) new sections in Title 9, Chapter 22, Article 18 related to Provider Exclusion Rules. The rules will set forth the basis for an exclusion, the period of an exclusion, the process to seek an appeal of an exclusion, and the process to seek reinstatement following an exclusion. These rules will enable AHCCCS to exclude individuals or entities from participation in the system who pose an undue risk of fraud, waste, and abuse. They will also preserve due process rights of excluded individuals and entities and reduce legal uncertainty by setting forth the process by which an exclusion determination may be appealed, as well as the process to be followed for reinstatement of participation. Technical and conforming changes will also be considered in the course of rulemaking.

This rulemaking is not related to a previously approved Five Year Review Report and does not establish or increase a new fee.

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?

This rulemaking does not establish or increase a fee.

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

The 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 proposed rulemaking will enable AHCCCS to exclude individuals or entities from participation in the system who pose an undue risk of fraud, waste, and abuse—the proposed rules will set forth the basis for an exclusion, the period of an exclusion, the process to seek an appeal of an exclusion and the process to seek reinstatement following an exclusion. These rules are necessary for the Administration to specifically delineate the basis of provider exclusion beyond general federal regulation and state statute. The Administration anticipates no increase in cost to the implementing agency, no change in public or private employment, no impact on political subdivisions, no fiscal impact on small businesses, and no impact on state revenues except to diminish the chance of fraud.

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 determined that creating these regulations under the existing framework was the least costly method. No alternative methods were considered since rules are required in the authorizing statute.

6. What are the economic impacts on stakeholders?

AHCCCS providers will be the persons to bear any negative outcomes of the rulemaking. However, they are provided clear instruction by the regulation, and the option for appeal of an exclusion. AHCCCS members will see direct benefits from the rule because it will allow the Administration to exclude entities from participation in AHCCCS who pose a risk to members or the program as a whole. The Administration anticipates a benefit of being able to exclude not just providers, but individuals who are affiliated with a variety of providers who AHCCCS has already taken action against, however the agency desires to prevent them from re-registering in the future. Under the framework of this rulemaking, providers will be notified of their exclusion and will be able to appeal if they believe the agency's finding is incorrect. Therefore, it will be beneficial for providers because it creates a due process right where they can

appeal.

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

The Agency states there were no changes between the proposed rulemaking and the final rulemaking.

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

The Agency received one comment from Arizona Alliance for Community Health Centers and responded with reasons as to why they did not agree.

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 that these rules do not require a permit or license.

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

The Agency indicates that the rules are not more stringent than corresponding federal law.

11. Conclusion

This regular rulemaking from the Arizona Health Care Cost Containment System (seeks to add seven new sections in Title 9, Chapter 22, Article 18 related to Provider Exclusion Rules. As indicated above, the rules do not establish or increase a fee and are not related to a 5YRR. The Department is seeking an immediate effective date pursuant to A.R.S. § 41-1032(A)(1), to preserve the public peace, health or safety. Council staff recommends approval of this rulemaking.

March 19, 2024

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

RE: R9-22-Article 18 Rulemaking

Dear Ms. Klein:

1.	The close of record date:	01/29/2024
2.	Does the rulemaking activity relate to a Five Year Review Report:	No
a.	If yes, the date the Council approved the Five Year Review Report:	N/A
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, 6/26/24

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. 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 RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

ARTICLE 18. PROVIDER EXCLUSION RULES

PREAMBLE

1. Article, Part, or Section Affected (as applicable)	Rulemaking Action
ARTICLE 18	New Section
R9-22-1801	New Section
R9-22-1802	New Section
R9-22-1803	New Section
R9-22-1804	New Section
R9-22-1805	New Section
R9-22-1806	New Section

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

Authorizing statute: A.R.S. § 36-2930.05(C)

Implementing statute: A.R.S. § 36-2930.05(C)

3. The effective date of the rule:

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

AHCCCS is requesting an effective date of June 26, 2024, per A.R.S. § 41-1032(A)(1), to preserve the public peace, health or safety. AHCCCS previously requested and was granted emergency rulemaking authority by the Attorney General's office on July 3, 2023. AHCCCS was granted a one-time renewal of the emergency rules for 180 days, effective 12/30/2023. The emergency rulemaking renewal will expire on June 27, 2024. Therefore, AHCCCS is requesting that this rulemaking is effective the day before the emergency rules expire. This is important to prevent a lapse in the ability of the agency to exclude providers for fraud, waste and abuse, or health and safety reasons, as outlined in the rule text. AHCCCS uses the authority to exclude, granted in statute, to protect its members from individuals and providers who have already taken actions to harm the agency or its members. Therefore, a delay in the effective date of the rule would harm the agency's authority to enact exclusions for the brief period until a regular 60 day delayed effective date.

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

Notice of Rulemaking Docket Opening: 29 A.A.R. 3875

Notice of Proposed Rulemaking: 29 A.A.R. 3833

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

Name: Nicole Fries

Address: 801 E. Jefferson St., Phoenix, AZ 85003

Mail Code: 4100

Telephone: (602)-417-4232

E-mail: AHCCCSRules@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:

In 2016, AHCCCS was sued to prevent enforcement of H.B. 2599, codified at A.R.S § 36-2930.05, concerning the permission to exclude from participation in Arizona's Medicaid Program, any individual or entity that failed to segregate taxpayer dollars from abortions, including the use of taxpayer dollars for any overhead expenses attributable to abortions. Under the Stipulation to Dismiss in Planned Parenthood Arizona, et al. v. Betlach, AHCCCS agreed to notify counsel of Planned Parenthood of Arizona and the ACLU when a rulemaking, promulgated to enforce H.B. 2599, is filed for public comment. AHCCCS also agreed not to request an immediate effective date for this rulemaking. Pursuant to A.R.S. § 36-2930.05, AHCCCS is required to adopt rules that prescribe procedures for determining the length of exclusion, appealing the exclusion determination and requesting reinstatement following an exclusion.

AHCCCS proposes to create a new Article 18 in Title 9, Chapter 22, which will constitute only provider exclusion rules. The proposed rules will set forth the basis for an exclusion, the period of an exclusion, the process to seek an appeal of an exclusion, and the process to seek reinstatement following an exclusion. A.R.S. § 36-2930.05(C) allows the administration to adopt rules which set forth a basis for exclusion, in addition to those already specified by A.R.S. 36-2930.05, subsections A and B, and the proposed rules will do so in R9-22-1802. The proposed rules will set forth the method for determination of the period of exclusion at R9-22-1803. Proposed rule R9-22-1804 will provide that an exclusion may be appealed pursuant to the Uniform Administrative Appeals Procedures, A.R.S. § 41-1092, et seq. The process for reinstatement following exclusion will be set forth by R9-22-1805 and R9-22-1806, which will be patterned in part after 42 C.F.R. §§ 1001.3002 and 1001.3004.

The proposed rulemaking will enable AHCCCS to exclude individuals or entities from participation in the system who pose an undue risk of fraud, waste, and abuse. The proposed rules are narrowly drawn and limited to matters specifically required to be addressed by A.R.S. § 36-2930.05(D) and allowed to be addressed by A.R.S. § 36-2930.05(C). The proposed rules will preserve the due process rights of excluded individuals and entities and reduce

legal uncertainty by setting forth the process by which an exclusion determination may be appealed, as well as the process to be followed for reinstatement of participation. Technical and conforming changes will also be considered in the course of rulemaking.

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

No study was relied upon for this 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. A summary of the economic, small business, and consumer impact:

The proposed rulemaking will enable AHCCCS to exclude individuals or entities from participation in the system who pose an undue risk of fraud, waste, and abuse. These rules are necessary for the Administration to specifically delineate the basis of provider exclusion beyond general federal regulation and state statute. Under existing authorities, AHCCCS Office of the Inspector General enforced exclusions have resulted in over 2.8 million in program savings from 2013-2021.

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

There were no changes between the proposed rulemaking and the final rulemaking.

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

AHCCCS received one comment from Arizona Alliance for Community Health Centers on January 29, 2024:

Stakeholder	Comment	AHCCCS reply to comment
Alliance for Community Health Centers	January 29, 2024 Carmen Heredia AHCCCS Director 801 E. Jefferson Phoenix, AZ 85034 RE: Comment on Proposed Rule Changes on Article 18 Provider	AHCCCS appreciates the insight the Alliance provided as to uncompensated board members, however AHCCCS does not believe that they should be treated any differently than the board members of other provider types. The reasons upon which AHCCCS may exclude an individual are clearly outlined in the

	Exclusion Rules Dear Carmen, Thank you for your efforts to stop the fraud and abuse uncovered in the Behavioral Health system. We recognize the critical role that AHCCCS plays in preventing fraud and abuse and value many of the changes being enacted. The proposed Article 18 Provider Exclusion Rules (R9-22-1801 to R9-22-1806) will expand the ability to protect the healthcare system from bad actors. However, we are concerned that R9-1802(A)(4) may have unintended consequences in preventing our volunteer Boards from being representative of the populations we serve. "R9-1802(A)(4) allows AHCCCS to exclude any individual or entity with a managing employee or a person with an ownership or control interest that has been convicted of a criminal offense which the Administration, in its sole discretion, determines may represent an undue risk of fraud, waste, or abuse of the system or an undue risk of harm to members." FQHCs have community based, volunteer Boards with a requirement that at least 51% of Board members be patients. The purpose is for the FQHCs to be representative of the population they are serving. Several of our FQHCs are involved in justice projects, such as the AHCCCS Targeted Investments program, where we are serving incarcerated individuals and those recently released from prison. The proposed provision may have the unintended consequence of preventing any of our FQHC volunteer, community Boards from having a	regulation and intended to protect AHCCCS members from those individuals who have already taken actions which cause a risk of fraud, waste, and abuse, or the health and safety of AHCCCS members. All individuals are able to appeal their exclusion, protecting the due process rights of those who may have concerns that AHCCCS would apply these exclusions too broadly. Since AHCCCS has concerns that individuals may not only attempt to take advantage of AHCCCS members for compensatory purposes, AHCCCS believes a blanket exemption would be inappropriate.

	member that is formerly incarcerated. As discussed below, this is an unnecessary precaution at FQHCs due to other safeguards which already prevent fraud and abuse. FQHCs are not "owned" in the traditional sense. Community Board members are volunteers, have no ownership interest, and are not compensated for their efforts, more than de minimis travel and meal expenses. Chief Executive Officers (CEOs) operate and manage the FQHC and affiliated sites. CEOs receive a salary but are also not "owners." FQHCs do not have an "ownership" structure. In fact, the federal government often has a legal interest in assets of the FQHC. Unlike at some of the fraudulent sober living homes, FQHC Board members have no mechanism to benefit financially or fraudulently by serving on our Boards. In addition, FQHCs already perform required OIG and CMS exclusion checks on Board members annually to verify they have not been barred from OIG or CMS programs. This is an added check that protects against anyone taking part that has previously been involved in Medicare or Medicaid fraud or abuse. The proposed rule allows AHCCCS to go further and potentially prevent anyone with a former criminal offense from serving on the volunteer, non-ownership Board. While we recognize AHCCCS could allow someone on a case-by-case basis to serve, the potential of embarrassment and being prevented from serving will have a chilling effect on our willingness to invite someone with any felony conviction from serving. This will limit the ability of our Boards from being truly representative of our patients.	

	Finally, FQHCs are subject to extensive federal regulation, which includes a wide range of financial, operational, and clinical requirements that they must meet. They are reviewed by the Health Resources and Services Administration through routine site visits to ensure they are complying with requirements, and all are subject to required data reporting as well as annual financial audits. The requirements to which FQHCs must demonstrate they adhere on an ongoing basis serve to prevent fraud and abuse. The Alliance's request is that an exception to R9-22-1802(A)(4) be made for entity Board members that do not have a controlling or financial interest in the entity and which are in compliance with the OIG and CMS exclusion checks specific to Medicare and Medicaid fraud. (We are not requesting a specific exclusion for FQHC volunteer Boards, but that is another possibility.) FQHC Background The Arizona Alliance for Community Health Centers (Alliance) is the Primary Care Association (PCA) for Arizona, a mission-driven, nonprofit member organization that represents FQHCs. The Alliance's network of 24 FQHCs comprises Arizona's largest primary care network serving over 817,000 patients annually. Arizona's health centers serve one in 9 Arizonans and one in 5 AHCCCS beneficiaries. Arizona FQHCs provide integrated physical and behavioral health services. These centers are vital in connecting people to quality care that gives everyone an equal opportunity to thrive. FQHCs have a long history, beginning in 1965, as part of the federal	

	government's war on poverty. FQHCs are mission-driven safety-net health care providers uniquely focused on removing barriers to care and providing quality healthcare to everyone, regardless of their ability to pay. The process to become an FQHC is rigorous, time consuming, and requires substantial investment. Many organizations that apply to become FQHCs are not awarded this designation because of the myriad requirements that they must meet and to which they must continually adhere. In addition, FQHCs have ongoing regulation by the Health Resources and Services Administration, Bureau of Primary Health Care (BPHC) including regular site visits and required and publicly available annual reporting on their finances, operations, staffing, services, and quality outcomes. As a result, FQHCs are subject to a multi-layered, heavily regulated level of oversight that ensures accountability over the actions, finances, quality, and services provided by FQHCs. This extensive approval process and ongoing oversight prevent any fraud and abuse by unscrupulous providers and operators. The Alliance and Arizona's FQHCs are committed to collaborating with AHCCCS to create a safer system for all, preventing fraud and abuse, and simultaneously expanding our ability to meet the needs of Arizonans. Please reach out if you have any questions or wish to discuss the details of this comment. Thank you, Jessica Yanow President & CEO	

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

There are no other matters prescribed by statute.

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 rule is not more stringent than 42 CFR § 1001.3002 and 42 CFR § 1001.3004.

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:

There was no analysis submitted to the agency on the topic of this rulemaking.

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

There is no material incorporated by reference in this rule.

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

The rules were previously made as an emergency rule. The initial emergency rule is found in 29 A.A.R. 1577. The emergency rulemaking renewal is found in 30 A.A.R. 69. No changes were made to the rule between the emergency rules and the final rulemaking package.

15. The full text of the rules follows:

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM - ADMINISTRATION

ARTICLE 18. PROVIDER EXCLUSION RULES

Sections

ARTICLE 18. PROVIDER EXCLUSION RULES

R9-22-1801. Definitions

"Administration" has the meaning defined in A.R.S. § 36-2901.

"Affiliation" has the meaning defined in 42 C.F.R. § 424.502.

"Managing employee" has the meaning defined in 42 C.F.R. § 455.101.

"Member" has the meaning defined in A.R.S. § 36-2901.

"Person with an ownership or control interest" has the meaning defined in 42 C.F.R. § 455.101 and 42 C.F.R. § 455.102.

"System" has the meaning defined in A.R.S. § 36-2901.

R9-22-1802. Basis for Exclusion

A. In addition to such grounds for exclusion set for in Subsections A and B of A.R.S. § 36-2930.05, the Administration, in its sole discretion, may exclude:

1. Any individual or entity which has failed to comply with any requirement, term, or condition set forth in any agreement with the Administration;
2. Any individual or entity which has failed to remit any indebtedness or overpayment as required by A.A.C. R9-22-713;
3. Any entity which has a managing employee or any entity with a person with an ownership or control interest that:
    a. Has failed to remit any indebtedness or overpayment as required by A.A.C. R9-22-713;
    b. Has an affiliation with an organization which has failed to remit any indebtedness or overpayment as required by A.A.C. R9-22-713;
4. Any individual or any entity with a managing employee or a person with an ownership or control interest that has been convicted of a criminal offense which the Administration, in its sole discretion, determines may represent an undue risk of fraud, waste, or abuse of the system or an undue risk of harm to members;
5. Any individual or entity who employs any person to furnish items or services who has been excluded from participation in the system pursuant to A.R.S. § 36-2930.05;
6. Any individual who is or was a managing employee or a person with an ownership or control interest who participated in, condoned, or was willfully ignorant of any action or failure to act of an entity which was or could have been the basis for exclusion of the entity;

7. Any individual who was an organizer, leader, manager, or supervisor of any entity activity which was or could have been the basis for exclusion of the entity; or

8. Any individual or entity in order to protect the health of members.

B. The delineation of grounds for exclusion herein does not exclude any other basis for exclusion pursuant to A.R.S. § 36-2930.05(C).

R9-22-1803. Period of Exclusion

A. Pursuant to A.R.S. § 36-2930.05 and 42 C.F.R. § 1002.210, any exclusion from participation in the system shall be for such period as determined in the discretion of the Administration, but in no event shall such period be less than 5 years.

B. In determining the period of exclusion, the Administration, in its sole discretion, may consider aggravating and mitigating factors set forth in any provision of Code of Federal Regulations Chapter 42 part 1001, Subpart C or part 1003.

R9-22-1804. Appeal of Exclusion

A. Any exclusion of an individual or entity pursuant to A.R.S. § 36-2930.05 is an appealable agency action subject to the Uniform Administrative Appeals Procedures, A.R.S. § 41-1092, et seq.

B. The Administration shall set forth in the notice of an appealable agency action required by A.R.S. § 41-1092.03 the period of exclusion and the earliest date on which AHCCCS will consider a request for reinstatement.

R9-22-1805. Reinstatement of Participation

A. If the period of exclusion has expired, an individual or entity may apply for reinstatement of participation in the system by submission of the following:

1. An application for participation as a provider.

2. Information to demonstrate reasonable assurances that the type of actions that formed the basis for the original exclusion have not recurred and will not recur.

3. Such other information as may be requested by the Administration.

B. In making the reinstatement determination, the Administration may consider:

1. Conduct of the individual or entity occurring prior to the date of the exclusion, if not known to

the Administration at the time of the exclusion;

2. Conduct of the individual or entity after the date of the exclusion;

3. Whether all fines and all debts due and owing (including overpayments) to any Federal, State, or local government that relate to Medicare, Medicaid, and all other Federal health care programs have been paid;

4. Whether the individual or entity otherwise qualifies for participation in the system;

5. Whether reinstatement is in the best interest of the system.

6. Such other information as deemed relevant by the Administration.

R9-22-1806. Denial of Reinstatement

A. If an application for reinstatement is denied, the Administration shall give written notice to the requesting individual or entity.

B. Within 30 days of the date on the notice of denial of reinstatement, the excluded individual or entity may submit documentary evidence and written argument against the continued exclusion.

C. After evaluating any additional evidence submitted by the excluded individual or entity (or at the end of the 30-day period if none is submitted), the Administration will send written notice either confirming the denial and indicating that a subsequent request for reinstatement will not be considered until at least one year after the date of the denial or approving the request for reinstatement of participation.

D. Any notice confirming a denial of reinstatement is an appealable agency action subject to the Uniform Administrative Appeals Procedures, A.R.S. § 41-1092, et seq.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

ARTICLE 18. PROVIDER EXCLUSION RULES

Introduction:

In 2016, AHCCCS was sued to prevent enforcement of H.B. 2599, codified at A.R.S § 36-2930.05, concerning the permission to exclude from participation in Arizona's Medicaid Program any individual or entity that failed to segregate taxpayer dollars from abortions, including the use of taxpayer dollars for any overhead expenses attributable to abortions. Under the Stipulation to Dismiss in Planned Parenthood Arizona, et al. v. Betlach, AHCCCS agreed to notify counsel of Planned Parenthood of Arizona and the ACLU when a rulemaking, promulgated to enforce H.B. 2599, is filed for public comment. AHCCCS also agreed not to request an immediate effective date for this rulemaking. Pursuant to A.R.S. § 36-2930.05, AHCCCS is required to adopt rules that prescribe procedures for determining the length of exclusion, appealing the exclusion determination and requesting reinstatement following an exclusion.

Purpose of Rule:

AHCCCS proposes to create a new Article 18 in Title 9, Chapter 22, which will constitute only provider exclusion rules. The proposed rules will set forth the basis for an exclusion, the period of an exclusion, the process to seek an appeal of an exclusion and the process to seek reinstatement following an exclusion. A.R.S. § 36-2930.05(C) allows the administration to adopt rules which set forth a basis for exclusion, in addition to those already specified by A.R.S. 36-2930.05, subsections A and B, and the proposed rules will do so in R9-22-1802.

1. Identification of rulemaking.

The proposed rules are narrowly drawn and limited to matters specifically required to be addressed by A.R.S. § 36-2930.05(D) and allowed to be addressed by A.R.S. § 36-2930.05(C). The proposed rules will set forth the method for determination of the period of exclusion at R9-22-1803. Proposed rule R9-22-1804 will provide that an exclusion may be appealed pursuant to the Uniform Administrative Appeals Procedures, A.R.S. § 41-1092, et seq. The process for reinstatement following exclusion will be set forth by R9-22-1805 and R9-22-1806, which will be patterned in part after 42 C.F.R. §§ 1001.3002 and 1001.3004. Technical and conforming changes will also be considered in the course of rulemaking.

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

The changes to this rule will allow for an increase in the opportunity to exclude providers, however it will be a case-by-case analysis whether a provider is excluded and therefore AHCCCS cannot anticipate if this will change the frequency of exclusion.

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

The proposed rulemaking will enable AHCCCS to exclude individuals or entities from participation in the system who pose an undue risk to AHCCCS members and the program at large. If these rules are not created, AHCCCS does not have the ability to exclude providers from the program unless the agency is instructed to do so by the Center for Medicaid & Medicare Services. This would leave AHCCCS and its members vulnerable to be taken advantage of by bad actors who have only perpetrated fraud, waste, or abuse within the State of Arizona, and had not reached the awareness of CMS at the point in which AHCCCS believes they would need to be excluded.

The proposed rules will preserve the due process rights of excluded individuals and entities and reduce legal uncertainty by setting forth the process by which an exclusion determination may be appealed as well as the process to be followed for reinstatement of participation. Therefore, the agency does not believe the rules are too broad, and are instead very detailed so each provider knows the reasons for their exclusion and may defend themselves if they believe AHCCCS acted incorrectly.

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

The Administration cannot anticipate the change in frequency of the conduct from the rule change until the rule is enacted.

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

AHCCCS providers will be the persons to bear any negative outcomes of the rulemaking, however, they are provided clear instruction by the regulation, and the option for appeal of an exclusion. AHCCCS members will see direct benefits from the rule because it will allow the Administration to exclude entities from participation in AHCCCS who pose a risk to members or the program as a whole.

3. Cost benefit analysis.

a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking including the number of new full-time employees necessary to implement and enforce the proposed rule:

i. Cost:

The Administration anticipates no increase in cost to the implementing agency. The only new activity will be collaboration between Provider Exclusion and OIG to publish the list of excluded providers.

ii. Benefit:

The Administration anticipates a benefit of being able to exclude not just providers, but individuals who are affiliated with a variety of providers who AHCCCS has already taken action against, however the agency desires to prevent them from re-registering in the future.

iii. Need for additional Full-time Employees:

The Administration does not anticipate the need to hire full-time employees as a result of this rulemaking.

b. Probable costs and benefits to political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

This rulemaking does not affect political subdivisions.

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

The Administration anticipates that public and private employment will not be impacted by the changes. AHCCCS is always mindful of the impact any agency actions may have on the number and provider type the agency takes action against. It is a priority for AHCCCS, and a responsibility the agency bears to the federal government to make sure members have adequate access to care and services and AHCCCS does not intend to exclude a large number of providers of any one kind or at one time, thereby impacting access to care.

5. Statement of probable impact of the proposed rule on small businesses. The statement shall include:

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

The Administration does not anticipate a fiscal impact on small businesses because the proposed rule language codifies state statute and mirrors federal requirements.

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

The Administration anticipates no impact on the administrative expenses of these small businesses because the proposed rule does not require a change in compliance beyond existing AHCCCS rules for providers.

c. Description of methods prescribed in section A.R.S. § 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not use each method:

i. Establishing less stringent compliance or reporting requirements in the rule for small businesses;

This rule does not impose compliance or reporting requirements on small businesses beyond those already necessary to comply with federal law and state statute.

ii. Establishing less stringent schedules deadlines in the rule for compliance or reporting requirements for small businesses;

This rule does not impose compliance or reporting requirements on small businesses beyond those requirements that are necessary to comply with federal law and state statute.

iii. Consolidate or simplify the rule's compliance or reporting requirements for small businesses;

This rule does not impose compliance or reporting requirements on small businesses beyond those requirements that are necessary to comply with federal law and state statute.

iv. Establish performance standards for small businesses to replace design or operational standards in the rule; and

This rule does not establish performance standards for small businesses beyond those requirements that are necessary to comply with federal law and state statute.

v. Exempting small businesses from any or all requirements of the rule.

The application of this rule will be on a case-by-case basis per provider, so there is no reason to exempt small businesses. Each excluded provider with receive an individualized notice explaining the basis for AHCCCS's authority to exclude, and allowing the provider to refute the basis with evidence if they believe the agency is incorrect.

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

The authority for AHCCCS to exclude providers already existed within A.R.S. § 36-2930.05, however in order for AHCCCS to utilize the authority in statute, rules were required. Therefore, creating regulations under the existing framework was the least costly method. Under the framework of this rulemaking, providers will be notified of their exclusion and be able to appeal if they believe the agency's finding is incorrect. Therefore, it will be beneficial for providers because it creates a due process right where they can appeal.

6. Statement of the probable effect on state revenues.

It is anticipated that the rule will not affect state revenues except to further diminish opportunities for fraud, waste, and abuse of the AHCCCS system.

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

No alternative methods were considered since rules are required in the authorizing statute.

8. **A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data.**

The Administration did not consider any specific data to base the rule upon.

36-2930.05. Provider participation; grounds for exclusion; rules; definition

A. The administration shall exclude from participation in the system any individual or entity that meets any basis for mandatory exclusion described in 42 Code of Federal Regulations section 1001.101.

B. The administration, in its sole discretion, may exclude from participation in the system any individual or entity that has done any of the following:

1. Met any basis for permissive exclusion described in 42 Code of Federal Regulations section 1002.210.

2. Committed any act prohibited by section 36-2918 or 36-2957.

3. Been found liable for the neglect of a patient that results in death or injury.

4. Engaged in the unlawful disposal of medical waste in violation of federal, state or local law.

5. Submitted a claim for a procedure performed in association with an abortion in violation of federal or state law.

6. Failed to segregate taxpayer dollars from abortions, including the use of taxpayer dollars for any overhead expenses attributable to abortions.

7. Failed to comply with federal or state law requiring mandatory reporting of sexual abuse, sexual assault, child or sex trafficking or statutory rape.

C. The delineation of grounds for exclusion pursuant to subsections A and B of this section does not exclude any other basis for exclusion pursuant to state law or any rule adopted by the administration.

D. The director shall adopt rules that prescribe procedures for determining the length of exclusion, appealing the exclusion determination and requesting reinstatement following an exclusion.

E. For the purposes of this section, "exclude" means that items and services furnished, ordered or prescribed by a specified individual or entity will not be reimbursed by the administration, a contractor or any agent of the administration or a contractor. Exclude includes the termination of a provider agreement or the administration's refusal to enter into a provider agreement.

E-3.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 13, Article 1

Amend: R9-13-101, R9-13-102, R9-13-103, R9-13-104, R9-13-105, R9-13-106, R9-13-107, R9-13-108, R9-13-109, R9-13-110, R9-13-111, Table 13.1

Repeal: R9-13-112, R9-13-113, R9-13-114, R9-13-115

New Section: R9-13-112, R9-13-113, R9-13-114, R9-13-115, R9-13-116

New Table: Table 13.2, Table 13.3, Table 13.4

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: May 7, 2024

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

FROM: Council Staff

DATE: **April 10, 2024**

SUBJECT: **DEPARTMENT OF HEALTH SERVICES**
Title 9, Chapter 13, Article 1

Amend: R9-13-101, R9-13-102, R9-13-103, R9-13-104, R9-13-105, R9-13-106, R9-13-107, R9-13-108, R9-13-109, R9-13-110, R9-13-111, Table 13.1

Repeal: R9-13-112, R9-13-113, R9-13-114, R9-13-115

New Section: R9-13-112, R9-13-113, R9-13-114, R9-13-115, R9-13-116

New Table: Table 13.2, Table 13.3, Table 13.4

Summary:

This regular rulemaking from the Department of Health Services (Department) seeks to amend eleven (11) rules and one (1) table, repeal four (4) rules, add five (5) new sections and add three (3) new tables related to Hearing and Vision Screening. The Department has the authority to adopt rules establishing standards and requirements for hearing screening and vision screening services in Arizona schools. The Department plans to revise the rules to establish requirements for schools providing vision screening services, establish standards for vision screening training to school nurses, volunteers, and other school personnel; vision screening methodology; and provide for a collection of school vision screening data for review and analysis by researchers, public agencies, and other organizations. In addition, the Department plans to amend current hearing screening rules to address issues identified in a five-year review report, improve the effectiveness of the hearing screening rules, and make them less burdensome.

This rulemaking is related to a Five Year Review Report approved by Council in October of 2022 and does not establish or increase a fee.

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

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

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

The Department states the rulemaking does not establish or increase a fee.

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

The Department states no study was reviewed or relied upon during the course of this rulemaking.

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

The rulemaking establishes vision screening requirements and updates the hearing screening rules to be more clear, concise, and understandable, and less burdensome.

The Department anticipates that those affected by the hearing screening rules will receive a significant benefit for having updated rules that are less burdensome and are clearer, concise, and understandable. Despite potential costs, the Department deems the benefits of identifying students with vision loss outweigh any associated expenses. The Department has determined that the benefits related to vision screenings for students identified in the new rules outweigh any potential costs associated with this rulemaking.

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

The Department has determined that there are no less intrusive or less costly alternatives for achieving the purpose of the rulemaking, and that the benefits of the rules outweigh the costs.

6. What are the economic impacts on stakeholders?

The Department identifies stakeholders as the Department, school districts and charter schools; individuals who wish to be a vision screener or vision screening trainer; hearing screeners and hearing screening trainers; specialists; enrolled students; and parents of enrolled students; and the general public.

The Department expects to incur costs less than $1,000 to have a database updated to add information about vision screening and the type of certification requirements and qualifications to become a vision screener or a vision screening trainer. To provide adequate

coverage for the expansion of the Sensory Screening Program and adding vision screening services, the Department anticipates hiring one new full-time employee with an average salary of $55,000 to assist in implementing the new vision screening rules. The Department expects that its greatest cost will come from Department personnel and resources used to provide training to individuals who wish to become either a visions screener or a vision screening trainer, and individuals who wish to renew their certification of completion. Overall, the Department expects to incur costs up to $10,000 related to drafting and promulgating the new rules, but believes the benefit of having new rules over time will exceed any cost incurred.

The Department estimates that a school may incur costs up to $10,000 for implementing the new vision screening requirements. Schools that already provide vision screenings may incur lesser costs as a result of these rules. Overall, schools should receive a significant benefit for providing visions screening services to students, identifying students who have vision loss, and providing early intervention services.

The Department estimates that individuals who wish to become a vision screening trainer may incur costs up to $1,000 to comply with the new rules and renew their certificate of completion every five years but receive a significant benefit from having minimum standards in place to perform a thorough and valid vision screening for students. The rules are also expected to benefit individuals and vision screening trainers by aligning with national standards and best practices, making the rules more effective, clear, concise, and understandable.

The Department anticipates that hearing screeners and hearing screening trainers will significantly benefit from having rules that are easier to understand and that are less restrictive. In addition, having fewer requirements to become a hearing screening trainer ensures more equitable access to trainers in rural areas. Making the hearing screening requirements minimal and in alignment with the new vision screening rules allows for better consistency and understandability for individuals who are both a hearing screener and a vision screener.

The Department anticipates optometrists, ophthalmologists, and medical doctors (“specialists”) who specialize in eye care may see a moderate increase in revenue since the new rules establish vision screening in schools and there may be more findings of early-onset vision loss in students, resulting in the need to be seen by a specialist.

Parents of enrolled students may incur minimal costs related to care and treatment if the parent’s enrolled child is referred to see a specialist and there is a diagnosis. However, the Department anticipates that this change will provide a significant benefit by improving the potential for early identification of vision loss and intervention.

The Department anticipates that the clarity of the new rules with respect to vision screening requirements based on national standards and best practices; qualified vision screeners and screening trainers; equipment standards consistent with national standards; and follow-up notifications to parents will provide a significant benefit to the general public. The Department believes that Arizonans in general will benefit from students who receive early intervention services to become successful and contributing members of the community as adults

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

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

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

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

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

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

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

Here, the Department stated that between the NPR and NFR, Table 13.4 was amended to to align better with the National American Association for Pediatric Ophthalmology and Strabismus/American Academy for Pediatrics guidelines and clarify the passing criteria for visual acuity based on the child's age. In addition, the Department corrected a cross-reference in Table 13.4 and merged 5 duplicative rows in the second column.

Council staff does not consider this to be a substantial change as the parties affected by the rule are the same, the subject matter of the rule is the same, and the impacts of the rule are the same. In addition, individuals who would be conducting Vision Screenings would already be complying with the standards set forth by the American Academy for Pediatrics and the National American Association for Pediatric Ophthalmology and Strabismus (AAPOS/AAP).

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

The Department received one formal written comment from Dr. Jim O'Neil about the rulemaking during the public comment period. In response to the comment, the Department amended the language in Table 13.4 to the "majority of optotypes" and clarified the passing criteria for visual acuity to align with the national AAPOS/AAP guidelines recommendations.

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

Although the rules require an individual to be certified, the Department does not issue general permits as allowed under A.R.S. § 41-1037(A)(2) and (3).

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

The Department states there is no corresponding federal law.

11. Conclusion

This regular rulemaking from the Department of Health Services seeks to amend eleven rules and one table, repeal four rules, add five new sections and add three new tables related to Hearing and Vision Screening. As indicated above, this rulemaking does not establish or increase a fee is related to a Five Year Review Report approved by Council in October of 2022. The Department is seeking the standard 60-day delayed effective date. Council staff recommends approval of this rulemaking.

ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

March 7, 2024

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

RE: Department of Health Services, 9 A.A.C. 13, Article 1, Health Program Services

Dear Ms. Klein:

1. The close of record date: January 29, 2024

2. Whether the rulemaking relates to five-year-review report and, if applicable, the date the report was approved by the Council:
   The rulemaking for 9 A.A.C. 13, Article 1 is related to a five-year review report.

3. Whether the rulemaking establishes a new fee and, if so, the statutes authorizing the fee:
   The rulemaking does not establish a fee.

4. Whether the rulemaking contains a fee increase:
   The rulemaking does not contain a fee increase.

5. Whether an immediate effective date is requested pursuant to A.R.S. § 41-1032:
   The Department is not requesting an immediate effective date for the rules.

The Department certifies that the Preamble of this rulemaking discloses a reference to any study relevant to the rule that the Department reviewed and either did or did not rely on its evaluation of or justification for the rule.

The Department certifies that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee there are no new full-time employees necessary to implement and enforce the rule.

The following documents are enclosed:

1. Notice of Final Rulemaking, including the Preamble, Table of Contents, and text of each rule;

2. An economic, small business, and consumer impact statement that contains the information required by A.R.S. 41-1055; and
3. General and specific statutes authorizing the rules, including relevant statutory definitions.

The Department's point of contact for questions about the rulemaking documents is Lucinda Feeley at Lucinda.Feeley@azdhs.gov.

Sincerely,

Stacie Gravito
Director's Designee

SG: lf

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 13. DEPARTMENT OF HEALTH SERVICES –

HEALTH PROGRAMS SERVICES

ARTICLE 1. HEARING SCREENING AND VISION SCREENING

PREAMBLE

1.	Article, Part or Sections Affected (as applicable)	Rulemaking Action
	R9-13-101	Amend
	R9-13-102	Amend
	R9-13-103	Amend
	R9-13-104	Amend
	R9-13-105	Amend
	R9-13-106	Amend
	R9-13-107	Amend
	R9-13-108	Amend
	R9-13-109	Amend
	R9-13-110	Amend
	R9-13-111	Amend
	R9-13-112	Repeal
	R9-13-112	New Section
	R9-13-113	Repeal
	R9-13-113	New Section
	R9-13-114	Repeal
	R9-13-114	New Section
	R9-13-115	Repeal
	R9-13-115	New Section
	R9-13-116	New Section
	Table 13.1	Amend
	Table 13.2	New Table
	Table 13.3	New Table
	Table 13.4	New Table

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

Authorizing Statutes: A.R.S. §§ 36-104(3), 36-136(G), 36-899.01, 36-899.02, and 36-899.03

Implementing Statutes: A.R.S. § 36-899.10

3. The effective date of the rules:

July 1, 2024

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 Proposed Rulemaking: 29 A.A.R. 3903, December 29, 2023

Notice of Rulemaking Docket Opening: 29 A.A.R. 1369, June 16, 2023

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

Name: Laura Luna Bellucci, Bureau Chief
Address: Arizona Department of Health Services
Bureau of Women's and Children's Health
150 N. 18th Avenue, Suite 320
Phoenix, AZ 85007-3232
Telephone: (602) 653-0472
E-mail: Laura.Bellucci@azdhs.gov

or

Name: Stacie Gravito, Office Chief
Address: Arizona Department of Health Services
Office of Administrative Counsel and Rules
150 N. 18th Ave., Suite 200
Phoenix, AZ 85007
Telephone: (602) 542-1020
Fax: (602) 364-1150
E-mail: Stacie.Gravito@azdhs.gov

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

Arizona Revised Statutes (A.R.S.) §§ 36-899.01 through 36-899.10 gives the Arizona Department of Health Services (Department) authority to adopt rules establishing standards and requirements for hearing screening and vision screening services in Arizona schools. The Department has adopted rules in Arizona Administrative Code, Title 9, Chapter 13, Article 1 related to hearing screening services. Laws 2019, Ch. 316, effective August 27, 2019, require the Department to adopt rules for vision screening services. After receiving rulemaking approval pursuant to A.R.S. § 41-1039(A), on May 24, 2023, the Department plans

to revise the rules to establish requirements for schools providing vision screening services, establish standards for vision screening training to school nurses, volunteers, and other school personnel; vision screening methodology; and provide for a collection of school vision screening data for review and analysis by researchers, public agencies, and other organizations. In addition, the Department plans to amend current hearing screening rules to address issues identified in a five-year review report, improve the effectiveness of the hearing screening rules, and make them less burdensome. The proposed changes will conform to the rulemaking format and style requirements of the Governor's Regulatory Review Council and the Office of the Secretary of State. The Department may add, delete, or modify Sections, as necessary.

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

The Department did not review or rely on any study for this rulemaking.

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

Not applicable

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

In this regular rulemaking, the Department is amending 11 Sections and one Table; repealing four Sections; and adding five new Sections and three new Tables. The new changes establish vision screening requirements and update the hearing screening rules to be more clear, concise, and understandable, and less burdensome. The Department has identified persons directly affected by the rules to be the Department; school districts and charter schools; individuals who wish to be a vision screener or vision screening trainer, hearing screeners and hearing screening trainers, specialists, enrolled students, and parents of enrolled students; and the general public. This analysis covers the costs and benefits associated with adopting and implementing rules related to new vision screening requirements and amending the current hearing screening rules. The annual cost and revenue changes are designated as minimal when $1,000 or less, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. A cost or benefit is indicated as significant when meaningful or important but not readily subject to quantification.

As of the 2022-2023 school year, the Sensory Screening Program provided guidance and support services to over 3000 Arizona public, charter, and private schools. In the 2022-2023 school year, 1780 schools reported that a total of 545,411 students in kindergarten through twelfth grade received at least one hearing screening during the school year. Of those students who received hearing screenings, 781 students were newly identified as having hearing loss. As of December 2023, 4270 hearing screening

trainers and screeners are listed in the Sensory Screening Program database. Now that vision screening is formally being added to the Sensory Screening Program, the Department anticipates spending a moderate amount of additional time issuing new vision screener and vision screening trainer certificates of completion to qualifying individuals. Due to this rulemaking and expanding vision screening services to the Sensory Screening Program, the Department plans to hire one new full-time employee (FTE), with an average salary of $55,000, to support the vision screening services being provided. The Department anticipates to incur a moderate cost for promulgating new rules, as well as costs related to the allocation of administrative staff to review and process the applications for individuals who wish to obtain an initial or renewal vision screening or vision screening trainer certification of completion.

The new vision screening rules and amendments to the current hearing screening rules include updating rules that allow documentation to be submitted electronically to the Department. By moving to an electronic database, the Department expects to increase productivity and processing time. Furthermore, to minimize costs related to implementing new vision screening services in the already established Sensory Screening Program, the Department has awarded a contract with a statewide training vendor to coordinate and implement the training of trainers and screeners. To support the use of appropriate tools for vision screening, the Department utilized donations provided for this purpose, to supply schools with "vision screening kits". This distribution will continue as future funding and donations allow. Each vision screening kit has a minimal cost of approximately $382.60. However, the schools may rent this equipment from the Department upon request.

Although schools have not been required by rules or statutes to provide vision screenings, many schools have already implemented vision screening services to enrolled students on a volunteer basis. The Department anticipates that the new vision screening rules may create a minimal regulatory burden for schools that do not already provide vision screening services. However, the Department believes that the benefits of the new rules will far outweigh any potential burden or cost for assessing students who might be experiencing vision impairment and who are availing services that contribute to the student's achievement rather than risking academic setbacks. Schools are expected to receive a significant benefit for having certified vision screeners and certified vision trainers who complete the vision screener training or vision trainer training approved by the Department. Many schools are not expected to incur additional costs. The Department expects that schools who already provide vision screening services may already have budgets established to support existing vision screening programs, and accordingly, the Department does not expect these schools to incur any additional cost. For other schools that have not established vision screening services, the Department expects that these schools may incur minimal-to-moderate costs due to the new rules. However, since these schools currently offer hearing screenings for enrolled students, adding vision screening services is mostly consistent and similar to hearing screening requirements. For an existing hearing screening program with an existing budget, it appears reasonable

that the cost to expand the hearing screening program to include vision screening is as expected to be minimal-to-moderate.

The Department is introducing new rules for vision screeners and trainers in alignment with existing rules for hearing screeners. The regulations cover eligibility criteria, classroom instruction, certification, and competency using vision equipment. Vision screeners must observe and verify certain conditions before performing screenings and report any limitations preventing screening to school administrators. Requirements for vision screening, calibration standards for equipment, notification, and follow-ups are established. Renewal processes are simplified, aligning with other states, and the Department expects vision screeners and vision screening trainers may incur minimal costs to comply with the updated rules. The amended rules aim to ensure clarity, consistency, and quality in vision screenings for students, offering benefits to individuals and trainers through enhanced training methodologies aligned with national standards. The new Sections related to vision screening include R9-13-112, *Vision Screener Qualifications*; R9-13-113, *Vision Screening Trainer Eligibility*, R9-13-114, *Vision Screening Trainer Certificate of Completion*; and R9-13-115, *Vision Screening Trainer Instruction, Examination, and Observation*. R9-13-116, *Trainer Certificate of Completion Renewal*, is also related to the new requirements for a vision screening trainer, however, this new Section also includes the hearing screening trainer renewal requirements. The new changes for a hearing screening trainer renewal have been simplified and rewritten from the previous R9-13-112 so the requirements are easier to understand. The new rules for vision screening add criteria for qualifications, standards, and renewal requirements for individuals who wish to obtain a vision screening trainer certificate.

To become a vision screener, an individual can be an optometrist, ophthalmologist, or at least 18 years old with a high school diploma. Classroom instruction, passing an examination, and demonstrating competency in using vision equipment are required for certification. For vision screener trainers, eligibility criteria include being licensed as an optometrist, ophthalmologist, or registered nurse providing school health services, or having relevant education and completing a specified number of vision screenings. Becoming a trainer involves completing classroom instruction, a written examination, and observation within 160 days. To renew a trainer certificate of completion, the trainer shall complete a refresher course during the fifth year of certification. If not renewed on time, attending the basic certification training course is required. Trainers must submit renewal information at least 60 days before expiration, and the Department will issue a renewed certificate within 30 days. The Department foresees minimal costs for certification, emphasizing the significant benefits of well-trained vision screeners and trainers for providing accurate screenings for school-enrolled children.

Additional changes were made throughout Article 1 to simplify the process of becoming a hearing screener or a hearing screening trainer, align hearing screening requirements with new vision screening rules, improve clarity, and eliminate unnecessary burdens. The Department is repealing R9-13-

113, which sets unnecessary and burdensome rules for continuing education unit (CEU) requirements. Hearing screeners and trainers are expected to experience minimal-to-moderate cost savings since they won't have to invest in specific CEU courses. The Department expects that hearing screeners and hearing screening trainers will receive a significant benefit from having the CEU requirements removed.

In R9-13-107, the Department is extending the timeframe for hearing screenings to be done within the first 90 school days of the school year, rather than within 45 calendar days. This change would align with new vision screening requirements and allow more time for schools to complete the required hearing screening on each student who needs to be screened for hearing. In R9-13-109, the Department is decreasing the eligibility requirements for hearing screeners to become trainers by decreasing the required 3,000 hearing screenings within the previous five years to 1,000 hearing screenings. This change is expected to provide more equity to hearing screening trainers, promote greater access to training opportunities in rural areas, and align hearing screening rules with the new requirements for a vision screening trainer. Also, the Department is expanding the eligibility requirements to become a hearing screening trainer by including a registered nurse who has completed a minimum of 100 hearing screenings within the last year. Other amendments were made throughout the Article to update references and correct grammatical errors. Overall, the Department expects there to be significant benefits by improved clarity, reduced restrictions, and increased accessibility for hearing screeners and trainers, promoting consistency with vision screening rules.

The existing rules define a "specialist" for hearing screenings, including audiologists and ENT doctors. The updated rules now broaden this definition to include licensed optometrists or ophthalmologists specializing in eye care, allowing them to serve as vision screeners. This change is expected to moderately increase revenue for these specialists due to the implementation of vision screening in schools. The amended rules in R9-13-105 now mandate school administrators to give parents a referral to a specialist if a student faces physical limitations preventing participation in a screening or fails an initial vision screening. Specialists may experience a moderate increase in revenue as more parents respond to these referrals by scheduling eye examinations for their children. The Department does not foresee this change being burdensome for specialists and estimates an overall moderate benefit from increased referrals resulting from expanded vision screening regulations. Furthermore, due to the requirement in R9-13-105 stating that school administrators must provide parents with a referral for enrolled students requiring follow-up with a specialist to verify hearing or vision screening results, the Department anticipates that specialists (licensed optometrists, ophthalmologists, or doctors of medicine licensed according to A.R.S. Title 32, Chapters 13 or 17) may receive a moderate benefit from parents who receive notifications requesting an examination to verify school vision screening results. The Department does not expect the new vision screening rules to increase costs or impose regulatory burdens

on specialists and anticipates that the rules may result in increased business and revenue for eye specialists.

The new vision screening rules outline the student populations to be screened, as specified in Table 13.2, aiming to benefit Arizona students by promoting timely intervention for eye conditions and vision loss. The rules establish criteria, standards, and requirements for reliable school vision screenings. The Department anticipates that the implementation of these rules will enhance academic, social, and communication skills for more students. Notifications to parents regarding scheduled vision screenings and the right to object are mandatory, according to R9-13-105. If a vision screening indicates a need for further evaluation of a student's vision, R9-13-105 requires that parents are informed within 10 school days to facilitate timely intervention. While parents of referred students may incur minimal costs for care, the Department expects a significant benefit from improved timely identification and intervention for vision loss. The Department expects having the new requirements will increase benefits for enrolled students and parents of enrolled students by having certified vision screeners and trainers that stay current with eye care procedures, equipment, and treatment provided by the new vision screening rules. Identifying students with early vision loss may help prevent that student from falling behind in school.

The Department anticipates a significant benefit for the public by having new rules that require schools to provide vision screening services and clearer hearing screening rules. The improved quality of screenings is expected to increase the identification of students with hearing loss or vision loss, leading to timely intervention services. Better-trained screeners and trainers, may reduce false positive referrals and ensure early detection of hearing or vision issues. The Department believes that timely intervention will contribute to students' success in school and as adults in the community. Given that unaddressed hearing or vision loss can dramatically limit a student's access to educational material, curtail interactions with teachers and peers, and hinder overall educational engagement, the rules aim to identify undetected hearing and vision disorders in school-aged children, potentially preventing delayed academic and interpersonal skill development, and minimizing the risk of permanent vision loss. The Department anticipates that those affected by the hearing screening rules will receive a significant benefit for having updated rules that are less burdensome and are more clear, concise, and understandable. Despite potential costs, the Department deems the benefits of identifying students with vision loss outweigh any associated expenses. The Department has determined that the benefits related to vision screenings for students identified in the new rules outweigh any potential costs associated with this rulemaking.

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

Between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking, the Department amended Table 13.4 to align better with the National AAPOS/AAP guidelines and clarify the passing

criteria for visual acuity based on the child's age. In addition, the Department corrected a cross-reference in Table 13.4 and merged 5 duplicative rows in the second column.

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

The Department received one formal written comment from Dr. Jim O'Neil about the rulemaking during the public comment period for the Notice of Proposed Rulemaking. A summary of the concerns expressed in the written comments is provided in the table below, along with the Department's responses. No one from the public attended the Oral Proceeding on January 29, 2024.

Informal Comments Received During the Comment Period for the Notice of Proposed Rulemaking	
Comment	ADHS Response
A few comments/suggestions: 1. National AAPOS/AAP guidelines generally recommend passing visual acuity lines to be the "majority of optotypes" as opposed to "at least half of the optoypes" as in the November 2023 ADHS draft version. 2. National A.A.P.O.S./AAP guidelines recommend visual acuity passing criteria of 20/40 between 48 and 59 months of age. The November 2023 ADHS draft lists 20/32 as passing criteria for all ages. This may not be a important distinction as most of the younger children are going to be screened by devices rather than the eye chart, but the more demanding 20/32 passing criteria may result in over-referrals if schools do not have photoscreening devices to perform vision screenings between ages 4 and 5. Thanks, Jim 0 Neil MD	Thank you for your recommendations. The Department has amended the language in Table 13.4 to the "majority of optotypes" and clarified the passing criteria for visual acuity to align with the national AAPOS/AAP guidelines recommendations.

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

There are no other matters prescribed by statute applicable specifically to the Department 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:

A.R.S. § 36-899.10 requires the Department to issue a vision screening certification to persons who meet the qualifications prescribed in statute and in rules adopted by the Department. Additionally, A.R.S. § 36-899.10 provides the Department authority to adopt rules pursuant to A.R.S. "title 41, chapter 6 to carry out this section." The Department in rule provides for a person

who does not pass the written examination or pass the training observation may file an appeal according to A.R.S. Title 41, Chapter 6. For these reasons, the Department does not use a general permit. The Department believes that under A.R.S. § 41-1037(A)(2) and (3) that a general permit is not applicable.

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

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

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

No business competitiveness analysis was submitted to the Department.

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

In this rulemaking, the Department is updating the following incorporation by reference.

R9-13-106(B)(2)(b) from ANSI/ASA S3.39-1987 (R2012) to ANSI/ASA S3.39-1987 (R2020) American National Standards Institution/Acoustical Society of America, American National Standard Specifications for Instruments to Measure Aural Acoustic Impedance and Admittance (Aural Acoustic Immittance), available from the American National Standards Institution at https://webstore.ansi.org.

Although not changed in this rulemaking, the following incorporation by reference is also included in the rulemaking:

R9-13-106(B)(1)(b): ANSI/ASA S3.6-2010 American National Standards Institution/Acoustical Society of America, Specification for Audiometers, available from the American National Standards Institution at https://webstore.ansi.org.

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

The rule was not previously made as an emergency rule.

15. The full text of the rules follows:

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 13. DEPARTMENT OF HEALTH SERVICES – HEALTH PROGRAMS SERVICES

ARTICLE 1. HEARING SCREENING AND VISION SCREENING

Section

ARTICLE 1. HEARING SCREENING AND VISION SCREENING

R9-13-101. Definitions

~~In this Article, unless the context otherwise requires~~ In addition to the definitions in A.R.S. §§ 36-899 and 36-899.10, the following definitions apply in this Article unless otherwise specified:

1. "Accredited" means that an educational institution is recognized by the U.S. Department of Education as providing standards necessary to meet acceptable levels of quality for its graduates to gain admission to other reputable institutions of higher learning or to achieve credentials for professional practice.
2. "Administrator" means the principal or person having general daily control and oversight of a school or that person's designee.
3. ~~"Assistive listening device" has the same meaning as "assistive listening device or system" in A.R.S. § 36-1901.~~
4.3. "Audiological equipment" means an instrument used to help determine the presence, type, or degree of hearing loss, such as:
   a. A pure tone audiometer,
   b. A tympanometer, or
   c. An otoacoustic emissions device.
5.4. "Audiological evaluation" means:
   a. Examination of an individual's ears;
   b. Assessment of the functioning of the individual's middle ear;
   c. Testing of the individual's ability to perceive sounds using audiological equipment; and
   d. ~~Analysis~~ An analysis by a specialist of the results obtained from the activities described in subsections (a) through (c) to determine if the individual has a hearing loss and, if so, the type and degree of the individual hearing loss.
6.5. "Audiologist" means an individual licensed under A.R.S. Title 36, Chapter 17.
7.6. "Audiometer" means an electronic device that administers sounds of varying pitches and intensities to assess an individual's ability to hear the sounds.
8.7. "Auditory canal" means the tubular passage between the cartilaginous portion of the ear that projects from an individual's head and the outer surface of the ~~ear drum~~ eardrum.
9. ~~"Auditory nerve" means the filament of neurological tissue that:~~
   ~~a. Connects the cochlea and the brain, and~~
   ~~b. Transmits impulses related to hearing.~~
8. "Autorefractor/photoscreener" means an automated device that provides information about the eyes that could affect vision, including refractive errors and eye misalignment.
9. "Behavioral condition" means any persistent and repetitive pattern of behavior that violates societal norms or rules, seriously impairs a person's functioning, or creates distress in others.

10. "Calendar day" means each day, that:
    a. Is not the day of the act, event, or default from which a designated period of time begins to run; and
    b. Includes the last day of the period unless it is a Saturday, Sunday, statewide furlough day, or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday, statewide furlough day, or legal holiday.
11. "Calibrate" means to measure the response of an instrument against a standard and adjust the instrument until the response falls within specified values according to the equipment's manufacturer specifications and by an authorized manufacturer's dealer, if recommended by the manufacturer.
12. "Certificate of completion" means a document issued to an individual who has completed the requirements in:
    a. R9-13-108 to perform hearing screening for students according to this Article; ~~or~~
    b. R9-13-111 ~~or R9-13-112~~ to provide training to individuals who perform hearing screenings~~.~~.;
    c. R9-13-112 to perform vision screening for students according to this Article; or
    d. R9-13-115 to provide training to individuals who perform vision screenings.
13. "Classroom" means a physical room or electronic space where training and educational courses occur.
14. "Color vision" means the perception of and ability to distinguish colors.
~~13. "Cochlea" means a coiled tube in the inner ear that converts sounds into neural messages.~~
~~14. "Cochlear implant" means a device that is surgically inserted into the cochlea to electrically stimulate the auditory nerve.~~
~~15. "Continuing education" means a course that provides instruction and training that is designed to develop or improve a trainer or screener's professional competence.~~
~~16. "Continuing education unit" means 50 to 60 minutes of continuous course work.~~
~~17. "Course" means a workshop, seminar, lecture, conference, or other learning program activities approved by the Department.~~
~~18.~~15. "daPa" means dekaPascal, a standard measure of air pressure.
~~19.~~16. "dB HL" means decibel hearing level, a measurement used to compare the intensity at which an individual hears sound at a particular frequency to a standard.
~~20.~~17. "dB SPL" means sound pressure level measured in units of decibels.
~~21.~~18. "Deaf" has the same meaning as in A.R.S. § 36-1941.
19. "Deafblind" has the same meaning as in A.R.S. § 36-1941.
~~22.~~20. "Diagnosis" means a determination of whether a student is deafblind, is deaf, is ~~or~~ hard of hearing, is legally blind, or has vision loss that is:
    a. Made by a specialist; and
    b. Based on an audiological evaluation or an eye examination of the student.

~~23.~~21. "Documentation" means a method used to report information on paper, electronic, photographic, or other permanent form.

~~24.~~22. "Eardrum" means the tympanic membrane in the ear that vibrates in response to sound.

~~25.~~23. "Earphone" means the part of an audiometer that is worn over an individual's ear.

~~26. "Electroacoustic analysis" means the evaluation by an audiologist of the functioning of a hearing aid or an assistive listening device using specialized electronic equipment.~~

~~27.~~24. "Eustachian tube" means a passage in an individual's head that:

a. Connects the middle ear and the throat, and

b. Equalizes pressure on both sides of the eardrum.

25. "Eye examination" means the same as "comprehensive eye and vision examination" in A.R.S. § 36-899.10 by an optometrist or ophthalmologist.

~~28.~~26. "Follow-up" means an action that serves to verify the ~~effectiveness~~ accuracy of a previous hearing screening or vision screening result ~~that resulted in treatment~~.

~~29.~~27. "Frequency" means the number of cycles per second of a sound wave, expressed in Hz and corresponding to the pitch of sound.

~~30.~~28. "Hard of hearing" has the same meaning as in A.R.S. § 36-1941.

~~31. "Hearing aid" has the same meaning as in A.R.S. § 36-1901.~~

~~32.~~29. "Hearing loss" means the difference, expressed in decibels, between the hearing threshold of an individual and a standard reference hearing threshold.

30. "Hearing screener" means an individual qualified to perform a hearing screening, as specified in R9-13-108.

~~33.~~31. "Hearing screening" means~~:~~ the same as "hearing screening evaluation" in A.R.S. § 36-899, and is performed by an individual who meets the requirements specified in R9-13-108 for the purpose of identifying students who may need further evaluation.

~~a. The same as "hearing screening evaluation" in A.R.S. § 36-899, and~~

~~b. Is performed by an individual who meets the requirements specified in R9-13-108 for the purpose of identifying students who may need further evaluation; or~~

~~c. An audiological evaluation provided by a specialist.~~

~~34. "Hearing screening population" means the students who are expected to have a hearing screening during a school year.~~

~~35. "Hearing threshold" means the faintest sound an individual hears at each frequency at which the individual is tested.~~

~~36.~~32. "Hz" means Hertz, a unit of frequency equal to one cycle per second.

~~37.~~33. "Immittance" means the mobility of the parts of the middle ear during the transmission of sound vibrations through the middle ear.

~~38. "Immediate family member" means an individual related by birth, marriage, or adoption.~~

~~39.~~34. "Inner ear" means the part of the ear, including the semicircular canals, cochlea, and auditory nerve, that converts sound into neural messages that are sent through the auditory nerve to the brain.

~~40.~~35. "Intensity" means the strength of a sound wave, resulting in the perception of sound volume as expressed in decibels or decibels hearing level dB HL.

~~41.~~36. "~~KHz~~ kHz" means a unit of frequency equal to one thousand cycles per second or one thousand hertz.

37. "Legally blind" means any person who:

a. Has no vision or visual acuity;

b. Has central visual acuity of 20/200 or less in the better eye, with the best correction by single magnification; or

c. Has a field defect in which the peripheral field has been contracted to such an extent that the widest diameter of the visual field subtends an angular distance no greater than twenty degrees.

~~42. "Middle ear" means the part of the ear that conducts sound to the inner ear, consisting of:~~

~~a. The eardrum;~~

~~b. The three small bones called the malleus, incus, and stapes; and~~

~~c. The space containing the eardrum and the three small bones.~~

~~43.~~38. "~~ml~~ mL" means a volume measurement unit.

~~44.~~39. "mmho" or "millimho" means a unit of electric conductance.

~~45.~~40. "Notification" means a method used to inform or announce information on paper, electronic, photographic, or other permanent form.

41. "Ophthalmologist" means an individual, licensed according to A.R.S. Title 32, Chapter 13 or 17, who may perform medical and surgical interventions for eye conditions.

42. "Optometrist" has the same meaning as in A.R.S. 32-1701, and is licensed according to A.R.S. Title 32, Chapter 16, who is a doctor of optometry who may examine the eyes to:

a. Evaluate health and visual abilities,

b. Diagnose eye diseases and conditions of the eye and visual system, and

c. Prescribe corrective lenses or provide other types of treatment.

43. "Optometry" means the professional practice of eye and vision care for the diagnosis, treatment, and prevention of diseases and conditions of the eye and visual system.

44. "Optotypes" means symbols, numbers, or letters of different sizes used in testing distance and near visual acuity.

~~46. "Other amplification device" means a hearing product used to amplify sounds, but may not address other components of hearing loss, such as distortion.~~

~~47.~~45. "Otitis media" means inflammation of the middle ear.

~~48.~~46. "Otoacoustic emissions device" ~~or "OAE device"~~ means an instrument used to determine the status of an individual's cochlear function by:

a. Presenting sounds into the auditory canal with a sound generator, and

b. Detecting, with one or more microphones, low-intensity echoes in the auditory canal that are produced by normally functioning cochlea in response to sounds.

~~49.~~47. "Outer ear" means the part of the ear that projects from an individual's head and the auditory canal.

~~50.~~48. "Parent" means a:

a. Natural or adoptive mother or father,

b. Legal guardian appointed by a court of competent jurisdiction, or

c. Custodian as defined in A.R.S. § 8-201.

~~51.~~49. "Pass" means a recordable response detected by a ~~hearing screener or audiological equipment consistent with established criteria for hearing screening requirements.~~:

a. Hearing screener using audiological equipment consistent with established criteria for hearing screening requirements; or

b. Vision screener using vision equipment consistent with established criteria for vision screening requirements.

~~52.~~50. "Person" has the same meaning as in A.R.S. § 41-1001.

~~53.~~51. "Preschool" means the instruction preceding kindergarten provided to individuals ~~three to five year old~~ three-years-old, four-years-old, or five-years-old through a school.

~~54.~~52. "Probe" means the part of a tympanometer or an ~~OAE~~ otoacoustic emissions device that is inserted into an individual's auditory canal during a hearing screening.

53. "Pseudoisochromatic plate" means a chart having printed dots of various colors, brightness, and sizes arranged so that dots of similar color form a known figure among a background of dots of other colors used to detect a color vision deficiency.

~~55.~~54. "Pure tone hearing screening" means a type of hearing screening using single frequency sounds that ~~is~~ are performed using a pure tone audiometer or a device that includes the functions of both an audiometer and a tympanometer.

~~56.~~55. "School" means:

a. A school as defined in A.R.S. § 15-101,

b. An accommodation school as defined in A.R.S. § 15-101,

c. A charter school as defined in A.R.S. § 15-101, or

d. A private school as defined in A.R.S. § 15-101.

~~57.~~56. "School day" means any day in which students attend an educational institution for instructional purposes.

~~58.~~57. "School year" means the period from July 1 through June 30.

~~59. "Screener" means an individual qualified to perform a hearing screening specified in R9-13-108.~~

58. "Screening population" means the students who are expected to have a hearing screening or a vision screening during a school year.

~~60. "Semicircular canal" means the loop-shaped tubular parts of the inner ear that contain portions of the sensory organs of balance.~~

~~61. "Sound wave" means the repeating cycles of high pressure and low pressure that are made by a vibrating object.~~

~~62.~~59. "Special education" has the same meaning as in A.R.S. § 15-761.

~~63.~~60. "Specialist" means an ~~audiologist or a doctor of medicine licensed according to A.R.S. Title 32, Chapters 13 or 17 who specializes in the ear, nose, and throat.~~:

a. Audiologist;

b. Individual licensed according to A.R.S. Title 32, Chapter 13 or 17 who specializes in the ear, nose, and throat;

c. Optometrist; or

d. Ophthalmologist.

61. "Stereoacuity" refers to depth perception and is used interchangeably with binocular vision.

~~64.~~62. "Student" means an individual enrolled in a school.

~~65.~~63. "Supervision" means a screener is in the room observing and providing direction while an individual provides ~~hearing screening to students specified in R9-13-108(M).~~:

a. A hearing screening to a student, as specified in Table 13.3, or

b. A vision screening to a student, as specified in Table 13.4.

~~66.~~64. "Trainer" means an individual, who:

a. Has a current certificate of completion, and

b. Provides classroom instruction and assessment of competency in using audiological equipment, as specified in R9-13-108, or vision equipment, as specified in R9-13-112.

~~67.~~65. "Tympanogram" means a graphic display of the mobility of the middle ear in response to an acoustic stimulus as a function of air pressure in the auditory canal.

~~68.~~66. "Tympanometer" means a device used to determine the status of an individual's middle ear by:

a. Presenting sound into the auditory canal with a sound generator;

b. Varying the air pressures in the auditory canal via an air pump to control the movement of the tympanic membrane; and

c. Detecting, with a microphone, variations in sound pressure level as acoustic energy passes into the individual's middle ear.

67. "Vision equipment" means vision screening materials and instruments used to help determine the presence, type, or degree of vision loss or impairment, including:

a. Optotypes,

b. Stereoacuity tests,

c. Pseudoisochromatic plates, and

d. Autorefractors/photoscreeners.

68. "Vision impairment" means visual impairment that cannot be corrected with a corrective device, such as eye glasses or contact lenses.

69. "Vision Screener" means an individual qualified to perform a vision screening, as specified in R9-13-112.

70. "Vision screening" in addition to the definition in A.R.S. § 36-899.10, means a test performed by an individual who meets the requirements specified in R9-13-112 for the purpose of identifying students who may need further evaluation.

71. "Visual acuity" means the relative ability of the visual system to resolve detail that is measured and recorded using an internationally recognized, two-figured indicator, such as 20/20.

72. "Written examination" means a series of questions administered in a paper or electronic format designed to determine an individual's knowledge and abilities specific to a hearing screening or vision screening.

R9-13-102. ~~Hearing Screening Population~~ Student Screening Populations

A. ~~An~~ Except as specified in subsections (B) and (C), an administrator shall ensure each student included in a school's hearing screening population, as specified in Table 13.1, receives a hearing screening.

B. An administrator may exclude from a school's hearing screening population:

1. A student who is 16 years of age or older;

2. A student who has been diagnosed as being deaf or hard of hearing; or

~~2.~~3. A student for whom the school has documentation from ~~a~~ the specialist that includes information, as specified in R9-13-105(B)(1):

~~a. States that the student received an audiological evaluation from a specialist;~~

~~b. Is dated within 12 months before the date the student would receive a hearing screening; or~~

~~c. Includes a time period during or after the current school year when the student is scheduled to receive another audiological evaluation from the audiologist or specialist; and~~

~~d. Contains the following information:~~

~~i. The student's name;~~

~~ii. The date the student's audiological evaluation was performed;~~

~~iii. The type of audiological equipment used;~~

~~iv. Whether the student has been diagnosed as being deaf or hard of hearing and, if so, the type and degree of hearing loss; and~~

~~v. The name of the specialist who performed the audiological evaluation; and~~

~~3. A student who is deaf or hard of hearing.~~

C. An administrator shall exclude a student from a school's hearing screening population ~~a student~~ for whom the administrator has ~~documentation,~~ received written notification from ~~a~~ the student's parent objecting to the student receiving a hearing screening, as specified in A.R.S. § 36-899.04, that contains the information specified in R9-13-105(A)(3)(d):

~~1. The student's name;~~

~~2. A statement objecting to the student receiving a hearing screening, including:~~

~~a. The school year the student should not receive the hearing screening, or~~

~~b. Instruction the student is not to receive a hearing screening until the parent notifies the administrator that the student may receive a hearing screening; and~~

~~3. The parent's name, signature, and date signed.~~

D. Except as specified in subsections (E) and (F), an administrator shall ensure each student included in a school's vision screening population, as specified in Table 13.2, receives a vision screening.

E. An administrator may exclude from a school's vision screening population:

1. A student who is 16 years of age or older;
2. A student who has been diagnosed as being legally blind or having vision loss; or
3. A student for whom the school has documentation from a specialist that includes information specified in R9-13-105(I)(1):

F. An administrator shall exclude from a school's vision screening population a student for whom the administrator has received written notification from the student's parent objecting to the student receiving a vision screening, as specified in A.R.S. § 36-899.10, that contains the information specified in R9-13-105(I)(3)(d):

R9-13-103. Hearing Screening and Vision Screening Requirements

A. Before permitting ~~a screener~~ an individual to provide a hearing screening, an administrator shall ensure that the ~~screener~~ individual:

1. Is an audiologist; or
2. ~~Has~~ Except as provided in R9-13-108(H), has a hearing screening certificate of completion, as specified in ~~R9-13-108(F) or (I)~~ R9-13-108(C).

~~**B.** If an individual is not a screener and requires supervision, an administrator shall ensure that the individual provides hearing screenings specified in R9-13-108(M).~~

~~**C.**~~**B.** Before performing a hearing screening on a student, a hearing screener shall:

1. Verify that the student is on a list of students in the school's hearing screening population provided by the administrator; and
2. Conduct a non-otoscopic inspection of the student's outer ears for anything that would ~~contra-indicate~~ contraindicate the continuation of the hearing screening, such as:

a. Blood or other bodily fluid in or draining from the auditory canal,

b. Earwax that may be occluding the auditory canal,

c. An open sore, or

d. A foreign object.

~~D.~~C. If a hearing screener observes a condition specified in subsection ~~(C)(2)~~ (B)(2) when inspecting a student's outer ears, the hearing screener shall:

1. Not perform a hearing screening on the student, and
2. Report the student's condition to the administrator immediately.

~~E.~~D. If a hearing screener does not observe a condition specified in subsection ~~(C)(2)~~ (B)(2) when inspecting a student's outer ears, the hearing screener shall:

1. Determine the developmental and age appropriate audiological equipment to be used ~~when~~, based on whether the student:
   a. ~~The student is~~ Is able or unable to understand the screener's instructions;
   b. ~~The student has~~ Has been designated as a child with a disability, as defined in A.R.S. § 15-761; or
   c. ~~The student is~~ Is physically or behaviorally limited in the ability to respond to perceived sounds; and
2. ~~Use one of the hearing screening methods specified in subsection (G)~~ Perform a hearing screening on each of the student's ears, using the appropriate hearing screening methods, as specified in Table 13.3;
3. ~~Perform a hearing screening on each of the student's ears; and~~
4. ~~Comply with the requirements specified in R9-13-104(A).~~

~~F. If a screener determines that a student in subsection (E)(1) is not able to complete the hearing screening, the screener shall:~~

~~1. Not perform a hearing screening on the student, and~~

~~2. Report the student's condition to the administrator within 10 school days.~~

~~G. When performing a hearing screening on a student, a screener shall comply with one of the following, passing criteria, if using:~~

~~1. A pure tone audiometer to perform a three-frequency, pure tone hearing screening on each of the student's ears with response recorded at each of the following frequencies and intensities:~~

~~a. 1000 Hz at 20 dB HL,~~

~~b. 2000 Hz at 20 dB HL, and~~

~~c. 4000 Hz at 20 dB HL;~~

~~2. A combination of a tympanometer and a pure tone audiometer to:~~

~~a. Produce a tympanogram showing the following results:~~

~~i. Peak acoustic immittance in mmho, ml, or compliance for a 226 Hz probe tone; or~~

~~ii. Tympanometric width in daPa; and~~

~~b. Obtain the results of a three-frequency, pure tone hearing screening on each of the student's ears with response recorded at each of the following frequencies and intensities:~~

~~i. 1000 Hz at 20 dB HL,~~

~~ii. 2000 Hz at 20 dB HL, and~~

~~iii. 4000 Hz at 20 dB HL; or~~

~~3. An OAE device to:~~

~~a. Measure responses of the cochlea to no less than three test frequencies; and~~

~~b. Device display screen indicates pass.~~

E. If a hearing screener determines that a student is not able to complete the hearing screening, the hearing screener shall inform the administrator within 10 school days.

F. Before permitting an individual to provide a vision screening, an administrator shall ensure that the individual:

1. Is an optometrist;
2. Is an ophthalmologist; or
3. Except as provided in R9-13-112(H), has a vision screening certificate of completion, as specified in R9-13-112(C).

G. Before performing a vision screening on a student, a vision screener shall:

1. Verify that the student is on a list of students in the school's vision screening population provided by the administrator; and
2. Conduct a non-ophthalmoscopic inspection of the student's eyes for anything that would contraindicate the continuation of the vision screening, such as:
   a. Abnormal color of iris or shape of pupils,
   b. Asymmetry of eyes or pupil size,
   c. Cloudy or hazy appearance to the cornea,
   d. Crusty eyelashes,
   e. Discoloration of the sclera,
   f. Drainage from an eye,
   g. Drooping of an eyelid,
   h. Growth on an eyelid or eye, or
   i. Redness and/or swelling of eyes, eyelids, or conjunctivitis.

H. If a vision screener observes a condition specified in subsection (G)(2) when inspecting a student's eyes, the vision screener shall:

1. Not perform a vision screening on the student, and

2. Report the student's condition to the administrator immediately.

I. If a vision screener does not observe a condition specified in subsection (G)(2) when inspecting a student's eyes, the vision screener shall:

1. Determine the developmental and age-appropriate vision equipment to be used, based on whether the student:

   a. Is able or unable to understand the vision screener's instructions;

   b. Has been designated as a child with a disability, as defined in A.R.S. § 15- 761; or

   c. Is physically or behaviorally limited in the ability to respond to perceived visual stimuli; and

2. Perform a vision screening using the appropriate vision screening methods, as specified in Table 13.4.

J. If a vision screener determines that a student is not able to complete the vision screening, the vision screener shall inform the administrator within 10 school days.

R9-13-104. Criteria for Passing a Hearing Screening or Vision Screening

A. ~~A screener shall consider a student to have passed a developmentally and age-appropriate hearing screening if one of the following applies:~~ A hearing screener shall consider a student to have passed a developmentally and age-appropriate hearing screening, as specified in Table 13.3, that meets the test-specific passing criteria.

~~1. During a three-frequency, pure tone hearing screening, performed according to R9-13-103(G)(1), the student responds to each frequency and intensity specified in R9-13-103(G)(1)(a) through (c) for each ear on which a hearing screening is performed;~~

~~2. During a hearing screening using both a tympanometer and pure tone audiometer, performed according to R9-13-103(G)(2):~~

~~a. The tympanogram for each of the student's ears shows:~~

~~i. The height of the peak acoustic immittance is > 0.3 mmho, ml, or compliance; or~~

~~ii. The tympanometric width is < 250 daPa; and~~

~~b. The student responds to each frequency specified in R9-13-103(G)(2)(b)(i) through (iii) for each ear on which a hearing screening is performed; or~~

~~3. During a hearing screening using an OAE device, performed according to R9-13-103(G)(3), the OAE device indicates results that the student has passed the hearing screening for each ear.~~

B. For a student in a school's hearing screening population who does not receive an initial hearing screening ~~specified in Table 13.1~~, an administrator shall ensure that the student receives the initial hearing screening not more than 45 school days after the date the student was expected to receive the initial hearing screening.

C. For a student in a school's hearing screening population who does not pass an initial hearing screening, as specified in Table 13.1 ~~according to subsection (A)~~, an administrator shall ensure that the student receives a second hearing screening using the same hearing screening method, unless determined that another hearing screening method would be more appropriate, no earlier than 10 school days and no later than 30 school days after the date of the initial hearing screening.~~:~~

~~1. The student shall receive a second hearing screening no earlier than 10 school days and no later than 30 school days after the date of the hearing screening specified in R9-13-103;~~

~~2. If the hearing screening specified in R9-13-103(G)(2) was performed using both a tympanometer and pure tone audiometer, the second hearing screening for the student is performed using both a tympanometer and pure tone audiometer; and~~

~~3. If the hearing screening specified in R9-13-103(G)(3) was performed using an otoacoustic emissions device, the second hearing screening for the student is performed using an otoacoustic emissions device.~~

D. If a student does not pass the second hearing screening ~~in subsection (C)(1) and (2)~~ according to subsection (C), an administrator shall provide notification to the student's parent, as specified in R9-13-105.

E. A vision screener shall consider a student to have passed a developmentally and age-appropriate vision screening, as specified in Table 13.4, that meets the test-specific passing criteria.

F. For a student in a school's vision screening population, as specified in Table 13.2, who does not receive an initial vision screening, an administrator shall ensure that the student receives the initial vision screening not more than 45 school days after the date the student was expected to receive the initial vision screening.

G. For a student in the school's vision screening population, as specified in Table 13.2, who does not pass an initial vision screening, according to Table 13.4, an administrator shall ensure that at the vision screener's discretion, the student receives a second vision screening using the same vision screening method, unless determined that another vision screening method would be more appropriate, no earlier than the next school day and no later than 30 school days after the date of the initial vision screening;

H. If a student does not pass an initial or the second vision screening according to subsection (G), an administrator shall provide notification to the student's parent, as specified in R9-13-105.

R9-13-105. Notification; Follow-up

A. An administrator shall provide a notification to parents of students identified ~~in~~ according to R9-13-102(A) and Table 13.1 that includes:

1. The ~~information for hearing screening~~ dates on which hearing screenings are scheduled to be conducted during the school year, ~~and~~

~~2. A reference to A.R.S. § 36-899.04 and information about the parent's right to object to their student receiving a hearing screening by submitting the document specified in R9-13-102(C) to the administrator.~~

2. Information about how the hearing screenings will be conducted, and

3. That a student will be excluded from hearing screening if:

a. The student has declined to receive a hearing screening, according to R9-13-102(B)(1);

b. The administrator has documentation that the student is deaf or hard of hearing, according to R9-13-102(B)(2);

c. The administrator receives documentation from the parent that includes the information listed in R9-13-105(B)(1); or

d. According to A.R.S. § 36-899.04, the student's parent objects to the student receiving a hearing screening, and the administrator receives from the parent the written notification that contains:

i. The student's name;

ii. A statement objecting to the student receiving a hearing screening, including:

a. The school year during which the student should not receive the hearing screening, or

b. Instruction that the student is not to receive a hearing screening until the parent notifies the administrator that the student may receive a hearing screening; and

iii. The parent's name, signature, and date signed.

~~**B.** If an administrator excludes a student from a hearing screening specified in, the administrator shall provide a notification to the student's parent that:~~

~~1. Informs the parent, whose student wears a device listed in subsection (3)(a) through (c), that the student shall not receive a hearing screening;~~

~~2. Recommends the parent schedule an audiological evaluation for the student with a specialist;~~

B. Except if an administrator has received written notification for a student whose parent has objected to the student receiving a hearing screening, as specified in A.R.S. § 36-899.04, if an administrator plans to exclude a student from a hearing screening, as specified in R9-13-102(B)(2) or (B)(3), the administrator shall provide a notification to the student's parent that

1. Requests the parent to provide the administrator with a copy of the specialist's audiological report dated within the past 12 months that contains:

a. The student's name;

b. The date the student's audiological evaluation was performed;

c. The type of audiological equipment used;

d. Whether the student has been diagnosed as being deaf or hard of hearing and, if so, the type and degree of hearing loss; and

e. The name of the specialist who performed the audiological evaluation;

~~3. Requests the parent in subsection (2) provide the administrator a copy of a specialist's audiological report dated within the past 12 months for the student's:~~

~~a. Hearing aid,~~

~~b. Assistive listening device, or~~

~~c. Other amplification device;~~

~~4. Informs a parent, who chooses for their student to not wear a device listed in subsection (3)(a) through (c), that the student shall receive a hearing screening unless the administrator receives documentation specified in R9-13-102(C) stating that the parent does not want their student to have a hearing screening; and~~

~~5.~~2. Informs a parent that a student ~~may~~ will receive a hearing screening if an administrator does not have:

a. Documentation of an audiological report in ~~subsection (3)~~ subsection (B)(1), or

b. Documentation specified in ~~R9-13-102(C)~~ R9-13-105(A)(3)(d) stating that the parent does not want ~~their~~ the student to have a hearing screening.

~~C. Except for a student in subsection (2)(a), within 10 school days after an initial hearing screening in subsection (A) has been completed, an administrator shall provide notification to a student's parent that includes:~~

~~1. The student's name; and~~

~~2. The reason why the student did not receive a hearing screening due to:~~

~~a. A visual condition of the outer ear specified in R9-13-103(C)(2), or~~

~~b. A behavioral condition specified in R9-13-103(E)(1).~~

C. If a student did not receive a hearing screening due to behavior, an administrator shall provide notification to a student's parent within 10 school days after an initial hearing screening, as specified in Table 13.3, or a second hearing screening, as specified in R9-13-104(C), that includes:

1. The student's name; and

2. A description of the student's behavior.

D. If a student did not receive a hearing screening due to a visual condition of the outer ear, as specified in R9-13-103(B)(2), an administrator shall provide immediate notification to a student's parent after an initial hearing screening or a second hearing screening, that includes:

1. The student's name; and

2. A description of the visual condition of the outer ear.

~~D.~~**E.** ~~Except for a student's second hearing screening in subsection (3)(b), within 10 school days after a student receives a second hearing screening specified in R9-13-104(C),~~ If a student does not pass a second hearing screening, as specified in R9-13-104(C), an administrator shall provide notification to ~~a~~ the student's parent within 10 school days that includes:

1. The student's name; and
2. The type of hearing screening the student received~~, if received; and~~.
3. ~~The hearing screening results whether the student:~~
   a. ~~Did not pass; or~~
   b. ~~Was not screened due to:~~
      i. ~~A visual condition of the outer ear specified in R9-13-103(C)(2), or~~
      ii. ~~A behavioral condition specified in R9-13-103(E)(1).~~

~~E.~~ ~~If a student in subsections (C) or (D) has an audiological evaluation on file at the school that is dated within the past 12 months, the student will not receive a hearing screening.~~

F. ~~If a student did not receive a hearing screening due to a reason identified in subsections (C)(2)(a), (D)(3)(a), or (D)(3)(b)(i), an administrator shall provide an immediate notification to the student's parent that includes:~~ In addition to the notification information provided in subsections (C), (D), or (E), an administrator shall request that the parent:

1. ~~The student's name;~~
2. ~~The reason for the immediate notification;~~
3.1. ~~A request that the parent contact~~ Contact a specialist to:
   a. Examine the student's ears; and
   b. If applicable, perform ~~Perform~~ an audiological evaluation; and
   c. ~~If the student uses any of the following, perform an:~~
      i. ~~Electroacoustic analysis of a hearing aid, an assistive listening device, or other amplification device; or~~
      ii. ~~Evaluation of a cochlear implant; and~~
4.2. ~~A request that the parent provide~~ Provide to the administrator documentation received from the specialist who examined the student that includes:
   a. The student's name;
   b. The name of the specialist;
   c. The date the specialist performed the services;
   d. The type of services provided; and
   e. If applicable:
      i. The results of the examination of the student's ears~~,~~;
      ii. The results of the student's audiological evaluation, including diagnosis~~,~~;

iii. Whether there is hearing loss and, ~~including~~ if so, the type and degree of hearing loss~~.~~; and

~~iv. The type of audiological equipment used to perform the audiological evaluation; and~~

~~v.~~iv. A recommendation for treatment.

G. ~~Forty-five calendar~~ Within forty-five school days after sending a notification specified in ~~subsection (F)(4)~~ subsection (F)(2), an administrator shall provide a follow-up notification to the student's parent to verify whether the student received an audiological evaluation and if evaluated, provide a diagnosis.

H. Within 10 school days after an administrator receives documentation from a specialist of a diagnosis that a student is deaf or hard of hearing, the administrator shall provide notification of the diagnosis, consistent with the privacy requirements in applicable law, to:

1. Each of the student's teachers,
2. Other school personnel who ~~interacts~~ interact with the student, and
3. The persons responsible for determining the student's eligibility for special education services, as specified in ~~under A.A.C.~~ R7-2-401.

I. An administrator shall provide a notification to parents of students identified according to Table 13.2 that includes:

1. The dates on which vision screenings are scheduled to be conducted during the school year,
2. Information about how the vision screenings will be conducted, and
3. That a student will be excluded from vision screening if:
   a. The student has declined to receive a vision screening, according to R9-13-102(E)(1);
   b. The administrator has documentation that the student is legally blind or has loss of vision, according to R9-13-102(E)(2);
   c. The administrator receives documentation from the parent that includes the information listed in R9-13-105(J); or
   d. According to A.R.S. § 36-899.10, the student's parent objects to the student receiving a vision screening, and the administrator receives from the parent the written notification that contains:
      i. The student's name;
      ii. A statement objecting to the student receiving a vision screening, including:
         a. The school year during which the student should not receive the vision screening, or
         b. Instruction that the student is not to receive a vision screening until the parent notifies the administrator that the student may receive a vision screening; and

iii. The parent's name, signature, and date signed.

J. Except if an administrator has received written notification for a student whose parent has objected to the student receiving a vision screening, as specified in A.R.S. § 36-899.10, if an administrator plans to exclude a student from a vision screening, as specified in R9-13-102(E)(2) or (E)(3), the administrator shall provide a notification to the student's parent that:

1. Requests the parent to provide the administrator with a copy of the specialist's vision report dated within the past 12 months that contains the following information:
   a. The student's name;
   b. The date the student's eye examination was performed;
   c. Whether the student has been diagnosed as being legally blind or has loss of vision, and, if so, the type and degree of vision loss; and
   d. The name of the specialist who performed the eye examination;
2. Informs a parent that a student will receive a vision screening if an administrator does not have documentation:
   a. Of a vision report in subsection (J)(1), or
   b. Specified in R9-13-102(F) stating that the parent does not want the student to have a vision screening.

K. If a student did not receive a vision screening due to behavior, an administrator shall provide notification to a student's parent within 10 school days after an initial vision screening in Table 13.4 or a second vision screening, that includes:

1. The student's name; and
2. A description of the student's behavior.

L. If a student did not receive a vision screening due to a visual condition of the outer eyes, as specified in R9-13-103(H)(2), an administrator shall provide immediate notification to a student's parent after an initial vision screening, as specified in Table 13.4 or a second vision screening, that includes:

1. The student's name; and
2. A description of the visual condition of the eye.

M. If a student does not pass a second vision screening, as specified in R9-13-104(G), an administrator shall provide notification to the student's parent within 10 school days that includes:

1. The student's name; and
2. The type of vision screening the student received

N. In addition to the notification information provided in subsections (K), (L), or (M), an administrator shall request that the parent:

1. Contact a specialist to:
   a. Examine the student's eyes; and

b. Perform a visual evaluation; and

2. Provide to the administrator documentation received from the specialist who examined the student that includes:

a. The student's name;

b. The name of the specialist;

c. The date the specialist performed the services;

d. The type of services provided; and

e. If applicable:

i. The results of the examination of the student's eyes;

ii. The results of the student's vision evaluation, including diagnosis;

iii. Whether there is vision loss and, if so, the type and degree of vision loss; and

iv. A recommendation for treatment.

O. Within forty-five school days after sending a notification specified in subsection (M), an administrator shall provide a follow-up notification to the student's parent to verify whether the student received an eye examination and, if evaluated, provide a diagnosis.

P. Within 10 school days after an administrator receives documentation from a specialist of a diagnosis that a student is blind or has loss of vision, the administrator shall provide notification of the diagnosis, consistent with the privacy requirements in applicable law, to:

1. Each of the student's teachers,

2. Other school personnel who interact with the student, and

3. The persons responsible for determining the student's eligibility for special education services, as specified in R7-2-401.

R9-13-106. Equipment Standards

A. An administrator shall ensure that audiological equipment used for hearing screenings is recommended by the American Academy of Audiology.

B. An administrator shall ensure that:

1. A pure tone audiometer is calibrated:

a. Not more than 12 months before the hearing screening is planned to occur, and

b. According to ANSI/ASA S3.6-2010 American National Standards Institution/Acoustical Society of America, Specification for Audiometers, incorporated by reference, on file with the Department, including no future editions or amendments, and available from the American National Standards Institution at https://webstore.ansi.org.

2. A tympanometer is calibrated:

a. Not more than 12 months before the hearing screening is planned to occur; and

b. According to ~~ANSI/ASA S3.39-1987 (R2012)~~ ANSI/ASA S3.39-1987 (R2020) American National Standards Institution/Acoustical Society of America, American National Standard Specifications for Instruments to Measure Aural Acoustic Impedance and Admittance (Aural Acoustic Immittance), incorporated by reference, on file with the Department, including no future editions or amendments, and available from the American National Standards Institution at https://webstore.ansi.org.

3. An ~~OAE~~ otoacoustic emissions device is calibrated:
   a. Not more than 12 months before the hearing screening is planned to occur; and
   b. According to the specifications of the otoacoustic emissions device's manufacturer, including:
      i. Distortion product emission,
      ii. No less than three test frequencies between 1 and 5 kHz,
      iii. An f2/f1 ratio of 1.22,
      iv. A L1/L2 levels of 65/55 dB SPL, and
      v. A pass and fail criterion based on an emission-to-noise ratio.

C. A hearing screener shall ensure that:

1. A pure tone audiometer:
   a. Is inspected within one school day before the hearing screening is planned to occur; and
   b. During the inspection in ~~subsection (1)(a)~~ subsection (C)(1)(a):
      i. Had a power source and power indicator that were working,
      ii. Had earphones that were free of noise or distortion that could interfere with a hearing screening,
      iii. Had earphone cords that were connected securely to the pure tone audiometer and had no breaks, and
      iv. Generated a signal at each frequency and intensity specified in ~~R9-13-103(G)(1)~~ Table 13.3 that did not cross from one earphone to the other.
2. A tympanometer:
   a. Is inspected within one school day before the hearing screening is planned to occur; and
   b. During the inspection in ~~subsection (2)(a)~~ subsection (C)(2)(a):
      i. Had no obstruction in the tympanometer's probe, and
      ii. Generated a signal.
3. An ~~OAE~~ otoacoustic emissions device:
   a. Is inspected within one school day before the hearing screening is planned to occur; and
   b. During the inspection in ~~subsection (3)(a)~~ subsection (C)(3)(a):

i. Had no obstruction in the ~~OAE's~~ otoacoustic emission device's probe microphone, and

ii. Generated a signal.

D. The administrator shall:

1. Ensure that the vision equipment used to conduct vision screenings is in good condition; and
2. If applicable, verify that the calibration is up-to-date according to the manufacturer guidelines for autorefractors.

E. A vision screener shall ensure vision equipment is:

1. Used for vision screenings based on the age and developmental abilities of the student;
2. If applicable, verify an autorefractor/photoscreeners' calibration date is within the past 12 months from the day the vision screening is provided; and
3. Inspected within one school day before the vision screening is scheduled to occur.

R9-13-107. Records and Reporting Requirements

A. An administrator shall obtain from a hearing screener:

1. The hearing screener's license number, if the hearing screener is an audiologist; or
2. A copy of the hearing screener's certificate of completion, as specified in R9-13-110 ~~dated within four years before the date the hearing screening is planned to occur~~.

B. ~~A~~ An administrator shall ensure that a student's record ~~shall include~~ includes, as applicable:

1. The dates and results of each hearing screening performed on the student;
2. An objection to a hearing screening made by the student's parent, as specified in ~~R9-13-102(C)~~ R9-13-105(A)(3)(d);
3. A request for a hearing screening made by an individual listed in Table 13.1;
4. A written diagnosis received by an administrator from a specialist, as specified in ~~R9-13-105(H)~~ R9-13-102(B)(2), ~~that a~~ including whether the student is deaf or hard of hearing;
5. If an administrator received a written diagnosis in ~~subsection (4)~~ subsection (B)(4), the name of each individual specified in ~~R9-13-105(H)~~ R9-13-105(A)(3)(b) that received notification of the student's diagnosis and the date notified; and
6. If ~~an~~ the administrator notified ~~a~~ the student's parent according to R9-13-105:
   a. A copy of the notification; or
   b. Documentation that contains:
      i. The reason for the notification,
      ii. The date of notification, and
      iii. Whether the administrator recommended that the student have an audiological evaluation completed by a specialist.

C. Between April 1 and June 30 of each school year, an administrator shall submit to the Department in a Department-provided format:

1. The ~~school:~~ name, address, and telephone number of the school;
   ~~a. Name,~~
   ~~b. Address, and~~
   ~~c. Telephone number;~~
2. The name of the school district, if applicable; and
3. For each hearing ~~screenings~~ screening conducted at the school during the school year:
   a. The name of each hearing screener who performed the hearing ~~screenings~~ screening;
   b. The hearing screener's audiological license number, if applicable;
   c. A copy of the hearing screener's certificate of completion ~~specified in R9-13-108(F) or R9-13-108(I)(3), if applicable~~;
   d. The type of audiological equipment used to conduct the hearing ~~screenings~~ screening;
   e. The date the audiological equipment was calibrated;
   f. The name and title of the individual submitting the information;
   g. The date the information is submitted;
   h. Whether the hearing ~~screenings~~ screening for students identified ~~in~~ according to Table 13.1 ~~were~~ was conducted within the first ~~45 calendar~~ 90 school days of the school year;
   i. The number of students grouped by:
      i. ~~The grades~~ Each grade level listed in Table 13.1, and
      ii. Enrollment in special education;
   j. The number of students who:
      i. Were enrolled at the start of the school year at the time of ~~prior to~~ before the first hearing screening provided to students,
      ii. Were excluded from the school's hearing screening population ~~as specified in R9-13-102(B)~~ according to R9-13-102(B) or (C) and Table 13.1,
      iii. Received an initial hearing screening,
      iv. Did not pass an initial hearing screening,
      v. Received a second hearing screening,
      vi. Did not pass a second hearing screening, and
      vii. Were first identified as being deaf or hard of hearing; and
   k. The number of students for whom the administrator:
      i. ~~An administrator provided~~ Provided notification to a student's parent, as specified in R9-13-105; and

ii. ~~An administrator received~~ Received documentation during the school year from a student's specialist related to an ~~examination,~~ audiological evaluation~~, electroacoustic analysis, or evaluation of the student's cochlear implant~~.

D. An administrator shall obtain from a vision screener:

1. The vision screener's license number, if the vision screener is an optometrist or an ophthalmologist; or
2. A copy of the vision screener's certificate of completion.

E. An administrator shall ensure a student's record includes:

1. The dates and results of each vision screening performed on the student;
2. If applicable, documentation of an objection to a vision screening made by the student's parent, as specified in R9-13-105(H)(3)(d);
3. If applicable, a request for a vision screening made by an individual listed in Table 13.2;
4. If applicable, a written diagnosis received by an administrator from a specialist, as specified in R9-13-105(E)(2), of the student being legally blind or having vision loss;
5. If the administrator received a written diagnosis in subsection (E)(4), the name of each individual that received notification of the student's diagnosis and the date notified; and
6. If the administrator notified a student's parent according to R9-13-105;
    a. A copy of the notification; or
    b. Documentation that contains:
        i. The reason for the notification,
        ii. The date of notification, and
        iii. Whether the administrator recommended that the student have a visual evaluation completed by a specialist.

F. Between April 1 and June 30 of each school year, an administrator shall submit to the Department in a Department-provided format:

1. The name, address, and telephone number of the school;
2. The name of the school district, if applicable; and
3. For each vision screening conducted at the school during the school year:
    a. The name of the vision screener who performed the vision screening;
    b. The vision screener's optometry or ophthalmology license number, if applicable;
    c. A copy of the vision screener's certificate of completion, if applicable;
    d. The type of vision equipment used to conduct the vision screening;
    e. The date the vision equipment was calibrated, if applicable;
    f. The name and title of the individual submitting the information;
    g. The date the information is submitted;

h. Whether the vision screenings for students identified in Table 13.2 were conducted within the first 90 school days of the school year;

i. The number of students grouped by:

i. Each grade level listed in Table 13.2; and

ii. Enrollment in special education;

j. The number of students who:

i. Were enrolled at the start of the school year prior to the first vision screening provided to students;

ii. Were excluded from the school's vision screening population, according to R9-13-102(E) or (F) and Table 13.2;

iii. Received an initial vision screening;

iv. Did not pass an initial vision screening;

v. Received a second vision screening;

vi. Did not pass a second vision screening;

vii. Were first identified as being legally blind; and

viii. Were first identified as having vision loss.

k. The number of students for whom an administrator:

i. Provided notification to a student's parent, as specified in R9-13-105; and

ii. Received documentation during the school year from a student's specialist related to an eye examination.

~~D.~~**G.** An administrator shall retain the information in:

1. Subsection (A) and (D) for at least three years after the date that the hearing screening or vision screening occurred~~.~~; and

2. Subsection (B) and (E) for three school years after fiscal year of last attendance of the student at the school, according to Arizona State Library, Archives and Public Records, General Records Retention Schedule for All Arizona School Districts, and Charter Schools Student Records.

R9-13-108. Hearing Screener Qualifications

A. An individual may be a hearing screener if the individual:

1. ~~If the individual is~~ Is an audiologist, or

2. ~~If the individual:~~

~~a. Is at least 18 years of age;~~

~~b. Has a high school diploma or a general equivalency diploma;~~

~~c. Has the ability to recognize a student's response to hearing a range of tones at different pitches and volumes; and~~

~~d.~~ Has a current hearing screener certificate of completion, as specified in ~~subsection (F)~~ subsection (C).

B. ~~For an~~ An individual, who is not an audiologist, is eligible to become a hearing screener, if the individual ~~shall complete classroom instruction for pure tone audiometry provided by a trainer~~:

1. Is at least 18 years of age;
2. Has a high school diploma or a general equivalency diploma;
3. Has the ability to recognize a student's response to hearing a range of tones at different pitches and volumes;
4. Has completed classroom instruction provided by a hearing screening trainer, including:
   ~~1.~~a. Introduction to hearing screening for children, including the:
      ~~a.~~i. ~~Development of speech and language~~ Anatomy and physiology of the ear,
      ~~b.~~ii. ~~Anatomy and physiology of the ear~~ Auditory development,
      iii. Language development,
      ~~c.~~iv. Signs and types of hearing loss in children,
      ~~d.~~v. Prevention of hearing loss in children,
      ~~e.~~vi. Otitis media, and
      ~~f.~~vii. ~~Infection control~~ Rationale for early identification of hearing loss;
   ~~2.~~b. Essentials for hearing screening children, including:
      ~~a. Auditory development;~~
      ~~b. Rationale for early identification of hearing loss;~~
      ~~c.~~i. When, how, and on whom hearing screening is performed; ~~and~~
      ~~d.~~ii. How to set up a hearing screening, including the selection of a method to use for hearing screening and a location to conduct hearing screening; and
      iii. Infection control;
   ~~3.~~c. Hearing screening protocols, including:
      i. Types of age-specific audiological equipment;
         (1) A pure tone audiometer,
         (2) Otoacoustic emission device, and
         (3) Tympanometer,
      ii. How to select an appropriate screening type;
      iii. Proper hearing screening techniques;
      ~~a.~~iv. Possible results of hearing screening;
      ~~b.~~v. ~~Screener~~ Hearing screener requirements specified in this Article;
      ~~c.~~vi. Procedures for tracking students expected to receive hearing screening and recording hearing screening results;

vii. Identifying students who need a second hearing screening; and

viii. Requirements in A.R.S. Title 36, Chapter 7.2, and requirements in this Article;

d. Hearing screening results, including documentation of:

~~d.~~i. Notification of and communication with the parents of students;

~~e.~~ii. The information that a parent of a student who does not pass a hearing screening is requested to obtain from the student's specialist and provide to the student's school;

~~f.~~iii. When and to whom a student's hearing loss is required to be reported;

~~g.~~iv. Procedures for reporting hearing screening results to the Department; and

~~h.~~v. What resources are available to the parent of a student who does not pass hearing screening;

~~i. Requirements in A.R.S. Title 36, Chapter 7.2 and requirements in this Article in addition to screener requirements; and~~

~~4. Audiological equipment, including:~~

~~a. A pure tone audiometer:~~

~~i. How a pure tone audiometer works;~~

~~ii. Checking the pure tone audiometer and earphones before performing hearing screening;~~

~~iii. Earphone placement;~~

~~iv. Performing hearing screening using a pure tone audiometer;~~

~~v. Identifying students who need a second hearing screening; and~~

~~vi. Identifying students for whom notification of a parent is required; and~~

~~b. An otoacoustic emission device:~~

~~i. How an otoacoustic emission device works;~~

~~ii. Why and when it is appropriate to use an otoacoustic emissions device is used during hearing screening;~~

~~iii. Performing a hearing screening using an otoacoustic emissions device with a remote probe;~~

~~iv Identifying students who need a second hearing screening; and~~

~~v. Identifying students for whom notification of a parent is required.~~

5. Obtains a score of at least 80% on a written examination that covers the classroom instruction, as specified in subsection (B)(4); and

6. Demonstrates competency in the use of the audiological equipment, as applicable.

~~C. An individual who has completed the hearing screening instruction in subsection (B) may request training in the use of a tympanometer by completing the following classroom instruction provided by a trainer:~~

1. How a tympanometer works;
2. Why and when it is appropriate to use a tympanometer during hearing screening;
3. The anatomy and functions of the middle ear and Eustachian tube;
4. How to use a tympanometer;
5. Identifying students who need a second hearing screening; and
6. Identifying students for whom notification of a parent is required.

D. Obtain a score of at least 80% on a written examination that covers the classroom instruction specified in subsection (B) or (C).

E. Demonstrate competency in the use of the audiological equipment specified in subsection (B) or (C) that an individual received classroom instruction.

F.C. Obtain a certificate of completion in a Department-provided format from the hearing trainer who provided the classroom instruction, examination, and competency assessment specified in (B) through (E), as applicable, that includes When the Department receives notification that an individual has satisfied the requirements in subsection (B), from the hearing screening trainer who provided the classroom instruction, written examination, and competency assessment, the Department shall issue to the individual a hearing screening certificate of completion that includes:

1. The individual's name;
2. The hearing screening methods specified in subsections (B) or (C) completed by the individual The information provided in R9-13-109(D)(2)(b), (f), and (g); and
3. The date the individual completed the classroom instruction in subsection (B) or (C);
4. The date the individual completed the hearing screening:
   a. Examination; and
   b. Assessment, including the type of audiological equipment;

5.3. The date the hearing screening certificate of completion issue date; was issued.

6. An attestation that the classroom instruction provided to the individual meets the requirements in subsection (B) or (C); and
7. The trainer's printed name and date issued.

G.D. A hearing screener's certificate of completion expires four years from the issue date indicated on the hearing screening certificate of completion specified in subsection (F).

H. Prior to the expiration date of a certificate of completion, a screener shall complete the requirements in subsection (I) to renew the screener's certificate of completion.

I. A screener, who is not an audiologist, wanting to renew a certificate of completion shall:

1. Complete two hearing screening continuing education units each year:
   a. Specified by the Department according to subsection (J), and

~~b. Applicable to the type of audiological equipment that the screener uses when performing a hearing screening;~~

~~2. As provided by a trainer:~~

~~a. Complete four hours of classroom instruction related to:~~

~~i. Development of speech and language,~~

~~ii. Essentials for hearing screening children, and~~

~~iii. Hearing screening protocols;~~

~~b. Obtain a score of at least 80% on a written examination that covers the hearing screening requirements in subsection (a); and~~

~~c. Demonstrate competency in the use of the audiological equipment consistent with the hearing screening training received in subsection (1) and (2);~~

~~3. Obtain a certificate of completion in a Department-provided format from the trainer who provided classroom instruction, the examination, and competency assessment in subsection (2) that includes:~~

~~a. The screener's name;~~

~~b. The hearing screening methods specified in subsection (1);~~

~~c. The date the screener completed the methods in subsection (1);~~

~~d. The date the screener completed the hearing screening:~~

~~i. Examination; and~~

~~ii. Assessment, including the type of audiological equipment;~~

~~e. The certificate of completion issue date;~~

~~f. An attestation that the classroom instruction provided to the screener meets the requirements in subsections (1) and (2); and~~

~~g. The trainer's printed name.~~

E. Before the expiration date of a hearing screening certificate of completion, a hearing screener, who is not an audiologist and wants to renew a hearing screening certificate of completion, shall:

1. Complete instruction, as provided by a hearing trainer or another Department-approved method related to:
   a. Development of speech and language,
   b. Essentials for hearing screening children, and
   c. Hearing screening protocols;
2. Obtain a score of at least 80% on a written examination that covers the hearing screening requirements in subsection (B)(5); and
3. Demonstrate competency in the use of the audiological equipment consistent with the hearing screening training received in subsection (B)(6);

F. Within 30 calendar days after the Department receives notification that a hearing screener has satisfied the requirements in subsection (E), the Department shall issue to the hearing screener a renewal hearing screening certificate of completion.

~~**J.** By January 1 of each calendar year, the Department shall provide a list of Department-approved continuing education courses.~~

~~K.~~G. An individual who does not score at least 80% on ~~a~~ the: ~~written examination in subsection (D) may retake the written examination. If an individual does not score at least 80% on the second written examination, the individual shall repeat classroom instruction in subsection (B) or (C) before taking a third written examination.~~

1. Initial written examination, as specified in subsection (B)(5), may retake the written examination; or
2. Second written examination, shall repeat the classroom instruction, as specified in subsection (B)(4) before taking a third written examination.

~~**L.** A screener, who does not score at least 80% on a written examination for renewal in subsection (I), may retake the written examination. A screener, who does not score at least 80% on the second written examination, shall repeat the classroom instruction in subsection (I)(1) and (2) before taking a third written examination.~~

~~M.~~H. An individual who is not a hearing screener:

1. May ~~use a pure tone audiometer to~~ perform an initial three-frequency, pure tone hearing screening for a student, as specified in ~~R9-13-103(G)(1)~~ Table 13.3, under the supervision of a hearing screener; and
2. Shall not perform a hearing screening:
   a. For a student who did not pass an initial hearing screening,
   b. Using a combination of a tympanometer and a pure tone audiometer according to R9-13-103(G)(2); or
   c. Using an ~~OAE~~ otoacoustic emissions device, as specified in ~~R9-13-103(G)(3)~~ Table 13.3.

R9-13-109. Hearing Screening Trainer Eligibility

A. An individual is eligible to be a hearing screening trainer if the individual ~~meets at least one of the following~~:

1. Is currently licensed in Arizona as an audiologist according to A.R.S. Title 36, Chapter 17, and has completed at least 25 hearing screenings within the 12 months before submitting the application in R9-13-110;
2. Is currently licensed as a registered nurse according to A.R.S. Title 32, Chapter 15 who is providing school health services and has completed at least 100 hearing screenings within the previous 12 months from the date of submitting the application in R9-13-110;

~~1.~~3. Has completed at least ~~30 semester~~ 30-semester credits at an accredited college or university related to audiology ~~and~~ or speech-language pathology ~~or the equivalent credits from a college or university from outside the United States or its territories verified by a Department approved third party evaluation service;~~ and 100 hearing screenings within the previous 12 months from the date of submitting the application in R9-13-110; or

~~2. Has completed at least two years of employment in a position directly related to and providing assistance in the practice of audiology and speech-language pathology;~~

~~3. Is currently licensed in this state as an audiologist according to A.R.S. Title 36, Chapter 17; or~~

4. Is currently a hearing screener who has maintained a hearing screener certificate of completion for the previous five years and has completed at least 1,000 hearing screenings within the previous five years from the date of the application in R9-13-110.

~~**B.** In addition to subsection (A), an individual who meets the requirement in:~~

~~1. Subsection (1) or (2), has completed at least 100 hearing screenings within the previous 12 months from the date of request specified in R9-13-110(C)(9).~~

~~2. Subsection (3), has completed at least 25 hearing screenings within the previous 12 months from the date of request specified in R9-13-110(C)(9).~~

~~3. Subsection (4), has completed 3,000 hearing screenings within the previous five years from the date of request specified in R9-13-110(C)(9).~~

B. Before the expiration date of a hearing screening trainer certificate of completion, a hearing screening trainer is eligible to renew a hearing screening trainer certificate of completion if the hearing screening trainer demonstrates the hearing screening trainer provided at least ten hearing screening trainings during the five-year period that a certificate of completion is valid.

~~**C** Prior to the expiration date of a trainer certificate of completion, a trainer is eligible to renew a certificate of completion if the trainer demonstrates the trainer provided at least two hearing screening trainings for each year during the five-year period that a certificate of completion is valid.~~

~~**D.**~~**C.** The scope of practice ~~of~~ for a hearing screening trainer includes:

1. Providing Department approved classroom instruction, as specified in ~~R9-13-108(B) and (C) in a classroom~~ R9-13-108(B)(4), including;
   a. Training individuals in hearing screening skills, procedures, and techniques; and
   b. Observing and assessing individuals and hearing screeners in the operations of audiological equipment;

~~2. Training individuals in hearing screening skills, procedures, and techniques specified in R9-13-108(B) and (C);~~

~~3. Observing and assessing individuals and screeners in the operations of audiological equipment specified in R9-13-108(E);~~

~~4.~~ ~~Administering to individuals a hearing screening examination specified in R9-13-108(D);~~

2. Administering a written examination that covers the applicable classroom instruction, as specified in R9-13-108(B)(5);

3. Assessing competency in the use of the applicable audiological equipment, as specified in R9-13-108(B)(6);

~~5.~~4. ~~Entering~~ Submitting to the Department, documentation of an individual's or hearing screener's information ~~in the Department's hearing screening database~~ for issuance of a hearing screening certificate of completion, as specified in subsection (D)(2); and

~~6.~~5. ~~Providing, if available to the public,~~ If a scheduled hearing screening training is available to the public, provide notice to the Department 30 calendar days before the training indicating what, where, and when classroom instruction, examination, or assessment of competency are scheduled to be provided to individuals to become a hearing screener ~~specified in R9-13-110(C)(8) or R9-13-111(C)(4)~~.

~~E.~~D. A hearing screening trainer ~~who provides instruction to an individual seeking a screener certificate of completion~~ shall:

1. Ensure that for an individual or hearing screener:

   ~~a.~~ ~~Eight hours of classroom instruction is provided, and~~

   ~~b.~~ ~~The types of classroom instruction are consistent with R9-13-108; and~~

   a. Seeking a hearing screener certificate of completion, the topics of the classroom instruction are consistent with R9-13-108(B)(4);

   b. Has a passing score of 80% on a written examination that covers the applicable topics of classroom instruction, as specified in R9-13-108(B)(5); and

   c. Demonstrates competency in the use of the audiological equipment, as specified in R9-13-108(B)(6); and

2. ~~Establish a hearing screening record in the Department's hearing screening database~~ Submit the following information to the Department, for each individual or hearing screener seeking a hearing screening certificate of completion ~~as a screener that includes~~:

   ~~a.~~ ~~The individual's:~~

      ~~i.~~ ~~Name,~~

      ~~ii.~~ ~~Address,~~

      ~~iii.~~ ~~E-mail address, and~~

      ~~iv.~~ ~~Telephone number;~~

   ~~b.~~ ~~The date the hearing certificate of completion expires;~~

   a. The name, address, e-mail address, and telephone number of the individual or hearing screener;

b. The date the individual or hearing screener completed the requirements in R9-13-108(B)(4), (5), and (6);

c. The address where the classroom instructions, examination, and assessment were held;

d. If applicable, the name of a sponsoring organization, such as a school, school district, or other public agency; ~~and~~

e. Documentation indicating when classroom instruction, examination, and assessment were provided~~.~~;

f. The hearing screening methods, in which the individual has demonstrated competency, as specified in Table 13.3; and

g. The hearing screening trainer's name.

~~**F.** A trainer who provides instruction to a screener who is seeking renewal of certificate of completion shall:~~

~~1. Ensure that:~~

~~a. A hearing screening continuing education units are completed,~~

~~b. Four hours of classroom instruction is provided, and~~

~~c. The types of classroom instruction are consistent with R9-13-108(I); and~~

~~2. Update the screener's record in the Department's hearing screening database for each screener seeking renewal of certificate of completion that includes:~~

~~a. The screener's:~~

~~i. Name,~~

~~ii. Address,~~

~~iii. E-mail address, and~~

~~iv. Telephone number;~~

~~b. The date the hearing certificate of completion expires;~~

~~c. The address where the classroom instructions, examination, and assessment were held;~~

~~d. If applicable, the name of a sponsoring organization, such as a school, school district, or other public agency; and~~

~~e. Documentation indicating when classroom instruction, examination, and assessment were provided.~~

~~**G.**~~**E.** A hearing screening trainer shall comply with:

1. ~~Comply with~~ A.R.S. §§ 36-899 through 36-899.04, and
2. ~~Comply with this~~ The applicable requirements in this Article.

R9-13-110. Hearing Screening Trainer Certificate of Completion ~~Request~~

~~**A.** An individual may apply for a trainer certificate of completion if the individual meets the eligibility requirements specified in R9-13-109(A) and (B).~~

B. ~~An individual applying for a trainer certificate of completion shall submit a request to the Department at least 30 days prior to November 1 of a calendar year.~~

C. ~~An individual shall provide a request for a trainer certificate of completion to the Department in a Department-provided format that includes:~~

1. ~~The individual's;~~
   a. ~~Name,~~
   b. ~~Address,~~
   c. ~~E-mail address, and~~
   d. ~~Telephone number;~~
2. ~~If applicable, the individual's former names;~~
3. ~~If the individual has completed 30 semester credits specified in R9-13-109(A)(1), the:~~
   a. ~~Name of the accredited college or university attended,~~
   b. ~~Class title for each class completed, and~~
   c. ~~Number of semester credits for each class;~~
4. ~~If the individual has completed two years of employment specified in R9-13-109(A)(2), the:~~
   a. ~~Employer's name,~~
   b. ~~Individual's position and description of responsibilities, and~~
   c. ~~Months and years of employment;~~
5. ~~If the individual is a licensed audiologist specified in R9-13-109(A)(3), the:~~
   a. ~~Audiologist's license number, and~~
   b. ~~Date of expiration;~~
6. ~~If the individual is a screener specified in R9-13-109(A)(4), who has maintained a hearing screener certificate of completion for the previous five years, the:~~
   a. ~~Names of the school districts where the screener provided hearing screenings, and~~
   b. ~~Screener's certification of completion date of expiration;~~
7. ~~Whether the individual completed the hearing screenings specified in R9-13-109(B);~~
8. ~~An attestation that the individual affirms:~~
   a. ~~To provide, if available to the public, notice of hearing screening instruction, examination, or assessment of competency specified in R9-13-109(D) to the Department 30 calendar days prior to providing to individuals to become a screener;~~
   b. ~~To provide information for each hearing screening training specified in R9-13-109(C); and~~
   c. ~~The information provided in the request for certificate of completion is true and accurate; and~~
9. ~~The individual's printed name and date of signature.~~

~~**D.** Within 10 calendar days from the date the Department receives an individual's request for a trainer certificate of completion, the Department shall send a notification to the individual that:~~

~~1. The individual may register to take classroom instruction and written examination, and~~

~~2. How the individual may register.~~

~~**E.** If the Department determines there is a need for additional trainers prior to the November 1 submission date in subsection (B), the Department shall provide:~~

~~1. A notice to the public that trainer certificate of completion requests will be accepted.~~

~~2. When an individual may submit a trainer certificate of completion request.~~

~~**F.** If the Department determines not to accept any trainer certificate of completion requests in subsection (B), the Department shall provide:~~

~~1. A notice to the public that no trainer certificate of completion requests will be accepted.~~

~~2. The notice 30 days prior to the November 1 submission date in subsection (B).~~

A. An individual who meets the eligibility requirements, as specified in R9-13-109(A), may apply for a hearing screening trainer certificate of completion by submitting a request to the Department, in a Department-provided format, that includes:

1. The individual's name, address, e-mail address, and telephone number;
2. If the individual is a licensed audiologist, as specified in R9-13-109(A)(1), the:
   a. Audiologist's license number, and
   b. Date of expiration;
3. If the individual is a registered nurse according to A.R.S. Title 32, Chapter 15, as specified in R9-13-109(A)(2), the:
   a. Registered nurse license number, and
   b. Date of expiration;
4. If the individual has completed 30-semester credits, as specified in R9-13-109(A)(3), all applicable academic transcripts demonstrating that the qualifying educational requirements have been met:
5. If the individual is a hearing screener who has maintained a hearing screener certificate of completion for the previous five years, as specified in R9-13-109(A)(4), the:
   a. Names of the school districts where the hearing screener provided hearing screenings, and
   b. Hearing screener's certification of completion date of expiration;
6. Whether the individual completed the hearing screenings, as specified in R9-13-109(A)(3); and
7. An attestation that:
   a. The applicant will comply with the requirements in R9-13-109, and

b. The information provided in the request for the hearing screening trainer certificate of completion is true and accurate; and

c. The individual's signature and date of signature.

B. Within 30 calendar days after the date the Department receives an individual's request for a hearing screening trainer certificate of completion, the Department shall send a notification to the individual regarding the information on how the individual may register to take hearing screening classroom instruction and written examination.

R9-13-111. Hearing Screening Trainer Instruction, Examination, and Observation

A. An individual requesting to become a hearing screening trainer shall complete the required classroom instruction, written examination, and observation within 160 calendar days from the date provided in the Department's notification, as specified in ~~R9-13-110(D)~~ R9-13-110(B).

B. An individual, who has received notification from the Department, as specified in ~~R9-13-110(D)~~ R9-13-110(B), shall attend classroom instruction provided by the Department or designee that includes:

1. Adult education learning strategies,
2. ~~Sensory~~ Hearing curriculum,
3. Hearing screening protocols, ~~confirm~~
4. Audiological equipment, and
5. Written examination.

C. An individual who completes classroom instruction and written examination, as specified in subsection (B), shall:

1. Pass a written examination with a score of 80% or more; and
2. ~~Obtain written confirmation from the Department or designee that indicates the individual's competency in the use of each type of audiological equipment in subsection (B)(4);~~
3. ~~3.~~2. Submit to the Department, in a Department-provided format, at least 30 calendar days before the date required in subsection (C)(2)(c), a request to schedule hearing screening training observation that includes:
   a. The individual's~~:~~ name, address, e-mail address, and telephone number;
      i. ~~Name,~~
      ii. ~~Address,~~
      iii. ~~E-mail address, and~~
      iv. ~~Telephone number;~~
   b. The date the individual passed the written examination in subsection (C)(1); and
   c. The date the individual is requesting the hearing screening training observation~~; and~~.
4. ~~Submit the request to take the hearing screening training observation 30 calendars days prior to the individual's requested schedule hearing screening training observation in subsection (3)(c).~~

D. ~~Within 10 calendar days from the date the Department receives an individual's request to schedule a hearing screening training observation, as specified in subsection (C)(3), the Department shall send a notification to the individual that:~~ If an individual participating in the hearing screening training observation, as specified in subsection (C)(2), passes with a score of 80% or more, the Department shall send the individual a hearing screening trainer certificate of completion within 10 calendar days after receiving notification that the individual has passed the hearing screening training observation.

~~1. The individual may register for hearing screening training observation, and~~

~~2. How the individual may register.~~

E. An individual, who ~~completes hearing screening training observation in subsection (D) shall:~~ does not score at least 80% on the second written examination, shall repeat the classroom instruction in subsection (C) before taking a third examination.

~~1. Pass the hearing screening training observation with a score of 80% or more; and~~

~~2. Obtain a trainer certificate of completion from the Department or designee.~~

~~**F.** Within 10 calendar days from the date an individual passed the hearing screening training observation with a score of 80% or more, the Department shall send the individual a trainer certificate of completion.~~

~~**G.** An individual, who does not score at least 80% on a written examination in subsection (D), may take a second written examination no later than 30 calendar days after having taken the first written examination.~~

~~**H.** If an individual does not score at least 80% on the second written examination, the individual shall repeat the classroom instruction in subsection (B) before taking a third written examination.~~

~~**I.** An individual who does not pass the written examination in subsection (H) shall not be issued a certificate of completion.~~

~~**J.** An individual, who does not pass a training observation in subsection (E), may take a second training observation no later than 60 calendar days after having taken the first training observation.~~

~~**K.** If an individual does not pass the second training observation, the individual shall repeat the classroom instruction in subsection (B) and written examination in subsection (C) before taking a third training observation.~~

~~**L.** An individual who does not pass the training observation in subsection (K) shall not be issued a certificate of completion.~~

F. If an individual does not score at least 80% on the:

1. Hearing screening training observation, as specified in subsection (D), may participate in a second hearing screening training observation no later than 60 calendar days after the first hearing screening training observation; or
2. Second hearing screening training observation, shall repeat the classroom instruction in subsection (B) before participating in a third hearing screening training observation.

~~M.~~**G.** If an individual does not complete the hearing screening training observation within 160 calendar days after the notification in ~~subsection (E)~~ subsection (D), the individual shall reapply for a hearing screening trainer certificate of completion, as specified in R9-13-110.

~~N. By October 1 of each year, if the Department accepts requests specified in R9-13-110(B), the Department will provide a list of Department-approved core curriculum and applicable material related to classroom instruction in subsection (B).~~

~~O.~~**H.** An individual, who does not pass the written examination or pass the hearing screening training observation may file an appeal according to A.R.S. Title 41, Chapter 6, Article 10.

R9-13-112. ~~Trainer Certificate of Completion Renewal~~ Repealed

~~A. A trainer's certificate of completion expires five years from the issue date specified on the certificate of completion.~~

~~B. Except as specified in R9-13-113(H), a trainer shall renew the trainer's certificate of completion every five years.~~

~~C. At least 60 calendar days before the expiration date of a certificate of completion, a trainer shall submit to the Department a renewal request in a Department-provided format that contains:~~

~~1. The trainer's:~~

~~a. Name,~~

~~b. Address,~~

~~c. E-mail address, and~~

~~d. Telephone number;~~

~~2. For each continuing education course specified in R9-13-113(B) and (C), the following:~~

~~a. The course title,~~

~~b. A course description,~~

~~c. The name of the individual providing the continuing education course,~~

~~d. The date the continuing education course was completed, and~~

~~e. The total number of continuing education hours attended;~~

~~3. For each hearing screening training specified in R9-13-109(C), the following:~~

~~a. Title of the classroom instruction, examination, or assessment provided, as applicable;~~

~~b. Date and location of the classroom instruction, examination, or assessment provided in subsection (a); and~~

~~c. Number of attendees;~~

~~4. An attestation that the trainer affirms:~~

~~a. The continuing education courses specified in subsection (2) are applicable and consistent with the Department's approved continuing education courses;~~

~~b. To provide, if available to the public, notice of hearing screening instruction, examination, or assessment of competency specified in R9-13-109(D) to the Department 30 calendar days prior to the trainer providing to individuals to become a screener; and~~

~~c. The information in the request for renewal is true and accurate; and~~

~~5. The trainer's printed name and date of signature.~~

~~**D.** Within 10 calendar days from the date a trainer submits a renewal request, the Department shall send the trainer a certificate of completion.~~

~~**E.** Except as specified in R9-13-113, a trainer who does not submit a trainer renewal request according to this Section 60 calendar days prior to the expiration date of the trainer's certificate of completion, the trainer's certificate of completion expires.~~

~~**F.** Except as specified in R9-13-113, a trainer who does not complete required continuing education specified in subsection (C)(2) shall apply for a trainer certificate of completion specified in R9-13-110 and R9-13-111.~~

R9-13-112. Vision Screener Qualifications

A. An individual may be a vision screener, if the individual:

1. Is an optometrist or ophthalmologist, or
2. Has a current vision screening certificate of completion, as specified in subsection (C).

B. An individual, who is not an optometrist or ophthalmologist, is eligible to become a vision screener, if the individual:

1. Is at least 18 years of age;
2. Has a high school diploma or a general equivalency diploma;
3. Has the ability to recognize a student's response using the recommended vision screening, as specified in Table 13.4;
4. Has completed classroom instruction provided by a vision screening trainer, including:
   a. Introduction to vision screening for children, including the:
      i. Anatomy, physiology, and development of the eye;
      ii. Signs and types of vision loss in children; and
      iii. Prevention of vision loss in children;
   b. Essentials for vision screening children, including:
      i. When, how, and on whom vision screening is performed;
      ii. How to set up a vision screening, including the selection of a method to use for vision screening and a location to conduct vision screening; and
      iii. Infection control;
   c. Vision screening protocols, including:
      i. Types of age-specific vision equipment;

ii. Proper vision screening techniques;

iii. Possible results of vision screening;

iv. Vision screener requirements, as specified in this Article;

v. Procedures for tracking students expected to receive vision screening and recording vision screening results;

vi. Identifying students who need a second vision screening; and

vii. Requirements in A.R.S. Title 36, Chapter 7.2, and requirements in this Article; and

d. Vision screening results, including documentation of:

i. Notification of and communication with the parents of students,

ii. The information that a parent of a student who does not pass a vision screening is requested to obtain from the student's specialist and provide to the student's school,

iii. Procedures for reporting vision screening results to the Department,

iv. When and to whom a student's vision loss is required to be reported, and

v. What resources are available to the parent of a student who does not pass a vision screening.

5. Obtains a score of at least 80% on an examination that covers the classroom instruction, as specified in subsection (B)(5); and

6. Demonstrates competency in the use of the visual equipment, as specified in subsection (B)(6).

C. When the Department receives notification that an individual has satisfied the requirements in subsection (B), from the vision screening trainer who provided the classroom instruction, written examination, and competency assessment, the Department shall issue to the individual a vision screening certificate of completion that includes:

1. The individual's name;

2. The information provided in R9-13-113(D)(2)(b), (f), and (g); and

3. The date the vision screening certificate of completion was issued.

D. Except as specified in A.R.S. § 36-899.10(B), a vision screener's certificate of completion expires four years from the issue date indicated on the vision screening certificate of completion.

E. Before the expiration date of a vision screening certificate of completion, a vision screener, who is not an optometrist or ophthalmologist and wants to renew a vision screening certificate of completion shall:

1. Complete instruction, as provided by a vision screening trainer or another Department-approved method related to:

a. Essentials for vision screening children, and

b. Vision screening protocols;

2. Obtain a score of at least 80% on an examination that covers the vision screening requirements in subsection (B)(5); and

3. Demonstrate competency in the use of the visual equipment consistent with the vision screening training received in subsection (B)(6); and

F. Within 30 calendar days after the Department receives notification that a vision screener has satisfied the requirements in subsection (E), the Department shall issue to the vision screener a renewal vision screening certificate of completion.

G. An individual who does not score at least 80% on the:

1. Initial written examination in subsection (B)(5), may retake the written examination; or

2. Second written examination, the individual shall repeat classroom instruction in subsection (B)(4) before taking a third written examination.

H. An individual who is not a vision screener:

1. May perform a vision screening, as specified in Table 13.4, under the supervision of a vision screener; and

2. Shall not perform a vision screening for a student who:

a. Did not pass an initial vision screening, or

b. Was not screened based on a condition identified in R9-13-103(G)(2).

~~R9-13-113.~~ ~~Trainer Continuing Education~~ Repealed

~~A.~~ ~~By January 1 of each calendar year, the Department shall provide a list of Department-approved continuing education courses.~~

~~B.~~ ~~Each calendar year, a trainer, who is not an audiologist, shall complete 10 continuing education units approved by the Department.~~

~~C.~~ ~~Every two calendar years, a trainer, who is an audiologist, shall complete 20 continuing education units approved by the Department.~~

~~D.~~ ~~A trainer shall report continuing education units completed in subsection (B) and (C) as required in a trainer renewal request specified in R9-13-112(C).~~

~~E.~~ ~~By November 1 of a calendar year or every two calendar years, as applicable, a trainer, who was prevented from completing the required continuing education units due to a personal illness or an immediate family member's illness during at least six continuous months of the preceding 12 months, may request to defer continuing education units by submitting to the Department:~~

~~1.~~ ~~A notification in a Department-provided format that contains:~~

~~a.~~ ~~The trainer's:~~

~~i.~~ ~~Name,~~

~~ii.~~ ~~Address,~~

~~iii.~~ ~~E-mail address, and~~

~~iv. Telephone number;~~

~~b. A statement regarding the trainer's personal or immediate family member's illness;~~

~~c. The number of continuing education units the trainer is requesting to defer;~~

~~d. The date submitted; and~~

~~e. An attestation that the trainer affirms the information provided in the request to deter continuing education is true and accurate; and~~

~~2. The trainer's printed name and date of signature.~~

~~**F.** If a trainer completed any continuing education units during a calendar year in subsection (B) or every two calendar years in subsection (C), as applicable, report the completed continuing education units specified in R9-12-112(C)(2).~~

~~**G.** A trainer who defers continuing education units shall obtain the deferred continuing education during the first 180 calendar days of the subsequent calendar year.~~

~~**H.** A trainer called to active military service shall:~~

~~1. Submit a written notice of renewal extension to the Department that includes:~~

~~a. The trainer's:~~

~~i. Name,~~

~~ii. Address,~~

~~iii. E-mail address, and~~

~~iv. Telephone number;~~

~~b. A statement stating the reason for the notice of renewal extension;~~

~~c. The trainer's signature, including date of signature; and~~

~~d. A copy of the trainer's deployment documentation;~~

~~2. Retain trainer certificate of completion for the term of service or deployment plus 180 calendar days;~~

~~3. Defer the requirement for completing the continuing education specified in R9-13-112 for the term of service or deployment plus 180 calendar days; and~~

~~4. Submit a renewal request according to R9-13-112 after the term of service or deployment plus 180 calendar days.~~

R9-13-113. Vision Screening Trainer Eligibility

A. An individual is eligible to be a vision screening trainer if the individual:

1. Is currently licensed in Arizona as an optometrist or ophthalmologist, according to A.R.S. Title 32, Chapter 16, and has completed at least 25 vision screenings within the 12 months before submitting the application in R9-13-114;

2. Is currently licensed as a registered nurse according to A.R.S. Title 32, Chapter 15 who is providing school health services and has completed at least 100 vision screenings within the previous 12 months from the date of submitting the application in R9-13-114;

3. Has completed at least 30-semester credits at an accredited college or university related to optometry, ophthalmology, or instruction of students with visual impairment, and 100 vision screenings within the previous 12 months from the date of submitting the application in R9-13-114, or

4. Is currently a vision screener who has maintained a vision screening certificate of completion for the previous five years and has completed at least 1,000 vision screenings within the previous five years from the date of the application in R9-13-114.

B. Before the expiration date of a vision screening trainer certificate of completion, a vision screening trainer is eligible to renew a vision screening trainer certificate of completion if the vision screening trainer demonstrates that the vision screening trainer provided at least ten vision screening trainings during the five-year period during which the certificate of completion was valid.

C. The scope of practice for a vision screening trainer includes:

1. Providing Department approved classroom instruction, as specified in R9-13-112(B)(4);
   a. Training individuals in vision screening skills, procedures, and techniques; and
   b. Observing and assessing individuals and vision screeners in the operations of vision equipment;
2. Administering a written examination that covers the applicable classroom instruction, as specified in R9-13-112(B)(5);
3. Assessing competency in the use of the applicable vision equipment, as specified in R9-13-112(B)(6);
4. Submitting to the Department, documentation of an individual's or vision screener's information for issuance of a vision screening certificate of completion, as specified in subsection (D)(2); and
5. If a scheduled vision screening training is available to the public, provide notice to the Department 30 calendar days prior to the training, indicating what, where, and when classroom instruction, examination, or assessment of competency are scheduled to be provided to individuals to become a vision screener.

D. A vision screening trainer shall:

1. Ensure that for an individual or vision screener:
   a. Seeking a vision screener certificate of completion, the topics of classroom instruction are consistent with R9-13-112(B)(4);
   b. Has a passing score of 80% on a written examination that covers the applicable topics of classroom instruction, as specified in R9-13-112(B)(5); and

c. Demonstrates competency, as specified in R9-13-112(B)(6); and

2. Submit the following information to the Department, for each individual or vision screener seeking a vision screening certificate of completion:

a. The name, address, e-mail address, and telephone number of the individual or vision screener;

b. The date the individual or vision screener completed the requirements in R9-13-112(B)(4), (5), and (6);

c. The address where the classroom instructions, examination, and assessment was held;

d. If applicable, the name of a sponsoring organization, such as a school, school district, or other public agency;

e. Documentation indicating when classroom instruction, examination, and assessment were provided.

f. The vision screening methods, in which the individual has demonstrated competency, as specified in Table 13.4; and

g. The vision screening trainer's name;

E. A vision screening trainer shall comply with:

1. A.R.S. § 36-899.10, and

2. Applicable requirements in this Article.

R9-13-114. ~~Requesting a Change~~ Repealed

~~A trainer requesting a change to personal information shall submit to the Department in a Department-provided format a written notice stating the information to be changed and indicating the new information within 30 calendar days after the effective date of the change.~~

R9-13-114. Vision Screening Trainer Certificate of Completion

A. An individual who meets the eligibility requirements, as specified in R9-13-113(A), may apply for a vision screening trainer certificate of completion by submitting a request to the Department, in a Department-provided format, that includes:

1. The individual's name, address, e-mail address, and telephone number;

2. If the individual is a licensed optometrist or ophthalmologist, as specified in R9-13-113(A)(1), the:

a. Optometrist or ophthalmologist license number, and

b. Date of expiration;

3. If the individual is a registered nurse according to A.R.S. Title 32, Chapter 15, as specified in R9-13-113(A)(2), the:

a. Registered nurse license number, and

b. Date of expiration;

4. If the individual has completed 30-semester credits, as specified in R9-13-113(A)(3), all applicable academic transcripts demonstrating that the qualifying educational requirements have been met;
5. If the individual is a vision screener who has maintained a vision screening certificate of completion for the previous five years, as specified in R9-13-113(A)(4), the:
   a. Names of the school districts where the vision screener provided vision screenings, and
   b. Vision screener's certification of completion date of expiration;
6. Whether the individual completed the vision screenings, as specified in R9-13-113(A)(4); and
7. An attestation that:
   a. The applicant will comply with the requirements in R9-13-113, and
   b. The information provided in the request for the vision screening trainer certificate of completion is true and accurate; and
   c. The individual's signature and date of signature.

B. Within 30 calendar days after the date the Department receives an individual's request for a vision screening trainer certificate of completion, the Department shall send a notification to the individual regarding the information on how the individual may register to take a vision screening classroom instruction and written examination.

R9-13-115. ~~Requirement for Screener or Trainer Certificate of Completion Issued Before Article Effective Date~~ Repealed

~~A.~~ ~~If a screener's certificate of completion expires before June 30, 2020, the screener whose certificate of completion includes pure tone audiometry or OAE and wishes to retain screener certificate of completion, shall complete training, examination, and assessment specified in R9-13-108 prior to the certificate's date of expiration.~~

~~B.~~ ~~If a screener's certificate of completion expires after June 30, 2020, the screener whose certificate of completion includes pure tone audiometry or OAE and wishes to retain screener certificate of completion, shall complete training, examination, and assessment specified in R9-13-108 prior to June 30, 2020.~~

~~C.~~ ~~A screener, whose certificate of completion includes both pure tone audiometry and OAE, shall renew current certificate of completion within 30 days prior to the expiration date of the certificate.~~

~~D.~~ ~~A trainer, who wishes to retain trainer certificate of completion and whose certificate of completion was issued before the effective date of this Article, shall submit a certificate of completion request specified in R9-13-110 no later than 30 days prior to November 2019.~~

R9-13-115. Vision Screening Trainer Instruction, Examination, and Observation

A. An individual requesting to become a vision screening trainer shall complete the required classroom instruction, written examination, and observation within 160 calendar days from the date provided in the Department's notification, as specified in R9-13-114(B).

B. An individual, who has received notification from the Department, as specified in R9-13-114(B), shall attend classroom instruction provided by the Department or designee that includes:

1. Adult education learning strategies,
2. Vision curriculum,
3. Vision screening protocols,
4. Vision equipment, and
5. Written examination.

C. An individual who completes classroom instruction and written examination, as specified in subsection (B), shall:

1. Pass a written examination with a score of 80% or more; and
2. Submit to the Department, in a Department-provided format, at least 30 calendar days before the date required in subsection (C)(2)(c), a request to schedule vision screening training observation that includes:
   a. The individual's name, address, e-mail address, and telephone number;
   b. The date the individual passed the examination in subsection (C)(1); and
   c. The date the individual is requesting the vision screening training observation; and

D. If an individual participating in the vision screening training observation, as specified in subsection (C)(2)(c), passes with a score of 80% or more, the Department shall send the individual a vision screening trainer certificate of completion within 10 calendar days after receiving notification that the individual has passed the vision screening training observation.

E. An individual, who does not score at least 80% on the second written examination, shall repeat the classroom instruction in subsection (C) before taking a third examination

F. If an individual does not score at least 80% on the:

1. Vision screening training observation, as specified in subsection (D), may participate in a second vision screening training observation no later than 60 calendar days after the first vision screening training observation; or
2. Second vision screening training observation, shall repeat the classroom instruction, as specified in subsection (B), before participating in a third vision screening training observation.

G. If an individual does not complete the vision screening training observation within 160 calendar days after the notification, as specified in subsection (D), the individual shall reapply for a vision screening trainer certificate of completion, as specified in R9-13-114.

H. An individual, who does not pass the examination or pass the vision screening training observation may file an appeal according to A.R.S. Title 41, Chapter 6, Article 10.

R9-13-116. Trainer Certificate of Completion Renewal

A. A training certificate of completion may be renewed by attending and completing a Department-approved refresher training course, either offered directly by the Department or by a trainer authorized under this Article, during the fifth year of certification from the date the preceding certificate was issued. Once a refresher training course is successfully completed, the five-year cycle begins again. If certification is not renewed within the required time period, the individual must attend the basic certification training course (i.e., a refresher course will not be sufficient).

B. A trainer shall submit the following to the Department, in a Department-provided format, at least 60 calendar days before the expiration date of the trainer's certificate of completion, which includes the trainer's name, address, e-mail address, and telephone number;

C. Within 30 calendar days from the date a trainer submits a renewal certificate of completion, the Department shall issue the trainer a certificate of completion

Table 13.1 Hearing Screening Population ~~(students)~~

A. Students Included in the Hearing Screening Population	
1. All grades, including preschool and kindergarten	Every student, within 90 school days after initial enrollment to school if the school does not have documentation of a previous hearing screening within the last 12 months.~~:~~ ~~a. Who is enrolled in special education, as required by A.R.S. Title 15, Chapter 7, Article 4 and A.A.C. R7-2-401;~~ ~~b. Who did not pass a hearing re-screening given to the student during the previous school year;~~ ~~c. For whom the school does not have any documentation that the student has previously had a hearing screening;~~ ~~d. Who is repeating a grade; and~~ ~~e. For whom one of the following requests a hearing screening:~~ ~~i. The student;~~ ~~ii. The student's parent;~~ ~~iii. A teacher;~~ ~~iv. A school nurse;~~ ~~v. A school psychologist, licensed according to A.R.S. Title 32, Chapter 19.1;~~ ~~vi. An audiologist, licensed according to A.R.S. § 36-1901;~~ ~~vii. A specialist;~~ ~~viii. A speech-language pathologist, licensed according to A.R.S. § 36-1901;~~ ~~ix. A medical physician, licensed according to A.R.S. Title 32, Chapter 13;~~

	~~x. An osteopathic physician licensed according to A.R.S. Title 32, Chapter 17.~~ Additional screening is applicable to every student if one of the following applies: a. The student receives or is being considered for special education services pursuant to A.R.S. Title 15, Chapter 7, Article 4, and A.A.C. Title 7, Chapter 2, Article 4, b. A teacher has requested a screening for the student; c. The student did not pass a hearing rescreening during the previous school year; or d. The student is repeating a grade.
2. Preschool	Every enrolled student
3. Kindergarten	Every enrolled student
4. Grade 1	Every enrolled student
~~5. Grade 2~~	~~Every enrolled student for whom the school does not have:~~ ~~a. Documentation that the student received and passed a hearing screening in or after grade 1, or~~ ~~b. Documentation that meets the requirements in subsection (B).~~
~~6.~~5. Grade 3	Every enrolled student
~~7. Grade 4~~	~~Every enrolled student for whom the school does not have:~~ ~~a. Documentation that the student received and passed a hearing screening in or after grade 3, or~~ ~~b. Documentation that meets the requirements in subsection (B).~~
~~8.~~6. Grade 5	Every enrolled student
~~9. Grade 6~~	~~Every enrolled student for whom the school does not have:~~ ~~a. Documentation that the student received and passed a hearing screening in or after grade 5, or~~ ~~b. Documentation that meets the requirements in subsection (B).~~
~~10.~~7. Grade 7	Every enrolled student
~~11. Grade 8~~	~~Every enrolled student for whom the school does not have:~~ ~~a. Documentation that the student received and passed a hearing screening in or after grade 7, or~~

	~~b. Documentation that meets the requirements in subsection (B).~~
~~12.~~8. Grade 9	Every enrolled student
~~13.~~9. Grades 10, 11, and 12	Every enrolled student for whom the school does not have~~:~~ ~~a. Documentation~~ documentation that the student received and passed a hearing screening in or after grade 9~~, or~~. ~~b. Documentation that meets the requirements in subsection (B).~~
B. Students Not Included in the Hearing Screening Population	
1. A student whose parent has objected to the student receiving a hearing screening, as specified in A.R.S. § 36-899.04. 2. A student who has been diagnosed as being deaf or hard of hearing. ~~1.~~3. A student who is at least 16 years of age and has requested not to receive a hearing screening according to A.R.S. § 36-899.01. ~~2.~~4. A student enrolled in a child care facility regulated pursuant to A.R.S. Title 36, Chapter 7.1~~, Child Care Programs~~.	

Table 13.2 Vision Screening Population

A.	**Students Included in Vision Screening Population**	
1.	All grades	Every enrolled student, within 90 school days after initial enrollment to school if the school does not have documentation of a previous vision screening within the last 12 months. Additional screening applicable to every student if one of the following applies: a. The student receives or is being considered for special education services pursuant to A.R.S. Title 15, Chapter 7, Article 4, and A.A.C. Title 7, Chapter 2, Article 4, and who has not been screened in the last year; b. A teacher has requested a screening for the student, and the student has not been screened in the previous year; or c. The student is not reading at the proficient level by the third grade pursuant to the state assessment required in ARS 15-741.
2.	Preschool	Every enrolled student, if initial entry
3.	Kindergarten	Every enrolled student, if initial entry
4.	Grade 3	Every enrolled student.
5.	Grade 7	Every enrolled student.
B.	**Students Not Included in Vision Screening Population**	
1.	A student whose parent objects to the student receiving a vision screening, as specified in A.R.S. § 36-899.10;	
2.	A student who has been diagnosed as being legally blind or having vision impairment;	
3.	A student enrolled in a private education program, as specified in A.R.S. § 36-899(5);	
4.	A student who is an "emancipated person" defined in A.R.S. § 12-2451 and objects to receiving a vision screening; or	
5.	A student enrolled in a child care facility regulated pursuant to A.R.S. Title 36, Chapter 7.1.	

Table 13.3 Hearing Screening Requirements

<table>
<tr><th>Screening Type</th><th>Pure Tone Audiometry</th><th>Pure Tone Audiometry/ Tympanoetry</th><th>Otoacoustic Emissions</th></tr>
<tr><td rowspan="2">Grade Level</td><td rowspan="2">All students who are cognitively and behaviorally able to participate.</td><td rowspan="2">Tympanometry may be added to pure tone screenings at the discretion of the screening program.</td><td>Initial Entry to preschool or kindergarten</td></tr>
<tr><td>Students who are cognitively or behaviorally limited in their ability to participate in pure tone screenings</td></tr>
<tr><td rowspan="3">Passing Criteria</td><td colspan="3">Screen each student’s ears, with the response recorded at the following criteria:</td></tr>
<tr><td rowspan="2">1000 Hz at 20 dB HL,
2000 Hz at 20 dB HL,
and
4000 Hz at 20 dB HL;</td><td>The height of the peak acoustic immittance is > 0.3 mmho, mL, or compliance; or
The tympanometric width or gradient is < 250 daPa;
and</td><td rowspan="2">The display screen of the otoacoustic emissions device indicates results that the student has passed</td></tr>
<tr><td>1000 Hz at 20 dB HL,
2000 Hz at 20 dB HL,
and
4000 Hz at 20 dB HL;</td></tr>
<tr><td colspan="4">Otoacoustic Emissions Screening</td></tr>
<tr><td colspan="4">A. Otoacoustic Emissions devices may be used to screen the following populations:
1. Students who are between the ages of one year but less than six years of age who cannot participate in pure tone hearing screening.
2. Students who are six years of age and older who cannot participate in pure tone hearing screenings, for example children with special healthcare needs and children with developmental delays or disabilities.
B. Otoacoustic emissions screenings do not measure the child’s ability to detect or respond to sound but measure the response of inner ear structures to auditory stimulation. Therefore, otoacoustic emissions</td></tr>
</table>

screening should not be used in lieu of pure tone audiometry screening for those students that are able to participate.

Table 13.4 Vision Screening Requirements

<table>
<tr><td>Screening Type</td><td>Distance and Near Visual Acuity</td><td>Stereoacuity</td><td>Color Vision Deficiency</td></tr>
<tr><td rowspan="4">Grade Level</td><td>Initial Entry to Preschool or Kindergarten (if able to participate)</td><td>Initial Entry to Preschool or Kindergarten (if able to participate)</td><td rowspan="4">Initial Entry to Preschool or Kindergarten</td></tr>
<tr><td>Grade 3</td><td rowspan="3">Grade 3</td></tr>
<tr><td>Grade 7</td></tr>
<tr><td>A student who is not reading at a proficient level by the third grade or who meets the criteria in Table 13.2 (A)(1)</td></tr>
<tr><td>Passing Criteria</td><td>Able to identify the majority of the optotypes at the:
1. 20/50 line if 3 years old,
2. 20/40 line if 4 years old,
3. 20/32 line if 5 years or older.</td><td colspan="2">According to the manufacturer’s criteria</td></tr>
<tr><td colspan="4">Instrument-based Vision Screening</td></tr>
<tr><td colspan="4">A. Autorefractors/photoscreeners may be used to screen the following populations:
1. Students who are between the ages of one year but less than six years of age who cannot participate in optotype visual acuity screening.
2. Students who are six years of age and older who cannot participate in optotype visual acuity screenings, for example, children with special healthcare needs and children with developmental delays or disabilities.
B. Autorefractors/photoscreeners do not measure visual acuity but identify the presence of risk factors that could lead to problems with visual acuity. Therefore, Autorefractors/photoscreeners should not be used in lieu of near or distance optotype visual acuity screening for students that are able to participate.
C. A student has passed an instrument-based vision screening if the display screen of the device indicates the results as passed.</td></tr>
</table>

ARIZONA DEPARTMENT
OF HEALTH SERVICES

TITLE 9. HEALTH SERVICES

CHAPTER 13. DEPARTMENT OF HEALTH SERVICES
HEALTH PROGRAM SERVICES

ARTICLE 1. HEARING SCREENING

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

March 2024

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT
TITLE 9. HEALTH SERVICES
CHAPTER 13. DEPARTMENT OF HEALTH PROGRAM SERVICES–
HEALTH PROGRAM SERVICES
ARTICLE 1. HEARING SCREENING

1. An identification of the rulemaking:

Arizona Revised Statutes (A.R.S.) § 36-899.01 through 36-899.10 authorizes the Arizona Department of Health Services (Department) to adopt rules establishing standards and requirements for hearing screening in Arizona schools and vision screening services in Arizona public and charter schools. The Department has adopted rules relating to hearing screening services in Arizona Administrative Code, Title 9, Chapter 13, Article 1. Laws 2019, Ch. 316, establishes A.R.S. § 36-36-899.10, which requires and authorizes the Department to adopt rules for vision screening services. After receiving approval from the governor's office in accordance with A.R.S. § 41-1039(A), on May 24, 2023, the Department has revised the rules to establish requirements for schools providing vision screening services, standards for vision screening training to school nurses, volunteers, and other school personnel; vision screening methodology; and provide for a collection of school vision screening data for review and analysis by researchers, public agencies, and other interested organizations. Furthermore, the Department has amended the current hearing screening rules to address issues identified in a five-year review report, improve the effectiveness of the hearing screening rules, reduce the regulatory burden, and align the current rules with the new vision screening rules. The current rules set requirements for Arizona schools to provide health screening services to enrolled students, allowing for early identification of hearing loss and appropriate intervention to eliminate or reduce negative effects on a child's learning and development. As part of the changes in this rulemaking, the Department will be amending the title of 9 A.A.C. 13, Article 1 to "Hearing Screening and Vision Screening" to implement the new statutory requirements related to vision screening and amend the current rules related to hearing screening.

2. Identification of the persons, who will be directly affected by, bears the costs of, or directly benefits from the rules:

a. The Department
b. School Districts and Charter Schools
c. Individuals Who Wish to be a Vision Screener or a Vision Screening Trainer
d. Hearing Screeners and Hearing Screening Trainers
e. Specialists

f. Enrolled Students and Parents of Enrolled Students

g. The General Public

3. Cost/benefit analysis:

This analysis covers the cost and benefits associated with adopting new rules to implement vision screening in Arizona public and charter schools and amending current rules related to hearing screening services to align with the new vision screening rules. The annual cost and revenue changes are designated as minimal when $1,000 or less, moderate when between $1,000 and $10,000, and substantial when $10,000 or greater in additional costs or revenues. Costs are listed as significant when meaningful or important, but not readily subject to quantification.

The Department

The current rules in 9 A.A.C. 13, Article 1 establish a Sensory Screening Program for hearing screening and the new rules establish criteria and requirements for Arizona schools to provide vision screenings to students. Some schools have already implemented vision screenings in their school Sensory Screening Program on a volunteer basis. A.R.S. § 36-899.10(H) requires the Department to adopt rules "that may not require materials and equipment specific to any one provider and shall include, where consistent with the requirements of this section, feedback from the public education programs required to implement the vision screenings. Rules adopted to carry out subsection A of this section shall be done in consultation with the department of education, recognized nonprofit organizations that provide free vision screening services, training, grants for vision screening services, eyeglasses or examinations, and ophthalmologists, optometrists, school nurses, pediatricians and school administrators." Drafting the new rules has required the Department's resources to amend, repeal, and establish rules in R9-13-101 through R9-13-116. In this rulemaking, the Department has simplified sections, removed duplicative or unnecessary language, and aligned the new vision screening rules with current hearing screening rules throughout Article 1. The Department is repealing the current R9-13-114 for requesting a change due to the fact that a screener or trainer can contact the Department via phone or email to update their contact information and this process is not necessary to be promulgated in the rule. In addition, the Department is simplifying the current reporting requirements so that only necessary information is documented and reported. The Department expects to incur up to minimal costs to have the database updated to add information about vision screening and the type of certification requirements and qualifications to become a vision screener or a vision screening trainer.

To provide adequate coverage for the expansion of the Sensory Screening Program and adding vision screening services, the Department anticipates hiring one new full-time employee (FTE) to assist in implementing the new vision screening rules. The new FTE will be a Health Program Manager II, with an

average salary of $55,000, and whose primary responsibilities will include supporting screener training, and providing sovereign and technical assistance for the sensory equipment loan program. The new staff will require new computers and software licenses, as well as a desk and cell phone. Overall, the Department expects to incur moderate costs related to drafting and promulgating the new rules, but believes the benefit of having new rules over time will exceed any cost incurred.

As of the 2022-2023 school year, the Sensory Screening Program provided health services to over 3,000 Arizona public, charter, and private schools. In the 2022-2023 school year, 1780 schools reported that a total of 545,411 students in kindergarten through twelfth grade received at least one hearing screening during the school year. Of those students who received hearing screenings, 781 students were newly identified as having hearing loss. As of December 2023, 4270 hearing screening trainers and screeners are listed in the Sensory Screening Program database. Now that vision screening is formally being added to the Sensory Screening Program, the Department anticipates spending a moderate amount of additional time issuing new vision screener and vision screening trainer certificates of completion to qualifying individuals.

The new vision screening rules and amendments to the current hearing screening rules include updating rules to allow for documentation to be submitted electronically to the Department. By moving to an electronic database, the Department expects to increase productivity and processing time. Eliminating the amount of costs related to printing and mailing is expected to reduce costs incurred by the Department. Due to moving everything to the electronic route, the Department expects to incur up to minimal costs for administrative support to update and maintain the Sensory Screening Program website, forms, and related resources and documents. However, since the Department has already been using an in-house processing system for issuing the certificates of completion for hearing screenings and hearing screening trainers, the Department expects additional costs from the new rules to be none-to-minimal for adding vision screening to the Sensory Screening Program. Furthermore, the Department expects that the number of vision screeners and vision screening trainers will be similar to the number of hearing screeners and hearing screening trainers, since most screeners are school nurses or volunteers interested in performing both services. Allowing screeners and trainers to be able to access updated vision and hearing screening information through the Department's electronic sources, is estimated by the Department to be a significant benefit to affected persons. Additionally, the Department anticipates spending less time responding to calls and questions about the new rules after an initial period of educating affected persons about the new rules. The Department expects that its greatest cost will come from Department personnel and resources used to provide training to individuals who wish to become either a vision screener or a vision screening trainer, and individuals who wish to renew their certificate of completion.

To minimize costs related to implementing new vision screening services in the already established Sensory Screening Program, the Department has awarded a contract with a statewide training vendor to coordinate and implement the training of trainers and screeners. In other words, the Department is working with a contractor to establish a free statewide hearing screening and vision screening training program to carry out requirements as prescribed in 9 A.A.C 13, Article 1. The Sensory Screening Program receives no state funding each year; however, a significant amount of money from the Title V Maternal and Child Health Block Grant[1] is allocated to the Sensory Screening Program. The Department believes it will receive a significant benefit for having rules that are more effective and allow for formalized vision screenings amongst Arizona schools to detect early vision loss. Additionally, the Department believes the new rules ensure enrolled students shall receive quality vision screenings and early intervention services if needed. Overall, the Department expects schools to incur minimal-to-moderate costs to incorporate vision screening in alliance with the new rules and statutes.

To support the use of appropriate tools for vision screening, the Department utilized donations provided for this purpose, to supply schools with "vision screening kits". This distribution will continue as future funding and donations allow. Each vision screening kit has a minimal cost of approximately $382.60 and is comprised of a Supplemental Screening Package (near vision eye charts; occluder glasses, stereopsis test, color deficiency test); LEA Symbols Chart; SLOAN letter chart; hand pointers; tape measures; and stickers. To date, the donation checks for these vision screening kits have come from the Vitalyst Health Foundation, with monies collected from the Technical Assistance Partnership of Arizona, Virginia G. Piper Charitable Trust, Arizona Community Foundation, and the Baptist Hospitals and Health Systems Legacy Foundation. Autorefractors and photoscreeners are not included in the donated vision screening kits provided to the school. However, the schools may rent this equipment from the Department upon request. The Department expects that consolidating, restructuring, and adding new rules will provide a significant benefit to the Department by having rules that are more clear, concise, and understandable. In addition, the Department believes it will receive a significant benefit from having more effective rules, and no longer have obsolete requirements and antiquated language and definitions.

School Districts and Charter Schools

The current rules prescribed in 9 A.A.C 13, Article 1 only apply to hearing screening services, and require a school administrator to ensure that the school provides hearing screenings for students enrolled in the school. Hearing screening services are required by statute for all Arizona schools,

[1] https://www.hhs.gov/guidance/document/title-v-maternal-and-child-health-services-block-grant-states-program-guidance-and-forms-2#:~:text=As%20one%20of%20the%20largest,special%20needs%2C%20and%20their%20families

including private schools. Whereas the new vision screening services are only required to be provided by Arizona public school districts and charter schools. Amendments have been made to the current rules to simplify language, remove duplicative requirements, obsolete rules, and definitions, and incorporate the new vision screening rules in alignment with current hearing screening rules. The new vision screening rules add requirements for a school administrator to include vision screening services for students enrolled in the school, as specified in the new Table 13.4. To have the new vision screening rules align better with the current hearing screening rules, the Department has amended and simplified the language in Table 13.1 for the hearing screening student population and created a new Table 13.3 for hearing screening requirements, while removing language related to hearing screening requirements from sections in the rules since it has been consolidated into the new Table 13.3. The new vision screening rules establish and identify many requirements in R9-13-101 through R9-13-116. Terms and definitions in R9-13-101 were amended to clarify terminology applicable to both hearing screening and vision screening, and additional definitions related to vision screening were created. For example, the definition of the term, "screener" was amended to apply to both hearing screening and vision screening. The amended rules in R9-13-102 identify the vision screening student population and clarify who may be exempt from a vision screening. Other changes were made in R9-13-102 to clean up and simplify language related to hearing screening. The Department estimates that a school may incur a minimal-to-moderate costs for implementing the new vision screening requirements. Schools that already provide vision screenings may incur fewer (lesser) costs as a result of these rules. Overall, schools should receive a significant benefit for providing vision screening services to students, identifying students who have vision loss, and providing early intervention services. Studies show that students whose vision needs are met are less likely to fall behind in school, show behavior problems in the classroom, and lag behind other students[2].

The hearing screening student population, as prescribed in Table 13.1, requires a total of seven grade levels to be screened, in addition to students outside of those parameters who may need an additional hearing screening. The vision screening student population consists of three required grade levels as well as students in other grade levels who meet the criteria for needing an additional vision screening. Therefore, the required vision screening population is about half of the required hearing screening population. The Department anticipates that about half as many students will receive a vision screening compared to the number of students receiving a hearing screening, once vision screening services are provided in schools. Currently, many Arizona schools offer vision screening services on a volunteer basis. It is expected that many certified hearing screeners are, or, may become a certified vision screener. For schools that may be short-staffed and need an additional vision screener, school

[2] https://preventblindness.org/vision-screening-guidelines-by-age/

administrators have reported to the Department that they plan to either contract with a certified vision screener for a moderate cost to come in and perform screenings on students or contact a local nonprofit organization (i.e. Lions Club) to volunteer to perform free vision screenings on students. Additionally, a school administrator may request parents and/or school staff to volunteer to assist the certified vision screener with the vision screenings at the school. Many vision screeners and vision screening trainers provide services voluntarily. In the 2022-2023 school year, 231,109 students received a vision screening, and 4,919 received prescription glasses for the first time after screening.

The Department amended the rules in R9-13-103 to add requirements related to vision screening for school administrators to verify a vision screener's certificate of completion before allowing the vision screener to provide vision screening services to students. In addition, new requirements in R9-13-103 were added for vision screeners to verify developmental and age-appropriate visual equipment before vision screening. These requirements allow school administrators to ensure vision screeners have proper credentials and that students who receive vision screenings are evaluated with the correct visual equipment. While some schools have already implemented vision screening services, the new rules and statutes ensure schools provide required vision screenings as prescribed in the 9 A.A.C. 13, Article 1 rules. The Department anticipates that schools will receive a significant benefit for having a student's vision screened by qualified vision screeners using proper visual equipment when determining whether or not a student may have vision loss.

In R9-13-104, the amended rules identify the criteria for passing a vision screening and create requirements for school administrators to ensure that students who do not receive a vision screening, when expected, are rescheduled for an initial vision screening. The Department anticipates that having to reschedule students who did not receive an initial vision screening could cause schools to incur a minimal-to-moderate cost since the number of students rescheduled is limited to a small number and may require a vision screener to come to the school to perform the vision screenings on enrolled students.

The amendments made in R9-13-105 establish the reporting requirements for vision screening in conjunction with the current hearing screening rules. The new requirements identify that a school administrator shall notify parents of information regarding their student's vision screening which is to be conducted at the school, as well as the parent's right to object to their student receiving vision screening pursuant to A.R.S § 36-899.10(F). If a student was excluded from a vision screening, a school administrator shall notify the parent with the reasoning as to why the student did not receive a vision screening. If a student did receive a vision screening and does not pass, a school administrator shall provide notification to the student's parent(s) of the type of vision screening the student received, the vision screening results, and the student is being recommended to be seen by a specialist. In addition, the

new vision screening rules require a school administrator to record copies of the written diagnosis received from a specialist regarding a vision examination. Similar record reporting requirements for a school administrator regarding hearing screening are already in place. The record and reporting requirements consist of a streamlined electronic process. The Department expects adding records and reporting requirements related to vision screening will have a minimal impact on school administrators, and the Department anticipates that these changes may provide a significant benefit to a school by identifying students who may have vision loss and need early intervention. For students, who do not have vision loss, vision screenings ensure that a student's eyesight has been checked and is in healthy condition.

Equipment standards in R9-13-106 were amended to include vision equipment requirements and verify the calibration is up-to-date according to manufacturer guidelines. The new rules require a vision screener to ensure the vision equipment is used appropriately based on the age and developmental abilities of the student. Charter schools and school districts may incur a minimal one-time cost of $300 to $500 for the required vision screening equipment to test distance visual acuity, near visual acuity, stereoacuity, and color vision deficiency. However, the Department anticipates that schools will receive a significant benefit for providing vision screenings with quality equipment. Rules in R9-13-107 for records and reporting requirements were amended to clarify and specify the requirements applicable to hearing screening or vision screening, and establish requirements for what a school administrator shall obtain and record for vision screenings. Similar to the hearing screening rules, an administrator shall obtain the vision screener's license number, if an optometrist, ophthalmologist, or a registered nurse; or a copy of the vision screener's certificate of completion. In addition, the administrator shall obtain information about each student's vision screening and keep that information on file for at least three years. The Department estimates that these changes may provide a significant benefit to a school by having clearer reporting requirements and having a copy of the report available for reference and/or other school purposes.

The Department estimates that schools will incur minimal-to-moderate administrative costs to implement the new vision screening rules into the current Sensory Screening Program since the new vision screening requirements are similar to current hearing screening requirements. Most Arizona schools are already in compliance with the hearing screening rules, specifically related to maintaining hearing screening records, adding requirements for vision screening should be a minimal-to-moderate cost. Additionally, as mentioned before, some schools have already begun providing vision screening services to students and will need to ensure compliance with the requirements established in this Article. The Department believes creating new rules for schools to provide vision screening services and

amending current hearing screening rules to be more clear, concise, and understandable is expected to benefit schools significantly.

Individuals Who Wish to be a Vision Screener or a Vision Screening Trainer

The Department is promulgating rules for vision screeners and vision screening trainers, pursuant to A.R.S. § 36-899.10. New vision screening requirements specify the individuals who may become vision screeners; the requirements for classroom instruction; establish rules on vision screening training and certification; and add requirements for individuals to demonstrate competency using vision equipment. The new rules relating to becoming a vision screener and/or a vision screening trainer are in R9-13-112, *Vision Screener Qualifications*; R9-13-113, *Vision Screening Trainer Eligibility*, R9-13-114, *Vision Screening Trainer Certificate of Completion*; and R9-13-115, *Vision Screening Trainer Instruction, Examination, and Observation*. R9-13-116, *Trainer Certificate of Completion Renewal*, is also related to the new requirements for a vision screening trainer, however, this new Section also includes the hearing screening trainer renewal requirements since the requirements for both are aligned. The new vision screening rules are related to preparing and providing vision screenings, including criteria for determining the proper visual equipment to use. In promulgating the rules, the Department identified standards for visual equipment to be used during vision screenings, consistent with national standards and best practices. Other Sections in the Article were amended to add vision screening requirements in areas that also cover hearing screening.

R9-13-104 was amended to identify criteria for vision screeners to determine if a student passed the vision screening. In R9-13-105(I) through (P) new requirements for notification and follow-ups regarding vision screenings were established, in alignment with the hearing screening notification and follow-up requirements in R9-13-105(A) through (H). Amendments were made in R9-13-106 to require calibration setting standards for vision equipment if required by the manufacturer, and to ensure that the vision screener is using the appropriate vision screening equipment based on the student's age and development. In R9-13-107(D) through (G), record and reporting requirements related to vision screening, were established in alignment with the current hearing screening record and reporting requirements in R9-13-107(A) through (C). A vision screener shall provide an administrator with the vision screener's license number, if an optometrist, an ophthalmologist, or a registered nurse, or a copy of the vision screener's certificate of completion. In addition, the vision screener shall provide the administrator with information about each student's vision screening.

As required by R9-13-113, an individual may be a vision screener, if the individual is an optometrist or ophthalmologist, or if the individual is at least 18 years old, has a high school diploma, can recognize a student's response using the recommended vision screening, completes classroom instruction

provided by a vision screening trainer, passes the examination that covers the classroom instruction and demonstrates competency in using vision equipment. The Department will issue a vision screening certificate of completion after the individual completes the classroom instruction and passes the examination. An individual may be a vision screener trainer if the individual: is currently licensed in Arizona as an optometrist or ophthalmologist, according to A.R.S. Title 32, Chapter 16, and has completed at least 25 vision screenings within the last 12 months; is currently licensed as a registered nurse according to A.R.S. Title 32, Chapter 15 who is providing school health services and has completed at least 100 vision screenings within the previous 12 months from the date of submitting the application in R9-13-114; has completed at least 30-semester credits at an accredited college or university related to optometry, ophthalmology, or instruction of students with visual impairment, and 100 vision screenings within the last 12 months; or is currently a vision screener who has maintained a vision screening certificate of completion for the last five years and has completed at least 1,000 vision screenings within the last five years. An individual seeking to become a vision screening trainer must complete required classroom instruction, a written examination, and observation within 160 calendar days from the Department's notification. The classroom instruction includes adult education strategies, vision curriculum, screening protocols, equipment, and a written examination. After completing the instruction and examination, the individual must pass with a score of 80% or more, submit a request for a training observation, and, upon passing the observation, receive a vision screening trainer certificate. If an individual does not pass the second examination, they must repeat the classroom instruction before a third attempt. If unsuccessful in the vision screening observation, the individual may have a second attempt within 60 days or repeat the instruction before a third attempt. Failure to complete the observation within 160 days requires reapplication. Individuals not passing the examination or observation may appeal according to A.R.S. Title 41, Chapter 6, Article 10.

The previous R9-13-115 included effective dates regarding the hearing screening rules, which are now past and obsolete. Therefore, this section was repealed and in place, a new section was established to create requirements for training individuals seeking an initial trainer certificate of completion in vision screening, instruction, examination, and observation. The new rules include the types of classroom instruction that an individual shall attend to become a vision screening trainer and obtain the certificate of completion. The Department estimates that individuals who wish to become a vision screening trainer may incur minimum costs to comply with the new rules, but will receive a significant benefit from having minimum standards in place to perform a thorough and valid vision screening for students.

Rules for renewing a certificate of completion for both a hearing screening trainer and a vision screening trainer were moved to R9-13-116 and rewritten to be more clear, concise, and understandable.

A training certificate of completion can be renewed by completing a Department-approved refresher training course during the fifth year of certification. The renewal cycle starts again after successfully finishing the refresher course. If certification is not renewed within the specified time, the individual must attend the basic certification training course; a refresher course is not sufficient. Trainers seeking renewal must submit required information to the Department at least 60 days before the expiration date. The Department will issue a renewed certificate of completion within 30 days of receiving the renewal submission. The Department believes that trainers may incur up to minimum costs to renew their certificate of completion every five years but receive a significant benefit from taking a refresher course to be up to date with new screening methodologies.

Overall, the Department anticipates that vision screeners and vision screening trainers may incur minimal costs to become certified, but will receive a significant benefit for being trained well enough to provide thorough and accurate vision screenings on children enrolled in school. With many schools already providing vision screening services as part of the Sensory Screening Program on a volunteer basis, there are already many certified vision screeners. Since the new rules and regulations require all schools to provide vision screening services, additional screeners will be needed, and they will need to have a valid certificate. Having rules that are current with national standards and best practices is expected to provide additional benefits to screeners who focus on providing quality vision screenings to students, especially when a student with vision loss is identified and is provided early intervention services. These rules are expected to benefit individuals and vision screening trainers by aligning with national standards and best practices, making the rules more effective, clear, concise, and understandable.

Hearing Screeners and Hearing Screening Trainers

The current rules in Chapter 13, Article 1 establish requirements for hearing screening services in schools and were amended to align with the new vision screening requirements, further amendments were made to update the current hearing screenings to be clearer, more understandable, and remove unnecessary burdensome requirements. The Department renamed the titles of Sections R9-13-108 through R9-13-111 to specify that the rules only apply to hearing screeners or hearing screening trainers. In this rulemaking, the Department is repealing R9-13-113, which sets unnecessary and burdensome rules for continuing education unit (CEU) requirements. Four definitions in R9-13-101 directly relate to the continuing education requirements in this Chapter and therefore are no longer necessary once this Section is removed. Without the requirement for CEUs, hearing screeners and hearing screening trainers may have more flexibility in how they manage their time and resources. Hearing screeners and trainers are expected to experience minimal-to-moderate cost savings since they won't have to invest in specific CEU courses or workshops to fulfill requirements. This can be particularly beneficial for individuals who may

face financial constraints or work in settings where budgetary considerations are a concern. Hearing screeners and trainers could potentially dedicate more time to gaining practical experience and applying their skills in real-world settings rather than spending time on formalized continuing education courses. Without the administrative burden of tracking and fulfilling CEU requirements, hearing screeners may experience increased efficiency in managing their professional development. This could lead to more time being devoted to their primary responsibilities. Therefore, the Department estimates that hearing screeners and hearing screening trainers will receive a significant benefit for not having to complete CEU requirements.

In R9-13-106(2)(b), the Department is updating the incorporation by reference for standards to calibrate a tympanometer, which is currently an outdated version and needs to be updated to ANSI/ASA S3.39-1987 (R2020). Furthermore, the Department is correcting cross-references and grammatical errors throughout the Article. In R9-13-107, the Department is updating the timeframe for hearing screenings to be done within the first 90 school days of the school year, rather than within 45 calendar days. This change would align with new vision screening requirements and allow more time for schools to complete the required hearing screening on each student who needs to be screened for hearing. In R9-13-108, the Department is removing requirements associated with continuing education, which requires the Department to provide a list of Department-approved CEU courses by January 1st of each calendar year. Since the Department implemented the CEU requirements at 25 A.A.R. 1827, effective July 2, 2019, the Department has received several written criticisms about the rules being burdensome and unclear. Comments from the public have indicated that continuing education course requirements can be financially burdensome and time-consuming. In addition, the requirement for CEUs is not specifically authorized in statute, therefore, pursuant to A.R.S. § 41-1030, the Department does not have the authority to implement this requirement. The Department believes that hearing screeners and hearing screening trainers would receive a significant benefit from not having CEU requirements for screeners.

In R9-13-109, the Department is expanding the eligibility criteria for hearing screening trainers to allow a registered nurse according to A.R.S. Title 32, Chapter 15 to be eligible to become a hearing screening trainer if they have completed at least 100 hearing screenings within the last 12 months. Other amendments in R9-13-109 were made to make the rules more clear, concise, and understandable. The Department is decreasing the eligibility requirements for hearing screeners to become trainers including decreasing the required 3,000 hearing screenings within the previous five years to 1,000 hearing screenings. Not only does this change minimize the requirements and provide more flexibility to hearing screening trainers, but it also aligns with the new requirements for a vision screening trainer. In addition, the Department is amending the rules in R9-13-109 to remove the timeframe requirement for classroom

instruction, so that only the required material is regulated by the rules. Other rules related to hearing screening are being amended to reduce regulatory requirements and make the rules more clear, concise, and understandable.

Overall, the Department anticipates that hearing screeners and hearing screening trainers will significantly benefit from having rules that are easier to understand and that are less restrictive. In addition, having fewer requirements to become a hearing screening trainer ensures more equitable access to trainers in rural areas. Making the hearing screening requirements minimal and in alignment with the new vision screening rules allows for better consistency and understandability for individuals who are both a hearing screener and a vision screener.

Specialist

In the current rules, the definition of a "specialist" includes licensed audiologists and doctors of medicine who specialize in ear, nose, and throat. The amended definition of a "specialist" adds a licensed optometrist or ophthalmologist according to A.R.S. Title 32, Chapter 16 who specializes in eye care. This change in the rule allows for the term specialist to apply to both hearing screening and vision screening rules, and specify that an optometrist or ophthalmologist may be a vision screener. The Department anticipates optometrists, ophthalmologists, and medical doctors who specialize in eye care may see a moderate increase in revenue since the new rules establish vision screening in schools and there may be more findings of early-onset vision loss in students, resulting in the need to be seen by a specialist. In R9-13-105, the rules were amended to require a school administrator to provide parents with a referral for their student to receive a vision screening by a specialist if a student did not receive an initial vision screening at the school due to physical limitations, or did not pass an initial vision screening. R9-13-105 also specifies what information about a student's eye examination from a specialist should be provided to the school, including the student's name, name of the specialist, the date the specialist performed the services, the type of services provided, and if applicable, the results of the examination of the student's eyes, diagnosis, whether there is vision loss and recommendations for treatment. The Department anticipates a moderate increase in revenue for specialists from parents who respond to the school administrator's request to have a student receive an eye examination by a specialist, and schedule appointments for their children. The Department does not anticipate this new rule to be burdensome for specialists. Overall, the Department estimates that specialists will receive a moderate benefit from the new rules by having an increased number of referrals due to additional children receiving vision screenings.

Enrolled Students and Parents of Enrolled Students

The student populations to be screened for hearing are outlined in Table 13.1, and the students who are to be vision screened are prescribed in the new Table 13.2. The Department anticipates Arizona students to benefit from school vision screenings in compliance with the criteria, standards, and requirements established in the new vision screening rules. Reliable school vision screenings enable more students to develop their academic, social, and communication skills by promoting early intervention for eye conditions and vision loss. The new rules establish requirements to notify parents regarding the student's vision screening. The new requirements in R9-13-105 specify that a school administrator is required to notify parents of students when a vision screening is scheduled in a school and inform parents that they have a right to object to their student receiving a vision screening by submitting the document specified in R9-13-102 to the school administrator. Additionally, R9-13-105 clarifies that the parent(s) are notified of vision screening results (if the student receives a vision screening). If a student does not receive a vision screening due to an existing physical or behavioral limit in the student's ability to adequately respond to vision screening, the student's parent(s) are to be informed immediately to ensure the student does not suffer from prolonged deterioration related to the physical or behavioral limit identified by the screener. Parents of enrolled students may incur minimal costs related to care and treatment if the parent's enrolled child is referred to see a specialist and there is a diagnosis. However, the Department anticipates that this change will provide a significant benefit by improving the potential for early identification of vision loss and intervention.

The Public

The Department anticipates that the clarity of the new rules with respect to vision screening requirements based on national standards and best practices; qualified vision screeners and screening trainers; equipment standards consistent with national standards; and follow-up notifications to parents will provide a significant benefit to the general public. In addition, the Department expects that the quality of vision screenings will increase, and there may be an increased number of students identified with vision loss who may need early intervention services. The Department anticipates that better trained vision screeners may reduce the number of false positive referrals of students and ensure that a student who may be experiencing early onset vision loss is not missed in a vision screening. The Department believes that Arizonans in general will benefit from students who receive early intervention services to become successful and contributing members of the community as adults. A component of being successful in school depends on the student's ability to see clearly. According to Prevent Blindness America[3], one in four school-aged children have undetected and untreated vision disorders that can interfere with learning and development. In the United States, millions of students in elementary schools

[3] https://preventblindness.org/vision-screening-guidelines-by-age/

have vision problems that go undetected and untreated. Not being able to see clearly may potentially slow a student's ability to learn. Without early detection and treatment, vision problems may lead to permanent vision loss, learning difficulties, and potentially missed learning opportunities. Identifying students who may have vision loss is the first step in helping them develop to become productive adults. The Department has determined that the benefits related to vision screenings for students identified in the new rules outweigh any potential costs associated with this rulemaking.

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

The Department does not expect the rules to have a negative impact on employment for private and public businesses, agencies, and political subdivisions. Rather, the Department is optimistic that expanding the current Sensory Screening Program to include vision screening services may increase private and public employment in businesses, and potentially improve financial resources for private and public businesses, agencies, and political subdivisions.

5. A statement of the probable impact of the rules on small businesses:

a. An identification of the small business subject to the rulemaking:

Small businesses affected by the rulemaking may include charter schools and offices of optometrists or an ophthalmologist.

b. The administrative and other costs required for compliance with the rules:

A summary of the administrative effects of the rulemaking is given in the cost and benefit analysis in section 3 of this EIS.

The Department believes the additional vision screening costs incurred by schools as a result of the rule changes are minimal-to-moderate, depending on the size of the school. Additionally, offices of optometrists or an ophthalmologist may receive moderate benefits from having additional parents or guardians of students schedule follow-up evaluations and testing of students who do not pass or do not complete a vision screening and may incur minimal costs associated with providing the information requested by schools to parents.

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

The Department knows of no other methods to further reduce the impact on small businesses.

d. The probable costs and benefits to private persons and consumers who are directly affected by the rulemaking:

A summary of the effects of the rulemaking on private persons and consumers is given in the cost and benefit analysis Paragraph 3.

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

The Department does not expect the rules to affect state revenues.

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

The Department has determined that there are no less intrusive or less costly alternatives for achieving the purpose of the rulemaking.

8. **A description of any data on which the rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data:**

Not applicable.

36-104. Powers and duties

This section is not to be construed as a statement of the department's organization. This section is intended to be a statement of powers and duties in addition to the powers and duties granted by section 36-103. The director shall:

1. Administer the following services:

(a) Administrative services, which shall include at a minimum the functions of accounting, personnel, standards certification, electronic data processing, vital statistics and the development, operation and maintenance of buildings and grounds used by the department.

(b) Public health support services, which shall include at a minimum:

(i) Consumer health protection programs, consistent with paragraph 25 of this section, that include at least the functions of community water supplies, general sanitation, vector control and food and drugs.

(ii) Epidemiology and disease control programs that include at least the functions of chronic disease, accident and injury control, communicable diseases, tuberculosis, venereal disease and others.

(iii) Laboratory services programs.

(iv) Health education and training programs.

(v) Disposition of human bodies programs.

(c) Community health services, which shall include at a minimum:

(i) Medical services programs that include at least the functions of maternal and child health, preschool health screening, family planning, public health nursing, premature and newborn program, immunizations, nutrition, dental care prevention and migrant health.

(ii) Dependency health care services programs that include at least the functions of need determination, availability of health resources to medically dependent individuals, quality control, utilization control and industry monitoring.

(iii) Children with physical disabilities services programs.

(iv) Programs for the prevention and early detection of an intellectual disability.

(d) Program planning, which shall include at least the following:

(i) An organizational unit for comprehensive health planning programs.

(ii) Program coordination, evaluation and development.

(iii) Need determination programs.

(iv) Health information programs.

2. Include and administer, within the office of the director, staff services, which shall include at a minimum budget preparation, public information, appeals, hearings, legislative and federal government liaison, grant development and management and departmental and interagency coordination.

3. Make rules for the organization and proper and efficient operation of the department.

4. Determine when a health care emergency or medical emergency situation exists or occurs within this state that cannot be satisfactorily controlled, corrected or treated by the health care delivery systems and facilities available. When such a situation is determined to exist, the director shall immediately report that situation to the legislature and the governor. The report shall include information on the scope of the emergency, recommendations for solution of the emergency and estimates of costs involved.

5. Provide a system of unified and coordinated health services and programs between this state and county governmental health units at all levels of government.

6. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.

8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.

9. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of the department's duties subject to the departmental rules and regulations on the confidentiality of information.

10. Establish and maintain separate financial accounts as required by federal law or regulations.

11. Advise with and make recommendations to the governor and the legislature on all matters concerning the department's objectives.

12. Take appropriate steps to reduce or contain costs in the field of health services.

13. Encourage and assist in the adoption of practical methods of improving systems of comprehensive planning, of program planning, of priority setting and of allocating resources.

14. Encourage an effective use of available federal resources in this state.

15. Research, recommend, advise and assist in the establishment of community or area health facilities, both public and private, and encourage the integration of planning, services and programs for the development of the state's health delivery capability.

16. Promote the effective use of health manpower and health facilities that provide health care for the citizens of this state.

17. Take appropriate steps to provide health care services to the medically dependent citizens of this state.

18. Certify training on the nature of sudden infant death syndrome, which shall include information on the investigation and handling of cases involving sudden and unexplained infant death for use by law enforcement officers as part of their basic training requirement.

19. Adopt protocols on the manner in which an autopsy shall be conducted under section 11-597, subsection D in cases of sudden and unexplained infant death.

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

21. Administer the federal family violence prevention and services act grants, and the department is designated as this state's recipient of federal family violence prevention and services act grants.

22. Accept and spend private grants of monies, gifts and devises for the purposes of methamphetamine education. The department shall disburse these monies to local prosecutorial or law enforcement agencies with existing programs, faith-based organizations and nonprofit entities that are qualified under section 501(c)(3) of the United States internal revenue code, including nonprofit entities providing services to women with a history of dual diagnosis disorders, and that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are not lapsing and do not revert to the state general fund at the close of the fiscal year.

23. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.

24. Pursuant to chapter 13, article 8 of this title, coordinate all public health and risk assessment issues associated with a chemical or other toxic fire event if a request for the event is received from the incident commander, the emergency response commission or the department of public safety and if funding is available. Coordination of public health issues shall include general environmental health consultation and risk assessment services consistent with chapter 13, article 8 of this title and, in consultation with the Arizona poison control system, informing the public as to potential public health risks from the environmental exposure. Pursuant to chapter 13, article 8 of this title, the department of health services shall also prepare a report, in consultation with appropriate state, federal and local governmental agencies, that evaluates the public health risks from the environmental exposure. The department of health services' report shall include any department of environmental quality report and map of smoke dispersion from the fire, the results of any environmental samples taken by the department of environmental quality and the toxicological implications and public health risks of the environmental exposure. The department of health services shall consult with the Arizona poison control system regarding toxicology issues and shall

prepare and produce its report for the public as soon as practicable after the event. The department of health services shall not use any monies pursuant to section 49-282, subsection E to implement this paragraph.

25. Consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture concerning its administration, pursuant to title 3, chapter 3, article 4.1, of this state's authority under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252).

26. Adopt rules pursuant to title 32, chapter 32, article 5 prescribing the designated database information to be collected by health profession regulatory boards for the health professionals workforce database.

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. If in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

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

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

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

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

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

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

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

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

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

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

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

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

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

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign

substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

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

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

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparing food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained

at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of

this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-899.01. Program for all school children; administration

A. A program of hearing evaluation services is established by the department. Such services shall be administered to all children as early as possible, but in no event later than the first year of attendance in any public or private education program, or residential facility for children with disabilities, and thereafter as circumstances permit until the child has attained the age of sixteen years or is no longer enrolled in a public or private education program.

B. The program of hearing evaluation services for children in a public education program shall be administered by the department with the aid of the department of education.

36-899.02. Powers of the department; limitations

A. The department may, in administering the program of hearing evaluation services:

1. Provide consulting services, establish or supplement hearing evaluation services in local health departments, public or private education programs or other community agencies.

2. Provide for the training of personnel to administer hearing screening evaluations.

3. Delegate powers and duties to other state agencies, county and local health departments, county and local boards of education or boards of trustees of private education programs or other community agencies to develop and maintain periodic hearing evaluation services.

4. Provide services by contractual arrangement for the development and maintenance of periodic hearing evaluation services.

5. Accept reports of hearing evaluation from qualified medical or other professional specialists employed by parents or guardians for hearing evaluation when such reports are submitted to the department.

B. The department shall not replace any qualified existing service.

36-899.03. Rules and regulations

The director shall develop rules and regulations governing standards, procedures, techniques and criteria for conducting and administering hearing evaluation services.

36-899.10. Vision screening; administration; rules; notification; definitions

A. Each school shall provide vision screening services to the following:

1. Students upon initial entry to school and for not more than two additional grade levels as prescribed by the department by rule. A school, at the school's discretion, may provide vision screening services to students who are in grade levels that are not prescribed by rule.

2. Students who receive or are being considered for special education services and who have not been screened in the last year pursuant to this section.

3. Students for whom a teacher has requested a screening and who have not been screened in the last year pursuant to this section.

4. Students who are not reading at grade level by the third grade pursuant to the state assessment required in section 15-741, if the rules adopted by the department do not require screening in the third grade.

B. A school nurse, a volunteer or other school personnel who have undergone training developed or approved by the department shall administer the vision screenings except that those individuals who are trained to administer vision screenings before August 27, 2019 are not required to retrain pursuant to this subsection.

C. A vision screening conducted pursuant to this section does not satisfy a requirement for a medical professional to complete a vision screening of a child according to established guidelines for pediatric care.

D. The school district governing board or charter school governing body shall provide the vision screening results to the parent or guardian of each student who did not pass the vision screening within forty-five days after the vision screening and shall comply with all applicable privacy laws. The

results shall identify that the student did not pass the vision screening and the need for a comprehensive eye and vision examination. The results shall state that a vision screening is not equivalent to a comprehensive eye and vision examination.

E. A school district governing board or charter school governing body providing vision screening services shall provide to the department annual data submissions in a department-approved format that complies with student privacy laws.

F. A student is not required to submit to any vision screening required by this section if a parent or guardian of the student objects and submits a statement of the objection to the school for any reason including that the student received a comprehensive eye and vision examination in the last year or if the student has a current diagnosis of permanent vision loss.

G. For the purposes of assisting and implementing the vision screening requirements established by this section, the department or its delegate, subject to available monies, may:

1. Develop and provide vision screening training to screeners designated in subsection B of this section.

2. Provide schools with materials the department determines by rule to be necessary for conducting vision screenings.

3. Compile any school vision screening data, with all individual identifying information removed, for review and analysis by researchers, public agencies or any foundation, nonprofit organization or other organization that provides free approved vision screening services or training, grants for vision screening services, eyeglasses or examinations.

H. The department of health services shall adopt rules pursuant to title 41, chapter 6 to carry out this section. The rules may not require materials and equipment specific to any one provider and shall include, where consistent with the requirements of this section, feedback from the public education programs required to implement the vision screenings. Rules adopted to carry out subsection A of this section shall be done in consultation with the department of education, recognized nonprofit organizations that provide free vision screening services, training, grants for vision screening services, eyeglasses or examinations and ophthalmologists, optometrists, school nurses, pediatricians and school administrators.

I. The department may accept gifts, grants, donations, bequests and other forms of voluntary contributions for the purposes of this section.

J. For the purposes of this section:

1. "Comprehensive eye and vision examination" means a vision examination performed by an optometrist or ophthalmologist.

2. "Department" means the department of health services.

3. "School" means a school district or charter school that provides instruction in preschool or kindergarten programs and grades one through twelve, or any combination of those programs or grades.

4. "Vision screening" means using a vision screening methodology approved or prescribed by rules adopted by the department pursuant to this section that, as age appropriate, include the evaluation of visual acuity, depth perception and color vision and that may include refraction.

5. "Vision screening services" means services that include identifying, testing and evaluating a child's vision and identifying the need for follow-up services, as prescribed by rules adopted by the department pursuant to this section.

6. "Volunteer" includes any individual or member of a foundation, nonprofit organization or other organization that provides vision screenings and is invited to provide vision screenings by the school.

Gmail

Lucinda Feeley <lucinda.feeley@azdhs.gov>

Fwd: ADHS vision screening rules

Morgan Scadden <morgan.scadden@azdhs.gov>
To: Lucinda Feeley <lucinda.feeley@azdhs.gov>

Hi Lucinda,

I was talking with Dr Jim O'Neil whose and ophthalmologist at PCH and he sent me the following comments on the rules. Is there an official spot for comments right now where he should senc

Tangentially, is there anything we need to prepare ahead of the upcoming oral proceeding?

Thanks!
Morgan Scadden, M.Ed. (She/Her)
Sensory Screening Program Manager

Bureau of Women's and Children's Health
Arizona Department of Health Services
150 North 18th Avenue, Suite 310, Phoenix, AZ 85007

Phone: 623-715-5142

Email: morgan.scadden@azdhs.gov
Health and Wellness for all Arizonans

---------- Forwarded message ---------
From: **O Neil, Jim** <joneil2@phoenixchildrens.com>
Date: Thu, Jan 11, 2024 at 11:39 AM
Subject: ADHS vision screening rules
To: morgan.scadden@azdhs.gov <morgan.scadden@azdhs.gov>
Cc: Rich Tirendi <rtirendi@visionquest2020.org>

Morgan,

Rich and I enjoyed meeting you yesterday. We appreciate how knowledgeable you are, and that you were able to spend so much time with us. We look forward to working together

I know you in Rich will be corresponding about the MOU for data access, and setting up a meeting with Lisa Alexander from SNOA.

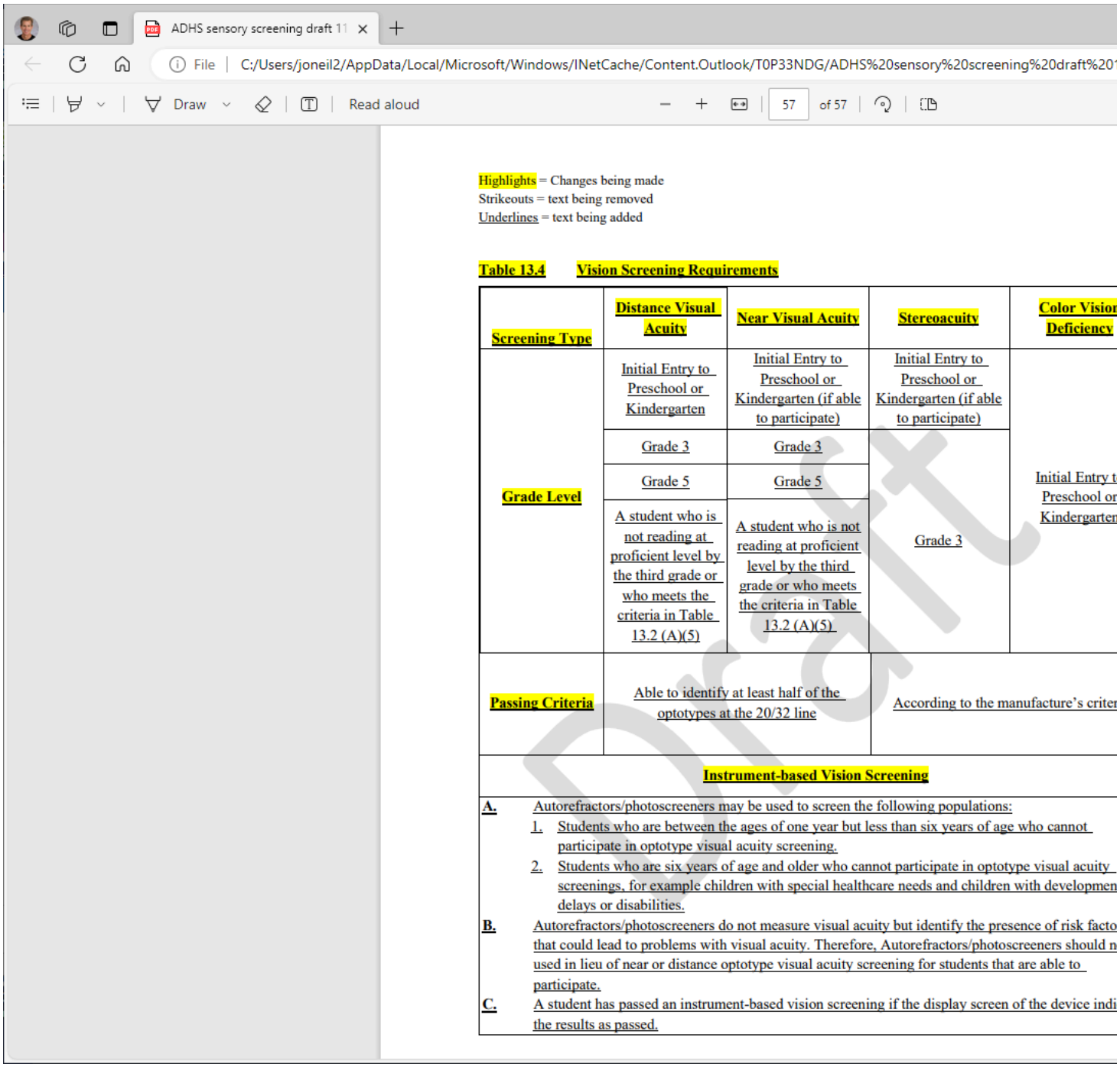
I realize the vision and hearing screening rules are nearly finalized. I did want to give you feedback for last minute consideration. Below is a screen shot from the November 2023 AD Academy of Pediatric Ophthalmology (A.A.P.O.S.) vision screening guidelines which are the same as the American Academy of Pediatrics (AAP) vision screening guidelines.

A few comments/suggestions.:

1. National AAPOS/AAP guidelines generally recommend passing visual acuity lines to be the “majority of optotypes” as opposed to “at least half of the optoypes” as in the November
2. National A.A.P.O.S./AAP guidelines recommend visual acuity passing criteria of 20/40 between 48 and 59 months of age. The November 2023 ADHS draft lists 20/32 as passing c to be screened by devices rather than the eye chart, but the more demanding 20/32 passing criteria may result in over-referrals if schools do not have photoscreening devices to pe

Thanks,

Jim 0 Neil MD



Highlights = Changes being made
Strikeouts = text being removed
Underlines = text being added

Table 13.4 Vision Screening Requirements

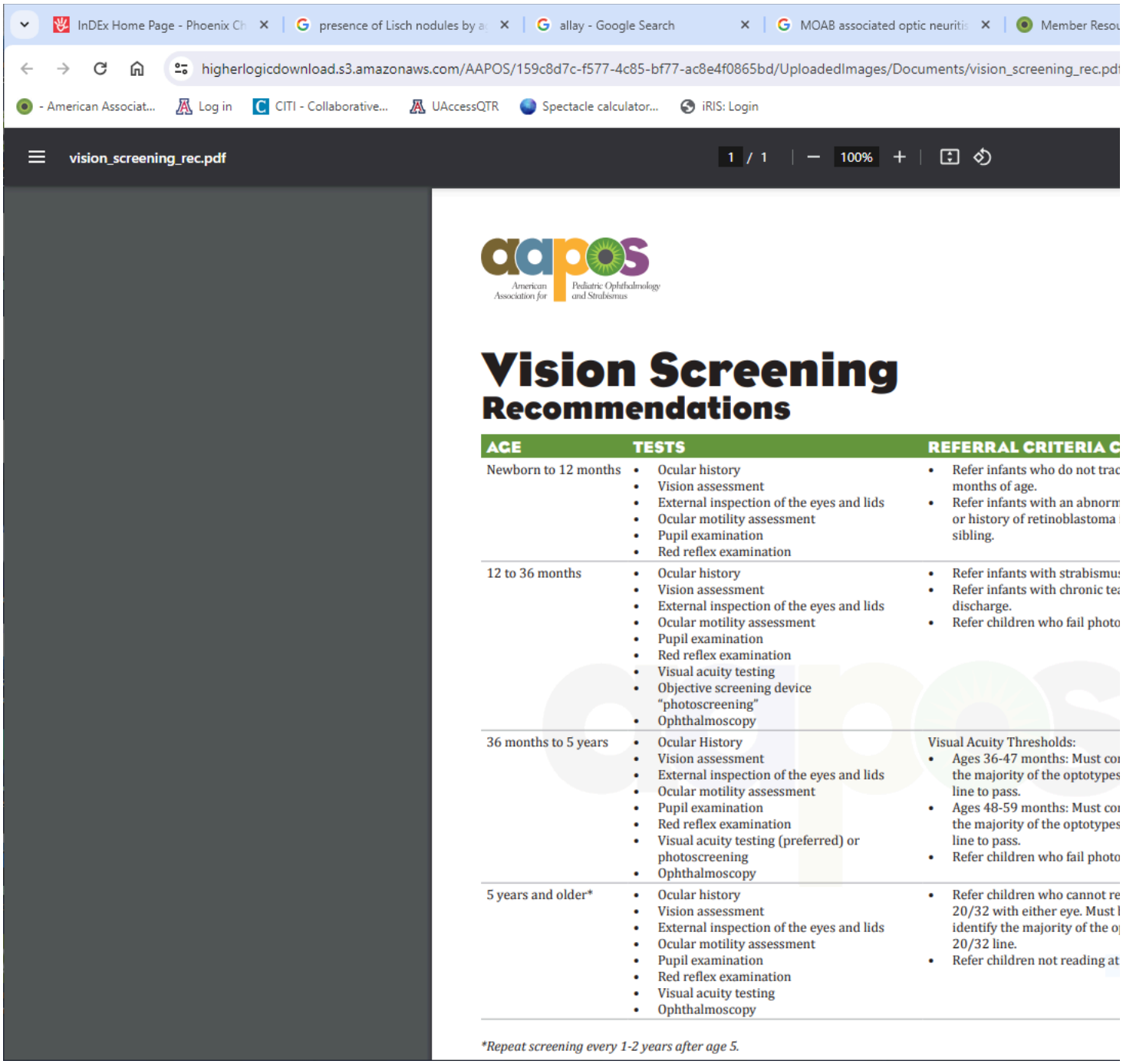
Screening Type	Distance Visual Acuity	Near Visual Acuity	Stereoacuity	Color Vision Deficiency
Grade Level	Initial Entry to Preschool or Kindergarten	Initial Entry to Preschool or Kindergarten (if able to participate)	Initial Entry to Preschool or Kindergarten (if able to participate)	Initial Entry t Preschool or Kindergarter
	Grade 3	Grade 3	Grade 3	
	Grade 5	Grade 5		
	A student who is not reading at proficient level by the third grade or who meets the criteria in Table 13.2 (A)(5)	A student who is not reading at proficient level by the third grade or who meets the criteria in Table 13.2 (A)(5)		
Passing Criteria	Able to identify at least half of the optotypes at the 20/32 line		According to the manufacture's criter	

Instrument-based Vision Screening

A. Autorefractors/photoscreeners may be used to screen the following populations:
1. Students who are between the ages of one year but less than six years of age who cannot participate in optotype visual acuity screening.
2. Students who are six years of age and older who cannot participate in optotype visual acuity screenings, for example children with special healthcare needs and children with developmen delays or disabilities.

B. Autorefractors/photoscreeners do not measure visual acuity but identify the presence of risk facto that could lead to problems with visual acuity. Therefore, Autorefractors/photoscreeners should n used in lieu of near or distance optotype visual acuity screening for students that are able to participate.

C. A student has passed an instrument-based vision screening if the display screen of the device indi the results as passed.



aapos
American Association for Pediatric Ophthalmology and Strabismus

Vision Screening Recommendations

AGE	TESTS	REFERRAL CRITERIA C
Newborn to 12 months	• Ocular history • Vision assessment • External inspection of the eyes and lids • Ocular motility assessment • Pupil examination • Red reflex examination	• Refer infants who do not trac months of age. • Refer infants with an abnorm or history of retinoblastoma sibling.
12 to 36 months	• Ocular history • Vision assessment • External inspection of the eyes and lids • Ocular motility assessment • Pupil examination • Red reflex examination • Visual acuity testing • Objective screening device "photoscreening" • Ophthalmoscopy	• Refer infants with strabismus • Refer infants with chronic tea discharge. • Refer children who fail photo
36 months to 5 years	• Ocular History • Vision assessment • External inspection of the eyes and lids • Ocular motility assessment • Pupil examination • Red reflex examination • Visual acuity testing (preferred) or photoscreening • Ophthalmoscopy	Visual Acuity Thresholds: • Ages 36-47 months: Must cor the majority of the optotypes line to pass. • Ages 48-59 months: Must cor the majority of the optotypes line to pass. • Refer children who fail photo
5 years and older*	• Ocular history • Vision assessment • External inspection of the eyes and lids • Ocular motility assessment • Pupil examination • Red reflex examination • Visual acuity testing • Ophthalmoscopy	• Refer children who cannot re 20/32 with either eye. Must l identify the majority of the o 20/32 line. • Refer children not reading at

**Repeat screening every 1-2 years after age 5.*

WATER INFRASTRUCTURE FINANCE AUTHORITY
Title 18, Chapter 15, Articles 1, 4, 9 & 10

Amend: Article 1, Article 4, R18-15-101, R18-15-102, R18-15-103, R18-15-104, R18-15-105, R18-15-107, R18-15-401, R18-15-402, R18-15-403, R18-15-404, R18-15-405

New Article: Article 9, Article 10

New Section: R18-15-901, R18-15-902, R18-15-903, R18-15-904, R18-15-905, R18-15-906, R18-15-1001, R18-15-1002, R18-15-1003, R18-15-1004, R18-15-1005, R18-15-1006

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - EXPEDITED RULEMAKING

MEETING DATE: May 7, 2024

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

FROM: Council Staff

DATE: April, 18, 2024

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

Amend: Article 1, R18-15-101, R18-15-102, R18-15-103, R18-15-104, R18-15-105, R18-15-107, Article 4, R18-15-401, R18-15-402, R18-15-403, R18-15-404, R18-15-405

New Article: Article 9, Article 10

New Section: R18-15-901, R18-15-902, R18-15-903, R18-15-904, R18-15-905, R18-15-906, R18-15-1001, R18-15-1002, R18-15-1003, R18-15-1004, R18-15-1005, R18-15-1006

Summary:

This expedited rulemaking from the Water Infrastructure Finance Authority (WIFA) seeks to amend six (6) rules in Article 1 related to General Provisions, amend five (5) rules in Article 4 related to the Water Supply Development Revolving Fund (WSDRF), add a new Article 9 containing six (6) sections related to the Long-Term Water Augmentation Fund (LTWAF), and add a new Article 10 containing six (6) sections related to the Water Conservation Grant Fund (WCGF).

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, WIFA indicates SB1740: (1) significantly modified the WSDRF and expanded eligibility for water supply development loans and grants; (2) established the LTWAF and permitting WIFA to provide financial assistance for water supply development projects inside or outside of Arizona; and (3) established the WCGF provide grants for voluntary water conservation programs or projects expected to result in long-term sustainable reductions in water use and improvements in water use efficiency and reliability.

As part of its Five-Year Review Report (5YRR) approved by the Council on November 7, 2023, WIFA proposed submitting rules to comply with the statutory changes to the WSDRF and to govern the new LTWAF and WCGF programs.

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 November 2023 5YRR. This rulemaking does not increase the cost of regulatory compliance, increase fees, or reduce the procedural rights of any regulated person.

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 amend six (6) rules in Article 1 related to General Provisions, amend five (5) rules in Article 4 related to the Water Supply Development Revolving Fund (WSDRF), add a new Article 9 containing six (6) sections related to the Long-Term Water Augmentation Fund (LTWAF), and add a new Article 10 containing six (6) sections related to the Water Conservation Grant Fund (WCGF).

Senate Bill 1740 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. Among other changes, SB1740: (1) significantly modified the WSDRF and expanded eligibility for water supply development loans and grants; (2) established the LTWAF and permitting WIFA to provide financial assistance for water supply development projects inside or outside of Arizona; and (3) established the WCGF provide grants for voluntary water conservation programs or projects expected to result in long-term sustainable reductions in water use and improvements in water use efficiency and reliability.

As part of its Five-Year Review Report (5YRR) approved by the Council on November 7, 2023, WIFA proposed submitting rules to comply with the statutory changes to the WSDRF and to govern the new LTWAF and WCGF programs. 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.

WATER INFRASTRUCTURE
FINANCE AUTHORITY OF ARIZONA

Katie Hobbs, Governor
Chuck Podolak, Director

March 14, 2024

Ms. Jessica Klein, 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 Klein:

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 May 7, 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 March 4, 2024, following a period for public comment.
        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." 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 changes to the Water Supply Development Revolving Fund, and the establishment of the Long-Term Water Augmentation Fund and Water Conservation Grant Fund. The expedited rulemaking from the Authority seeks to:
            - Amend six (6) rules in Title 18, Chapter 15, Article 1 regarding general administration of the Authority's financial assistance programs;
            - Amend five (5) rules in Title 18, Chapter 15, Article 4 regarding the Water Supply Development Revolving Fund;
            - Establish a new article consisting of six (6) rules in Title 18, Chapter 15 regarding obtaining financial assistance from the Long-Term Water Augmentation Fund; and
            - Establish a new article consisting of six (6) rules in Title 18, Chapter 15 regarding obtaining financial assistance from the Water Conservation Grant Fund.
    b. 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.
    c. 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 March 4, 2024. There were no oral comments made during the proceeding or additional written comments received. The record closed at 4:00 p.m. on March 4, 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. §§ 49-1274(B)(2); 49-1308(B)(2); 49-1333(B)(2); 49-1270 through 49-1282; 49-1301 through 49-1313; and 49-1331 through 49-1335.
- 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. "Discharge" has the same meaning as prescribed in A.R.S. § 49-201(12)
    c. "Drinking water facility" has the same meaning as prescribed in A.R.S. § 49-1201(6).
    d. "Planning and design loan repayment agreement" means the same as technical assistance loan repayment agreement and has the meaning as prescribed in A.R.S. § 49-1201(11).
    e. "Wastewater treatment facility" has the same meaning as prescribed in A.R.S. § 49-1201(19).
    f. "Water provider" has the same meaning as prescribed in A.R.S. § 49-1201(20).
    g. "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 (4)
-Notice of Final Expedited Rulemaking
-Statutory authority for rulemaking
-A.R.S. § 49-201, included pursuant to A.A.C. R1-6-202(A)(8)
-The Authority's Five year review report, approved November 7, 2023

20240314 - GRRC Approval Request - WIFA Expedited Rulemaking

Final Audit Report 2024-03-14

Created:	2024-03-14
By:	Joe Citelli (jcitelli@azwifa.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAjN9Nt92cg-9Ggngv0hr66a2TbmZC1zbU

"20240314 - GRRC Approval Request - WIFA Expedited Rulemaking" History

Document created by Joe Citelli (jcitelli@azwifa.gov)
2024-03-14 - 8:10:21 PM GMT

Document emailed to Chuck Podolak (cpodolak@azwifa.gov) for signature
2024-03-14 - 8:10:26 PM GMT

Email viewed by Chuck Podolak (cpodolak@azwifa.gov)
2024-03-14 - 8:35:52 PM GMT

Document e-signed by Chuck Podolak (cpodolak@azwifa.gov)
Signature Date: 2024-03-14 - 8:36:35 PM GMT - Time Source: server

Agreement completed.
2024-03-14 - 8:36:35 PM GMT

NOTICE OF FINAL EXPEDITED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

PREAMBLE

1.	Article, Part, or Section Affected (as applicable)	Rulemaking Action
	Article 1	Amend
	R18-15-101	Amend
	R18-15-102	Amend
	R18-15-103	Amend
	R18-15-104	Amend
	R18-15-105	Amend
	R18-15-107	Amend
	Article 4	Amend
	R18-15-401	Amend
	R18-15-402	Amend
	R18-15-403	Amend
	R18-15-404	Amend
	R18-15-405	Amend
	Article 9	New Article
	R18-15-901	New Section
	R18-15-902	New Section
	R18-15-903	New Section
	R18-15-904	New Section
	R18-15-905	New Section

R18-15-906	New Section
Article 10	New Article
R18-15-1001	New Section
R18-15-1002	New Section
R18-15-1003	New Section
R18-15-1004	New Section
R18-15-1005	New Section
R18-15-1006	New Section

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. §§ 49-1274(B)(2); 49-1308(B)(2); and 49-1333(B)(2)

Implementing statute: A.R.S. §§ 49-1270 through 49-1282; 49-1301 through 49-1313; and 49-1331 through 49-1335

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: 30 A.A.R. 247 (February 2, 2024)

Notice of Proposed Expedited Rulemaking: 30 A.A.R. 221 (February 2, 2024)

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 amend A.A.C. Title 18, Chapter 15 by:

- Amending Article 1 – General Provisions;
- Amending Article 4 – Water Supply Development Revolving Fund;
- Adding Article 9 – Long-Term Water Augmentation Fund; and
- Adding Article 10 – Water Conservation Grant 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: (1) Significantly modified the WSDRF and expanded eligibility for water supply development loans and grants; (2) Established the LTWAF and permitting WIFA to provide financial assistance for water supply development projects inside or outside of Arizona; and (3) Established the WCGF provide grants for voluntary water conservation programs or projects expected to result in long-term sustainable reductions in water use and improvements in water use efficiency and reliability.

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 comply with the statutory changes to the WSDRF and to govern the new LTWAF and WCGF programs. 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.

A. Proposed Rules Amending Article 4 – Water Supply Development Revolving Fund

Pursuant to A.R.S. § 49-1273(A), monies in the WSDRF may be used to make loans up to $3,000,000 and/or provide grants or technical assistance up to $2,000,000 to eligible entities for water supply development projects in Arizona. WIFA is authorized to prescribe rules governing the criteria by which assistance will be awarded. A.R.S. § 49-1274(B)(2).

The proposed rulemaking amends existing WSDRF rules to align with statutory changes enacted by SB1740. The proposed rules are primarily procedural in nature and are closely modeled after the successful Clean Water and Drinking Water State Revolving Fund

programs. The proposed rules do not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights.

B. Proposed Rules Adding Article 9 – Long-Term Water Augmentation Fund

Pursuant to A.R.S. § 49-1303(A)(6), monies in the LTWAF may be used to provide financial assistance to eligible entities for the purposes of financing or refinancing water supply development projects in Arizona, including projects for conservation through reducing existing water use or more efficient uses of existing water supplies. WIFA is authorized to prescribe rules governing the criteria by which financial assistance will be awarded. A.R.S. § 49-1308(B).

The proposed rulemaking adds Article 9 – Long-Term Water Augmentation Fund to administer the new LTWAF program enacted by SB1740. The proposed rules are primarily procedural in nature and establish a framework for applicants to apply to WIFA for financial assistance from the LTWAF. The proposed rules do not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights.

C. Proposed Rules Adding Article 10 – Water Conservation Grant Fund

Pursuant to A.R.S. § 49-1331(A), monies in the WCGF may be used to facilitate voluntary water conservation programs or projects that are expected to result in long-term reductions in water use, improvements in water use efficiency, or improvements in water reliability. Through the WCGF, WIFA may provide grants to eligible applicants up to $3,000,000 for a water conservation program, and up to $250,000 for a water conservation project. A.R.S. § 49-1333(B)(4). WIFA is authorized to prescribe rules governing the criteria by which assistance will be awarded from the WCGF.

The proposed rulemaking adds Article 10 – Water Conservation Grant Fund to administer the new WCGF program enacted by SB1740. The proposed rules are primarily procedural in nature and establish a framework for applicants to apply to WIFA for financial assistance from the WCGF. The proposed rules do not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights.

D. Proposed Rules Amending Article 1 – General Provisions

The proposed rulemaking also updates several sections in Article 1 – General Provisions. The proposed updates are intended to increase the clarity and effectiveness of WIFA's existing rules. Additionally, the proposed rulemaking updates citations contained in the definitions section to conform to statutory changes enacted by SB1740.

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. A 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.

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 rules do not require the use of a permit. Therefore, a general permit is not applicable.

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

The rules do not require the use of a permit. Therefore, a general permit is not applicable.

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

No business competitiveness analysis was 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 1. GENERAL PROVISIONS

ARTICLE 4. WATER SUPPLY DEVELOPMENT REVOLVING FUND

ARTICLE 9. LONG-TERM WATER AUGMENTATION FUND

ARTICLE 10. WATER CONSERVATION GRANT FUND

Section

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).~~

"ADEQ" means the Arizona Department of Environmental Quality.

"Applicant" means ~~a governmental unit, a non-point source project sponsor, a drinking water facility, or a water provider~~ an entity 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~~ Authority 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~~ has the same meaning as prescribed in A.R.S. § 49-1201(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.~~

"Director" means the director of the Water Infrastructure Finance Authority of Arizona.

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

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

"Drinking water facility" has the same meaning as prescribed in ~~A.R.S. § 49-1201(5)~~ A.R.S. § 49-1201(6).

"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, it is a public decision document that briefly describes why the project will not have any significant environmental effects.

"Fundable range" means a subset of ~~the~~ a ~~project priority list~~ 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.

"Long-Term Water Augmentation Committee" means the committee established by A.R.S. § 49-1208(B).

"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, stormwater 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~~ Priority List" means the document developed by the ~~Board~~ Authority according to R18-15-203 ~~or~~ R18-15-303; or R-18-402 that ranks projects according to R18-15-204; ~~or~~ R18-15-304; or R-18-15-403.

"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, it is the conclusion of the EIS process.

"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)~~ A.R.S. § 49-1201(19).

"Water Conservation Grant Committee" means the committee established by A.R.S. § 49-1335.

"Water provider" has the same meaning as prescribed in ~~A.R.S. § 49-1201(13)~~ A.R.S. § 49-1201(20).

"Water supply development" has the same meaning as prescribed in ~~A.R.S. § 49-1201(14)~~ A.R.S. § 49-1201(22).

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

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;~~
5. Long-Term Water Augmentation Fund; and
6. Water Conservation Grant Fund.

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.

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 seeking financial assistance through the Long-Term Water Augmentation Fund shall apply for financial assistance according to Articles 1 and 9.

G. An applicant seeking a grant through the Water Conservation Grant Fund shall apply for financial assistance according to Articles 1 and 10.

H. 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.

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 authorized the financing decision.

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~~ five 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 system schematics; 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. If any of the required information listed in subsection (D)(1) is not available, the Authority may assist the applicant in determining alternative documentation to support 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.

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~~,~~;~~ and~~

4. A legal opinion of the local borrower's counsel concurrent with closing date of the financial assistance agreement.

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. For purposes of this section, "project account" means the account in which the financial assistance is held or maintained.

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.

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~~ 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~~ 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~~ 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.

ARTICLE 4. WATER SUPPLY DEVELOPMENT REVOLVING FUND

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

A. 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)~~ an eligible entity as defined by A.R.S. § 49-1270(1); is 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~~ Project Priority List developed under R18-15-402.

B. Financial assistance from the Water Supply Development Revolving Fund may include loans, grants, other financial assistance, or a combination of any thereof.

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

A. The Authority annually shall prepare a Water Supply Development Revolving Fund ~~project list~~ Project Priority List. The Authority is not required to prepare a Water Supply Development Revolving Fund ~~project list~~ 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 water supply development project shall request to have the project included on the Water Supply Development Revolving Fund ~~project list~~ Project Priority List. The applicant may request that multiple projects be placed on the Water Supply Development Revolving Fund ~~project list~~ Project Priority List. An applicant shall make a request for placement of a project on the Water Supply Development Revolving Fund ~~project list~~ 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 list~~ Project Priority 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~~ Project Priority List, the Authority shall consider all ~~project list~~ Project Priority 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~~ Project Priority List shall identify:

1. The applicant;
2. Project title;
3. A project description;
4. Population of the water provider's ~~service~~ area served;
5. The amount requested for financial assistance; and

~~5.~~6. 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~~ Project Priority 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~~ Project Priority List and then adopt the Water Supply Development Revolving Fund ~~project list~~ Project Priority List at a public meeting.

E. After adoption of the annual ~~project list~~ Project Priority List, the ~~Board~~ Authority may allow:

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

F. After an opportunity for public notice, the ~~Board~~ Authority may remove a project from the Water Supply Development Revolving Fund ~~project list~~ 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; or

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~~.

R18-15-403. Water Supply Development Revolving Fund ~~Project List Ranking~~ Order and Priority

A. The Authority shall consider the ~~following categories~~ evaluative criteria listed in A.R.S. § 49-1274(B)(3) to determine the order and priority of each project on the Water Supply Development Revolving Fund ~~project list~~ Project Priority 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 tied 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~~2~~), sequentially. If projects continue to remain tied,~~ the Board shall determine the priority of the tied projects.

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~~ Project Priority 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~~ Project Priority List.

B. The Authority shall not ~~forward~~ present 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~~ project is on the Water Supply Development Revolving Fund Project Priority List;

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.

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 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~~ five 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;

8. A recommendation of what type and amount of financial assistance to provide; and

9. Any other information deemed necessary by the Authority.

B. If any of the required information listed in subsection (A)(5) is not available, the Authority may assist the applicant in determining alternative documentation to support the applicant's financial capability.

~~B~~C. 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 scope of 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.

D. The Authority shall provide an opportunity for public comment prior to the Board's determination regarding the applicant's request for financial assistance. The opportunity for public comment does not need to occur at the same meeting in which the Board makes its determination regarding the applicant's request for financial assistance.

~~C~~**E.** 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~~ 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 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~~ Project Priority List. The Board shall make a determination as described in subsection (~~B~~C) on each application until the available funds are committed.

~~D~~**F.** 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.

ARTICLE 9. LONG-TERM WATER AUGMENTATION FUND

R18-15-901. Long-Term Water Augmentation Fund Financial Assistance Eligibility Criteria

To be eligible to receive financial assistance from the Long-Term Water Augmentation Fund, the applicant shall demonstrate the applicant is an eligible entity as defined by A.R.S. § 49-1301(1), and is requesting financial assistance for a purpose as defined in A.R.S. § 49-1303(A)(6) or (7).

R18-15-902. Long-Term Water Augmentation Fund Request for Applications

A. The Authority shall commence a funding cycle for financial assistance from the Long-Term Water Augmentation Fund by issuing a Request for Applications.

B. Adequate public notice of the request for applications shall be given at least thirty days before the due date for the submittal of applications.

C. A Request for Applications shall include at least the following information:

1. A description of the Water Supply Development Projects eligible to apply;

2. The total amount of available funds;

3. Whether a single award or multiple awards may be made;

4. Any additional information required by the applications;

5. The criteria or factors under which applications will be evaluated for award and the relative importance of each criteria or factor; and

6. The due date for submittal of applications and the anticipated time the awards may be made.

D. The Authority may hold a preapplication conference before the due date for submittal of applications to explain the application requirements. Preapplication Conferences shall be open to the public.

E. Applicants to the Long-Term Water Augmentation Fund shall submit applications in a form acceptable to the Authority.

R18-15-903. Long-Term Water Augmentation Fund Order and Priority

A. The Authority shall determine the Order and Priority of applications by applying the evaluative criteria listed in:

1. A.R.S. § 49-1304(A); and
2. The Request for Applications.

B. For each funding cycle, the Authority shall evaluate and summarize each application received and develop an analysis that provides recommendations to the Long-Term Water Augmentation Committee. The analysis shall include, as applicable:

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 five 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;
7. A summary of the applicant's ability to meet any applicable permitting and environmental requirements imposed by federal, state, or local agencies; and
8. Any other information deemed necessary by the Authority.

C. If any of the required information listed in subsection (B)(5) is not available, the Authority may assist the applicant in determining alternative documentation to support the applicant's financial capability.

D. The Long-Term Water Augmentation Committee shall review all eligible applications received during a given funding cycle and provide recommendations to the Board regarding the order and priority of the applications. Specific numeric ranking is not required.

E. The Long-Term Water Augmentation Committee may recommend the adjustment of the budgets of the applications received individually or collectively.

F. The Long-Term Water Augmentation-Committee may require an Applicant to provide additional information before making a recommendation to the Board.

G. The Authority may remove an application from consideration under a given funding cycle under one or more of the following circumstances:

1. The project was financed from another source;
2. The proposed project is no longer an eligible project;
3. The applicant requests removal;
4. The applicant is no longer an eligible applicant; or
5. The applicant did not update, modify, correct or resubmit an Application Form in Response to a Request from the Authority.

R18-15-904. Long-Term Water Augmentation Fund Application for Financial Assistance

The Authority shall not present an application for consideration unless all of the following conditions are met:

1. The Application meets all requirements listed in the Request for Applications; and
2. The applicant has demonstrated legal capability, financial capability, technical capability, and managerial capability under R18-15-104.

R18-15-905. Long-Term Water Augmentation Fund Application Review For Financial Assistance

A. After an opportunity for public comment, the Board shall consider the Long-Term Water Augmentation Committee's recommendations and make a determination regarding applications for financial assistance at a public meeting. The Board shall base this determination on the information provided in the application, analysis prepared by the Authority, recommendation of the Long-Term Water Augmentation Committee; 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 scope of 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.

B. The opportunity for public comment required under subsection (A) does not need to be at the same meeting in which the Board makes its determination regarding the applicant's request for financial assistance.

C. The Board may require an Applicant to provide additional information before making a determination regarding a request for financial assistance.

D. The Board may award financial assistance to an application regardless of the recommended order and priority of applications, provided the Board documents the specific justifications for the action taken during a public meeting.

E. 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 with pending applications. The Board shall determine the amount of funding available, if any, to make available for the remaining applications received under a given funding cycle. The Board shall make a determination as described in subsection (C) on each application until the available funds are committed.

F. Upon approval of an application, the Authority shall prepare an agreement for execution by the applicant and the Authority. The terms of the agreement shall be determined by the Authority.

R18-15-906. Long-Term Water Augmentation 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.

ARTICLE 10. WATER CONSERVATION GRANT FUND

R18-15-1001. Water Conservation Grant Fund Eligibility Criteria

A. To be eligible to receive financial assistance from the Water Conservation Grant Fund, the applicant shall demonstrate the applicant is an eligible entity as defined by A.R.S. § 49-1301 or has partnered with an eligible entity as defined in A.R.S. § 49-1301 pursuant to A.R.S. § 49-1333(A), and is requesting a grant for a purpose as defined in A.R.S. § 49-1332(B).

B. An applicant shall commit to a matching contribution toward the total program or project cost as specified in A.R.S. § 49-1333(B)(4). The matching contribution may include cash contributions or in-kind contributions. The matching contribution may not include any monies provided by the Authority.

R18-15-1002. Water Conservation Grant Fund Request for Grant Applications

A. The Authority shall commence a funding cycle for financial assistance from the Water Conservation Grant Fund by issuing a Request for Grant Applications.

B. Adequate public notice of the Request for Grant Applications shall be given at least thirty days before the due date for the submittal of applications.

C. A Request for Grant Applications shall include at least the following information:

1. A description of the nature of the grant project, including the scope of the work to be performed by an awardee;
2. An identification of the funding source and the total amount of available funds;
3. Whether a single award or multiple awards may be made;
4. Encouragement of collaboration by entities for community partnerships, if appropriate;
5. Any additional information required by the applications;
6. The criteria or factors under which applications will be evaluated for award and the relative importance of each criteria or factor; and
7. The due date for submittal of applications.

D. The Authority may hold a preapplication conference before the due date for submittal of applications to explain the grant application requirements. Preapplication Conferences shall be open to the public.

E. Applicants to the Water Conversation Grant Fund shall submit applications in a form acceptable to the Authority.

R18-15-1003. Water Conservation Grant Fund Order and Priority

A. The Authority shall determine the Order and Priority of applications by applying the evaluative criteria listed in:

1. A.R.S. § 49-1334; and
2. The Request for Grant Applications.

B. For each funding cycle, the Authority shall evaluate and summarize each Grant application received and develop an analysis that provides recommendations to the Water Conservation Grant Committee. The analysis shall include, as applicable:

1. The scope, size, and budget of the proposed Program or project, including as much cost detail as possible;
2. The estimated water savings of the Proposed Program or Project;
3. A summary of any previous assistance provided by the Authority to the applicant; and
4. Any other information deemed necessary by the Authority.

C. In evaluating applications to the Water Conservation Grant Fund, the Authority shall apply following definitions:

1. "Program" means activities that occur in multiple phases over an established timeframe, and that may result in multiple deliverables.
2. "Project" means activities that are confined to a particular time and place, and that result in a single deliverable.

D. The Water Conservation Grant Committee shall review all eligible Grant applications received during a given funding cycle and provide recommendations to the Board regarding the order and priority of the Grant applications. Specific numeric ranking is not required.

E. The Water Conservation Grant Committee shall provide an opportunity for public comment on the applications during a public meeting.

F. The Water Conservation Grant Committee may recommend the adjustment of the budgets of ~~the applications received individually or collectively.~~

G. The Water Conservation Grant Committee may require an Applicant to provide additional information before making a recommendation to the Board.

H. The Authority may remove an application from consideration under a given funding cycle under one or more of the following circumstances:

1. The project was financed from another source;

2. The proposed project is no longer an eligible project;

3. The applicant requests removal;

4. The applicant is no longer an eligible applicant; or

5. The applicant did not update, modify, correct, or resubmit an Application Form in Response to a Request from the Authority.

R18-15-1004. Water Conservation Grant Fund Application for Financial Assistance

The Authority shall not present an application for consideration unless all the following conditions are met:

1. The application meets all requirements listed in the Request for Grant Applications; and

2. The applicant has demonstrated to the satisfaction of the Authority, an ability to timely perform the program or project.

R18-15-1005. Water Conservation Grant Fund Awards

A. After an opportunity for public comment, the Board shall consider the Water Conservation Grant Committee's recommendations and shall determine grant awards during a public meeting.

B. The Board may make modifications to recommendations from the Water Conservation Grant Committee including:

1. Adjustment of an application's budget by an amount or percentage;

2. Adjustment of the order and priority of an individual application or a collective group of applications; or

3. Any other modifications deemed necessary by the Board.

C. If the Board does not affirm the recommendations of the Water Conservation Grant Fund, the Board shall document the specific justifications for the action taken during a public meeting.

D. The opportunity for public comment required under subsection (A) does not need to be at the same meeting in which the Board makes its determination regarding grant awards.

E. The Board may require an Applicant to provide additional information before making a determination regarding a grant award.

F. After Board approval of a grant application, the Authority shall enter into a grant agreement with the grant recipient. The terms of the grant agreement shall be determined by the Authority.

R18-15-1006. Water Conservation Grant Fund Requirements

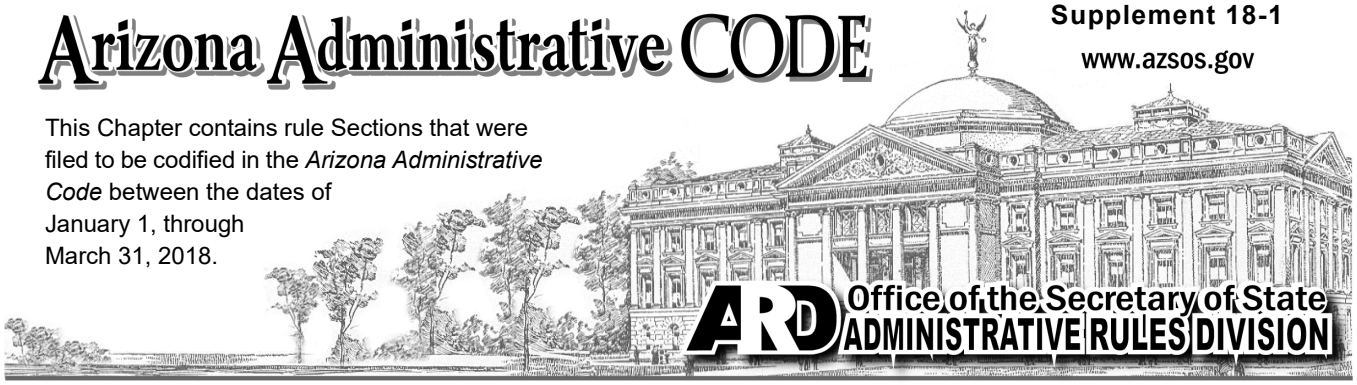
The duly authorized agent, principal or officer of the applicant shall certify the applicant has not violated any federal, state, or local law pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest, or other unlawful or corrupt practices relating to or in connection with the submission of a grant application to the Water Conservation Grant Fund.

Arizona Administrative CODE

Supplement 18-1

www.azsos.gov

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



TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

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

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

Questions about these rules? Contact:

Department: Water Infrastructure Finance Authority of Arizona
Name: Trish Incognito, Executive Director
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.

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

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

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

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 15. WATER INFRASTRUCTURE FINANCE AUTHORITY OF ARIZONA

ARTICLE 1. GENERAL PROVISIONS

ARTICLE 2. CLEAN WATER REVOLVING FUND

ARTICLE 3. DRINKING WATER REVOLVING FUND

ARTICLE 4. WATER SUPPLY DEVELOPMENT REVOLVING FUND

ARTICLE 5. TECHNICAL ASSISTANCE

Article 5, consisting of Sections R18-15-501 through R18-15-507, adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2).

ARTICLE 6. HARDSHIP GRANT FUND PROGRAM

Article 6, consisting of Sections R18-15-601 through R18-15-603, adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2).

ARTICLE 7. INTEREST RATE SETTING AND FORGIVABLE PRINCIPAL

Article 7, consisting of Section R18-15-701, adopted by final rulemaking at 6 A.A.R. 2116, effective May 16, 2000 (Supp. 00-2).

ARTICLE 1. GENERAL PROVISIONS

R18-15-101. Definitions

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

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

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

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

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

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

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

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

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

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

"Department" means the Arizona Department of Environmental Quality.

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

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

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

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

"EA" means an environmental assessment.

"EID" means an environmental information document.

"EIS" means an environmental impact statement.

"EPA" means the United States Environmental Protection Agency.

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

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

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

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

"FONSI" means a finding of no significant impact.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"ROD" means a record of decision.

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

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

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

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

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

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

Historical Note

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

R18-15-102. Types of Assistance Available

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

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

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

Historical Note

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

R18-15-103. Application Process

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

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

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

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

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

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

Historical Note

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

R18-15-104. General Financial Assistance Application Requirements

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

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

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

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

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

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

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

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

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

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

Historical Note

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

R18-15-105. General Financial Assistance Conditions

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

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

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

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

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

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

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

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

F. The Authority shall release loan proceeds subject to a disbursement request if the request is consistent with the financial assistance agreement and the disbursement schedule.
1. The applicant shall submit each disbursement request on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, a cost-incurred report, and a DBE report. The Authority shall not process a disbursement until the applicant provides a completed disbursement form.
2. The applicant shall include copies of invoices or other documents that show proof of eligible costs incurred with each disbursement request.

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

Historical Note

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

R18-15-106. Environmental Review

A. The Authority shall conduct an environmental review according to this Section for impacts of the design or construction of water infrastructure. As part of the application process, the Authority shall request information from the applicant to conduct an environmental review consistent with 40 CFR 35.3140 and 40 CFR 35.3580. The Authority shall determine whether the project meets the criteria for categorical exclusion under subsections (B) and (C), or whether the project requires the preparation of an environmental assessment (EA) or an environmental impact statement (EIS) to identify and evaluate its environmental impacts.
1. The Authority shall not execute a technical or financial assistance agreement with an applicant until the requirements of this section are met. For projects that include an environmental information document or an environmental impact statement, the Authority may execute a technical or financial assistance agreement with an applicant prior to the completion of the conditions of this section, provided that the applicant meets the requirements of this section before proceeding with the design of the selected alternative.
2. Projects under the Water Supply Development Revolving Fund Program are not subject to the requirements of this section.

B. A project may be categorically excluded from environmental review if the project fits within a category that is eligible for exclusion and the project does not involve any of the extraordinary circumstances listed in subsection (C). If, based on the application and other information submitted by the applicant, the Authority determines that a categorical exclusion from an environmental review is warranted, the project is exempt from the requirements of this Section, except for the public notice and participation requirements in subsection (J). The Authority may issue a categorical exclusion if information and documents demonstrate that the project qualifies under one or more of the following categories:
1. Any project relating to existing infrastructure systems that involves minor upgrading, minor expansion of system capacity, rehabilitation (including functional replacement) of the existing system and system components, or construction of new minor ancillary facilities adjacent to or on the same property as existing facilities. This category does not include projects that:
   a. Involve new or relocated discharges to surface water or groundwater,
   b. Will likely result in the substantial increase in the volume or the loading of pollutant to the receiving water,
   c. Will provide capacity to serve a population 30% greater than the existing population,
   d. Are not supported by the state or other regional growth plan or strategy, or
   e. Directly or indirectly involve or relate to upgrading or extending infrastructure systems primarily for the purposes of future development.
2. Any clean water project in unsewered communities involving the replacement of existing onsite systems, providing the new onsite systems do not result in substantial increases in the volume of discharge or the loadings of pollutants from existing sources, or relocate an existing discharge.

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

Indian tribe approved land use or federal land management plans.

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

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

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

E. The Authority shall conduct the EA that includes:

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

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

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

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

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

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

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

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

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

Historical Note

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

R18-15-107. Disputes

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

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

B. The interested party shall file the formal letter of dispute with the executive director within 30 days of the action and provide a copy to each member of the Board. The formal letter of dispute shall include the following information:
1. The name, address, and telephone number of the interested party;
2. The signature of the interested party or the interested party's representative;
3. A detailed statement of the legal and factual grounds of the dispute including:
   a. Copies of relevant documents, and
   b. The nature of the substantial financial interest or the nature of the substantial adverse financial impact of the interested party; and
4. The form of relief requested.

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

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

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

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

R18-15-108. Repealed

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

R18-15-109. Repealed

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

R18-15-110. Repealed

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

R18-15-111. Repealed

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

R18-15-112. Renumbered

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

R18-15-113. Renumbered

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

ARTICLE 2. CLEAN WATER REVOLVING FUND

R18-15-201. Clean Water Revolving Fund Financial Assistance Eligibility Criteria
To receive financial assistance from the Clean Water Revolving Fund, the applicant shall demonstrate the applicant is eligible under A.R.S. § 49-1224(A) to request financial assistance for a purpose as defined in A.R.S. § 49-1223(A); the proposed project is to design, construct, acquire, improve, or refinance a publicly owned wastewater treatment facility, or for any other purpose permitted by the Clean Water Act including nonpoint source projects; and the proposed project appears on the Clean Water Revolving Fund Project Priority List developed under R18-15-203.

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

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

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

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

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

Historical Note

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

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

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

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

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

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

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

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

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

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

Historical Note

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

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

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

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

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

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

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

Historical Note

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

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

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

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

Historical Note

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

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

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

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

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

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

Historical Note

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

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

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

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

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

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

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

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

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

R18-15-208. Clean Water Revolving Fund Requirements

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

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

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

ARTICLE 3. DRINKING WATER REVOLVING FUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Historical Note

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

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

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

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

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

Historical Note

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

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

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

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

Historical Note

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

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

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

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

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

Historical Note

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

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

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

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

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

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

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

Historical Note

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

R18-15-308. Drinking Water Revolving Fund Requirements

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

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

Historical Note

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

ARTICLE 4. WATER SUPPLY DEVELOPMENT REVOLVING FUND

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

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

Historical Note

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

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

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

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

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

Water Supply Development Revolving Fund project list shall identify:

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

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

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

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

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

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

Historical Note

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

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

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

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

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

Historical Note

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

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

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

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

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

Historical Note

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

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

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

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

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

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

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

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

Historical Note

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

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

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

Historical Note

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

R18-15-407. Renumbered

Historical Note

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

R18-15-408. Renumbered

Historical Note

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

ARTICLE 5. TECHNICAL ASSISTANCE

R18-15-501. Technical Assistance

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

Historical Note

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

R18-15-502. Technical Assistance Intended Use Plan

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

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

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

Historical Note

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Historical Note

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

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

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

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

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

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

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

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

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

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

I. The Authority and the applicant shall enter into a planning and design assistance agreement that shall include at a minimum:
1. A scope of work,
2. The amount awarded,
3. The amount of the local match required,
4. A final project budget and timeline, and
5. Reporting requirements.

J. The Authority shall release proceeds subject to a disbursement request if the request is consistent with the planning and design assistance agreement and the disbursement schedule.
1. The recipient shall request each disbursement on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, a cost-incurred report, and a DBE report. The Authority shall not process a disbursement until the recipient provides a completed disbursement form.
2. The recipient shall include copies of invoices or other documents that show proof of eligible costs incurred with each disbursement request.

Historical Note

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

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

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

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

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

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

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

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

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

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

I. The Authority and the grant applicant shall enter into a planning and design assistance grant agreement that shall include at a minimum:
1. A scope of work,
2. The amount of the grant awarded,
3. The amount of the local match required,
4. A final project budget and timeline, and
5. Reporting requirements.

J. The Authority shall release grant proceeds subject to a disbursement request if the request is consistent with the planning and design assistance grant agreement and the disbursement schedule.
1. The grant recipient shall request each disbursement on the forms provided by the Authority. Each disbursement request shall include a certification and signature document, and a cost-incurred report. The Authority shall not process a disbursement until the recipient provides a completed disbursement form.
2. The grant recipient shall include copies of invoices or other documents that show proof of eligible costs incurred with each disbursement request.

Historical Note

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

R18-5-506. Repealed

Historical Note

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

R18-15-507. Repealed

Historical Note

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

R18-15-508. Repealed

Historical Note

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

R18-15-509. Repealed

Historical Note

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

R18-15-510. Repealed

Historical Note

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

R18-15-511. Repealed

Historical Note

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

ARTICLE 6. HARDSHIP GRANT FUND PROGRAM

R18-15-601. Hardship Grant Fund Administration

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

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

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

Historical Note

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

R18-15-602. Hardship Grant Fund Financial Assistance

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

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

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

Historical Note

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

R18-15-603. Hardship Grant Fund Technical Assistance

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

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

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

Historical Note

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

ARTICLE 7. INTEREST RATE SETTING AND FORGIVABLE PRINCIPAL

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

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

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

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

Historical Note

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

A.R.S. T. 49, Ch. 8, Art. 3, Refs & Annos
Currentness

Editors' Notes

GENERAL NOTES

<Article 3, Water Supply Development Revolving Fund Financial Provisions, consisting of §§ 49-1271 to 49-1282, was added by Laws 2007, Ch. 226, § 11, effective September 19, 2007.>

TERMINATION UNDER SUNSET LAW

<The water infrastructure finance authority shall terminate on July 1, 2027, unless continued. See §§ 41-3027.02 and 41-2955.>

<Title 49, Chapter 8, Articles 1 and 3 and §§ 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, relating to water infrastructure finance program, are conditionally repealed on January 1, 2028, by § 41-3027.02.>

A. R. S. T. 49, Ch. 8, Art. 3, Refs & Annos, AZ ST T. 49, Ch. 8, Art. 3, Refs & Annos
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 3. Water Supply Development Revolving Fund Financial Provisions (Refs & Annos)

A.R.S. § 49-1270

§ 49-1270. Definitions

Effective: June 20, 2023
Currentness

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 initial active management area in which part of the central Arizona project aqueduct is located.

(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 initial active management area in which part of the central Arizona project aqueduct is located.

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 § 49-1271.

Credits
Added by Laws 2022, Ch. 366, § 18. Amended by Laws 2023, Ch. 197, § 5, eff. June 20, 2023.

A. R. S. § 49-1270, AZ ST § 49-1270
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 3. Water Supply Development Revolving Fund Financial Provisions (Refs & Annos)

A.R.S. § 49-1271

§ 49-1271. Water supply development revolving fund

Effective: September 24, 2022
Currentness

A. The water supply development revolving fund is established consisting of all of the following:

1. Monies received from the issuance and sale of water supply development bonds under § 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 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 § 35-190 relating to lapsing of appropriations.

C. All monies shall be deposited, pursuant to §§ 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 § 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. [1]

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 § 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.

Credits

Added by Laws 2007, Ch. 226, § 11. Amended by Laws 2022, Ch. 366, § 19.

Footnotes

1 Section 42-1001 et seq. or 43-101 et seq.

A. R. S. § 49-1271, AZ ST § 49-1271

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 3. Water Supply Development Revolving Fund Financial Provisions (Refs & Annos)

A.R.S. § 49-1272

§ 49-1272. Water supply development revolving fund; administration

Effective: September 19, 2007
Currentness

A. The board shall administer the water supply development revolving fund.

B. On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by § 35-313, and monies earned from investment shall be credited to the fund.

C. Monies and other assets in the fund shall be used solely for the purposes authorized by this article.

Credits
Added by Laws 2007, Ch. 226, § 11.

A. R. S. § 49-1272, AZ ST § 49-1272
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

A.R.S. § 49-1273

§ 49-1273. Water supply development revolving fund; purposes

Effective: September 24, 2022
Currentness

A. Monies in the water supply development revolving fund may be used for the following purposes:

1. Making loans to eligible entities in this state under § 49-1274 for water supply development projects within this state. A single loan shall not exceed $3,000,000.

2. Making grants or providing technical assistance to eligible entities for water supply development projects in this state. A single grant shall not exceed $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. Conducting water supply studies.

B. If the monies pledged to secure water supply development bonds issued pursuant to § 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.

Credits

Added by Laws 2007, Ch. 226, § 11. Amended by Laws 2010, Ch. 244, § 40, eff. Oct. 1, 2011; Laws 2014, Ch. 212, § 3; Laws 2021, Ch. 262, § 2; Laws 2021, Ch. 407, § 6; Laws 2022, Ch. 63, § 2; Laws 2022, Ch. 366, § 20.

A. R. S. § 49-1273, AZ ST § 49-1273
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 3. Water Supply Development Revolving Fund Financial Provisions (Refs & Annos)

A.R.S. § 49-1274

§ 49-1274. Water supply development revolving fund financial assistance; procedures

Effective: September 24, 2022
Currentness

A. In compliance with any applicable requirements, an eligible entity may apply to the authority for and accept and incur indebtedness as a result of a loan or any other financial assistance from the water supply development revolving fund for water supply development projects in this state. In compliance with any applicable requirements, an eligible entity may also apply to the authority for and accept grants, staff assistance or technical assistance for a water supply development project in this state.

B. The authority shall do all of the following:

1. Prescribe a simplified form and procedure to apply for and approve assistance.

2. Establish by rule criteria by which assistance will be awarded, including:

(a) For any assistance:

(i) A determination of the applicant's financial ability to construct, operate and maintain the project if the applicant receives the assistance.

(ii) A determination of the applicant's ability to manage the project.

(iii) A determination of the applicant's ability to meet any applicable environmental requirements imposed by federal or state agencies.

(iv) A determination of the applicant's ability to acquire any necessary regulatory permits.

(b) If the applicant is applying for a loan:

(i) A determination of the ability of the applicant to repay a loan according to the terms and conditions established by this section. At the option of the authority, the existence of a current investment grade rating on existing debt of the applicant that

is secured by the same revenues to be pledged to secure repayment under the loan repayment agreement constitutes evidence regarding ability to repay a loan.

(ii) A determination of the applicant's legal capability to enter into a loan repayment agreement.

3. Determine the order and priority of projects assisted under this section based on the merits of the application with respect to water supply development issues, including the following:

(a) The ability of the project to provide multiple water supply development benefits.

(b) The cost-effectiveness of the project.

(c) The reliability and long-term security of the water supply to be developed through the project.

(d) The degree to which the project will maximize or leverage multiple available funding sources, including federal funding.

(e) The feasibility of the project, including the feasibility of the proposed design and operation of any project.

(f) Comments from water users, local citizens and affected jurisdictions.

(g) Existing, near-term and long-term water demands compared to the volume and reliability of existing water supplies of the proposed recipients of the water supply.

(h) Existing and planned conservation, best management practices and water management programs of the applicant or the proposed recipients of the water supply.

(i) The ability of the project to provide water supply development benefits to multiple jurisdictions within the state.

(j) Other criteria that the authority deems appropriate.

C. The authority shall conduct background checks, financial checks and other reviews deemed appropriate for individual applicants, applicants' boards of directors and other partners of the applicants.

D. The authority shall review on its merits each application received and shall inform the applicant of the authority's determination. If the application is not approved, the authority shall notify the applicant, stating the reasons. If the application is approved, the authority may condition the approval on assurances the authority deems necessary to ensure that the financial assistance will be used according to law and the terms of the application.

Credits

Added by Laws 2007, Ch. 226, § 11. Amended by Laws 2014, Ch. 212, § 4; Laws 2022, Ch. 63, § 3; Laws 2022, Ch. 366, § 21.

A. R. S. § 49-1274, AZ ST § 49-1274

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

A.R.S. § 49-1275

§ 49-1275. Water supply development revolving fund; loans; terms

Effective: September 24, 2022
Currentness

A. A loan from the water supply development revolving fund shall be evidenced by bonds, if the eligible entity has bonding authority, or by a loan repayment agreement, delivered to and held by the authority.

B. A loan under this section shall:

1. Be conditioned on establishing a dedicated revenue source for repaying the loan.

2. Be repaid in a period and on terms determined by the authority.

C. The authority shall prescribe the rate of interest on loans made under this section, but the rate shall not exceed the prevailing market rate for similar types of loans. The authority may adopt rules that provide for flexible interest rates and interest-free loans. All loan agreements or bonds of an eligible entity shall clearly specify the amount of principal and interest and any redemption premium that is due on any payment date. The authority may not unilaterally amend a loan repayment agreement, loan or bond after its execution or implement any policy that modifies terms and conditions or affects a previously executed loan repayment agreement, loan or bond. The authority may not impose a redemption premium or an interest payment beyond the date the principal is paid as a condition of refinancing or receiving prepayment on a loan repayment agreement, loan or bond if the loan repayment agreement, loan or bond did not originally contain a redemption premium or interest payment beyond the date the principal is paid.

D. The approval of a loan is conditioned on a written commitment by the eligible entity to complete all applicable reviews and approvals and to secure all required permits in a timely manner.

E. A loan made to an eligible entity that is a political subdivision of this state may be secured additionally by an irrevocable pledge of any shared state revenues due to the eligible entity for the duration of the loan as prescribed by the authority. As applicable to loans additionally secured with shared state revenues, the authority may enter into agreements to specify the allocation of shared state revenues in relation to individual borrowers from such authorities. If a pledge of shared state revenues as additional security for a loan is required and the eligible entity fails to make any payment due to the authority under its loan repayment agreement or the eligible entity's bonds, the authority shall certify to the state treasurer and notify the governing body of the defaulting eligible entity that the eligible entity has failed to make the required payment and shall direct a withholding of shared state revenues as prescribed in subsection F of this section. The certificate of default shall be in the form determined

by the authority, except that the certificate shall specify the amount required to satisfy the unpaid payment obligation of the eligible entity.

F. On receipt of a certificate of default from the authority, the state treasurer, to the extent not expressly prohibited by law, shall withhold any monies due to the defaulting eligible entity from the next succeeding distribution of monies pursuant to § 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 § 43-206 the amount specified in the certificate of default and shall immediately deposit the monies in the water supply development revolving fund. The state treasurer shall continue to withhold and deposit monies until the authority certifies to the state treasurer that the default has been cured. The state treasurer shall not withhold any amount that is necessary to make any required deposits then due for the payment of principal and interest on bonds or indebtedness of the eligible entity if so certified by the defaulting eligible entity to the state treasurer and the authority. The defaulting eligible entity shall not certify deposits as necessary for payment for bonds or indebtedness unless the bonds were issued or the indebtedness incurred before the date of the loan repayment agreement and the bonds or indebtedness was secured by a pledge of distributions made pursuant to §§ 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 §§ 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 § 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.

Credits

Added by Laws 2007, Ch. 226, § 11. Amended by Laws 2014, Ch. 212, § 5; Laws 2022, Ch. 63, § 4; Laws 2022, Ch. 366, § 22.

A. R. S. § 49-1275, AZ ST § 49-1275

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 3. Water Supply Development Revolving Fund Financial Provisions (Refs & Annos)

A.R.S. § 49-1276

§ 49-1276. Enforcement; attorney general

Effective: September 19, 2007
Currentness

The attorney general may take actions necessary to enforce the loan contract and achieve repayment of loans provided by the authority pursuant to §§ 49-1274 and 49-1275.

Credits
Added by Laws 2007, Ch. 226, § 11.

A. R. S. § 49-1276, AZ ST § 49-1276
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

A.R.S. § 49-1277

§ 49-1277. Water supply development bonds

Effective: September 24, 2022
Currentness

A. The authority may issue negotiable water supply development bonds in a principal amount necessary to provide sufficient monies for those projects approved under this article and including such items as maintaining sufficient reserves to secure the bonds, to pay the necessary costs of issuing, selling and redeeming the bonds and to pay other expenditures of the authority incidental to and necessary and convenient to carry out the purposes of this article. The board shall issue the bonds pursuant to subsections C and D of this section.

B. The board shall authorize the bonds by resolution. The resolution shall prescribe:

1. The rate or rates of interest and the denominations of the bonds.

2. The date or dates of the bonds and maturity.

3. The coupon or registered form of the bonds.

4. The manner of executing the bonds.

5. The medium and place of payment.

6. The terms of redemption.

C. The bonds shall be sold at public or private sale at the price and on the terms determined by the board. All proceeds from issuing bonds shall be deposited in the appropriate accounts of the funds administered by the authority.

D. The board shall publish a notice of its intention to issue bonds under this article for at least five consecutive days in a newspaper published in this state. The last day of publication must be at least ten days before issuing the bonds. The notice shall state the amount of the bonds to be sold and the intended date of issuance. A copy of the notice shall be hand delivered or sent, by certified mail, return receipt requested, to the director of the department of administration on or before the last day of publication.

E. To secure any bonds authorized by this section, the board by resolution may:

1. Provide that bonds issued under this section may be secured by a first lien on all or part of the monies paid into the appropriate account or subaccount of the funds administered by the authority.

2. Pledge or assign to or in trust for the benefit of the holder or holders of the bonds any part or appropriate account or subaccount of the monies in the funds as is necessary to pay the principal and interest of the bonds as they come due.

3. Set aside, regulate and dispose of reserves and sinking funds.

4. Provide that sufficient amounts of the proceeds from the sale of the bonds may be used to fully or partly fund any reserves or sinking funds set up by the bond resolution.

5. Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of 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 bonds of all legal and financial expenses incurred by the board in issuing, selling, delivering and paying the bonds.

7. Do any other matters that in any way may affect the security and protection of the bonds.

F. Any member of the board or any person executing the bonds is not personally liable for the payment of the bonds. The bonds are valid and binding obligations notwithstanding that before the delivery of the bonds any of the persons whose signatures appear on the bonds cease to be members of the board. From and after the sale and delivery of the bonds, they are incontestable by the board.

G. The board, out of any available monies, may purchase bonds, which may be canceled, at a price not exceeding either of the following:

1. If the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date.

2. If the bonds are not then redeemable, the redemption price applicable on the first date after purchase on which the bonds become subject to redemption plus accrued interest to that date.

Credits
Added by Laws 2007, Ch. 226, § 11. Amended by Laws 2022, Ch. 63, § 5.

A. R. S. § 49-1277, AZ ST § 49-1277
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

A.R.S. § 49-1278

§ 49-1278. Water supply development bonds; purpose

Effective: September 19, 2007
Currentness

A. Water supply development bonds may be issued to provide financial assistance under this article and to increase the capitalization of the water supply development revolving fund to accomplish the purposes stated in § 49-1273. These bonds may be secured by any monies received or to be received in the water supply development revolving fund. Amounts in the water supply development revolving fund may be used to cure defaults on loans made from the water supply development revolving fund to the extent otherwise permitted by law.

B. Any pledge made under this article is valid and binding from the time when the pledge is made. The monies pledged and received to be placed in the appropriate 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 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.

C. The bonds issued under this section, their transfer and the income they produce are exempt from taxation by this state or by any political subdivision of this state.

Credits
Added by Laws 2007, Ch. 226, § 11.

A. R. S. § 49-1278, AZ ST § 49-1278
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 3. Water Supply Development Revolving Fund Financial Provisions (Refs & Annos)

A.R.S. § 49-1279

§ 49-1279. Bond obligations of the authority

Effective: September 19, 2007
Currentness

Bonds issued under this article are obligations of the water infrastructure finance authority of Arizona, are payable only according to their terms and are not general obligations, special obligations or otherwise of this state. The bonds do not constitute a legal debt of this state and are not enforceable against this state. Payment of the bonds is not enforceable out of any state monies other than the income and revenue pledged and assigned to, or in trust for the benefit of, the holder or holders of the bonds.

Credits
Added by Laws 2007, Ch. 226, § 11.

A. R. S. § 49-1279, AZ ST § 49-1279
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 3. Water Supply Development Revolving Fund Financial Provisions (Refs & Annos)

A.R.S. § 49-1280

§ 49-1280. Certification of bonds by attorney general

Effective: September 19, 2007
Currentness

The board may submit any water supply development bonds issued under this article to the attorney general after all proceedings for their authorization have been completed. On submission, the attorney general shall examine and pass on the validity of the bonds and the regularity of the proceedings. If the proceedings comply with this article, and if the attorney general determines that, when delivered and paid for, the bonds will constitute binding and legal obligations of the board, the attorney general shall certify on the back of each bond, in substance, that it is issued according to the constitution and laws of this state.

Credits
Added by Laws 2007, Ch. 226, § 11.

A. R. S. § 49-1280, AZ ST § 49-1280
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 3. Water Supply Development Revolving Fund Financial Provisions (Refs & Annos)

A.R.S. § 49-1281

§ 49-1281. Water supply development bonds as legal investments

Effective: September 19, 2007
Currentness

Water supply development bonds issued under this article are securities 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. The bonds are also securities 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.

Credits
Added by Laws 2007, Ch. 226, § 11.

A. R. S. § 49-1281, AZ ST § 49-1281
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 3. Water Supply Development Revolving Fund Financial Provisions (Refs & Annos)

A.R.S. § 49-1282

§ 49-1282. Agreement of state

Effective: September 19, 2007
Currentness

This state pledges to and agrees with the holders of the bonds that this state will not limit or alter the rights vested in the water infrastructure finance authority of Arizona 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 bonds, or in any way impair the rights and remedies of the bondholders, until all bonds issued under this article, together with interest, 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. The board as agent for this state may include this pledge and undertaking in its resolutions and indentures securing its bonds.

Credits
Added by Laws 2007, Ch. 226, § 11.

A. R. S. § 49-1282, AZ ST § 49-1282
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

A.R.S. § 49-1291

§§ 49-1291 to 49-1297. Renumbered as §§ 27-991 to 27-997

Currentness

A. R. S. § 49-1291, AZ ST § 49-1291
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

A.R.S. § 49-1292

§§ 49-1291 to 49-1297. Renumbered as §§ 27-991 to 27-997

Currentness

A. R. S. § 49-1292, AZ ST § 49-1292
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

A.R.S. § 49-1293

§§ 49-1291 to 49-1297. Renumbered as §§ 27-991 to 27-997

Currentness

A. R. S. § 49-1293, AZ ST § 49-1293
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

A.R.S. § 49-1294

§§ 49-1291 to 49-1297. Renumbered as §§ 27-991 to 27-997

Currentness

A. R. S. § 49-1294, AZ ST § 49-1294
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

A.R.S. § 49-1295

§§ 49-1291 to 49-1297. Renumbered as §§ 27-991 to 27-997

Currentness

A. R. S. § 49-1295, AZ ST § 49-1295
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

A.R.S. § 49-1296

§§ 49-1291 to 49-1297. Renumbered as §§ 27-991 to 27-997

Currentness

A. R. S. § 49-1296, AZ ST § 49-1296
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

A.R.S. § 49-1297

§§ 49-1291 to 49-1297. Renumbered as §§ 27-991 to 27-997

Currentness

A. R. S. § 49-1297, AZ ST § 49-1297
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

A.R.S. T. 49, Ch. 8, Art. 4, Refs & Annos
Currentness

Editors' Notes

GENERAL NOTES

<Article 4, Long-term Water Augmentation Fund, consisting of §§ 49-1301 to 49-1313, was added by Laws 2022, Ch. 366, § 23, effective Sept. 24, 2022.>

A. R. S. T. 49, Ch. 8, Art. 4, Refs & Annos, AZ ST T. 49, Ch. 8, Art. 4, Refs & Annos
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 4. Long-Term Water Augmentation Fund (Refs & Annos)

A.R.S. § 49-1301

§ 49-1301. Definitions

Effective: September 24, 2022
Currentness

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 § 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.

Credits
Added by Laws 2022, Ch. 366, § 23.

Editors' Notes

TERMINATION UNDER SUNSET LAW

<The water infrastructure finance authority shall terminate on July 1, 2027, unless continued. See §§ 41-3027.02 and 41-2955.>

<Title 49, Chapter 8, Articles 1 and 3 and §§ 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, relating to water infrastructure finance program, are conditionally repealed on January 1, 2028, by § 41-3027.02.>

A. R. S. § 49-1301, AZ ST § 49-1301
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 4. Long-Term Water Augmentation Fund (Refs & Annos)

A.R.S. § 49-1302

§ 49-1302. Long-term water augmentation fund

Effective: September 24, 2022
Currentness

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 § 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 § 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 §§ 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 §§ 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 § 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.

Credits
Added by Laws 2022, Ch. 366, § 23.

A. R. S. § 49-1302, AZ ST § 49-1302
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 4. Long-Term Water Augmentation Fund (Refs & Annos)

A.R.S. § 49-1303

§ 49-1303. Long-term water augmentation fund; purposes; limitation

Effective: September 24, 2022
Currentness

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 § 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 § 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.

Credits

Added by Laws 2022, Ch. 366, § 23.

Editors' Notes

TERMINATION UNDER SUNSET LAW

<The water infrastructure finance authority shall terminate on July 1, 2027, unless continued. See §§ 41-3027.02 and 41-2955.>

<Title 49, Chapter 8, Articles 1 and 3 and §§ 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, relating to water infrastructure finance program, are conditionally repealed on January 1, 2028, by § 41-3027.02.>

A. R. S. § 49-1303, AZ ST § 49-1303

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 4. Long-Term Water Augmentation Fund (Refs & Annos)

A.R.S. § 49-1304

§ 49-1304. Evaluation criteria for projects from the long-term water augmentation fund

Effective: September 24, 2022
Currentness

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 § 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 § 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 § 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.

Credits
Added by Laws 2022, Ch. 366, § 23.

Editors' Notes

TERMINATION UNDER SUNSET LAW

<The water infrastructure finance authority shall terminate on July 1, 2027, unless continued. See §§ 41-3027.02 and 41-2955.>

<Title 49, Chapter 8, Articles 1 and 3 and §§ 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, relating to water infrastructure finance program, are conditionally repealed on January 1, 2028, by § 41-3027.02.>

A. R. S. § 49-1304, AZ ST § 49-1304
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 4. Long-Term Water Augmentation Fund (Refs & Annos)

A.R.S. § 49-1305

§ 49-1305. Opportunity for participation by Colorado River water users

Effective: September 24, 2022
Currentness

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.

Credits
Added by Laws 2022, Ch. 366, § 23.

Editors' Notes

TERMINATION UNDER SUNSET LAW

<The water infrastructure finance authority shall terminate on July 1, 2027, unless continued. See §§ 41-3027.02 and 41-2955.>

<Title 49, Chapter 8, Articles 1 and 3 and §§ 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, relating to water infrastructure finance program, are conditionally repealed on January 1, 2028, by § 41-3027.02.>

A. R. S. § 49-1305, AZ ST § 49-1305
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 4. Long-Term Water Augmentation Fund (Refs & Annos)

A.R.S. § 49-1306

§ 49-1306. Taxation exemption

Effective: September 24, 2022
Currentness

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 [1] 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.

Credits
Added by Laws 2022, Ch. 366, § 23.

Editors' Notes

TERMINATION UNDER SUNSET LAW

<The water infrastructure finance authority shall terminate on July 1, 2027, unless continued. See §§ 41-3027.02 and 41-2955.>

<Title 49, Chapter 8, Articles 1 and 3 and §§ 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, relating to water infrastructure finance program, are conditionally repealed on January 1, 2028, by § 41-3027.02.>

Footnotes

1 Section 35-511 et seq.

A. R. S. § 49-1306, AZ ST § 49-1306
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 4. Long-Term Water Augmentation Fund (Refs & Annos)

A.R.S. § 49-1307

§ 49-1307. Financial assistance from the long-term water augmentation fund; terms

Effective: June 20, 2023
Currentness

A. The authority shall consider applications for financial assistance from the long-term water augmentation fund in accordance with § 49-1304 and shall consider the recommendations of the long-term water augmentation committee established by § 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 § 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 §§ 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 §§ 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 § 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 § 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 § 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 § 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 §§ 42-5029 and 43-206.

Credits

Added by Laws 2022, Ch. 366, § 23. Amended by Laws 2023, Ch. 197, § 6, eff. June 20, 2023.

Editors' Notes

TERMINATION UNDER SUNSET LAW

<The water infrastructure finance authority shall terminate on July 1, 2027, unless continued. See §§ 41-3027.02 and 41-2955.>

<Title 49, Chapter 8, Articles 1 and 3 and §§ 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, relating to water infrastructure finance program, are conditionally repealed on January 1, 2028, by § 41-3027.02.>

A. R. S. § 49-1307, AZ ST § 49-1307
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 4. Long-Term Water Augmentation Fund (Refs & Annos)

A.R.S. § 49-1308

§ 49-1308. Long-term water augmentation financial assistance; procedures

Effective: September 24, 2022
Currentness

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 § 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.

Credits
Added by Laws 2022, Ch. 366, § 23.

Editors' Notes

TERMINATION UNDER SUNSET LAW

<The water infrastructure finance authority shall terminate on July 1, 2027, unless continued. See §§ 41-3027.02 and 41-2955.>

<Title 49, Chapter 8, Articles 1 and 3 and §§ 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, relating to water infrastructure finance program, are conditionally repealed on January 1, 2028, by § 41-3027.02.>

A. R. S. § 49-1308, AZ ST § 49-1308
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

A.R.S. § 49-1309

§ 49-1309. Long-term water augmentation bonds; requirements; authority; exemption from liability

Effective: June 20, 2023
Currentness

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.

Credits

Added by Laws 2022, Ch. 366, § 23. Amended by Laws 2023, Ch. 197, § 7, eff. June 20, 2023.

Editors' Notes

TERMINATION UNDER SUNSET LAW

<The water infrastructure finance authority shall terminate on July 1, 2027, unless continued. See §§ 41-3027.02 and 41-2955.>

<Title 49, Chapter 8, Articles 1 and 3 and §§ 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, relating to water infrastructure finance program, are conditionally repealed on January 1, 2028, by § 41-3027.02.>

A. R. S. § 49-1309, AZ ST § 49-1309
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 4. Long-Term Water Augmentation Fund (Refs & Annos)

A.R.S. § 49-1310

§ 49-1310. Long-term water augmentation bond obligations of the authority

Effective: September 24, 2022
Currentness

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.

Credits
Added by Laws 2022, Ch. 366, § 23.

Editors' Notes

TERMINATION UNDER SUNSET LAW

<The water infrastructure finance authority shall terminate on July 1, 2027, unless continued. See §§ 41-3027.02 and 41-2955.>

<Title 49, Chapter 8, Articles 1 and 3 and §§ 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, relating to water infrastructure finance program, are conditionally repealed on January 1, 2028, by § 41-3027.02.>

A. R. S. § 49-1310, AZ ST § 49-1310
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

A.R.S. § 49-1311

§ 49-1311. Certification of long-term water augmentation bonds by attorney general

Effective: September 24, 2022
Currentness

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.

Credits
Added by Laws 2022, Ch. 366, § 23.

Editors' Notes

TERMINATION UNDER SUNSET LAW

<The water infrastructure finance authority shall terminate on July 1, 2027, unless continued. See §§ 41-3027.02 and 41-2955.>

<Title 49, Chapter 8, Articles 1 and 3 and §§ 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, relating to water infrastructure finance program, are conditionally repealed on January 1, 2028, by § 41-3027.02.>

A. R. S. § 49-1311, AZ ST § 49-1311
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 4. Long-Term Water Augmentation Fund (Refs & Annos)

A.R.S. § 49-1312

§ 49-1312. Long-term water augmentation bonds as legal investments

Effective: September 24, 2022
Currentness

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.

Credits
Added by Laws 2022, Ch. 366, § 23.

Editors' Notes

TERMINATION UNDER SUNSET LAW

<The water infrastructure finance authority shall terminate on July 1, 2027, unless continued. See §§ 41-3027.02 and 41-2955.>

<Title 49, Chapter 8, Articles 1 and 3 and §§ 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, relating to water infrastructure finance program, are conditionally repealed on January 1, 2028, by § 41-3027.02.>

A. R. S. § 49-1312, AZ ST § 49-1312
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 4. Long-Term Water Augmentation Fund (Refs & Annos)

A.R.S. § 49-1313

§ 49-1313. Agreement of state

Effective: September 24, 2022
Currentness

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.

Credits
Added by Laws 2022, Ch. 366, § 23.

Editors' Notes

TERMINATION UNDER SUNSET LAW

<The water infrastructure finance authority shall terminate on July 1, 2027, unless continued. See §§ 41-3027.02 and 41-2955.>

<Title 49, Chapter 8, Articles 1 and 3 and §§ 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, relating to water infrastructure finance program, are conditionally repealed on January 1, 2028, by § 41-3027.02.>

A. R. S. § 49-1313, AZ ST § 49-1313
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

A.R.S. T. 49, Ch. 8, Art. 5, Refs & Annos
Currentness

Editors' Notes

GENERAL NOTES

<Article 5, Water Conservation Grant Fund, consisting of §§ 49-1331 to 49-1335, was added by Laws 2022, Ch. 366, § 23, effective Sept. 24, 2022.>

A. R. S. T. 49, Ch. 8, Art. 5, Refs & Annos, AZ ST T. 49, Ch. 8, Art. 5, Refs & Annos
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 5. Water Conservation Grant Fund (Refs & Annos)

A.R.S. § 49-1331

§ 49-1331. Water conservation grant fund; exemption; administration; report

Effective: September 24, 2022
Currentness

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 § 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 § 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. [1]

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 § 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.

Credits
Added by Laws 2022, Ch. 366, § 23.

Footnotes

1 Section 42-1001 et seq. or 43-101 et seq.

A. R. S. § 49-1331, AZ ST § 49-1331
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 5. Water Conservation Grant Fund (Refs & Annos)

A.R.S. § 49-1332

§ 49-1332. Water conservation grant fund; purposes

Effective: September 24, 2022
Currentness

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.

Credits

Added by Laws 2022, Ch. 366, § 23.

A. R. S. § 49-1332, AZ ST § 49-1332

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 5. Water Conservation Grant Fund (Refs & Annos)

A.R.S. § 49-1333

§ 49-1333. Water conservation grant fund; procedures

Effective: June 20, 2023
Currentness

A. In compliance with any applicable requirements, an eligible entity as defined in § 49-1301 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 §§ 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 an eligible entity as defined in § 49-1301.

B. The authority shall:

1. Prescribe a simplified form and procedure to apply for and approve assistance.

2. Establish by rule criteria that are 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 §§ 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.

Credits
Added by Laws 2022, Ch. 366, § 23. Amended by Laws 2023, Ch. 197, § 8, eff. June 20, 2023.

A. R. S. § 49-1333, AZ ST § 49-1333
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

A.R.S. § 49-1334

§ 49-1334. Evaluation criteria for water conservation programs and projects from the water conservation grant fund; procedures

Effective: September 24, 2022
Currentness

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 § 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 § 49-1302 or the water supply development revolving fund established by § 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.

Credits
Added by Laws 2022, Ch. 366, § 23.

A. R. S. § 49-1334, AZ ST § 49-1334
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 8. Water Infrastructure Finance Program (Refs & Annos)
Article 5. Water Conservation Grant Fund (Refs & Annos)

A.R.S. § 49-1335

§ 49-1335. Water conservation grant committee; membership; recommendations

Effective: September 24, 2022
Currentness

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. [1]

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 § 49-1206.

Credits
Added by Laws 2022, Ch. 366, § 23.

Footnotes

1 Section 37-1001 et seq.

A. R. S. § 49-1335, AZ ST § 49-1335
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Arizona Revised Statutes Annotated
Title 49. The Environment
Chapter 2. Water Quality Control (Refs & Annos)
Article 1. General Provisions (Refs & Annos)

A.R.S. § 49-201

§ 49-201. Definitions

Effective: September 29, 2021
Currentness

In this chapter, unless the context otherwise requires:

1. “Administrator” means the administrator of the United States environmental protection agency.

2. “Aquifer” means a geologic unit that contains sufficient saturated permeable material to yield usable quantities of water to a well or spring.

3. “Best management practices” means those methods, measures or practices to prevent or reduce discharges and includes structural and nonstructural controls and operation and maintenance procedures. Best management practices may be applied before, during and after discharges to reduce or eliminate the introduction of pollutants into receiving waters. Economic, institutional and technical factors shall be considered in developing best management practices.

4. “CERCLA” means the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code §§ 9601 through 9657), commonly known as “superfund”.

5. “Clean closure” means implementation of all actions specified in an aquifer protection permit, if any, as closure requirements, as well as elimination, to the greatest degree practicable, of any reasonable probability of further discharge from the facility and of either exceeding aquifer water quality standards at the applicable point of compliance or, if an aquifer water quality standard is exceeded at the time the permit is issued, causing further degradation of the aquifer at the applicable point of compliance as provided in § 49-243, subsection B, paragraph 3. Clean closure also means postclosure monitoring and maintenance are unnecessary to meet the requirements in an aquifer protection permit.

6. “Clean water act” means the federal water pollution control act amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code §§ 1251 through 1376), as amended.

7. “Closed facility” means:

(a) A facility that ceased operation before January 1, 1986, that is not, on August 13, 1986, engaged in the activity for which the facility was designed and that was previously operated and for which there is no intent to resume operation.

(b) A facility that has been approved as a clean closure by the director.

(c) A facility at which any postclosure monitoring and maintenance plan, notifications and approvals required in a permit have been completed.

8. “Concentrated animal feeding operation” means an animal feeding operation that meets the criteria prescribed in 40 Code of Federal Regulations part 122, appendix B for determining a concentrated animal feeding operation for purposes of 40 Code of Federal Regulations §§ 122.23 and 122.24, appendix C.

9. “Department” means the department of environmental quality.

10. “Direct reuse” means the beneficial use of reclaimed water for specific purposes authorized pursuant to § 49-203, subsection A, paragraph 7.

11. “Director” means the director of environmental quality or the director's designee.

12. “Discharge” means the direct or indirect addition of any pollutant to the waters of the state from a facility. For purposes of the aquifer protection permit program prescribed by article 3 of this chapter, [1] discharge means the addition of a pollutant from a facility either directly to an aquifer or to the land surface or the vadose zone in such a manner that there is a reasonable probability that the pollutant will reach an aquifer.

13. “Discharge impact area” means the potential areal extent of pollutant migration, as projected on the land surface, as the result of a discharge from a facility.

14. “Discharge limitation” means any restriction, prohibition, limitation or criteria established by the director, through a rule, permit or order, on quantities, rates, concentrations, combinations, toxicity and characteristics of pollutants.

15. “Effluent-dependent water” means a surface water or portion of a surface water that consists of a point source discharge without which the surface water would be ephemeral. An effluent-dependent water may be perennial or intermittent depending on the volume and frequency of the point source discharge of treated wastewater.

16. “Environment” means WOTUS, any other surface waters, groundwater, drinking water supply, land surface or subsurface strata or ambient air, within or bordering on this state.

17. “Ephemeral water” means a surface water or portion of surface water that flows or pools only in direct response to precipitation.

18. “Existing facility” means a facility on which construction began before August 13, 1986 and that is neither a new facility nor a closed facility. For the purposes of this definition, construction on a facility has begun if the facility owner or operator has either:

(a) Begun, or caused to begin, as part of a continuous on-site construction program any placement, assembly or installation of a building, structure or equipment.

(b) Entered a binding contractual obligation to purchase a building, structure or equipment that is intended to be used in its operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility engineering and design studies, do not constitute a contractual obligation for purposes of this definition.

19. “Facility” means any land, building, installation, structure, equipment, device, conveyance, area, source, activity or practice from which there is, or with reasonable probability may be, a discharge.

20. “Gray water” means wastewater that has been collected separately from a sewage flow and that originates from a clothes washer or a bathroom tub, shower or sink but that does not include wastewater from a kitchen sink, dishwasher or toilet.

21. “Hazardous substance” means:

(a) Any substance designated pursuant to §§ 311(b)(2)(A) and 307(a) of the clean water act.

(b) Any element, compound, mixture, solution or substance designated pursuant to § 102 of CERCLA.

(c) Any hazardous waste having the characteristics identified under or listed pursuant to § 49-922.

(d) Any hazardous air pollutant listed under § 112 of the federal clean air act (42 United States Code § 7412).

(e) Any imminently hazardous chemical substance or mixture with respect to which the administrator has taken action pursuant to § 7 of the federal toxic substances control act (15 United States Code § 2606).

(f) Any substance that the director, by rule, either designates as a hazardous substance following the designation of the substance by the administrator under the authority described in subdivisions (a) through (e) of this paragraph or designates as a hazardous substance on the basis of a determination that such substance represents an imminent and substantial endangerment to public health.

22. “Inert material” means broken concrete, asphaltic pavement, manufactured asbestos-containing products, brick, rock, gravel, sand and soil. Inert material also includes material that when subjected to a water leach test that is designed to approximate natural infiltrating waters will not leach substances in concentrations that exceed numeric aquifer water quality standards

established pursuant to § 49-223, including overburden and wall rock that is not acid generating, taking into consideration acid neutralization potential, and that has not and will not be subject to mine leaching operations.

23. "Intermittent water" means a surface water or portion of surface water that flows continuously during certain times of the year and more than in direct response to precipitation, such as when it receives water from a spring, elevated groundwater table or another surface source, such as melting snowpack.

24. "Major modification" means a physical change in an existing facility or a change in its method of operation that results in a significant increase or adverse alteration in the characteristics or volume of the pollutants discharged, or the addition of a process or major piece of production equipment, building or structure that is physically separated from the existing operation and that causes a discharge, provided that:

(a) A modification to a groundwater protection permit facility as defined in § 49-241.01, subsection C that would qualify for an area-wide permit pursuant to § 49-243 consisting of an activity or structure listed in § 49-241, subsection B shall not constitute a major modification solely because of that listing.

(b) For a groundwater protection permit facility as defined in § 49-241.01, subsection C, a physical expansion that is accomplished by lateral accretion or upward expansion within the pollutant management area of the existing facility or group of facilities shall not constitute a major modification if the accretion or expansion is accomplished through sound engineering practice in a manner compatible with existing facility design, taking into account safety, stability and risk of environmental release. For a facility described in § 49-241.01, subsection C, paragraph 1, expansion of a facility shall conform with the terms and conditions of the applicable permit. For a facility described in § 49-241.01, subsection C, paragraph 2, if the area of the contemplated expansion is not identified in the notice of disposal, the owner or operator of the facility shall submit to the director the information required by § 49-243, subsection A, paragraphs 1, 2, 3 and 7.

25. "New facility" means a previously closed facility that resumes operation or a facility on which construction was begun after August 13, 1986 on a site at which no other facility is located or to totally replace the process or production equipment that causes the discharge from an existing facility. A major modification to an existing facility is deemed a new facility to the extent that the criteria in § 49-243, subsection B, paragraph 1 can be practicably applied to such modification. For the purposes of this definition, construction on a facility has begun if the facility owner or operator has either:

(a) Begun, or caused to begin as part of a continuous on-site construction program, any placement, assembly or installation of a building, structure or equipment.

(b) Entered a binding contractual obligation to purchase a building, structure or equipment that is intended to be used in its operation within a reasonable time. Options to purchase or contracts that can be terminated or modified without substantial loss, and contracts for feasibility engineering and design studies, do not constitute a contractual obligation for purposes of this definition.

26. "Nonpoint source" means any conveyance that is not a point source from which pollutants are or may be discharged to WOTUS.

27. "Non-WOTUS protected surface water" means a protected surface water that is not a WOTUS.

28. “Non-WOTUS waters of the state” means waters of the state that are not WOTUS.

29. “On-site wastewater treatment facility” 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.

30. “Ordinary high watermark” means the line on the shore of an intermittent or perennial protected surface water established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris or other appropriate means that consider the characteristics of the channel, floodplain and riparian area.

31. “Perennial water” means a surface water or portion of surface water that flows continuously throughout the year.

32. “Permit” means a written authorization issued by the director or prescribed by this chapter or in a rule adopted under this chapter stating the conditions and restrictions governing a discharge or governing the construction, operation or modification of a facility. For the purposes of regulating non-WOTUS protected surface waters, a permit shall not include provisions governing the construction, operation or modification of a facility except as necessary for the purpose of ensuring that a discharge meets water quality-related effluent limitations or to require best management practices for the purpose of ensuring that a discharge does not cause an exceedance of an applicable surface water quality standard.

33. “Person” means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or any federal facility, interstate body or other entity.

34. “Point source” means any discernible, confined and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft from which pollutants are or may be discharged to WOTUS or protected surface water. Point source does not include return flows from irrigated agriculture.

35. “Pollutant” means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining, industrial, municipal and agricultural wastes or any other liquid, solid, gaseous or hazardous substances.

36. “Postclosure monitoring and maintenance” means those activities that are conducted after closure notification and that are necessary to:

(a) Keep the facility in compliance with either the aquifer water quality standards at the applicable point of compliance or, for any aquifer water quality standard that is exceeded at the time the aquifer protection permit is issued, the requirement to prevent the facility from further degrading the aquifer at the applicable point of compliance as provided under § 49-243, subsection B, paragraph 3.

(b) Verify that the actions or controls specified as closure requirements in an approved closure plan or strategy are routinely inspected and maintained.

(c) Perform any remedial, mitigative or corrective actions or controls as specified in the aquifer protection permit or perform corrective action as necessary to comply with this paragraph and article 3 of this chapter.

(d) Meet property use restrictions.

37. “Practicably” means able to be reasonably done from the standpoint of technical practicability and, except for pollutants addressed in § 49-243, subsection I, economically achievable on an industry-wide basis.

38. “Protected surface waters” means waters of the state listed on the protected surface waters list under § 49-221, subsection G and all WOTUS.

39. “Public waters” means waters of the state open to or managed for use by members of the general public.

40. “Recharge project” means a facility necessary or convenient to obtain, divert, withdraw, transport, exchange, deliver, treat or store water to infiltrate or reintroduce that water into the ground.

41. “Reclaimed water” means water that has been treated or processed by a wastewater treatment plant or an on-site wastewater treatment facility.

42. “Regulated agricultural activity” means the application of nitrogen fertilizer or a concentrated animal feeding operation.

43. “Safe drinking water act” means the federal safe drinking water act, as amended (P.L. 93-523; 88 Stat. 1660; 95-190; 91 Stat. 1393).

44. “Standards” means water quality standards, pretreatment standards and toxicity standards established pursuant to this chapter.

45. “Standards of performance” means performance standards, design standards, best management practices, technologically based standards and other standards, limitations or restrictions established by the director by rule or by permit condition.

46. “Tank” means a stationary device, including a sump, that is constructed of concrete, steel, plastic, fiberglass, or other non-earthen material that provides substantial structural support, and that is designed to contain an accumulation of solid, liquid or gaseous materials.

47. “Toxic pollutant” means a substance that will cause significant adverse reactions if ingested in drinking water. Significant adverse reactions are reactions that may indicate a tendency of a substance or mixture to cause long lasting or irreversible damage to human health.

48. “Trade secret” means information to which all of the following apply:

(a) A person has taken reasonable measures to protect from disclosure and the person intends to continue to take such measures.

(b) The information is not, and has not been, reasonably obtainable without the person's consent by other persons, other than governmental bodies, by use of legitimate means, other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding.

(c) No statute specifically requires disclosure of the information to the public.

(d) The person has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position.

49. “Vadose zone” means the zone between the ground surface and any aquifer.

50. “Waters of the state” means all waters within the jurisdiction of this state including all perennial or intermittent streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, aquifers, springs, irrigation systems, drainage systems and other bodies or accumulations of surface, underground, natural, artificial, public or private water situated wholly or partly in or bordering on the state.

51. “Well” means a bored, drilled or driven shaft, pit or hole whose depth is greater than its largest surface dimension.

52. “Wetland” means, for the purposes of non-WOTUS protected surface waters, an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

53. “WOTUS” means waters of the state that are also navigable waters as defined by section 502(7) of the clean water act.

54. “WOTUS protected surface water” means a protected surface water that is a WOTUS.

Credits

Added as § 36-3501 by Laws 1986, Ch. 368, § 21, eff. Aug. 13, 1986. Renumbered as § 49-201 and amended by Laws 1986, Ch. 368, §§ 36, 44, eff. July 1, 1987. Amended by Laws 1993, Ch. 31, § 2; Laws 1994, Ch. 237, § 1; Laws 1995, Ch. 262, § 2; Laws 1996, Ch. 194, § 4; Laws 1999, Ch. 26, § 4; Laws 2001, Ch. 357, § 1; Laws 2006, Ch. 228, § 2; Laws 2014, Ch. 115, § 1; Laws 2021, Ch. 325, § 2.

Footnotes

1 Section 49-241 et seq.

A. R. S. § 49-201, AZ ST § 49-201
Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of March 6, 2024.

End of Document

DEPARTMENT OF PUBLIC SAFETY LOCAL RETIREMENT BOARD
Title 13, Chapter 8, Article 1

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: May 7, 2024

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

FROM: Council Staff

DATE: April 26, 2024

SUBJECT: **DEPARTMENT OF PUBLIC SAFETY LOCAL RETIREMENT BOARD**
Title 13, Chapter 8, Article 1

Summary

This Five-Year Review Report (5YRR) from the Department of Public Safety Local Retirement Board (Board) relates to fifteen (15) rules in Title 13, Chapter 8, Article 1 which serve to provide information and procedures to employees of the Department of Public Safety (Department) who are eligible for benefits under the Arizona Public Safety Personnel Retirement System (PSPRS), a public retirement system created by Arizona law. *See* A.R.S. § 38-841, *et seq*.

In the prior report for these rules, which was approved by the Council in December 2018, the Board did not propose to amend any rules.

Proposed Action

In the current report, the Board indicates A.R.S. § 38-847 was substantially amended by the Arizona Legislature in 2021 (Laws 2021, Ch. 34, eff. Jan. 1, 2022) and removed some power and authority from the Board. The Board indicates the rules have not been amended to reflect those statutory changes. In response to statutory changes, the Board did not review the following rules with the intention that those rules expire under A.R.S. § 41-1056(J):

- R13-8-104:
- R13-8-107
- R13-8-109
- R13-8-110
- R13-8-111

Furthermore, the Department is proposing to amend the following rules as described in more detail below:

- R13-8-101
- R13-8-102
- R13-8-105
- R13-8-108

The Board anticipates submitting a rulemaking to the Council in January 2025.

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:

According to the Department, an economic, small business, and consumer impact statement is not applicable because the Local Board does not engage with any small or large business, or any consumers. The rules serve to provide information and procedures to employees of the Department who are eligible for benefits under the Arizona Public Safety Personnel Retirement System, a public retirement system created by Arizona law.

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, this is not applicable. The Local Board does not regulate any person or business and the rules do not have any underlying regulatory objectives. The rules serve to provide information and procedures to employees of the Department who are eligible for benefits under the Arizona Public Safety Personnel Retirement System.

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?

As outlined above, A.R.S. § 38-847 was substantially amended by the Arizona Legislature in 2021 (Laws 2021, Ch. 34, eff. Jan. 1, 2022) and removed some power and authority from the Board. The Board indicates the rules have not been amended to reflect those statutory changes. Specifically, the Board is allowing the following rules to expire as the duties outlined therein were removed from the purview of the Board:

- **R13-8-104:** Normal retirement, deferred retirement, deferred retirement option plan (DROP), and reverse DROP duties were removed from the purview of the Board.
- **R13-8-107:** Survivor's benefits duties were removed from the purview of the Board.
- **R13-8-109:** Benefits calculations duties were removed from the purview of the Board.
- **R13-8-110:** Termination of benefits duties were removed from the purview of the Board.
- **R13-8-111:** Duties related to the calculation of benefits or suspension of benefits were removed from the purview of a Local Board.

Additionally, the Board indicates that the following rules must be amended as they are no longer consistent with statute:

- **R13-8-101:** Remove the definition of DROP and add a definition of Fund Manager.
- **R13-8-102:** Remove the duties of the Secretary to provide information and applications to members at any time other than upon request as PSPRS is now responsible for retirements, DROP, and survivor benefits, not a Local Board.
- **R13-8-105:** Conform to A.R.S. § 38-859, which requires a Local Board to appoint a Medical Board for evaluating disability applications.
- **R13-8-108:** Remove references to retirement and survivor's benefits and add references to line of duty death determinations to conform with A.R.S. § 38-847.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Board indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Board indicates the rules are mostly enforced as written to the extent that they remain applicable following amendments to A.R.S. § 38-847. However, the Board indicates rule R13-8-105(B), which states that the Secretary independently determines whether to appoint a Medical Board to review a disability application, is not enforced as written. A.R.S. § 38-859(D) requires the Board to appoint a Medical Board. The Board was required to adopt Local Board Procedures per A.R.S. § 38-847(F), derived from Model Uniform Rules issued by the PSPRS Board of Trustees. These Local Board Procedures address the proper procedure for the evaluation of disability benefit applications and are followed by the Board as they align with statute, notwithstanding R13-8-105(B).

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 Board indicates it does not issue regulatory permits, licenses, or authorizations.

11. Conclusion

This 5YRR from the Board relates to fifteen (15) rules in Title 13, Chapter 8, Article 1 which serve to provide information and procedures to employees of the Department of Public Safety who are eligible for benefits under the Arizona Public Safety Personnel Retirement System.

The Board indicates A.R.S. § 38-847 was substantially amended by the Arizona Legislature in 2021 (Laws 2021, Ch. 34, eff. Jan. 1, 2022) and removed some power and authority from the Board. The Board indicates the rules have not been amended to reflect those statutory changes. In response to statutory changes, the Board did not review five (5) rules with the intention that those rules expire under A.R.S. § 41-1056(J) and intends to amend another four (4) rules to make them consistent with statute. The Board anticipates submitting a rulemaking to the Council in January 2025.

Council staff recommends approval of this report.

RYAN RAPP PACHECO & KELLEY PLC
3200 N. Central Avenue, Suite 2250
Phoenix, Arizona 85012
Telephone (602) 280-1000
Facsimile (602) 265-1495
LESLI M. SORENSEN, Esq.
Partner
Email: lsorensen@rrpklaw.com

September 28, 2023

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

RE: Arizona Department of Public Safety Public Safety Personnel Retirement System Local Board; A.A.C. Title 13, Chapter 8, Article 1; Five Year Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year Review Report of the Arizona Department of Public Safety Public Safety Personnel Retirement System Local Board ("DPS Local Board") for A.A.C. Title 13, Chapter 8, Article 1, which is due on September 28, 2023.

The DPS Local Board did not review the following rules with the intention that those rules expire under A.R.S. § 41-1056(J):

- R13-8-104
- R13-8-107
- R13-8-109
- R13-8-110
- R13-8-111

The DPS Local Board hereby certifies compliance with A.R.S. § 41-1091.

I am authorized by the DPS Local Board to file this Report on its behalf. For questions about this report, please feel free to contact me.

Yours very truly,

RYAN RAPP PACHECO & KELLEY, PLC.

LESLI M. SORENSEN

Arizona Department of Public Safety
Public Safety Personnel Retirement System Local Board

5 YEAR REVIEW REPORT - AMENDED

A.A.C. Title 13, Ch. 8, Art. 1

April 24, 2024

1. Authorization of the rule by existing statutes

A.R.S. § 38-841, *et seq*.

2. The objective of each rule:

Rule	Objective
R13-8-101	To notify the public generally, and the members of the System specifically, of the definitions applicable to the Rules.
R13-8-102	To notify the public generally, and the members of the System specifically, of who maintains and distributes information about the System.
R13-8-103	To provide procedures for the evaluation, review, and acceptance of new members into the System by the DPS Local Board, including procedures for identification of pre-existing conditions and notification to a new member of the DPS Local Board's decision.
R13-8-104	Not Reviewed[1]
R13-8-105	To provide procedures for the evaluation, review, and acceptance of disability retirements under the System by the DPS Local Board, including specific questions to be addressed by the Board's Medical Board.
R13-8-106	To provide procedures for the process of reevaluating members receiving accidental or ordinary disability pensions to determine whether a member has recovered from the disability and the determination of whether the member's disability benefit should be terminated.
R13-8-107	Not Reviewed[2]
R13-8-108	To provide procedures for notifying applicants for benefits of the DPS Local Board's decisions and the right to appeal, if applicable.

[1] Laws 2021, Ch. 34, eff. Jan. 1, 2022 removed normal retirement, deferred retirement, deferred retirement option plan (DROP), and reverse DROP duties from the purview of a Local Board. As such, this Rule should be allowed to expire.
[2] Laws 2021, Ch. 34, eff. Jan. 1, 2022 removed survivor's benefits duties from the purview of a Local Board. As such, this Rule should be allowed to expire.

R13-8-109	Not Reviewed[3]
R13-8-110	Not Reviewed[4]
R13-8-111	Not Reviewed[5]
R13-8-112	To notify an applicant and the fund manager of the procedures for a rehearing on an original determination made by the DPS Local Board.
R13-8-113	To notify an applicant and the fund manager of the procedures for a review of a decision by the DPS Local Board on a rehearing on an original determination made by the DPS Local Board.
R13-8-114	To notify parties to hearings by the DPS Local Board of who pays for transcripts of oral hearings and the process for waiving such costs.
R13-8-115	To exempt medical records and data of members in the Board's possession from Arizona's Public Records Laws, to direct the Board to discuss such records and data in executive session unless waived by the member, and to ensure only reasonably necessary individuals are present during executive sessions.

3. Are the rules effective in achieving their objectives?

Yes.

4. Are the rules consistent with other rules and statutes?

Not entirely. A.R.S. § 38-847 was substantially amended by the Arizona Legislature in 2021 (Laws 2021, Ch. 34, eff. Jan. 1, 2022) and removed some power and authority from the Board. The Rules have not been amended to reflect those statutory changes.

5. Are the rules enforced as written?

Mostly. To the extent a Rule remains applicable following the amendments to A.R.S. § 38-847 in 2021, it is enforced as written, except for R13-8-105(B).

Per R13-8-105(B), the Secretary independently determines whether to appoint a Medical Board to review a disability application, however A.R.S. § 38-859(D) requires the Board to appoint a Medical Board. The Board was required to adopt Local Board Procedures per A.R.S. § 38-847(F), derived from Model Uniform Rules issued by the PSPRS Board of Trustees. These Local Board Procedures address the proper procedure for the evaluation of disability benefit applications and are followed by the DPS Local Board as they align with statute, notwithstanding R13-8-105(B).

[3] Laws 2021, Ch. 34, eff. Jan. 1, 2022 removed benefits calculations duties from the purview of a Local Board. As such, this Rule should be allowed to expire.
[4] Laws 2021, Ch. 34, eff. Jan. 1, 2022 removed termination of benefits duties from the purview of a Local Board. As such, this Rule should be allowed to expire.
[5] Laws 2021, Ch. 34, eff. Jan. 1, 2022 removed duties related to the calculation of benefits or suspension of benefits from the purview of a Local Board. As such, this Rule should be allowed to expire.

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:

Not Applicable. The Local Board does not engage with any small or large businesses, any economic principles, or any consumers.

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

Not Applicable. The Local Board does not compete with any business.

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

There was no course of action indicated in the 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:

Not Applicable. The Local Board does not regulate any person or business and the Rules do not have any underlying regulatory objectives. The Rules serve to provide information and procedures to employees of DPS who are eligible for benefits under the Arizona Public Safety Personnel Retirement System ("PSPRS"), a public retirement system created by Arizona law.

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

Not Applicable. The Local Board is solely a State authorized entity. There are no corresponding Federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Not Applicable. The Local Board does not issue regulatory permits, licenses, or authorizations.

14. Proposed course of action

The DPS Local Board will consider amending the Rules as follows:

- R13-8-101 to remove the definition of DROP and add a definition of Fund Manager.
- R13-8-102 to remove the duties of the Secretary to provide information and applications to members at any time other than upon request as PSPRS is now responsible for retirements, DROP, and survivor benefits, not a Local Board.
- R13-8-105 to conform to A.R.S. § 38-859, which requires a Local Board to appoint a Medical Board for evaluating disability applications.
- R13-8-108 to remove references to retirement and survivor's benefits and add references to line of duty death determinations to conform with A.R.S. § 38-847.

The Board expects to be able to submit a rulemaking to the Council in January 2025.

Additional Information from the DPS Local Board

As noted above, the Board is required by A.R.S. § 38-847(F) to adopt Local Board Procedures that incorporate the Model Uniform Rules for Local Board Procedure that are issued by the PSPRS Board of Trustees. The Board of Trustees updates the Model Uniform Rules from time to time and the Local Board must incorporate those amendments in its separate Department of Public Safety Local Board Public Safety Personnel Retirement System Rules of Local Board Procedure. Therefore, at times, A.A.C. Title 13, Chapter 8 may be in conflict with the Rules of Local Board Procedure adopted pursuant to A.R.S. § 38-847(F).

TITLE 13. PUBLIC SAFETY

**CHAPTER 8. DEPARTMENT OF PUBLIC SAFETY
LOCAL RETIREMENT BOARD**

(Authority: A.R.S. § 38-841 et seq.)

ARTICLE 1. PROCEDURES

Article 1, consisting of Sections R13-8-101 through R13-8-114, adopted effective July 22, 1994 (Supp. 94-3).

Section

ARTICLE 1. PROCEDURES

R13-8-101. Definitions and Interpretation

A. "System" means the Public Safety Personnel Retirement System, created by the provisions of A.R.S. Title 38, Chapter 5, Article 4, (A.R.S. § 38-841 et seq.).

B. "Local board" means the Department of Public Safety Local Retirement Board for the Public Safety Personnel Retirement System established pursuant to A.R.S. § 38-847.

C. "Secretary" means the secretary of the local board.

D. "DROP" means deferred retirement option plan.

E. Interpretation and application of the rules in this Chapter shall be consistent with the definitions set forth in A.R.S. § 38-842.

Historical Note

Adopted effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 13 A.A.R. 1801, effective June 30, 2007 (Supp. 07-2).

R13-8-102. Distribution of Information, Retirement Forms, and Applications

A. Information explaining the system received from the fund manager, shall be maintained by the secretary who shall distribute the information:

1. To potential members within one month of hire,
2. Upon request, and
3. Upon application for retirement.

B. The retirement forms and applications are provided by the fund manager and shall be maintained by the secretary who shall distribute them upon request.

Historical Note

Adopted effective July 22, 1994 (Supp. 94-3).

R13-8-103. New Memberships

A. Within one month of hire, the secretary shall distribute membership forms to the newly employed commissioned officers.

B. After receipt of completed membership forms, the secretary shall request each applicant's medical report from the medical advisor of the Department of Public Safety and review the medical reports. The secretary shall report to the local board when the medical report indicates a pre-existing physical or mental condition or prior injury.

C. The local board at its regularly scheduled meetings shall review the applications for new membership for eligibility in the system and the medical reports of any applicants with a pre-existing physical or mental condition or prior injury.

D. If an applicant has a physical or mental condition or injury that existed or occurred prior to the date of membership in the system, but is otherwise eligible for membership, the local board shall approve membership, excluding accidental, catastrophic, or ordinary disability benefits relating to the pre-existing physical or mental condition or injury.

E. If the local board denies membership or approves membership with an exclusion based on a pre-existing condition or prior injury, the secretary shall so notify the applicant in writing.

F. The local board may review on its own initiative and redetermine its prior decisions on membership and exclusions. The local board shall notify any member of any meeting at which the local board will review a prior decision affecting a member's membership.

Historical Note

Adopted effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 13 A.A.R. 1801, effective June 30, 2007 (Supp. 07-2).

R13-8-104. Normal Retirement, Deferred Retirement, Deferred Retirement Option Plan (DROP) and Reverse DROP

A. When a member applies for normal retirement, deferred retirement, DROP, or reverse DROP, the member shall be provided with the appropriate forms, information on the documentation required, and assistance in applying for retirement benefits.

B. When all required forms and documentation have been fully completed and submitted to the secretary, the application for normal retirement, deferred retirement, DROP, or reverse DROP shall be placed on the agenda for the next regularly scheduled meeting of the local board, provided the submission is completed ten calendar days prior to the meeting.

C. A member shall be permitted to address the local board when the local board is considering the member's application.

Historical Note

Adopted effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 13 A.A.R. 1801, effective June 30, 2007 (Supp. 07-2).

R13-8-105. Disability Retirement

A. When a member applies for ordinary, accidental, catastrophic, or temporary disability pension, the member shall be provided with the appropriate forms, information on the documentation required, and assistance in applying for a disability pension.

B. When all required forms and documentation have been fully completed and submitted to the secretary, the secretary shall schedule the appointed Medical Board, notify the claimant of the date, time, and location of the Medical Board examination,

and forward the application and all appropriate papers to the Medical Board.

C. If the claimant is applying for an ordinary disability pension, the local board shall request the Medical Board to address specifically:
1. Whether the claimant:
   a. Has a physical condition which totally and permanently prevents the claimant from performing a reasonable range of duties within the member's department, or
   b. Has a mental condition which totally and permanently prevents the claimant from engaging in any substantial gainful activity, and
2. Whether the claimant's disability is the result of a physical or mental condition or injury that existed or occurred prior to the claimant's date of membership in the system.

D. If the claimant is applying for an accidental disability pension, the local board shall request the Medical Board to address specifically:
1. Whether the claimant has a physical or mental condition which totally and permanently prevents the claimant from performing a reasonable range of duties within the member's job classification,
2. Whether the disabling condition was incurred in the performance of the member's job duties, and
3. Whether the claimant's disability is the result of a physical or mental condition or injury that existed or occurred prior to the claimant's date of membership in the system.

E. If the claimant is applying for a temporary disability pension, the local board shall request the Medical Board to address specifically:
1. Whether the claimant has a physical or mental condition which totally and temporarily prevents the claimant from performing a reasonable range of duties within the member's department, and
2. Whether the disabling condition was incurred in the performance of the member's job duties.

F. If the claimant is applying for a catastrophic disability pension, the local board shall request the Medical Board to address specifically:
1. Whether the claimant has a physical condition which totally and permanently prevents the claimant from engaging in any gainful employment,
2. Whether the disabling physical condition or injury was incurred in the performance of the claimant's employment duties, and
3. Whether the claimant's disability is the result of a physical condition or injury that existed or occurred prior to the claimant's date of membership in the system.

G. Upon receipt of the Medical Board's evaluation, the secretary shall forward a copy of the evaluation to the claimant, and the application for disability retirement shall be placed on the agenda for the next regularly scheduled meeting of the local board, provided the evaluation is received ten calendar days prior to the meeting.

H. A member shall be permitted to address the local board when the local board is considering the member's application.

Historical Note
Adopted effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 13 A.A.R. 1801, effective June 30, 2007 (Supp. 07-2).

R13-8-106. Medical Examination of and Recovery by Member with Accidental or Ordinary Disability

A. When the local board determines that a member qualifies for an ordinary or accidental disability retirement pension and the member will not reach normal retirement date within one year of the initial determination, the local board shall determine whether and when to request medical re-examination pursuant to A.R.S. § 38-844(E).

B. If the local board requests a medical re-examination, the secretary shall so calendar the requested medical examination; process and direct the relevant medical documents; notify the member of the date, time, and location of the medical examination; and forward appropriate documentation to the doctors or clinic performing the medical examination.

C. The local board shall request the Medical Board performing the medical re-examination to address specifically whether the member has sufficiently recovered to be able to engage in a reasonable range of duties within the member's department.

D. Upon receipt of the report of the medical re-examination, the secretary shall forward a copy to the member and place the item on the agenda for the next regularly scheduled meeting of the local board, provided the report is received ten calendar days prior to the meeting.

E. The member shall be permitted to address the local board at any board meeting at which a determination on recovery may be made.

F. If the local board determines that the member has recovered sufficiently to be able to engage in a reasonable range of duties within the member's department, the local board shall notify the member and the member's department. If the member's department makes an offer of employment to the member, and the member refuses an offer of employment from the member's department or from any employer in the system, the local board shall terminate benefits.

G. If the local board determines that the member has not recovered, the local board shall determine whether and when to request another medical re-examination pursuant to A.R.S. § 38-844(E).

H. Notwithstanding the provisions of subsections (A) and (G), the local board may request a medical re-examination pursuant to A.R.S. § 38-844(E) at any time prior to the normal retirement date of a member with a disability pension.

Historical Note
Adopted effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 13 A.A.R. 1801, effective June 30, 2007 (Supp. 07-2).

R13-8-107. Survivor's Benefits

A. When a surviving spouse or a guardian applies for benefits, the surviving spouse or guardian shall be provided with the appropriate forms, information on the documentation required, and assistance in applying for death benefits for surviving spouse, guardian, and eligible children.

B. When all required forms and documentation have been fully completed and submitted to the secretary, the application for survivor's benefits shall be placed on the agenda for the next regularly scheduled meeting of the local board, provided the submission is completed ten calendar days prior to the meeting.

C. Upon application, the surviving spouses, guardians, and eligible children shall be permitted to address the local board.

Historical Note
Adopted effective July 22, 1994 (Supp. 94-3).

R13-8-108. Notification to Claimant of Determination as to Right of Claimant to a Benefit

A. When the local board approves applications for retirement, disability pensions, and survivor's benefits, the claimant shall receive notification of the local board's original determination either by attending the meeting at which the action was taken,

by certified mail, or by receiving benefits from the system pursuant to the local board's original action.

B. When the local board denies applications for retirement, disability pensions, and survivor's benefits, the claimant shall receive notification of the local board's original determination either by attending the meeting at which the action was taken or by certified mail. The notification shall include notification to claimant of the statutory right to apply for a rehearing on the original determination within 60 days after receipt of notification.

Historical Note
Adopted effective July 22, 1994 (Supp. 94-3).

R13-8-109. Benefits Calculations

A. The local board delegates to the secretary the calculation of DROP benefits, service retirement benefits, disability retirement benefits, and death benefits for surviving spouses of members and retired members, guardians, and eligible children.

B. Subsequent to the issuance of a member's last paycheck, the secretary shall calculate the member's service retirement benefits or the disability retirement benefits.

C. Subsequent to a member's last contribution to the System after approval of the member's participation in DROP, the secretary shall calculate the member's DROP benefit.

D. The member, surviving spouse, guardian, or eligible child shall receive notification of the calculation of benefits by receiving benefits from the system or by certified mail.

Historical Note
Adopted effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 13 A.A.R. 1801, effective June 30, 2007 (Supp. 07-2).

R13-8-110. Termination of Benefits

A. Upon the death of a retired member, the local board shall terminate the member's benefits effective the first day of the month following the death and shall consider applications for survivor's benefits, if and when submitted.

B. When an eligible child is no longer eligible, the local board shall terminate the child's pension and, where appropriate, any guardian or conservator's pension.

Historical Note
Adopted effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 13 A.A.R. 1801, effective June 30, 2007 (Supp. 07-2).

R13-8-111. Income Reporting for Member with Ordinary Disability Pension

A. No later than April 30 of each year, each member receiving ordinary disability payments during the period prior to the member's normal retirement date shall provide a notarized statement to the local board which identifies all income from employment, including self-employment, received by the member in the previous calendar year and describes the employment and self-employment from which the member received income. The statement shall also include the fair market value of all benefits received by the member during the previous calendar year as compensation for such employment or self-employment. Copies of all income tax statements, 1099 forms, and W-2 forms reflecting the member's income for the previous calendar year shall be attached to the notarized statement.

B. Upon written request by a member, the local board may grant the member an additional 30 days to allow the member to provide the local board with the information required under subsection (A).

C. If a member fails to report income as required by this rule, the local board shall suspend any further ordinary disability payments to the member until the member reports income for the previous year.

D. After the local board reviews the reported income information, the secretary shall return the copies of all income tax statements, 1099 forms, and W-2 forms to the member.

Historical Note
Adopted effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 13 A.A.R. 1801, effective June 30, 2007 (Supp. 07-2).

R13-8-112. Rehearing on Original Determination

A. The local board shall conduct rehearings pursuant to A.R.S. § 38-847(H) as though the rehearings were an adjudicative proceeding under A.R.S. Title 41, Chapter 6, Article 6 (A.R.S. § 41-1061 et seq.).

B. If the fund manager applies for a rehearing, the claimant whose benefit determination may be affected shall be a party to the proceeding.

C. By ten calendar days prior to the rehearing, the claimant or fund manager shall submit to the local board a list of witnesses whom the claimant or fund manager intends to call to testify at the hearing and of all exhibits which the claimant or fund manager intends to use at the hearing as well as a copy of all listed exhibits.

D. By ten calendar days prior to the rehearing, the claimant or fund manager may submit to the local board a written statement setting forth the facts of the case and a brief addressing relevant issues.

E. If the claimant, fund manager, or local board desires subpoenas pursuant to A.R.S. § 41-1062(A)(4), the subpoenas shall be submitted at least ten calendar days prior to the rehearing to the secretary for issuance by the presiding hearing officer. Service of the subpoenas is the responsibility of the party requesting issuance of the subpoenas.

F. Applications for permission to take depositions pursuant to A.R.S. § 41-1062(A)(4) shall be submitted to the secretary for determination by the presiding hearing officer.

G. Unless the local board decides otherwise, the chairperson of the local board shall function as the presiding hearing officer.

H. The burden of proof for establishing a disability shall be with the claimant.

Historical Note
Adopted effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 13 A.A.R. 1801, effective June 30, 2007 (Supp. 07-2).

R13-8-113. Review of Decision by Local Board on Rehearing of Original Determination

A. Except as provided in subsection (H), the decision by the local board on rehearing of the original determination may be vacated and a new rehearing granted on motion of the aggrieved party for any of the following causes materially affecting that party's rights:

1. Irregularity in the administrative proceedings of the local board or the hearing officer or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing.
2. Misconduct of the local board, the hearing officer, or prevailing party.
3. Accident or surprise which could not have been prevented by ordinary prudence.
4. Material evidence, newly discovered, which with reasonable diligence could not have been discovered and produced at the rehearing.

5. Error in the admission or rejection of evidence, or other errors of law occurring at the rehearing or during the progress of the administrative proceeding.
6. That the decision is the result of passion or prejudice.
7. That the decision is not justified by the evidence or is contrary to law.

B. A new rehearing may be granted to all or any of the parties and on all or part of the issues for any of the reasons for which new rehearings are authorized by law or rule of the local board. On the granting of a motion for review, the local board may take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions and direct the entry of a new decision.

C. The motion for review shall be in writing, shall specify generally the grounds upon which the motion is based, and may be amended at any time before it is ruled upon by the local board.

D. A motion for review shall be filed not later than 15 calendar days after receipt of notification of the decision by the local board on the rehearing of original determination. For purposes of this subsection, the claimant shall receive notification either by attending the meeting at which the decision is made or by certified mail.

E. Any party to the proceeding may file a response to the motion or amended motion within ten calendar days after service of the motion or amended motion. The local board may require filing of briefs upon issues raised in the motion and may provide for oral argument.

F. When a motion for rehearing is based upon affidavits, they shall be served with the motion. All parties to the proceeding have ten calendar days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 calendar days either by the local board for good cause shown or by the parties by written stipulation. The local board may permit reply affidavits.

G. Not later than 40 calendar days after the decision, the local board of its own initiative may order a new rehearing for any reason for which it might have granted a new rehearing on motion of a party. Additionally, after giving the parties notice and an opportunity to be heard on the matter, the local board may grant a motion for review, timely served, for a reason not stated in the motion. In either case the local board shall specify the grounds therefore.

H. If the local board makes specific findings that the immediate effectiveness of a decision in a particular matter is necessary for the protection of the system and its members and that a review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without opportunity for a review. If a decision is issued as a final decision without an opportunity for review, any application for judicial review of the decision shall be made within the time limits permitted by law for applications for judicial review of the local board's final decisions.

Historical Note
Adopted effective July 22, 1994 (Supp. 94-3).

R13-8-114. Transcripts

If any party designates any portion of the oral proceedings before the local board or hearing officer as part of the record on review in the superior court, the cost of the transcript shall be paid by the party so designating unless the local board waives the cost of transcription upon good cause shown. A request for waiver of the cost of the transcription shall be in writing and served upon the local board at the time of the service of the complaint.

Historical Note
Adopted effective July 22, 1994 (Supp. 94-3).

R13-8-115. Confidentiality of Medical Records and Data

A. Medical records and data of members held by the local board are confidential and are exempt from public copying and inspection requirements of A.R.S. § 39-121 et seq.

B. The local board shall discuss all medical records and specific medical data in executive session, including the taking of testimony that is specifically required to be maintained as confidential by state or federal law, unless the member signs a consent form to discuss the member's medical records and data in an open meeting.

C. The member, member's legal counsel, and only individuals whose presence is reasonably necessary in order for the local board to carry out its executive session responsibilities may attend an executive session pursuant to A.R.S. § 38-431.03(A)(2) to discuss the member's medical records and specific medical data.

Historical Note
New Section made by final rulemaking at 13 A.A.R. 1801, effective June 30, 2007 (Supp. 07-2).

A.R.S. § 38-841

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-841. Purpose; vested benefits

A. Before the establishment of the public safety personnel retirement system, municipal firemen and policemen, employees of the Arizona highway patrol and other public safety personnel in the state of Arizona were covered under various local, municipal and state retirement programs. These heterogeneous programs provided for wide and significant differentials in employee contribution rates, benefit eligibility provisions, types of benefit protection and benefit formulas.

B. In order to provide a uniform, consistent and equitable statewide program for public safety personnel who are regularly assigned hazardous duty in the employ of the state of Arizona or a political subdivision thereof, this retirement system was created effective as of July 1, 1968, as an amendment to and continuation of three prior systems. Groups of employees covered under the three prior systems as of June 30, 1968, and the assets and liabilities accumulated thereunder for such employees, are transferred with prior service credits to this retirement system as of the effective date, and both they and their employers shall be required to make stipulated contributions to support the system's benefit structure on a sound actuarial basis. Future employees in such groups shall commence participation in, and contributions to, the system immediately on commencement of covered employment.

C. The provisions of this system shall not be construed to authorize the granting of any retirement benefits to persons who are retired as of the effective date of this article, except as described in *sections 38-849* and *38-853*.

D. Additional eligible groups of public safety personnel will participate in the system pursuant to election by their employer for such coverage under an appropriate joinder agreement.

E. The public safety personnel retirement system is a jural entity that may sue and be sued.

History

Recent legislative history: *Laws 2010, 2nd Reg. Sess., Ch. 118, § 2*.

Annotations

JUDICIAL DECISIONS

Purpose.

Legislative Intent.

Divorce.

Eligibility.

Additional Cases of Historical Interest (1955 — 1984)

Pensions & Benefits Law: Governmental Employees: Fire Department Pensions

Pensions & Benefits Law: Governmental Employees: Police Pensions

Purpose.

The pension plan under this section is unrelated to workers' compensation and is a fund from which retired police officers are paid benefits after termination of employment and fulfillment of all statutory requirements by the member for the pension; it provides for payment of benefits before qualifying for normal retirement if a member is accidentally disabled. *Wills v. Pima County Pub. Safety Personnel Retirement Bd., 154 Ariz. 435, 743 P.2d 944, 1987 Ariz. App. LEXIS 415 (Ariz. Ct. App. 1987)*.

Legislative Intent.

The legislature never intended that persons who were not regularly assigned to hazardous duty were to be part of the public safety personnel retirement. *Fund Manager, Pub. Safety Personnel Retirement Sys. v. Pima County Sheriff Pub. Safety Personnel Retirement Sys. Bd., 145 Ariz. 47, 699 P.2d 921, 1985 Ariz. App. LEXIS 486 (Ariz. Ct. App. 1985)*.

Divorce.

Pension plans are a form of deferred compensation to employees for services rendered; any portion of the plan earned during marriage is community property subject to equitable division at dissolution. *Koelsch v. Koelsch, 148 Ariz. 176, 713 P.2d 1234, 1986 Ariz. LEXIS 173 (Ariz. 1986)*.

Eligibility.

Where a commissioned police officer applied for a non-commissioned position in order to receive his pension, and where the opening had not been advertised publicly, and where he was chosen for the position by the chief of police, since the city manager did not approve of the transfer, the city employee was not entitled to the position. *Woolison v. Tucson, 146 Ariz. 298, 705 P.2d 1349, 1985 Ariz. App. LEXIS 654 (Ariz. Ct. App. 1985)*.

Additional Cases of Historical Interest (1955 — 1984)

Pensions & Benefits Law: Governmental Employees: Fire Department Pensions

Saunders v. Superior Court, 109 Ariz. 424, 510 P.2d 740, 1973 Ariz. LEXIS 367 (Ariz. 1973).

Overview: *Firefighter and police and firefighters associations were permitted to intervene in an action filed by the city and two of its taxpayers seeking to have an act creating a retirement system for public safety personnel declared unconstitutional.*

- The Public Safety Personnel Retirement System provides for pension benefits for policemen, firemen and law enforcement officers employed by the state. *Ariz. Rev. Stat. § 38-841* et seq. The system is to be funded by contributions from the employers of public safety personnel.

Pensions & Benefits Law: Governmental Employees: Police Pensions

Saunders v. Superior Court, 109 Ariz. 424, 510 P.2d 740, 1973 Ariz. LEXIS 367 (Ariz. 1973).

Overview: *Firefighter and police and firefighters associations were permitted to intervene in an action filed by the city and two of its taxpayers seeking to have an act creating a retirement system for public safety personnel declared unconstitutional.*

- The Public Safety Personnel Retirement System provides for pension benefits for policemen, firemen and law enforcement officers employed by the state. *Ariz. Rev. Stat. § 38-841* et seq. The system is to be funded by contributions from the employers of public safety personnel.

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-842

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-842. Definitions

In this article, unless the context otherwise requires:

1. "Accidental disability" means a physical or mental condition that the local board finds totally and permanently prevents an employee from performing a reasonable range of duties within the employee's job classification and that was incurred in the performance of the employee's duty.

2. "Accumulated contributions" means, for each member, the sum of the amount of the member's aggregate contributions made to the fund and the amount, if any, attributable to the employee's contributions before the member's effective date under another public retirement system, other than the federal social security act, and transferred to the fund minus the benefits paid to or on behalf of the member.

3. "Actuarial equivalent" means equality in present value of the aggregate amounts expected to be received under two different forms of payment, based on mortality and interest assumptions adopted by the board.

4. "Alternate payee" means the spouse or former spouse of a participant as designated in a domestic relations order.

5. "Alternate payee's portion" means benefits that are payable to an alternate payee pursuant to a plan approved domestic relations order.

6. "Annuitant" means a person who is receiving a benefit pursuant to *section 38-846.01*.

7. "Average monthly benefit compensation" means the result obtained by dividing the total compensation paid to an employee during a considered period by the number of months, including fractional months, in which such compensation was received. For an employee who becomes a member of the system:

(a) Before January 1, 2012, the considered period shall be the three consecutive years within the last twenty completed years of credited service that yield the highest average. In the computation under this subdivision, a period of nonpaid or partially paid industrial leave shall be considered based on the compensation the employee would have received in the employee's job classification if the employee was not on industrial leave.

(b) On or after January 1, 2012 and before July 1, 2017, the considered period is the five consecutive years within the last twenty completed years of credited service that yield the highest average. In the computation under this subdivision, a period of nonpaid or partially paid industrial leave shall be considered based on the compensation the employee would have received in the employee's job classification if the employee was not on industrial leave.

(c) On or after July 1, 2017, the considered period is the five consecutive years within the last fifteen completed years of credited service that yield the highest average. In the computation under this subdivision, a period of nonpaid or partially paid industrial leave shall be considered based on

the compensation the employee would have received in the employee's job classification if the employee was not on industrial leave.

8. "Board" means the board of trustees of the system, who are the persons appointed to invest and operate the fund.

9. "Catastrophic disability" means a physical and not a psychological condition that the local board determines prevents the employee from totally and permanently engaging in any gainful employment and that results from a physical injury incurred in the performance of the employee's duty.

10. "Certified peace officer" means a peace officer certified by the Arizona peace officer standards and training board.

11. "Claimant" means any member or beneficiary who files an application for benefits pursuant to this article.

12. "Compensation" means, for the purpose of computing retirement benefits, base salary, overtime pay, shift differential pay, military differential wage pay, compensatory time used by an employee in lieu of overtime not otherwise paid by an employer and holiday pay paid to an employee by the employer for the employee's performance of services in an eligible group on a regular monthly, semimonthly or biweekly payroll basis and longevity pay paid to an employee at least every six months for which contributions are made to the system pursuant to *section 38-843*, subsection D. Compensation does not include, for the purpose of computing retirement benefits, payment for unused sick leave, payment in lieu of vacation, payment for unused compensatory time or payment for any fringe benefits. In addition, compensation does not include, for the purpose of computing retirement benefits, payments made directly or indirectly by the employer to the employee for work performed for a third party on a contracted basis or any other type of agreement under which the third party pays or reimburses the employer for the work performed by the employee for that third party, except for third-party contracts between public agencies for law enforcement, criminal, traffic and crime suppression activities training or fire, wildfire, emergency medical or emergency management activities or where the employer supervises the employee's performance of law enforcement, criminal, traffic and crime suppression activities training or fire, wildfire, emergency medical or emergency management activities. For the purposes of this paragraph, "base salary" means the amount of compensation each employee is regularly paid for personal services rendered to an employer before the addition of any extra monies, including overtime pay, shift differential pay, holiday pay, longevity pay, fringe benefit pay and similar extra payments.

13. "Credited service" means the member's total period of service before the member's effective date of participation, plus those compensated periods of the member's service thereafter for which the member made contributions to the fund.

14. "Cure period" means the ninety-day period in which a participant or alternate payee may submit an amended domestic relations order and request a determination, calculated from the time the system issues a determination finding that a previously submitted domestic relations order did not qualify as a plan approved domestic relations order.

15. "Depository" means a bank in which all monies of the system are deposited and held and from which all expenditures for benefits, expenses and investments are disbursed.

16. "Determination" means a written document that indicates to a participant and alternate payee whether a domestic relations order qualifies as a plan approved domestic relations order.

17. "Determination period" means the ninety-day period in which the system must review a domestic relations order that is submitted by a participant or alternate payee to determine whether the domestic relations order qualifies as a plan approved domestic relations order, calculated from the time the system mails a notice of receipt to the participant and alternate payee.

18. “Direct rollover” means a payment by the system to an eligible retirement plan that is specified by the distributee.

19. “Distributee” means a member, a member’s surviving spouse or a member’s spouse or former spouse who is the alternate payee under a plan approved domestic relations order.

20. “Domestic relations order” means an order of a court of this state that is made pursuant to the domestic relations laws of this state and that creates or recognizes the existence of an alternate payee’s right to, or assigns to an alternate payee the right to, receive a portion of the benefits payable to a participant.

21. “Effective date of participation” means July 1, 1968, except with respect to employers and their covered employees whose contributions to the fund commence thereafter, the effective date of their participation in the system is as specified in the applicable joinder agreement.

22. “Effective date of vesting” means the date a member’s rights to benefits vest pursuant to *section 38-844.01*.

23. “Eligible child” means an unmarried child of a deceased member or retired member who meets one of the following qualifications:

(a) Is under eighteen years of age.

(b) Is at least eighteen years of age and under twenty-three years of age only during any period that the child is a full-time student.

(c) Is under a disability that began before the child attained twenty-three years of age and remains a dependent of the surviving spouse or guardian.

24. “Eligible groups” means only the following who are regularly assigned to hazardous duty:

(a) Municipal police officers who are certified peace officers.

(b) Municipal firefighters.

(c) Paid full-time firefighters employed directly by a fire district organized pursuant to *section 48- 803* or *48-804* or a joint powers authority pursuant to *section 48-805.01* with three or more full-time firefighters, but not including firefighters employed by a fire district pursuant to a contract with a corporation.

(d) State highway patrol officers who are certified peace officers.

(e) State firefighters.

(f) County sheriffs and deputies who are certified peace officers.

(g) Game and fish wardens who are certified peace officers.

(h) Police officers who are certified peace officers and firefighters of a nonprofit corporation operating a public airport pursuant to *sections 28-8423* and *28-8424*. A police officer shall be designated pursuant to *section 28-8426* to aid and supplement state and local law enforcement agencies and a firefighter’s sole duty shall be to perform firefighting services, including services required by federal regulations.

(i) Police officers who are certified peace officers and who are appointed by the Arizona board of regents.

(j) Police officers who are certified peace officers and who are appointed by a community college district governing board.

(k) State attorney general investigators who are certified peace officers.

(l) County attorney investigators who are certified peace officers.

(m) Police officers who are certified peace officers and who are employed by an Indian reservation police agency.

(n) Firefighters who are employed by an Indian reservation firefighting agency.

(o) Department of liquor licenses and control investigators who are certified peace officers.

(p) Arizona department of agriculture officers who are certified peace officers.

(q) Arizona state parks board rangers and managers who are certified peace officers.

(r) County park rangers who are certified peace officers.

(s) Game rangers who are certified peace officers and who are employed by an Indian reservation.

25. "Eligible retirement plan" means any of the following that accepts a distributee's eligible rollover distribution:

(a) An individual retirement account described in section 408(a) of the internal revenue code.

(b) An individual retirement annuity described in section 408(b) of the internal revenue code.

(c) An annuity plan described in section 403(a) of the internal revenue code.

(d) A qualified trust described in section 401(a) of the internal revenue code.

(e) An annuity contract described in section 403(b) of the internal revenue code.

(f) An eligible deferred compensation plan described in section 457(b) of the internal revenue code that is maintained by a state, a political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state and that agrees to separately account for amounts transferred into the eligible deferred compensation plan from this plan.

(g) A Roth individual retirement account that satisfies the requirements of section 408A of the internal revenue code.

(h) For distributions made after December 18, 2015, a simple retirement account as defined in section 408(p) of the internal revenue code.

26. "Eligible rollover distribution" means a payment to a distributee, but does not include any of the following:

(a) Any distribution that is one of a series of substantially equal periodic payments made not less frequently than annually for the life or life expectancy of the member or the joint lives or joint life expectancies of the member and the member's beneficiary or for a specified period of ten years or more.

(b) Any distribution to the extent the distribution is required under section 401(a)(9) of the internal revenue code.

(c) The portion of any distribution that may not be included in gross income.

(d) Any distribution made to satisfy the requirements of section 415 of the internal revenue code.

(e) Hardship distributions.

(f) Similar items designated by the commissioner of the United States internal revenue service in revenue rulings, notices and other guidance published in the internal revenue bulletin.

27. "Employee" means any person who is employed by a participating employer and who is a member of an eligible group but does not include any persons compensated on a contractual or fee basis. If an eligible group requires certified peace officer status or firefighter certification and at the option of the local board, employee may include a person who is training to become a certified peace officer or firefighter.

28. "Employers" means:

(a) Cities contributing to the fire fighters' relief and pension fund as provided in *sections 9-951* through 9-973 or statutes amended thereby and antecedent thereto, as of June 30, 1968 on behalf of their full-time paid firefighters.
(b) Cities contributing under the state police pension laws as provided in *sections 9-911 through 9-934* or statutes amended thereby and antecedent thereto, as of June 30, 1968 on behalf of their municipal policemen.

(c) The state highway patrol covered under the state highway patrol retirement system.

(d) The state, or any political subdivision of this state, including towns, cities, fire districts, joint powers authorities, counties and nonprofit corporations operating public airports pursuant to *sections 28-8423* and *28-8424*, that has elected to participate in the system on behalf of an eligible group of public safety personnel pursuant to a joinder agreement entered into after July 1, 1968.

(e) Indian tribes that have elected to participate in the system on behalf of an eligible group of public safety personnel pursuant to a joinder agreement entered into after July 1, 1968.

29. "Fund" means the public safety personnel retirement fund, which is the fund established to receive and invest contributions accumulated under the system and from which benefits are paid.

30. "Local board" means the retirement board of the employer, who are the persons appointed to administer the system as it applies to their members in the system.

31. "Member":

(a) Means any full-time employee who meets all of the following qualifications:

(i) Who is either a paid municipal police officer, a paid firefighter, a law enforcement officer who is employed by this state including the director thereof, a state firefighter who is primarily assigned to firefighting duties, a firefighter or police officer of a nonprofit corporation operating a public airport pursuant to *sections 28-8423* and *28-8424*, all ranks designated by the Arizona law enforcement merit system council, a state attorney general investigator who is a certified peace officer, a county attorney investigator who is a certified peace officer, a department of liquor licenses and control investigator who is a certified peace officer, an Arizona department of agriculture officer who is a certified peace officer, an Arizona state parks board ranger or manager who is a certified peace officer, a county park ranger who is a certified peace officer, a person who is a certified peace officer and who is employed by an Indian reservation police agency, a game ranger who is a certified peace officer and who is employed by an Indian reservation, a firefighter who is employed by an Indian reservation firefighting agency or an employee included in a group designated as eligible employees under a joinder agreement entered into by their employer after July 1, 1968 and who is or was regularly assigned to hazardous duty or, beginning retroactively to January 1, 2009, who is a police chief or a fire chief.

(ii) Who, on or after the employee's effective date of participation, is receiving compensation for personal services rendered to an employer or would be receiving compensation except for an authorized leave of absence.

(iii) Whose customary employment is at least forty hours per week or, for those employees who customarily work fluctuating workweeks, whose customary employment averages at least forty hours per week.

(iv) Who is engaged to work for more than six months in a calendar year.

(v) Who, if economic conditions exist, is required to take furlough days or reduce the hours of the employee's normal workweek below forty hours but not less than thirty hours per pay cycle, and maintain the employee's active member status within the system as long as the hour change does not extend beyond twelve consecutive months.

(vi) Who has not attained age sixty-five before the employee's effective date of participation or who was over age sixty-five with twenty-five years or more of service prior to the employee's effective date of participation.

(b) Does not include an employee who is hired on or after July 1, 2017, who makes the irrevocable election to participate solely in the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter and who was not an active, an inactive or a retired member of the system or a member of the system with a disability on June 30, 2017.

32. "Normal retirement date" means:

(a) For an employee who becomes a member of the system before January 1, 2012, the first day of the calendar month immediately following the employee's completion of twenty years of service or the employee's sixty-second birthday and the employee's completion of fifteen years of service.

(b) For an employee who becomes a member of the system on or after January 1, 2012 and before July 1, 2017, the first day of the calendar month immediately following the employee's completion of either twenty-five years of service or fifteen years of credited service if the employee is at least fifty-two and one-half years of age.

(c) For an employee who becomes a member of the system on or after July 1, 2017, the first day of the calendar month immediately following the employee's completion of fifteen years of credited service if the employee is at least fifty-five years of age.

33. "Notice of receipt" means a written document that is issued by the system to a participant and alternate payee and that states that the system has received a domestic relations order and a request for a determination that the domestic relations order is a plan approved domestic relations order.

34. "Ordinary disability" means a physical condition that the local board determines will prevent an employee totally and permanently from performing a reasonable range of duties within the employee's department or a mental condition that the local board determines will prevent an employee totally and permanently from engaging in any substantial gainful activity.

35. "Participant" means a member who is subject to a domestic relations order.

36. "Participant's portion" means benefits that are payable to a participant pursuant to a plan approved domestic relations order.

37. "Pension" means a series of monthly amounts that are payable to a person who is entitled to receive benefits under the plan but does not include an annuity that is payable pursuant to *section 38-846.01*.

38. "Personal representative" means the personal representative of a deceased alternate payee.

39. "Physician" means a physician who is licensed pursuant to title 32, chapter 13 or 17.

40. "Plan approved domestic relations order" means a domestic relations order that the system approves as meeting all the requirements for a plan approved domestic relations order as otherwise prescribed in this article.

41. "Plan year" or "fiscal year" means the period beginning on July 1 of any year and ending on June 30 of the next succeeding year.

42. "Regularly assigned to hazardous duty" means regularly assigned to duties of the type normally expected of municipal police officers, municipal or state firefighters, eligible fire district firefighters, state highway patrol officers, county sheriffs and deputies, fish and game wardens, firefighters and police officers of a nonprofit corporation operating a public airport pursuant to *sections 28-8423* and *28-8424*, police officers who are appointed by the Arizona board of regents or a community college district governing board, state attorney general investigators who are certified peace officers, county attorney investigators who are certified peace officers, department of liquor licenses and control investigators who are certified peace officers, Arizona department of agriculture officers who are certified peace

officers, Arizona state parks board rangers and managers who are certified peace officers, county park rangers who are certified peace officers, police officers who are certified peace officers and who are employed by an Indian reservation police agency, firefighters who are employed by an Indian reservation firefighting agency or game rangers who are certified peace officers and who are employed by an Indian reservation. Those individuals who are assigned solely to support duties such as secretaries, stenographers, clerical personnel, clerks, cooks, maintenance personnel, mechanics and dispatchers are not assigned to hazardous duty regardless of their position classification title. Since the normal duties of those jobs described in this paragraph are constantly changing, questions as to whether a person is or was previously regularly assigned to hazardous duty shall be resolved by the local board on a case-by-case basis. Resolutions by local boards are subject to rehearing and appeal.

43. "Retirement" or "retired" means termination of employment after a member has fulfilled all requirements for a pension, for an employee who becomes a member of the system on or after January 1, 2012 and before July 1, 2017, attains the age and service requirements for a normal retirement date or for an employee who becomes a member of the system on or after July 1, 2017 attains the age and credited service requirements for a normal retirement date. Retirement shall be considered as commencing on the first day of the month immediately following a member's last day of employment or authorized leave of absence, if later.

44. "Segregated funds" means the amount of benefits that would currently be payable to an alternate payee pursuant to a domestic relations order under review by the system, or a domestic relations order submitted to the system that failed to qualify as a plan approved domestic relations order, if the domestic relations order were determined to be a plan approved domestic relations order.

45. "Service" means the last period of continuous employment of an employee by the employers before the employee's retirement, except that if such period includes employment during which the employee would not have qualified as a member had the system then been effective, such as employment as a volunteer firefighter, then only twenty-five percent of such noncovered employment shall be considered as service. Any absence that is authorized by an employer shall not be considered as interrupting continuity of employment if the employee returns within the period of authorized absence. Transfers between employers also shall not be considered as interrupting continuity of employment. Any period during which a member is receiving sick leave payments or a temporary disability pension shall be considered as service. Notwithstanding any other provision of this paragraph, any period during which a person was employed as a full-time paid firefighter for a corporation that contracted with an employer to provide firefighting services on behalf of the employer shall be considered as service if the employer has elected at its option to treat part or all of the period the firefighter worked for the company as service in its applicable joinder agreement. Any reference in this system to the number of years of service of an employee shall be deemed to include fractional portions of a year.

46. "State" means the state of Arizona, including any department, office, board, commission, agency or other instrumentality of this state.

47. "System" means the public safety personnel retirement system established by this article.

48. "Temporary disability" means a physical or mental condition that the local board finds totally and temporarily prevents an employee from performing a reasonable range of duties within the employee's department and that was incurred in the performance of the employee's duty.

History

Laws 1990, 2nd Reg. Sess., Ch. 325, § 1; *Laws 1990, 2nd Reg. Sess., Ch. 411, § 2*; *Laws 1991, 1st Reg. Sess., Ch. 156, § 1*; *Laws 1992, 2nd Reg. Sess., Ch. 228, § 1*; *Laws 1992, 2nd Reg. Sess., Ch. 341, § 1*; *Laws 1995, 1st Reg. Sess., Ch. 32, § 1*; *Laws 1995, 1st Reg. Sess., Ch. 205, § 3*; *Laws 1996, 2nd Reg. Sess., Ch. 351, § 22*; *Laws*

1997, 1st Reg. Sess., Ch. 1, § 426; Laws 1997, 1st Reg. Sess., Ch. 239, § 7; Laws 1997, 1st Reg. Sess., Ch. 239, § 8; Laws 1999, Ch. 50, § 3; Laws 1999, Ch. 327, § 21; Laws 2000, Ch. 329, § 1; Laws 2001, Ch. 353, § 2; Laws 2002, Ch. 335, § 2; Laws 2004, Ch. 325, § 1; Laws 2006, Ch. 264, § 6; Laws 2007, Ch. 87, § 3; Laws 2008, Ch. 227, § 1; Laws 2009, Ch. 35, § 10; *Laws 2009, 3rd Sp. Sess., Ch. 6, § 15*; Laws 2010, 2nd Reg. Sess., Ch. 118, § 3; Laws 2010, 2nd Reg. Sess., Ch. 200, § 30; Laws 2012, 2nd Reg. Sess., Ch. 66, § 4; Laws 2013, 1st Reg. Sess., Ch. 203, § 2; 2015 1st Reg. Sess. Ch. 64, § 1; 2016 2nd Reg. Sess. Ch. 2, § 3, effective August 6, 2016; 2017 1st Reg. Sess. Ch. 266, § 1, effective August 9, 2017; 2021 1st Reg. Sess. Ch. 23, § 3, effective September 29, 2021; 2021 1st Reg. Sess. Ch. 120, § 1, effective September 29, 2021; 2022 2nd Reg. Sess. Ch. 73, § 9, effective September 24, 2022.

Annotations

Notes

Editor's Notes

Another version of this section, as amended by Laws 2011, 1st Reg. Sess., Ch. 27, § 25, Ch. 347, § 2 and Ch. 357, § 24, was repealed by Laws 2012, 2nd Reg. Sess., Ch. 66 § 5.

Laws 2011, 1st Reg. Sess., Ch. 357, § 58 provides, “The legislature intends by this act: 1. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that a retired member who returns to work for an employer may have on the Arizona state retirement system. Through the establishment of the alternate contribution rate the legislature intends to assure employers that the use of leased, contracted or retired employees and services will have a minimal, if any, actuarial impact on the Arizona state retirement system. 2. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that is caused by distorting the actuarial assumption relating to age related rates of retirement that a retired member who returns to work for an employer may have on the elected officials’ retirement plan, the public safety personnel retirement system and the corrections officer retirement plan.”

Laws 2008, Ch. 227, § 3 provides, “If an employer in the public safety personnel retirement system elects to include its fire fighters who have prior service working as a fire fighter for a corporation that contracted with an employer to provide fire fighting services as part of its eligible group, the employer shall amend the joinder agreement with the fund manager of the public safety personnel retirement system or execute a joinder agreement if the employer entered the system on July 1, 1968.”

Amendment Notes

The 2015 amendment added (26)(d) through (26)(f) and (41); redesignated former (41) through (47) as (42) through (48); and made a stylistic change.

The 2016 amendment added the (7)(a), (7)(b), and (31)(a) designations; deleted the former second sentence of (7)(a), which read: “For an employee who becomes a member of the system”; added “and before July 1, 2017” in (7)(b); added (7)(c); redesignated former (31)(a) through (31)(f) as (31)(a)(i) through (31)(a)(vi); added (3)(b); added “and before July 1, 2017” in (32)(b) and in the first sentence of (43); added (32)(c); in the first sentence of (43), deleted “or” following “for a pension” and added “or for an employee who becomes a member of the system on or after July 1, 2017 attains the age and credited service requirements for a normal retirement date”; and made related and stylistic changes.

The 2017 amendment substituted “completion of either twenty-five years of service or fifteen years of credited service” for “completion of twenty-five years of service” in (32)(b).

The 2021 amendment by ch. 23 added the second sentence of (7)(a); substituted “subdivision” for “paragraph” in the second sentence of (7)(b) and (7)(c); and made a stylistic change.

The 2021 amendment by ch. 120 added (25)(g).
The 2022 amendment added (24)(s) and (25)(h); substituted “may not be included” for “is not includable” in (26)(c); substituted “9-973” for “9-971” in (28)(a); added “a game ranger who is a certified peace officer and who is employed by an Indian reservation” in (31)(a)(i); added “or game rangers who are certified peace officers and who are employed by an Indian reservation” in the first sentence of (42); substituted “this state” for “the state”; and made a related change.

Legislative Intent

Laws 2016, 2nd Reg. Sess., Ch. 2, § 21 provides, “A. The legislature recognizes that in order to have a sound public retirement system that benefits this state, taxpayers and members of the retirement system, pursuant to article XXIX, Constitution of Arizona, the public retirement system must be funded with contributions and investment earnings based on actuarial methods and assumptions that are consistent with generally accepted actuarial standards. The legislature finds that the current structure of the public safety personnel retirement system does not achieve this goal and that the current system imperils the retirement security that the members of that system have come to expect. For these reasons, the legislature intends to modify and amend the provisions of the current system for both current and new members to make the system viable and sustainable now and into the future.

B. The legislature further finds:

1. That the current structure of the public safety personnel retirement system does not lead to the goal of attaining one hundred percent funded status and jeopardizes the future payment of benefits to current and future retirees of the retirement program.

2. That the current structure of the public safety personnel retirement system, which requires a fixed employee contribution rate, requires a contribution rate from employees that is insufficient in relation to the cost associated with the benefits required by the plan design and therefore places a greater financial burden on employers. By moving to a shared cost structure, public safety employees will bear increased responsibility for the fiscal health of the fund and, as the fund improves its funded status and approaches fully funded or overfunded status, the employees will realize decreased contribution costs that will be lower than currently required.

3. That the current method of funding benefit increases to retirees of the public safety personnel retirement system is flawed and makes it highly unlikely that this fund will achieve its actuarially assumed earning rates during positive and negative investment environments and creates an undesirable possibility of greater investment risk on the part of the fund's trustees. It is fundamentally unsound to provide a benefit increase during periods when the funded status of the retirement program is less than seventy percent. Changing the manner of funding these benefit increases is intended to improve the funded status of the public safety personnel retirement system and is in the best interests of the members and beneficiaries of this retirement program in that it will preserve future benefits for plan participants.

4. It is necessary to change the future plan and system structures for nonvested members to take into consideration the increased life expectancy of members and future employees and make the reforms necessary to preserve the funded status of the retirement program in future years.

5. To protect the future benefits of retired, active and future employees, it is necessary to make the changes outlined in this act to preserve the funded status of this retirement program and return the program to fiscal solvency.

C. It is the legislature's intent that this act does not impair or amend any agreement between an employee and employer that addresses participation in or contributions to alternative retirement plans or compensation arrangements not administered through the public safety personnel retirement system.”

Severability
Laws 2016, 2nd Reg. Sess., Ch. 2, § 23 provides, “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.”

Applicability

By *Laws 2021, 1st Reg. Sess., Ch. 120, § 7*, applies retroactively to from and after December 31, 2019.

JUDICIAL DECISIONS

Legislative Intent.

Accidental Disability.

—Burden of Proof.

—Causal Connection.

—"Incurred in Performance of Duty."

Compensation.

Employee.

—Legislative Intent.

—Eligibility.

—Joinder Agreements.

Ordinary Disability.

"Temporary Disability."

Additional Cases of Historical Interest (1955 — 1984)

Labor & Employment Law: Disability & Unemployment Insurance: Disability Benefits: Proof: General Overview

Legislative Intent.

By replacing "his regularly assigned duties" with "a reasonable range of duties within the employee's department," the legislature intended to narrow the definition of disability to disallow pensions to employees able to perform a reasonable range of duties but not all regularly assigned duties. *Brodsky v. City of Phoenix, Police Dep't Retirement Sys. Bd., 183 Ariz. 92, 900 P.2d 1228, 196 Ariz. Adv. Rep. 29, 1995 Ariz. App. LEXIS 173 (Ariz. Ct. App. 1995)*.

Accidental Disability.

—Burden of Proof.

Although workers' compensation cases are based on a very liberal interpretation of medical causation in order to entitle a worker to benefits, they are useful in assisting in a determination that "incurred in the performance of his duty" means proof of a causal relationship between the disability and duties of a public safety employee. *Wills v. Pima County Pub. Safety Personnel Retirement Bd., 154 Ariz. 435, 743 P.2d 944, 1987 Ariz. App. LEXIS 415 (Ariz. Ct. App. 1987)*.

Entitlement to an accidental disability pension depends on evidence sufficient to establish a causal relationship between the employee's disability and his duties as a public safety employee. *Wills v. Pima County Pub. Safety Personnel Retirement Bd., 154 Ariz. 435, 743 P.2d 944, 1987 Ariz. App. LEXIS 415 (Ariz. Ct. App. 1987)*.

—Causal Connection.

Police officer was not entitled to a permanent disability pension under the provisions of this section because his job stress neither caused nor contributed to his heart condition; there was no causal connection between his employment and his heart condition. *Wills v. Pima County Pub. Safety Personnel Retirement Bd., 154 Ariz. 435, 743 P.2d 944, 1987 Ariz. App. LEXIS 415 (Ariz. Ct. App. 1987)*.

—"Incurred in Performance of Duty."

The words "incurred in the performance of his duty" in the context of the subsection defining "accidental disability" means "to occur as a result." *Wills v. Pima County Pub. Safety Personnel Retirement Bd., 154 Ariz. 435, 743 P.2d 944, 1987 Ariz. App. LEXIS 415 (Ariz. Ct. App. 1987)*.

Compensation.

Under the public safety personnel retirement system, eligible compensation had to be generated from a member's regular assignment to hazardous duty; because the employee's teaching salary was unrelated to his regular assignment to hazardous duty as a police officer, his teaching salary was not eligible compensation. *Loftus v. Ariz. State Univ. Pub. Safety Pers. Ret. Sys. Local Bd., 227 Ariz. 216, 255 P.3d 1020, 608 Ariz. Adv. Rep. 11, 2011 Ariz. App. LEXIS 70 (Ariz. Ct. App. 2011)*.

Employee. —

Legislative Intent.

The legislature intended the enumerated groups of employees in subsection 13 to be exclusive since it chose not to place the phrase "including but not limited to" in that subsection but used it elsewhere. *Arizona Bd. of Regents ex rel. University of Ariz. v. State, 160 Ariz. 150, 771 P.2d 880, 30 Ariz. Adv. Rep. 19, 1989 Ariz. App. LEXIS 65 (Ariz. Ct. App. 1989)*.

—Eligibility.

Deputy sheriff employed exclusively as a cook at county jail was not entitled to a retirement pension under the public safety personnel retirement system. *Fund Manager, Pub. Safety Personnel Retirement Sys. v. Pima County Sheriff Pub. Safety Personnel Retirement Sys. Bd., 145 Ariz. 47, 699 P.2d 921, 1985 Ariz. App. LEXIS 486 (Ariz. Ct. App. 1985)*.

—Joinder Agreements.

Members brought into the public safety personnel retirement system through joinder agreements must be among expressly listed groups of employees who are regularly assigned to hazardous duty. *Arizona Bd. of Regents ex rel. University of Ariz. v. State, 160 Ariz. 150, 771 P.2d 880, 30 Ariz. Adv. Rep. 19, 1989 Ariz. App. LEXIS 65 (Ariz. Ct. App. 1989)*.

Ordinary Disability.

Unchallenged independent medical report accepted by the Guadalupe Public Safety Retirement Local Board established that the employee was physically unable to continue to perform his job; because the employee met the statutory requirements, he qualified for a pension. *Parkinson v. Guadalupe Pub. Safety Ret. Local Bd., 214 Ariz. 274, 151 P.3d 557, 496 Ariz. Adv. Rep. 49, 2007 Ariz. App. LEXIS 14 (Ariz. Ct. App. 2007)*.

“Temporary Disability.”

A “reasonable range of duties” as used in the definition of “temporary disability,” pursuant to paragraph 27 [now paragraph 29], must be defined in the context of the surrounding circumstances. In a rural setting with a small police force, a disabled officer who is unable to perform strenuous physical activity might not be able to perform a “reasonable range of duties”; however, in a large metropolitan area, a wide range of tasks are available, and public policy favors maximum utilization of disabled employees. *Brodsky v. City of Phoenix, Police Dep't Retirement Sys. Bd., 183 Ariz. 92, 900 P.2d 1228, 196 Ariz. Adv. Rep. 29, 1995 Ariz. App. LEXIS 173 (Ariz. Ct. App. 1995)*.

Additional Cases of Historical Interest (1955 — 1984)

Labor & Employment Law: Disability & Unemployment Insurance: Disability Benefits: Proof: General Overview

Leschinsky v. Public Safety Personnel Retirement Sys., 27 Ariz. App. 618, 557 P.2d 550, 1976 Ariz. App. LEXIS 678 (Ariz. Ct. App. 1976).

Overview: *The police officer was not eligible to receive disability benefits because his employment was terminated prior to his normal retirement date by reason of misconduct, not by reason of accidental disability.*

- “Accidental disability” means a physical or mental condition which, in the judgment of the board, totally and presumably permanently prevents an employee from performing his regularly assigned duties and was incurred in the performance of his duty. *Ariz. Rev. Stat. § 38-842(1)*.

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-842.01

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-842.01. Benefit election; eligibility; disability; death; employees hired on or after July 1, 2017

A. An employee who is hired on or after July 1, 2017 and who was not an active, an inactive or a retired member of the system or a member of the system with a disability on June 30, 2017 is eligible to participate in the system or the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter, depending on the employee's election under this section. The employee's participation in either the system or the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter begins ninety days after the date the employee is hired. Unless the elections made under this section are made before the ninetieth day after the date of employment, the employee is automatically enrolled in the system for the remainder of the employee's employment. Any election made under this section is irrevocable and is the employee's election for the remainder of the employee's employment. If an employee is subsequently rehired after a bona fide termination of employment from the employee's employer of not less than six months with no prearranged reemployment agreement with the employer or hired by a new employer, the employee may make a new election under this section before the ninetieth day after the date of hire. If the employee does not make a new election within that time frame, the employee's previous election will continue. The employee may make one of the following irrevocable elections:

1. To participate solely in the system.
2. To participate solely in the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter.

B. An employee who makes an election to participate solely in the system or is automatically enrolled in the system pursuant to subsection A of this section and who is not covered by the federal old age and survivors insurance system is also enrolled in the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter during any period that the employee is not covered by the federal old age and survivors insurance system through an employer under the system. If such employee is subsequently covered by the federal old age and survivors insurance system, the employee and the employer may not make any contributions on the employee's behalf to the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter that are described in *section 38-867*, subsection A, paragraph 1 or subsection B during the period the employee is covered by the federal old age and survivors insurance system. If at any later time the employee is not covered by the federal old age and survivors insurance system through an employer under the system, the employee and the employer shall again be required to contribute on behalf of the employee to the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter as required by *section 38-867*, subsection A, paragraph 1 and, if the employee made an irrevocable election to contribute more of the employee's gross pensionable compensation to the public safety personnel defined contribution

retirement plan as provided in *section 38-867*, subsection B, such contributions shall be reestablished for the period the employee is not covered by the federal old age and survivors insurance system.

C. If an employee in the employee's first ninety days of employment is determined to be eligible for an accidental or catastrophic disability pension pursuant to *section 38-844*, the employee shall be automatically enrolled in the system for the remainder of the employee's employment with any employer under the system commencing on the employee's date of disability and shall receive an accidental or catastrophic disability pension as prescribed in this article.

D. If an employee in the employee's first ninety days of employment is killed in the line of duty or dies from injuries suffered in the line of duty, the employee shall be considered as having been enrolled in the system and the surviving spouse of the deceased employee is eligible for survivor benefits as prescribed in this article.

E. If an employee who is hired on or after July 1, 2017 and who is an active or inactive member of the system or a participant in the public safety personnel defined contribution plan established pursuant to article 4.1 of this chapter is subsequently rehired by the employee's previous employer or another employer under the system, the employee's participation in either the system or the public safety personnel defined contribution plan, for which the employee had elected to participate, begins on the date the employee is rehired or hired by another employer.

History

2016 2nd Reg. Sess. Ch. 2, § 4, effective August 6, 2016; *2017 1st Reg. Sess. Ch. 269, § 6*, effective May 3, 2017; *2018 2nd Reg. Sess. Ch. 42, § 1*, effective August 3, 2018; *2023 1st Reg. Sess. Ch. 6, § 1*, effective October 30, 2023; *2023 1st Reg. Sess. Ch. 48, § 1*.

Annotations

Notes

Editor's Notes

Text of section as amended by *Laws 2023, 1st Reg. Sess., Chs. 6* and *48*, blended.

Amendment Notes

The 2017 amendment substituted "contribution retirement plan" for "contribution plan" in (B); added "or catastrophic" two times in (C); and added (D).

The 2018 amendment, in (B), in the second sentence, inserted "and the employer" following "insurance system, the employee" and "on the employee's behalf" following "make any contributions" and in the last sentence, inserted "and the employer" following "under the system, the employee" and "on behalf of the employee" following "required to contribute."

The 2023 amendment by ch. 6, § 1, added (E).

The 2023 amendment by ch. 48, § 1, in the introductory language of (A), deleted "with any employer under the system" at the end of the second sentence, deleted "with any employer under the system, regardless of whether the employee's employment is continuous" at the end of the third sentence and added the fourth sentence.

Legislative intent.
Laws 2016, 2nd Reg. Sess., Ch. 2, § 21 provides, "A. The legislature recognizes that in order to have a sound public retirement system that benefits this state, taxpayers and members of the retirement system, pursuant to article XXIX,

Constitution of Arizona, the public retirement system must be funded with contributions and investment earnings based on actuarial methods and assumptions that are consistent with generally accepted actuarial standards. The legislature finds that the current structure of the public safety personnel retirement system does not achieve this goal and that the current system imperils the retirement security that the members of that system have come to expect. For these reasons, the legislature intends to modify and amend the provisions of the current system for both current and new members to make the system viable and sustainable now and into the future.

B. The legislature further finds:

1. That the current structure of the public safety personnel retirement system does not lead to the goal of attaining one hundred percent funded status and jeopardizes the future payment of benefits to current and future retirees of the retirement program.

2. That the current structure of the public safety personnel retirement system, which requires a fixed employee contribution rate, requires a contribution rate from employees that is insufficient in relation to the cost associated with the benefits required by the plan design and therefore places a greater financial burden on employers. By moving to a shared cost structure, public safety employees will bear increased responsibility for the fiscal health of the fund and, as the fund improves its funded status and approaches fully funded or overfunded status, the employees will realize decreased contribution costs that will be lower than currently required.

3. That the current method of funding benefit increases to retirees of the public safety personnel retirement system is flawed and makes it highly unlikely that this fund will achieve its actuarially assumed earning rates during positive and negative investment environments and creates an undesirable possibility of greater investment risk on the part of the fund's trustees. It is fundamentally unsound to provide a benefit increase during periods when the funded status of the retirement program is less than seventy percent. Changing the manner of funding these benefit increases is intended to improve the funded status of the public safety personnel retirement system and is in the best interests of the members and beneficiaries of this retirement program in that it will preserve future benefits for plan participants.

4. It is necessary to change the future plan and system structures for nonvested members to take into consideration the increased life expectancy of members and future employees and make the reforms necessary to preserve the funded status of the retirement program in future years.

5. To protect the future benefits of retired, active and future employees, it is necessary to make the changes outlined in this act to preserve the funded status of this retirement program and return the program to fiscal solvency.

C. It is the legislature's intent that this act does not impair or amend any agreement between an employee and employer that addresses participation in or contributions to alternative retirement plans or compensation arrangements not administered through the public safety personnel retirement system."

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-842.02

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

§ 38-842.02. Public safety employer risk pool

A. The public safety employer risk pool is established for members hired on or after July 1, 2017 and consists of, for actuarial purposes in the system and to determine contribution rates pursuant to *section 38-843*, any employer of an eligible group that has on May 1, 2017 two hundred fifty or fewer active members who were hired before July 1, 2017.

B. If an employer has more than two hundred fifty active members who were hired before July 1, 2017 in any eligible group on May 1, 2017, the employer may not participate in the risk pool for any of the employer's eligible groups, except that:

1. Each state agency's eligibility for the risk pool is not affected by another state agency's ineligibility for the risk pool.

2. For a county with multiple eligible groups in the system, the eligibility of each eligible group of a county for the risk pool is not affected by the ineligibility for the risk pool of another eligible group of that county.

C. Any Indian tribe that has elected to participate in the system and that qualifies for the public safety employer risk pool pursuant to subsection A of this section may elect to opt out of the risk pool before January 1, 2019. The Indian tribe shall notify the administrator of the system in writing before January 1, 2019 of the Indian tribe's decision not to participate in the public safety employer risk pool. If an Indian tribe is a new employer in the system pursuant to subsection D of this section, the Indian tribe shall have ninety days after the date of participation to elect to opt out of the risk pool and to notify the administrator of the system in writing of the Indian tribe's decision not to participate in the public safety employer risk pool.

D. This state or any political subdivision of this state, Indian tribe or public organization that becomes a new employer in the system and that has two hundred fifty or fewer employees, on the effective date of participation in the system pursuant to *section 38-851*, who are in an eligible group shall participate in the public safety employer risk pool unless subsection B or C of this section applies.

E. If any individual employer in the public safety employer risk pool experiences a deviation in reported active member payroll of greater than twenty percent of the average of all participating employers in the risk pool in a twenty-four-month period, the system actuary shall prepare a financial impact report to determine whether the deviation creates an increased or decreased unfunded liability within the risk pool. If the deviation in reported active member payroll creates an increase to the unfunded liability within the risk pool, the responsible individual employer shall pay into the system, within sixty days after being notified of the amount due, one hundred percent of the cost of the increase in the unfunded liability. If the deviation in reported active member payroll creates a decrease to the unfunded liability within the risk pool, the system shall immediately credit the responsible individual employer one hundred percent of the cost of the decrease in the unfunded liability.

History

2017 1st Reg. Sess. Ch. 235, § 1, effective May 1, 2017; *2018 2nd Reg. Sess. Ch. 42, § 2*, effective August 3, 2018.

Annotations

Notes

Amendment Notes

The 2018 amendment, in (C), substituted “January 1, 2019” for “January 1, 2018” in the first and second sentences; and made a stylistic change.

Applicability

By *Laws 2018, 2nd Reg. Sess., Ch. 42, § 15*, applicable retroactively to from and after December 31, 2017.

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-843

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-843. Contributions; employer account asset transfers

A. Each employer that participates in the system on behalf of a group of employees who were covered under a prior public retirement system, other than the federal social security act, shall transfer all securities and monies attributable to the taxes and contributions of this state other than this state's contribution to social security, the employer and the employees for the covered group of employees under the other system, such transfer to be made to the fund subject to all existing liabilities and on or within sixty days following the employer's effective date. All monies and securities transferred to the fund shall be credited to the employer's account in the fund. A record of the market value and the cost value of such transferred contributions shall be maintained for actuarial and investment purposes.

B. As determined by actuarial valuations reported to the employer and the local board by the board of trustees, each employer shall make contributions sufficient under such actuarial valuations to meet both the normal cost for members hired before July 1, 2017 plus the actuarially determined amount required to amortize the unfunded accrued liability on a level percent of compensation basis for all employees of the employer who are members of the system or participants as defined in *section 38-865*, paragraph 7, subdivision (a), item (i) over, beginning July 1, 2017, a closed period of not more than twenty years, except as provided in subsection M of this section, that is established by the board of trustees taking into account the recommendation of the system's actuary. An employer shall have the option of paying a higher level percent of compensation thereby reducing its unfunded past service liability. An employer shall also have the option of increasing its contributions in order to reduce the contributions required from its members under subsection C of this section, except that if an employer elects this option the employer shall pay the same higher level percentage contribution for all members of the eligible group. A county employer that elected to pay a higher level percentage contribution rate may eliminate that higher level percentage contribution rate amount for members who are hired on or after January 1, 2015. During a period when an employee is on industrial leave and the employee elects to continue contributions during the period of industrial leave, the employer shall make the contributions based on the compensation the employee would have received in the employee's job classification if the employee was in normal employment status. All contributions made by the employers and all state taxes allocated to the fund shall be irrevocable and shall be used to pay benefits under the system or to pay expenses of the system and fund. The minimum employer contribution that is paid and that is in excess of the normal cost plus the actuarially determined amount required to amortize the unfunded accrued liability as calculated pursuant to this subsection shall be used to reduce future employer contribution increases and shall not be used to pay for an increase in benefits that are otherwise payable to members. The board shall separately account for these monies in the fund. Forfeitures arising because of severance of employment before a member becomes eligible for a pension or any other reason shall be applied to reduce the cost of the employer, not to increase the benefits otherwise payable to members. After the close of any fiscal year, if the system's actuary determines that the actuarial valuation of an employer's account contains excess valuation assets other than excess valuation assets that were in the employer's account as of fiscal year 2004-2005 and is more than one hundred

percent funded, the board shall account for the excess valuation assets up to one hundred percent of the present value of all future benefits of the employer in a stabilization reserve account.

After the close of any fiscal year, if the system's actuary determines that the actuarial valuation of an employer's account has a valuation asset deficiency and an unfunded actuarial accrued liability, the board shall use any valuation assets in the stabilization reserve account for that employer, to the extent available, to limit the decline in that employer's funding ratio to not more than two percent.

C. Each member who was hired before July 1, 2017, throughout the member's period of service from the member's effective date of participation, shall contribute to the fund an amount equal to the amount prescribed in subsection E of this section, except as provided in subsection B of this section. Each member who was hired on or after July 1, 2017, throughout the member's period of service from the member's effective date of participation, shall contribute to the fund an amount equal to the amount prescribed in subsection H of this section. During a period when an employee is on industrial leave and the employee elects to continue contributions during the period of industrial leave, the employee shall make the employee's contribution based on the compensation the employee would have received in the employee's job classification if the employee was in normal employment status. Contributions of members shall be required as a condition of employment and membership in the system and shall be made by payroll deductions. Every employee shall be deemed to consent to such deductions. Payment of an employee's compensation, less such payroll deductions, shall constitute a full and complete discharge and satisfaction of all claims and demands by the employee relating to remuneration for the employee's services rendered during the period covered by the payment, except with respect to the benefits provided under the system. A member may not, under any circumstance, borrow from, take a loan against or remove contributions from the member's account before the termination of membership in the plan or the receipt of a pension.

D. Each employer shall transfer to the board the employer and employee contributions provided for in subsections B, C and H of this section within ten working days after each payroll date. Contributions transferred after that date shall include a penalty of ten percent per annum, compounded annually, for each day the contributions are late, such penalty to be paid by the employer. Delinquent payments due under this subsection, together with interest charges as provided in this subsection, may be recovered by action in a court of competent jurisdiction against an employer liable for the payments or, at the request of the board, may be deducted from any other monies, including excise revenue taxes, payable to such employer by any department or agency of this state.

E. The amount contributed by a member who was hired before July 1, 2017 pursuant to subsection C of this section is:

1. Through June 30, 2011, 7.65 percent of the member's compensation.
2. For fiscal year 2011-2012, 8.65 percent of the member's compensation.
3. For fiscal year 2012-2013, 9.55 percent of the member's compensation.
4. For fiscal year 2013-2014, 10.35 percent of the member's compensation.
5. For fiscal year 2014-2015, 11.05 percent of the member's compensation.
6. For fiscal year 2015-2016 through fiscal year 2022-2023, 11.65 percent of the member's compensation or 33.3 percent of the sum of the member's contribution rate from the preceding fiscal year and the aggregate computed employer contribution rate that is calculated pursuant to subsection B of this section, whichever is lower, except that the member contribution rate shall not be less than

   7.65 percent of the member's compensation and the employer contribution rate shall not be less than the rate prescribed in subsection B of this section.
7. For fiscal year 2023-2024 and each fiscal year thereafter, 7.65 percent of the member's compensation.

F. From and after June 30, 2011 through June 30, 2023, the amount of the member's contribution that exceeds 7.65 percent of the member's compensation shall not be used to reduce the employer's contributions that are calculated pursuant to subsection B of this section until the employer's funded ratio,

as expressed as a percentage of the employer's actuarial value of assets to accrued actuarial liability as determined by actuarial valuations reported pursuant to subsection B of this section, is at or above one hundred percent.

G. From and after June 30, 2023, the amount of the members contribution that exceeds 7.65 percent of the member's compensation collected pursuant to subsection E of this section and that was accumulated from and after June 30, 2011 through June 30, 2023 may be used in calculating the employers contributions that are calculated pursuant to subsection B of this section.

H. For members hired on or after July 1, 2017, the employer and member contributions are determined as follows:

1. For employers and members in the public safety employer risk pool:

(a) As determined by the system consolidated actuarial valuation reported to the board of trustees, each employer shall make contributions sufficient under such actuarial valuation to pay fifty percent of both the normal cost plus the actuarially determined amount required to amortize the total unfunded accrued liability within the risk pool for all employers attributable to all members in the risk pool. For each year that new unfunded liabilities are attributable to the public safety employer risk pool, a new amortization base representing the most recent annual gain or loss, smoothed over a period of not more than five years as determined by the board, shall be created on a level-dollar basis over a closed period equal to the average expected remaining service lives of all members of the risk pool but not more than ten years, as determined by the board.

(b) The remaining fifty percent of both the normal cost and actuarially determined amount required to amortize the total unfunded accrued liability within the public safety employer risk pool as determined in subdivision (a) of this paragraph shall be divided by the total number of members in the risk pool such that each member contributes an equal percentage of the member's compensation. Member contributions shall begin simultaneously with membership in the system and shall be made by payroll deduction.

2. For employers and members that are not in the public safety employer risk pool:

(a) As determined by actuarial valuations reported to the employer and the local board by the board of trustees, each employer shall make contributions sufficient under such actuarial valuations to pay fifty percent of both the normal cost plus the actuarially determined amount required to amortize the total unfunded accrued liability for each employer attributable only to those members hired on or after July 1, 2017. For each year that new unfunded liabilities are attributable to the employer's own members hired on or after July 1, 2017, a new amortization base representing the most recent annual gain or loss, smoothed over a period of not more than five years as determined by the board, shall be created on a level-dollar basis over a closed period equal to the average expected remaining service lives of all members but not more than ten years, as determined by the board.

(b) The remaining fifty percent of both the normal cost and actuarially determined amount required to amortize the total unfunded accrued liability as determined pursuant to subdivision (a) of this paragraph shall be divided by the total number of the employer's members who were hired on or after July 1, 2017 such that each member contributes an equal percentage of the member's compensation. Member contributions shall begin simultaneously with membership in the system and shall be made by payroll deduction.

I. In any fiscal year, an employer's contribution to the system in combination with member contributions may not be less than the actuarially determined normal cost for that fiscal year. The board may not suspend contributions to the system unless both of the following apply:

1. The retirement system actuary, based on the annual valuation, determines the stabilization reserve of an employer's account is funded to one hundred percent of present value of all future benefits of the employer.

2. The board determines that suspending, in whole or in part, the normal cost contributions as calculated under subsection B of this section would not be in conflict with its fiduciary responsibility.

J. An employer may request that the board transfer excess assets of an employer's account that has no liabilities or beneficiaries to another account of the employer that is managed by the board. The board may authorize the transfer of assets if all of the following apply:

1. The board verifies that the employer's liabilities have been reconciled with the administrator and there are no remaining or potential liabilities or beneficiaries of the employer's account.

2. The board and the system bear no liability that the proposed transfer conforms with any other restrictions on the use or transfer of the assets of the proposed transfer.

3. The transfer does not violate the internal revenue code or threaten to impair the system's status as a qualified plan under the internal revenue code.

K. For the purposes of requesting a transfer of assets pursuant to this section, an employer must meet both of the following requirements:

1. The governing body of the employer adopts a resolution requesting the transfer of assets in an open session where public comment is allowed.

2. The employer submits a written request to the administrator of the board for the transfer of assets along with the adopted resolution.

L. For a state employer that meets the requirements of subsection J of this section, the joint legislative budget committee may request from the administrator of the board confirmation that an employer's account meets the requirements to transfer the account assets. The legislature shall pass a bill directing the board to transfer the assets from the eligible employer account to another account of the employer. Before the legislature passes the bill, the joint legislative budget committee shall confirm with the administrator of the board that the assets are eligible for transfer to another employer account and discuss the matter in a scheduled public meeting.

M. For the purposes of calculating unfunded liability amortization payments pursuant to subsection B of this section, an employer may make a onetime election to request that the board use a closed period of not more than thirty years if the employer meets both of the following requirements:

1. The governing body of the employer adopts a resolution requesting the longer amortization period and specifying the actuarial valuation date for which the new amortization period is to begin. The actuarial valuation date chosen must be the system's fiscal year end either immediately before or immediately after the date of the resolution.

2. The employer submits a written request for the longer amortization period along with the adopted resolution to the administrator of the board.

N. For the purposes of subsection M of this section, employer does not include this state or any state agency.

O. If a member's employment is terminated with an employer by either party, the total liability under the system associated with the member's service with the employer remains with the employer.

History

Laws 1989, 1st Reg. Sess. Ch. 310, § 7; *Laws 1990, 2nd Reg. Sess., Ch. 325, § 2*; *Laws 1991, 1st Reg. Sess., Ch. 155, § 1*; *Laws 1997, 1st Reg. Sess., Ch. 239, § 10*; *Laws 2000, Ch. 126, § 4*; *Laws 2005, Ch. 208, § 3*; *Laws 2006, Ch. 251, § 2*; *Laws 2010, 2nd Reg. Sess., Ch. 118, § 4*; *Laws 2010, 2nd Reg. Sess., Ch. 200, § 31*; *Laws 2011, 1st Reg. Sess., Ch. 357, § 25*; *Laws 2013, 1st Reg. Sess., Ch. 203, § 3*; *Laws 2014, 2nd Reg. Sess., Ch. 202, § 1*; *2016 2nd Reg. Sess. Ch. 2, § 5*, effective August 6, 2016; *2017 1st Reg. Sess. Ch. 163, § 1*, effective August 9, 2017;

2017 1st Reg. Sess. Ch. 235, § 2, effective May 1, 2017; 2017 1st Reg. Sess. Ch. 269, § 7, effective May 3, 2017; 2022 2nd Reg. Sess. Ch. 221, § 1, effective September 24, 2022; 2023 1st Reg. Sess. Ch. 102, § 1, effective May 1, 2023.

Annotations

Notes

Editor's Notes

Laws 2011, 1st Reg. Sess., Ch. 357, § 58 provides, “The legislature intends by this act: 1. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that a retired member who returns to work for an employer may have on the Arizona state retirement system. Through the establishment of the alternate contribution rate the legislature intends to assure employers that the use of leased, contracted or retired employees and services will have a minimal, if any, actuarial impact on the Arizona state retirement system. 2. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that is caused by distorting the actuarial assumption relating to age related rates of retirement that a retired member who returns to work for an employer may have on the elected officials’ retirement plan, the public safety personnel retirement system and the corrections officer retirement plan.”

Amendment by Laws 2023, Ch. 102, § 1 retroactively applicable beginning July 1, 2023.

Amendment Notes

The 2016 amendment, in the first sentence of (B), deleted “level per cent of compensation” following “employer shall make,” added “for members hired before July 1, 2017,” added “on a level percent of compensation basis for all employees of the employer who are members of the system or participants as defined in section 38 865, paragraph 7, subdivision (a),” and substituted “July 1, 2017, a closed period of not more than twenty years” for “July 1, 2005, a rolling period of at least twenty and not more than thirty years”; in (C), added “who was hired before July 1, 2017” in the first sentence and added the second sentence; substituted “subsections B, C and G” for “subsections B and C” in the first sentence of (D); added “who was hired before July 1, 2017” in the introductory language of (E); added (G) through (I); and made stylistic changes.

The first 2017 amendment, in (B), in the first sentence, substituted “subdivision (a), item (i)” for “subdivision (a)” and added “except as provided in subsection I of this section” following “twenty years”; added (I) and (J); and redesignated former (I) as (K).

The second 2017 amendment, added (G)(1) and the introductory language of (G)(2), redesignated former (G)(1) and (G)(2) as (G)(2)(a) and (G)(2)(b), in (G)(2)(a), substituted “period of not more” for “period not more” in the second sentence, and substituted “subdivision (a) of this paragraph” for “paragraph 1 of this subsection” in (G)(2)(b); and substituted “under the United States” for “under the provisions of the United States” in (H)(1).

The third 2017 amendment added “except as provided in subsection I of this section” following “twenty years” in the first sentence of (B); and substituted “under the United States” for “under the provisions of the United States” in (H)(1); added (I) and (J); and redesignated former (I) as (K).

The 2022 amendment, in (B), in the first sentence, substituted “subsection L” for “subsection I” and deleted “except that, beginning with fiscal year 2006-2007, except as otherwise provided, the employer contribution rate shall not be less than eight percent of compensation. For any employer whose actual contribution rate is less than eight percent of compensation for fiscal year 2006-2007, that employer’s contribution rate is not subject to the eight percent minimum but, for fiscal year 2006-2007 and each year thereafter, shall be at least five percent and not more than the employer’s actual contribution rate” following “system’s actuary” and in the second to the last sentence, deleted “fifty percent of” following “shall account for” and added “up to one hundred percent of present value of all future benefits of the

employer."; and in (F), in the first sentence, deleted "For fiscal year 2011-2012 and each fiscal year thereafter" at the beginning and added "until the employer's funded ratio as expressed as a percentage of the employer's actuarial value of assets to accrued actuarial liability as determined by actuarial valuations reported pursuant to subsection B of this section is at or above one hundred percent" and added the last sentence.

The 2023 amendment in (A), substituted "that" for "who", "this" for "the" and "this state's" for "the state" in the first sentence; substituted "sub M" for "sub L" throughout the ; added "the" in (B); substituted "sub H" for "sub G" in the second sentence of (C) and first sentence of (D); in (E)(6), substituted "through" for "and each" and "2022-2023" for "thereafter" in the first sentence; added (E)(7); deleted the last sentence of (F), which formerly read: "If the employer's funded ratio falls below one hundred percent funded, the amount of the member's contributions above 7.65 percent as provided in sub E, paragraph 6 of this shall accumulate from that time and not be used to reduce the"; added (G); redesignated former (G) through (N) as (H) through (O); and substituted "J" for "I" in the first sentence of (L).

Legislative intent.

Laws 2016, 2nd Reg. Sess., Ch. 2, § 21 provides, "A. The legislature recognizes that in order to have a sound public retirement system that benefits this state, taxpayers and members of the retirement system, pursuant to article XXIX, Constitution of Arizona, the public retirement system must be funded with contributions and investment earnings based on actuarial methods and assumptions that are consistent with generally accepted actuarial standards. The legislature finds that the current structure of the public safety personnel retirement system does not achieve this goal and that the current system imperils the retirement security that the members of that system have come to expect. For these reasons, the legislature intends to modify and amend the provisions of the current system for both current and new members to make the system viable and sustainable now and into the future.

B. The legislature further finds:

1. That the current structure of the public safety personnel retirement system does not lead to the goal of attaining one hundred percent funded status and jeopardizes the future payment of benefits to current and future retirees of the retirement program.

2. That the current structure of the public safety personnel retirement system, which requires a fixed employee contribution rate, requires a contribution rate from employees that is insufficient in relation to the cost associated with the benefits required by the plan design and therefore places a greater financial burden on employers. By moving to a shared cost structure, public safety employees will bear increased responsibility for the fiscal health of the fund and, as the fund improves its funded status and approaches fully funded or overfunded status, the employees will realize decreased contribution costs that will be lower than currently required.

3. That the current method of funding benefit increases to retirees of the public safety personnel retirement system is flawed and makes it highly unlikely that this fund will achieve its actuarially assumed earning rates during positive and negative investment environments and creates an undesirable possibility of greater investment risk on the part of the fund's trustees. It is fundamentally unsound to provide a benefit increase during periods when the funded status of the retirement program is less than seventy percent. Changing the manner of funding these benefit increases is intended to improve the funded status of the public safety personnel retirement system and is in the best interests of the members and beneficiaries of this retirement program in that it will preserve future benefits for plan participants.

4. It is necessary to change the future plan and system structures for nonvested members to take into consideration the increased life expectancy of members and future employees and make the reforms necessary to preserve the funded status of the retirement program in future years.

5. To protect the future benefits of retired, active and future employees, it is necessary to make the changes outlined in this act to preserve the funded status of this retirement program and return the program to fiscal solvency.

C. It is the legislature's intent that this act does not impair or amend any agreement between an employee and employer that addresses participation in or contributions to alternative retirement plans or compensation arrangements not administered through the public safety personnel retirement system."

Severability.

Laws 2016, 2nd Reg. Sess., Ch. 2, § 23, provides, "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."

JUDICIAL DECISIONS

Applicability.

Division of Benefits.

Transfers. Unfunded

Liability.

Applicability.

Subsection B applies only when the employer changes the retirement system for an existing group of employees. *Alexander v. Fund Manager, Pub. Safety Personnel Retirement Sys., 166 Ariz. 589, 804 P.2d 122, 77 Ariz. Adv. Rep. 22, 1990 Ariz. App. LEXIS 421 (Ariz. Ct. App. 1990)*.

Division of Benefits.

The appropriate method for calculating a division of retirement benefits is the reserve jurisdiction valuation method. *Miller v. Miller, 140 Ariz. 520, 683 P.2d 319, 1984 Ariz. App. LEXIS 480 (Ariz. Ct. App. 1984)*.

Transfers.

Because the pension benefits the plaintiff earned while employed by the sheriff's department were not "attributable" to his employment as a game warden, the local board was not obligated to transfer the plaintiff's benefits from the Arizona state retirement system to the public safety personnel retirement system (PSPRS) when the game and fish department permitted wardens to participate in the PSPRS. *Alexander v. Fund Manager, Pub. Safety Personnel Retirement Sys., 166 Ariz. 589, 804 P.2d 122, 77 Ariz. Adv. Rep. 22, 1990 Ariz. App. LEXIS 421 (Ariz. Ct. App. 1990)*.

Unfunded Liability.

The difference between the amount of money necessary to fund a public safety personnel retirement system (PSPRS) member's prospective benefits and the amount transferred from the Arizona state retirement system attributable to that employee's prior service is known as the "unfunded liability," and pursuant to subsection B, that unfunded liability is normally paid by the employer for the prior credited service of employees which the employer designates as eligible for participation in the PSPRS. *Alexander v. Fund Manager, Pub. Safety Personnel Retirement Sys., 166 Ariz. 589, 804 P.2d 122, 77 Ariz. Adv. Rep. 22, 1990 Ariz. App. LEXIS 421 (Ariz. Ct. App. 1990)*.

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-843.01

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-843.01. Internal revenue code section 414(h) pickup of member contributions

Each employer shall pick up the contributions required of members on account of compensation paid after the effective date specified in the resolution of the board activating the provisions of this section. The picked up contributions shall be treated as employer contributions for the purpose of tax treatment under the United States internal revenue code. The specified effective date shall not be before the date the system receives notification from the internal revenue service that pursuant to section 414(h) of the internal revenue code the member contributions picked up shall not be included in gross income for income tax purposes until the time that the picked up contributions are distributed by refund or pension payments. The employers shall pick up the member contributions from monies established and available in a retirement deduction account, which monies would otherwise have been designated as member contributions and paid to the system. Member contributions picked up pursuant to this section shall be treated for all other purposes, in the same manner and to the same extent, as member contributions made before the effective date.

History

Laws 1999, Ch. 50, § 4, *Ch. 327, § 22*; *Laws 2010, 2nd Reg. Sess., Ch. 200, § 32*, effective April 28, 2010.

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-843.02

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-843.02. Internal revenue code qualification

The legislature intends that the system is a qualified pension plan under section 401 of the internal revenue code, as amended, or successor provisions of law, and that the trust is exempt from taxation under section 501 of the internal revenue code, as amended. The assets of the fund are held in trust for the exclusive benefit of the members and beneficiaries of the system. The board may adopt such additional provisions to the system as are necessary to fulfill this intent.

History

Laws 2000, Ch. 126, § 5; *Laws 2010, 2nd Reg. Sess., Ch. 200, § 33*, effective April 28, 2010.

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-843.03

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-843.03. Statutory construction

Because the system as enacted at a particular time is a unique amalgam of rights and obligations having a critical impact on the actuarial integrity of the system, the legislature intends that the system as enacted at a particular time be construed and applied as a coherent whole and without reference to any other provision of the system in effect at a different time.

History

Laws 2000, Ch. 126, § 5, effective July 1, 1968.

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-843.04

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-843.04. Compensation limitation; adjustments; definition

A. The annual compensation of each member taken into account for purposes of the system shall not exceed the following:

1. Beginning January 1, 1996 through December 31, 2001, $150,000.

2. Except for members who are hired on or after July 1, 2017, beginning January 1, 2002, $200,000. The board shall adjust the $200,000 annual compensation limit under this paragraph at the same time and in the same manner as adjusted by the United States secretary of the treasury under section 401(a)(17)(B) of the internal revenue code. The adjustment under this paragraph for a calendar year applies to annual compensation for that calendar year.

3. For members who are hired on or after July 1, 2017, $110,000. The board shall adjust the $110,000 annual compensation limit under this paragraph as prescribed in subsection C of this section. Notwithstanding the adjustments made under subsection C of this section, the limit under this paragraph, as adjusted by the board, may not exceed the maximum compensation limit of section 401(a)(17) of the internal revenue code, as adjusted by the United States secretary of the treasury.

B. If compensation under the system is determined on a period of time that contains fewer than twelve calendar months, the compensation limit for that period of time is equal to the dollar limit for the calendar year during which the period of time begins, multiplied by the fraction in which the numerator is the number of full months in that period of time and the denominator is twelve.

C. Beginning in fiscal year 2020-2021, and every third fiscal year thereafter, the board shall adjust the annual compensation limit specified in subsection A, paragraph 3 of this section by the average change in the public safety wage index as determined in this subsection. The board shall annually publish the public safety wage index in January. The annual compensation limit adjustment under this subsection for a calendar year applies to the annual compensation for that calendar year. To determine the public safety wage index:

1. Employers represented in the public safety wage index shall provide the board pay scales for the month of July for the enforcement classifications of public safety officers annually in July.

2. The board shall determine the weighted average of the change in the top of the pay scale for public safety officers of the employers represented in the public safety wage index. The average change shall be weighted by measuring each employer's total number of members divided by the total number of members of all employers represented in the public safety wage index.

D. The board shall establish a public safety wage index that is composed of a group of employers that represents geographic diversity across this state and that represents:

1. Seven large employers, each of which has one thousand or more total system members, composed of one state law enforcement agency, one county law enforcement agency, three municipal law enforcement agencies and two municipal fire agencies.

2. Nine midsized employers, each of which has more than two hundred but fewer than one thousand total system members, composed of one state law enforcement agency, two county law enforcement agencies, four municipal law enforcement agencies, one municipal fire agency and one fire district.

3. Ten small employers, each of which has two hundred or fewer total system members, composed of three municipal law enforcement agencies, four municipal fire agencies and three fire districts.

E. The board may not change the employers represented in the public safety wage index more frequently than every ten years, unless required to maintain the composition of employers as prescribed in subsection D of this section.

F. For the purposes of this section, “public safety officers” means the classification of police officers, sheriff’s deputies, firefighters or wildlife managers or their equivalent enforcement classifications.

History

Recent legislative history: *Laws 2009, Ch. 35, § 11*; *Laws 2010, 2nd Reg. Sess., Ch. 200, § 34*; *2016 2nd Reg. Sess. Ch. 2, § 6*, effective August 6, 2016; *2019 1st Reg. Sess. Ch. 36, § 8*, effective August 27, 2019.

Annotations

Notes

Editor's Notes

Laws 2016, 2nd Reg. Sess., Ch. 2, § 20 provides, “Notwithstanding *section 38-843.04, subsection D, Arizona Revised Statutes*, as added by this act, beginning July 1, 2017, the employers for the purposes of the public safety wage index are the central Yavapai fire district, department of public safety, Drexel heights fire district, Flagstaff fire department, Flagstaff police department, Arizona game and fish department, Gilbert police department, Glendale police department, Golder ranch fire district, Kingman fire department, Kingman police department, Maricopa county sheriff's department, Mesa police department, Nogales fire department, Nogales police department, Northwest fire district, Phoenix fire department, Phoenix police department, Pima county sheriff's department, Pinal county sheriff's department, Prescott fire department, Prescott police department, Scottsdale police department, Tempe fire department, Tucson fire department and Tucson police department.”

Amendment Notes

The 2016 amendment rewrote the section, which formerly read: “A. The annual compensation of each member taken into account for purposes of the system shall not exceed the following: 1. Beginning January 1, 1996 through December 31, 2001, one hundred fifty thousand dollars. 2. Beginning January 1, 2002, two hundred thousand dollars. B. If compensation under the system is determined on a period of time that contains fewer than twelve calendar months, the compensation limit for that period of time is equal to the dollar limit for the calendar year during which the period of time begins, multiplied by the fraction in which the numerator is the number of full months in that period of time and the denominator is twelve. C. The board shall adjust the annual compensation limits under this section at the same time and in the same manner as adjusted by the United States secretary of the treasury under section 401(a)(17)(B) of the internal revenue code. The adjustment under this subsection for a calendar year applies to annual compensation for the plan year that begins with or within the calendar year.”

The 2019 amendment substituted “that calendar year” for “the plan year that begins with or within the calendar year” in the last sentence of (A)(2); added the second to the last sentence in the introductory paragraph of (C); substituted “fewer” for “less” in (D)(2) and (D)(3); and made stylistic changes.

Legislative intent.

Laws 2016, 2nd Reg. Sess., Ch. 2, § 21 provides, “A. The legislature recognizes that in order to have a sound public retirement system that benefits this state, taxpayers and members of the retirement system, pursuant to article XXIX, Constitution of Arizona, the public retirement system must be funded with contributions and investment earnings based on actuarial methods and assumptions that are consistent with generally accepted actuarial standards. The legislature finds that the current structure of the public safety personnel retirement system does not achieve this goal and that the current system imperils the retirement security that the members of that system have come to expect. For these reasons, the legislature intends to modify and amend the provisions of the current system for both current and new members to make the system viable and sustainable now and into the future.

B. The legislature further finds:

1. That the current structure of the public safety personnel retirement system does not lead to the goal of attaining one hundred percent funded status and jeopardizes the future payment of benefits to current and future retirees of the retirement program.

2. That the current structure of the public safety personnel retirement system, which requires a fixed employee contribution rate, requires a contribution rate from employees that is insufficient in relation to the cost associated with the benefits required by the plan design and therefore places a greater financial burden on employers. By moving to a shared cost structure, public safety employees will bear increased responsibility for the fiscal health of the fund and, as the fund improves its funded status and approaches fully funded or overfunded status, the employees will realize decreased contribution costs that will be lower than currently required.

3. That the current method of funding benefit increases to retirees of the public safety personnel retirement system is flawed and makes it highly unlikely that this fund will achieve its actuarially assumed earning rates during positive and negative investment environments and creates an undesirable possibility of greater investment risk on the part of the fund's trustees. It is fundamentally unsound to provide a benefit increase during periods when the funded status of the retirement program is less than seventy percent. Changing the manner of funding these benefit increases is intended to improve the funded status of the public safety personnel retirement system and is in the best interests of the members and beneficiaries of this retirement program in that it will preserve future benefits for plan participants.

4. It is necessary to change the future plan and system structures for nonvested members to take into consideration the increased life expectancy of members and future employees and make the reforms necessary to preserve the funded status of the retirement program in future years.

5. To protect the future benefits of retired, active and future employees, it is necessary to make the changes outlined in this act to preserve the funded status of this retirement program and return the program to fiscal solvency.

C. It is the legislature's intent that this act does not impair or amend any agreement between an employee and employer that addresses participation in or contributions to alternative retirement plans or compensation arrangements not administered through the public safety personnel retirement system.”

Severability.

Laws 2016, 2nd Reg. Sess., Ch. 2, § 23 provides, “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.”

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-843.05

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-843.05. Retired members; return to work; employer contributions

A. An employer shall pay contributions at an alternate contribution rate on behalf of a retired member who returns to work in any capacity in a position ordinarily filled by an employee of the employer of an eligible group, unless the retired member is required to participate in another state retirement system and the retired member returned to work before July 20, 2011. For the purposes of this subsection, "returns to work in any capacity" includes a retired member who returns to work and is ineligible for benefits pursuant to *section 38-849*, subsection E.

B. The alternate contribution rate shall be equal to that portion of the individual employer's total required contribution that is applied to the amortization of the unfunded actuarial accrued liability for the fiscal year beginning July 1, based on the system's actuary's calculation of the total required contribution for the preceding fiscal year ended on June 30. The alternate contribution rate shall be applied to the compensation, gross salary or contract fee of a retired member who meets the requirements of this section.

C. The alternate contribution rate shall not be less than eight percent in any fiscal year.

D. All contributions made by the employer and allocated to the fund are irrevocable and shall be used as benefits under this article or to pay the expenses of the system. Payments made pursuant to this section by employers become delinquent after the due date prescribed in *section 38-843*, subsection D, and thereafter shall be increased by interest from and after that date until payment is received by the system.

E. An employer of a retired member shall immediately notify the local board after the employment of a retired member and shall submit any reports, data, paperwork or materials that are requested by the board or the local board that are necessary to determine the compensation, gross salary or contract fee associated with a retired member who returns to work or to determine the function, use, efficacy or operation of the return to work program.

History

Recent legislative history: *Laws 2011, 1st Reg. Sess., Ch. 357, § 26*; *Laws 2012, 2nd Reg. Sess., Ch. 136, § 4*; *Laws 2012, 2nd Reg. Sess., Ch. 362, § 16*; *2016 2nd Reg. Sess. Ch. 323, § 1*, effective August 6, 2016.

Annotations

Notes

Editor's Notes

Laws 2011, 1st Reg. Sess., Ch. 357, § 54 provides, “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.”

For legislative findings related to this section, see *Laws 2011, 1st Reg. Sess., Ch. 357, § 55*.

Laws 2011, 1st Reg. Sess., Ch. 357, § 58 provides, “The legislature intends by this act: 1. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that a retired member who returns to work for an employer may have on the Arizona state retirement system. Through the establishment of the alternate contribution rate the legislature intends to assure employers that the use of leased, contracted or retired employees and services will have a minimal, if any, actuarial impact on the Arizona state retirement system. 2. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that is caused by distorting the actuarial assumption relating to age related rates of retirement that a retired member who returns to work for an employer may have on the elected officials’ retirement plan, the public safety personnel retirement system and the corrections officer retirement plan.”

Amendment Notes

The 2016 amendment added “individual employer’s” in the first sentence of (B) and made a stylistic change.

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-843.06

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-843.06. Required distributions

All distributions required under this article shall be determined and made pursuant to section 401(a)(9) of the internal revenue code and the regulations that are issued under that section by the United States secretary of the treasury.

History

2017 1st Reg. Sess. Ch. 269, § 8, effective May 3, 2017.

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-843.07

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-843.07. Adjustment and refund; termination of the system

A. If more than the correct amount of employer or member contributions is paid into the system by an employer through a mistake of fact, the board shall return those contributions to the employer if the employer requests return of the contributions within one year after the date of the overpayment. The board may not pay an employer earnings attributable to excess contributions but shall reduce the amount returned to an employer pursuant to this subsection by the amount of losses attributable to the excess contributions.

B. On termination or partial termination of the system, the accrued benefit of each member is, as of the date of termination or partial termination, fully vested and nonforfeitable to the extent then funded.

History

2017 1st Reg. Sess. Ch. 269, § 8, effective May 3, 2017.

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-844

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-844. Requirements for retirement benefits and disability pensions

A. A member shall be eligible for a normal pension on retirement on or after the member's normal retirement date. Payment of a normal pension shall commence as of the first day of the month following the date of retirement, and the last payment shall be made as of the last day of the month in which the death of the retired member occurs.

B. A member is eligible for an accidental disability pension if the member's employment is terminated by reason of accidental disability. A member is eligible for an ordinary disability pension if the member's employment is terminated before the member's normal retirement date by reason of ordinary disability. A member shall file an application for a disability pension after the disabling incident or within one year after the date the member ceases to be an employee. Timely application for an accidental, catastrophic or ordinary disability pension is a prerequisite to receipt of the pension. Payment of an accidental, catastrophic or ordinary disability pension shall commence as of the first day of the month following the date of retirement or the expiration of a period during which the member is receiving sick leave payments or a temporary disability pension, whichever is later, but not earlier than *section 38-845.02* allows for retroactive payments. The last payment shall be made as of the last day of the month in which the death of the retired member occurs, or if disability ceases before the member's normal retirement date, the first day of the month in which disability ceases.

C. A member is eligible for a catastrophic disability pension if the member's employment is terminated by reason of catastrophic disability. If more than the allowable catastrophic disability pensions are approved by the local boards in a calendar year, from and after December 31 of the following calendar year a member of the system is not eligible to apply for a catastrophic disability pension. On or before January 31, the board of trustees shall report to the president of the senate and the speaker of the house of representatives the number of catastrophic disability pensions that were approved by the local boards in the preceding calendar year. For the purposes of this subsection, "allowable catastrophic disability pensions" means for calendar year 2004, ten, and for subsequent calendar years the number of allowable catastrophic disability pensions allowed in the prior calendar year minus the number of catastrophic disability pensions approved by the local boards in the prior calendar year plus four.

D. Notwithstanding any other provision of this section, no member shall qualify for an accidental, catastrophic or ordinary disability pension if the local board determines that the member's disability results from the following:

1. An injury suffered while engaged in a felonious criminal act or enterprise.
2. Service in the armed forces of the United States that entitles the member to a veteran's disability pension.
3. A physical or mental condition or injury that existed or occurred before the member's date of membership in the system.

E. Accidental or ordinary disability shall be considered to have ceased and an accidental or ordinary disability pension terminates if the member:

1. Has sufficiently recovered, in the opinion of the local board, based on a medical examination by a designated physician or a physician working in a clinic that is appointed by the local board, to be able to engage in a reasonable range of duties within the member's department and the member refuses an offer of employment by an employer in the system.

2. Refuses to undergo any medical examination requested by the local board, provided that a medical examination shall not be required more frequently than once in any calendar year.

F. Sixty months after the award of a catastrophic disability pension, the local board shall reevaluate the member. If the member still qualifies for the catastrophic disability pension, the member is entitled to continue to receive the pension at the reduced amount prescribed in *section 38-845*, subsection E. A catastrophic disability shall be considered to have ceased and a catastrophic disability pension terminates if the local board determines that the member has sufficiently recovered and is able to engage in gainful employment based on a medical examination by a designated physician or a physician working in a clinic that is appointed by the local board. After the sixty-month review, the catastrophic disability shall be considered to have ceased and a catastrophic disability pension terminates if the local board determines that the member has sufficiently recovered and is able to engage in gainful employment based on a medical examination by a designated physician or a physician working in a clinic that is appointed by the local board, except that the medical examination shall not be required more frequently than once in a calendar year. The medical review after the sixty-month period does not apply after the date the catastrophic disability pensioner would have attained twenty-five years of service assuming the pensioner remained a member of the system. The local board shall also terminate a catastrophic disability pension if the member refuses to undergo any medical examination requested by the local board. A member whose catastrophic disability pension is terminated may apply for and if eligible is entitled to receive an accidental disability pension as provided in this section.

G. Subsection E of this section does not apply after a disability pensioner's normal retirement date. The amount of a disability pension shall not be recomputed at a disability pensioner's normal retirement date.

H. If accidental or ordinary disability ceases before a retired member attains the member's normal retirement date and the member is reemployed by an employer, the member shall be treated as if the member has been on an uncompensated leave of absence during the period of the member's disability retirement and shall be a contributing member of the system. The pension payable on the member's subsequent retirement shall be determined as provided in *section 38-845*.

I. A member shall be eligible for a temporary disability pension if the member's employment is terminated before the member's normal retirement date by reason of temporary disability. Payment of a temporary disability pension shall commence as of the first day of the month following the date of disability or the expiration of a period during which the member is receiving compensation and sick leave payments, whichever is later. The last payment shall be made as of the first day of the month in which either the death of the member occurs or the local board deems the member is no longer under temporary disability, whichever first occurs, provided that not more than twelve monthly temporary disability payments shall be made in total to the member.

J. If on the expiration of a temporary disability pension the local board finds on application that the member has an accidental or ordinary disability, the member shall be eligible for an accidental or ordinary disability pension, as provided in this section.

K. The system shall make payments pursuant to section 401(a)(9) of the internal revenue code and the regulations that are issued under that section. Notwithstanding any other provision of the system, beginning January 1, 1987 payment of benefits to a member shall commence not later than April 1 of the calendar year following the later of:

1. The calendar year in which the member attains seventy-two years of age.

2. The date the member terminates employment.

History

Recent legislative history: *Laws 1996, 2nd Reg. Sess., Ch. 318, § 1*; *Laws 2004, Ch. 91, § 1*; *Laws 2004, Ch. 325, § 2*; *Laws 2009, Ch. 35, § 12*; *Laws 2010, 2nd Reg. Sess., Ch. 118, § 5*; *Laws 2010, 2nd Reg. Sess., Ch. 200, § 35*; *Laws 2012, 2nd Reg. Sess., Ch. 136, § 5*; *Laws 2013, 1st Reg. Sess., Ch. 203, § 4*; *2021 1st Reg. Sess. Ch. 23, § 4*, effective September 29, 2021.

Annotations

Notes

Amendment Notes

The 2021 amendment substituted “not more than” for “no more than” in the last sentence of (I); substituted “not later than” for “no later than” in the second sentence of the introductory language of (K); and substituted “seventy two years” for “seventy and one half years” in (K)(1).

JUDICIAL DECISIONS

Applicability.

Divorce.

Qualification.

Vesting.

—In General.

—Injury.

Additional Cases of Historical Interest (1955 — 1984)

Labor & Employment Law: Disability & Unemployment Insurance: Disability Benefits: Coverage & Definitions: General Overview

Labor & Employment Law: Disability & Unemployment Insurance: Disability Benefits: Proof: General Overview

Pensions & Benefits Law: Governmental Employees: Police Pensions

Applicability.

The doctrine of *Yeazell v. Copins, 98 Ariz. 109, 402 P.2d 541 (1965)* applies only where the right to a benefit has vested; where pension rights have vested, legislation in effect at that point in time define the employee’s rights and may not be changed by the legislature. *Fund Manager, Pub. Safety Personnel Retirement Sys. v. Phoenix Police Dep't Pub. Safety Personnel Retirement Sys. Bd., 151 Ariz. 487, 728 P.2d 1237, 1986 Ariz. App. LEXIS 652 (Ariz. Ct. App. 1986)*.

Disabled police officer had no vested right to the accidental disability benefits in existence when he was hired, where he was injured after the legislature had modified the statute in effect at time of employment. *Fund Manager, Pub. Safety Personnel Retirement Sys. v. Phoenix Police Dep't Pub. Safety Personnel Retirement Sys. Bd., 151 Ariz. 487, 728 P.2d 1237, 1986 Ariz. App. LEXIS 652 (Ariz. Ct. App. 1986)*.

Divorce.

Retirement agencies cannot be forced to pay a non-employee former spouse his or her share before the employee spouse retires; thus, when the employee spouse continues to work, he or she must reimburse the non-employee former spouse. Once the employee spouse retires, however, there is no reason why the retirement agencies should not send checks to both the employee and the non-employee spouses. *Koelsch v. Koelsch, 148 Ariz. 176, 713 P.2d 1234, 1986 Ariz. LEXIS 173 (Ariz. 1986)*.

Because the firefighter did not meet the threshold statutory eligibility requirement under subsection B of this section, the City of Phoenix Fire Pension Board was not required to appoint a medical board under the provisions of *A.R.S. § 38-859* or otherwise process his application for disability benefits before denying it. *Hosea v. City of Phoenix Fire Pension Bd., 224 Ariz. 245, 229 P.3d 257, 581 Ariz. Adv. Rep. 36, 2010 Ariz. App. LEXIS 61 (Ariz. Ct. App. 2010)*.

Qualification.

Unchallenged independent medical report accepted by the Guadalupe Public Safety Retirement Local Board established that the employee was physically unable to continue to perform his job; because the employee met the statutory requirements, he qualified for a pension. *Parkinson v. Guadalupe Pub. Safety Ret. Local Bd., 214 Ariz. 274, 151 P.3d 557, 496 Ariz. Adv. Rep. 49, 2007 Ariz. App. LEXIS 14 (Ariz. Ct. App. 2007)*.

Vesting. —In

General.

A public employee's right to or interest in a disability pension vests upon the occurrence of the event or condition which would qualify him for such pension — the injury. *Fund Manager, Pub. Safety Personnel Retirement Sys. v. Phoenix Police Dep't Pub. Safety Personnel Retirement Sys. Bd., 151 Ariz. 487, 728 P.2d 1237, 1986 Ariz. App. LEXIS 652 (Ariz. Ct. App. 1986)*.

—Injury.

Just as unearned annual leave, holiday pay, vacation credits and sick leave do not vest until the condition of service is satisfied, the right to an accidental disability pension does not vest until the contingent event of injury occurs. *Fund Manager, Pub. Safety Personnel Retirement Sys. v. Phoenix Police Dep't Pub. Safety Personnel Retirement Sys. Bd., 151 Ariz. 487, 728 P.2d 1237, 1986 Ariz. App. LEXIS 652 (Ariz. Ct. App. 1986)*.

Additional Cases of Historical Interest (1955 — 1984)

Labor & Employment Law: Disability & Unemployment Insurance: Disability Benefits: Coverage & Definitions: General Overview

Leschinsky v. Public Safety Personnel Retirement Sys., 27 Ariz. App. 618, 557 P.2d 550, 1976 Ariz. App. LEXIS 678 (Ariz. Ct. App. 1976).
Overview: *The police officer was not eligible to receive disability benefits because his employment was terminated prior to his normal retirement date by reason of misconduct, not by reason of accidental disability.*

- *Ariz. Rev. Stat. § 38-844(B)* sets forth the requirements for disability benefits for police officers. It states: A member shall be eligible for a permanent disability pension if his employment is terminated prior to his normal retirement date by reason of accidental disability.

Labor & Employment Law: Disability & Unemployment Insurance: Disability Benefits: Proof: General Overview

Leschinsky v. Public Safety Personnel Retirement Sys., 27 Ariz. App. 618, 557 P.2d 550, 1976 Ariz. App. LEXIS 678 (Ariz. Ct. App. 1976).

Overview: *The police officer was not eligible to receive disability benefits because his employment was terminated prior to his normal retirement date by reason of misconduct, not by reason of accidental disability.*

- *Ariz. Rev. Stat. § 38-844(B)* sets forth the requirements for disability benefits for police officers. It states: A member shall be eligible for a permanent disability pension if his employment is terminated prior to his normal retirement date by reason of accidental disability.

Pensions & Benefits Law: Governmental Employees: Police Pensions

Leschinsky v. Public Safety Personnel Retirement Sys., 27 Ariz. App. 618, 557 P.2d 550, 1976 Ariz. App. LEXIS 678 (Ariz. Ct. App. 1976).

Overview: *The police officer was not eligible to receive disability benefits because his employment was terminated prior to his normal retirement date by reason of misconduct, not by reason of accidental disability.*

- *Ariz. Rev. Stat. § 38-844(B)* sets forth the requirements for disability benefits for police officers. It states: A member shall be eligible for a permanent disability pension if his employment is terminated prior to his normal retirement date by reason of accidental disability.

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-844.01

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-844.01. Vested rights to benefits

A member of the system does not have vested rights to benefits under the system, except as provided in *section 38-854*, until he files an application for benefits and is found eligible for those benefits as provided in this article. An eligible claimant's rights to benefits vest on the date of his application for those benefits or his last day of employment under the system, whichever occurs first.

History

Last legislative year: 1983.

Annotations

JUDICIAL DECISIONS

Applicability.

Vesting.

—In General.

—Injury.

Applicability.

The doctrine of *Yeazell v. Copins, 98 Ariz. 109, 402 P.2d 541 (1965)* applies only where the right to a benefit has vested; where pension rights have vested, legislation in effect at that time define the employee's rights and may not be changed by the legislature. *Fund Manager, Pub. Safety Personnel Retirement Sys. v. Phoenix Police Dep't Pub. Safety Personnel Retirement Sys. Bd., 151 Ariz. 487, 728 P.2d 1237, 1986 Ariz. App. LEXIS 652 (Ariz. Ct. App. 1986)*.

Vesting. —In

General.

38-844.01. Vested rights to benefits

A public employee's right to or interest in a disability pension vests upon the occurrence of the event or condition which would qualify him for such pension — the injury. *Fund Manager, Pub. Safety Personnel Retirement Sys. v. Phoenix Police Dep't Pub. Safety Personnel Retirement Sys. Bd., 151 Ariz. 487, 728 P.2d 1237, 1986 Ariz. App. LEXIS 652 (Ariz. Ct. App. 1986)*.

—Injury.

Just as unearned annual leave, holiday pay, vacation credits and sick leave do not vest until the condition of service is satisfied, the right to an accidental disability pension does not vest until the contingent event of injury occurs. *Fund Manager, Pub. Safety Personnel Retirement Sys. v. Phoenix Police Dep't Pub. Safety Personnel Retirement Sys. Bd., 151 Ariz. 487, 728 P.2d 1237, 1986 Ariz. App. LEXIS 652 (Ariz. Ct. App. 1986)*.

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-844.02

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-844.02. Deferred retirement option plan for employees hired before January 1, 2012; purpose

A. A deferred retirement option plan is established for those employees who become members of the system before January 1, 2012. The purpose of the deferred retirement option plan is to add flexibility to the system and to provide members who elect to participate in the deferred retirement option plan access to a lump sum benefit in addition to their normal monthly retirement benefit on actual retirement.

B. The board shall offer the deferred retirement option plan to members on a voluntary basis as an alternative method of benefit accrual under the system.

History

Recent legislative history: *Laws 2002, Ch. 335, § 3*; *Laws 2010, 2nd Reg. Sess., Ch. 200, § 36*; *Laws 2011, 1st Reg. Sess., Ch. 357, § 27*.

Annotations

Notes

Editor's Notes

Laws 2011, 1st Reg. Sess., Ch. 357, § 54 provides, “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.”

For legislative findings related to this section, see *Laws 2011, 1st Reg. Sess., Ch. 357, § 55*.

Laws 2011, 1st Reg. Sess., Ch. 357, § 58 provides, “The legislature intends by this act: 1. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that a retired member who returns to work for an employer may have on the Arizona state retirement system. Through the establishment of the alternate contribution rate the legislature intends to assure employers that the use of leased, contracted or retired employees and services will have a minimal, if any, actuarial impact on the Arizona state retirement system. 2. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that is caused by distorting the actuarial assumption relating to age related rates of retirement that a retired member who returns to work for an employer may

have on the elected officials' retirement plan, the public safety personnel retirement system and the corrections officer retirement plan."

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-844.03

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-844.03. Eligibility; participation

A. Any member who is eligible for a normal pension pursuant to *section 38-844*, subsection A, who becomes a member of the system before January 1, 2012 and who has at least twenty years of credited service is eligible to participate for not more than sixty consecutive months in the deferred retirement option plan. In addition, any member who is subject to *section 38-858*, subsection C is eligible to participate for not more than sixty consecutive months in the deferred retirement option plan retroactive to the member's twentieth year of credited service or on the day before the member began military service, whichever is later, if the member makes the election pursuant to this section on or before resuming employment with the member's employer. Any member who is eligible for a normal pension pursuant to *section 38-844*, subsection a, who becomes a member of the system before January 1, 2012, who is at least fifty-one years of age and who has at least twenty-four and one-half years of credited service is eligible to participate for not more than eighty-four consecutive months in the deferred retirement option plan.

B. A member who elects to participate in the deferred retirement option plan shall voluntarily and irrevocably:

1. Designate a period of participation that is not more than sixty consecutive months or eighty-four consecutive months, as applicable pursuant to subsection a of this section.

2. Beginning on the date the member elects to participate in the deferred retirement option plan, cease to accrue benefits under any other provision of this article. The member's effective date of participation is the first day of the month following the date the member elects to participate.

3. Have deferred retirement option plan benefits credited to a deferred retirement option plan participation account pursuant to *section 38-844.05*.

4. Receive benefits from the system on termination of employment at the same time and in the same manner as otherwise prescribed in this article.

5. Agree to terminate employment on completion of the deferred retirement option plan participation period designated by the member on the appropriate deferred retirement option plan participation form.

C. If a member fails to terminate employment on completion of the designated deferred retirement option plan participation period:

1. The member is not entitled to the interest accumulation on the deferred retirement option plan participation account.

2. The deferred retirement option plan participation account shall not be credited with the monthly amount prescribed in *section 38-844.05*, subsection C, paragraph 1 and that amount shall not be paid directly to the member.

3. The payment prescribed in *section 38-844.08*, subsection A, paragraph 1 shall not be paid until the member terminates employment and is payable at the same time as the pension amount is paid on retirement.

4. The member does not acquire any further credited service in the system.

History

Laws 2000, Ch. 340, § 1; *Laws 2001, Ch. 59, § 1*; *Laws 2001, Ch. 349, § 1*; *Laws 2005, Ch. 209, § 1*; *Laws 2009, Ch. 35, § 13*; *Laws 2011, 1st Reg. Sess., Ch. 357, § 28*; *2019 1st Reg. Sess. Ch. 38, § 5*, effective April 1, 2019; *2022 2nd Reg. Sess. Ch. 351, § 1*, effective July 6, 2022.

Annotations

Notes

Editor's Notes

Laws 2011, 1st Reg. Sess., Ch. 357, § 54 provides, “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.”

For legislative findings related to this section, see *Laws 2011, 1st Reg. Sess., Ch. 357, § 55*.

Laws 2011, 1st Reg. Sess., Ch. 357, § 58 provides, “The legislature intends by this act: 1. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that a retired member who returns to work for an employer may have on the Arizona state retirement system. Through the establishment of the alternate contribution rate the legislature intends to assure employers that the use of leased, contracted or retired employees and services will have a minimal, if any, actuarial impact on the Arizona state retirement system. 2. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that is caused by distorting the actuarial assumption relating to age related rates of retirement that a retired member who returns to work for an employer may have on the elected officials’ retirement plan, the public safety personnel retirement system and the corrections officer retirement plan.”

Amendment Notes

The 2019 amendment substituted “subsection C” for “subsection B” in the second sentence of (A).

The 2022 amendment, in (A), added “for not more than sixty consecutive months” twice and added the last sentence; and added “or eighty-four consecutive months, as applicable pursuant to subsection a of this section” in (B)(1).

Applicability

Laws 2019, 1st Reg. Sess., Ch. 38, § 16(A) provides, “ *Section 38-844.03, Arizona Revised Statutes*, as amended by this act, apply retroactively to from and after July 19, 2011.”

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-844.04

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-844.04. Termination of deferred retirement option plan participation

A. A member may terminate participation in the deferred retirement option plan by voluntarily terminating employment at any time before the completion of the deferred retirement option plan participation period designated by the member on the appropriate deferred retirement option plan participation form.

B. Participation in the deferred retirement option plan terminates on the first occurrence of any of the following:

1. Completion of the deferred retirement option plan participation period designated by the member on the appropriate deferred retirement option plan participation form.

2. Termination of employment. If termination of employment for cause is reversed, a member's participation in the deferred retirement option plan, minus any benefits previously distributed pursuant to this article, shall be reinstated for the duration of the original deferred retirement option plan participation period designated by the member on the appropriate deferred retirement option plan participation form.

3. Death of the member.

4. Approval of disability retirement benefits pursuant to *section 38-844*, subsection B.

History

Recent legislative history: *Laws 2000, Ch. 340, § 1*; *Laws 2002, Ch. 335, § 4*.

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-844.05

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-844.05. Deferred retirement option benefits and participation accounts

A. A deferred retirement option plan participation account is an account established within the system on behalf of each deferred retirement option plan participant. All benefits accrued pursuant to this article shall be accounted for in the deferred retirement option plan participation account. A deferred retirement option plan participant does not have a claim on the assets of the system with respect to the member's deferred retirement option plan participation account and assets shall not be set aside for any deferred retirement option plan participant that are separate from all other system assets.

B. All amounts credited to a member's deferred retirement option plan participation account are fully vested.

C. A member's deferred retirement option plan participation account shall be credited with the following:

1. An amount, credited monthly, that is computed in the same manner as a normal retirement benefit using the factors of credited service and average monthly benefit compensation in effect on the date of deferred retirement option plan participation.

2. For the first sixty months, an amount, credited monthly, that represents interest on the amount credited pursuant to paragraph 1 of this subsection at a rate equal to the assumed rate of return determined by the board.

D. Beginning on or before January 1, 2023, at the end of the first sixty-month period, for a member who extended the member's period of participation in the deferred retirement option plan past sixty months, the system shall transfer the accumulated balance of a member's deferred retirement option plan participation account to an account created for the member in a defined contribution plan. For the subsequent period of time in the deferred retirement option plan, up to twenty-four months, all deferred retirement option plan benefits that are accrued and credited monthly pursuant to subsection C, paragraph 1 of this section shall be deposited in the member's defined contribution plan account. A member may not withdraw the assets of the member's defined contribution plan account until the member terminates employment.

E. The participant is not entitled to receive any amount prescribed by *section 38-856.05* or *38-857* during the deferred retirement option plan participation period.

History

Laws 2000, Ch. 340, § 1; *Laws 2010, 2nd Reg. Sess., Ch. 200, § 37*; *Laws 2011, 1st Reg. Sess., Ch. 357, § 29*; *Laws 2012, 2nd Reg. Sess., Ch. 348, § 3*; *2016 2nd Reg. Sess. Ch. 2, § 7*, effective August 6, 2016; *2019 1st Reg. Sess. Ch. 38, § 6*, effective April 1, 2019; *2022 2nd Reg. Sess. Ch. 351, § 2*, effective July 6, 2022.

Notes

Editor's Notes

Laws 2011, 1st Reg. Sess., Ch. 357, § 58 provides, “The legislature intends by this act: 1. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that a retired member who returns to work for an employer may have on the Arizona state retirement system. Through the establishment of the alternate contribution rate the legislature intends to assure employers that the use of leased, contracted or retired employees and services will have a minimal, if any, actuarial impact on the Arizona state retirement system. 2. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that is caused by distorting the actuarial assumption relating to age related rates of retirement that a retired member who returns to work for an employer may have on the elected officials’ retirement plan, the public safety personnel retirement system and the corrections officer retirement plan.”

Amendment Notes

The 2016 amendment substituted “section 38-856.05 or 38-857” for “section 38-856, 38-856.02 or 38-857” in (D).

The 2019 amendment deleted “except that for a member who has less than twenty years of credited service on January 1, 2012 and who elects to participate in the deferred retirement option plan on or after January 1, 2012, the amount credited monthly is the amount that represents interest at a rate equal to the average annual return of the system over the period of years established by the board for use in the calculation of the actuarial value of assets for the previous year, but not to exceed the system's assumed investment rate of return but at least two percent” at the end of (C)(2); and deleted former (C)(3), which read: “If applicable, employee contributions made pursuant to section 38-844.06, subsection B.”

The 2022 amendment added “For the first sixty months” in (C)(2); added (D); and redesignated former (D) as (E).

Applicability

Laws 2019, 1st Reg. Sess., Ch. 38, § 16(A) provides, “ *Section 38-844.05, Arizona Revised Statutes*, as amended by this act, apply retroactively to from and after July 19, 2011.”

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-844.06

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-844.06. Additional deferred retirement option plan provisions

A. Beginning on the day after the date the member elects to participate in the deferred retirement option plan, employee and employer contributions pursuant to *section 38-843* cease with respect to that member.

B. A member who elects to participate in the deferred retirement option plan and who develops a disability during the period of deferred retirement option plan participation is eligible to apply for disability retirement benefits. If the application for disability retirement benefits is approved by the local board:

1. The disability retirement benefits shall be computed using the factors of credited service and average monthly benefit compensation in effect the day before the effective date of the member's deferred retirement option plan participation.

2. All amounts in the member's deferred retirement option plan participation account shall be distributed pursuant to *section 38-844.08*.

C. If a member dies during the period of the member's deferred retirement option plan participation, the entire amount in the member's deferred retirement option plan participation account shall be transferred by the system's trustee directly to the trustee of the public safety personnel defined contribution retirement plan established pursuant to article 4.1 of this chapter and deposited in an account established on behalf of the deceased member. On deposit of the monies in the account, the monies shall be made immediately available to the member's beneficiary to either withdraw all or any portion of the monies or directly transfer all or any portion of the monies to an eligible retirement plan in accordance with section 401(a)(31) of the internal revenue code.

History

Laws 2000, Ch. 340, § 1; *Laws 2002, Ch. 335, § 5*; *Laws 2011, 1st Reg. Sess., Ch. 357, § 30*; *Laws 2014, 2nd Reg. Sess., Ch. 215, § 172*; *2019 1st Reg. Sess. Ch. 38, § 7*, effective April 1, 2019; *2021 1st Reg. Sess. Ch. 120, § 2*, effective September 29, 2021.

Annotations

Notes

Editor's Notes

Laws 2014, 2nd Reg. Sess., Ch. 215, § 222 provides, "This act replaces the term 'disabled', 'handicap', 'handicapped' or 'handicapping' in each of the statutes in which it appears in the Arizona Revised Statutes, except references to the proper name of a federal act, and requires this state to use the term 'persons with disabilities'. It is the intent of the legislature that agencies, boards, commissions, departments, officers and other administrative units of this state make similar changes in their respective administrative rules."

Laws 2011, 1st Reg. Sess., Ch. 357, § 58 provides, "The legislature intends by this act: 1. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that a retired member who returns to work for an employer may have on the Arizona state retirement system. Through the establishment of the alternate contribution rate the legislature intends to assure employers that the use of leased, contracted or retired employees and services will have a minimal, if any, actuarial impact on the Arizona state retirement system. 2. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that is caused by distorting the actuarial assumption relating to age related rates of retirement that a retired member who returns to work for an employer may have on the elected officials' retirement plan, the public safety personnel retirement system and the corrections officer retirement plan."

Amendment Notes

The 2019 amendment deleted "Except as provided by subsection B of this section" at the beginning of (A); deleted former (B), which read: "A member who has less than twenty years of credited service on January 1, 2012 and who elects to participate in the deferred retirement option plan on or after January 1, 2012, shall make employee contributions to the system in the amount equal to the employee contributions calculated pursuant to section 38- 843"; and redesignated former (C) and (D) as (B) and (C).

The 2021 amendment rewrote (C), which formerly read: "If a member dies during the period of the member's deferred retirement option plan participation, the designated beneficiary of the member is entitled to receive all amounts in the member's deferred retirement option plan participation account."

Applicability

By *Laws 2021, 1st Reg. Sess., Ch. 120, § 7*, applies retroactively to from and after January 1, 2020.

Laws 2019, 1st Reg. Sess., Ch. 38, § 16(A) provides, "*Section 38-844.06, Arizona Revised Statutes*, as amended by this act, apply retroactively to from and after July 19, 2011."

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-844.07

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-844.07. Designation of deferred retirement option plan beneficiaries

A. A member who elects to participate in the deferred retirement option plan shall designate a beneficiary. A member's beneficiary designation applies to all amounts in the member's deferred retirement option plan participation account.

B. If a designated beneficiary predeceases a deferred retirement option plan participant who dies before designating a new beneficiary, the beneficiary of the participant's deferred retirement option plan participation account shall be the following persons in the following order of priority:

1. The participant's surviving spouse.
2. The participant's natural or adopted children in equal shares.
3. The participant's estate.

C. A member shall not make a beneficiary designation pursuant to this section that results in an abrogation of a member's community property obligations under the applicable laws of this state.

History

Laws 2000, Ch. 340, § 1; *2021 1st Reg. Sess. Ch. 120, § 3*, effective September 29, 2021.

Annotations

Notes

Amendment Notes

The 2021 amendment, in the second sentence of (A), substituted "amounts in the member's" for "distributions pursuant to the" and added "participation account"; and rewrote (B), which formerly read: "If a designated beneficiary predeceases a deferred retirement option plan participant who dies before designating a new beneficiary, all distributions pursuant to the deferred retirement option plan shall be made to the estate of the deferred retirement option plan participant."

Applicability

By *Laws 2021, 1st Reg. Sess., Ch. 120, § 7*, applies retroactively to from and after January 1, 2020.

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-844.08

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-844.08. Payment of deferred retirement option plan benefits

A. On the simultaneous termination of deferred retirement option plan participation and employment, a member is entitled to receive all of the following:

1. The monthly retirement allowance in the amount determined pursuant to *section 38-845* that was credited monthly to the member's deferred retirement option plan participation account at the date of termination of deferred retirement option plan participation.

2. All amounts credited to the member's deferred retirement option plan participation account on the effective date of termination of deferred retirement option plan participation.

B. The form of payment shall be a lump sum distribution that is directly deposited in an account created for the member in the public safety personnel defined contribution retirement plan established by article 4.1 of this chapter. On deposit of the lump sum payment, the member shall immediately be able to either withdraw all or any portion of the lump sum deposit or directly transfer all or any portion of the lump sum deposit to an eligible retirement plan as required by section 401(a)(31) of the internal revenue code.

History

Laws 2000, Ch. 340, § 1; *Laws 2012, 2nd Reg. Sess., Ch. 348, § 4*; *2015 1st Reg. Sess. Ch. 64, § 2*; *2017 1st Reg. Sess. Ch. 269, § 9*, effective May 3, 2017; *2019 1st Reg. Sess. Ch. 38, § 8*, effective April 1, 2019.

Annotations

Notes

Amendment Notes

The 2015 amendment rewrote the second sentence of (B), which formerly read: "If allowed by the internal revenue service, the participant may elect to transfer the lump sum distribution to an eligible retirement plan or individual retirement account" and made stylistic changes.

The 2017 amendment rewrote (B), which read: "The form of payment shall be a lump sum distribution. The member of the member's beneficiary may make a direct rollover of the lump sum distribution to an eligible retirement plan under the same rules specified in section 38-846.02, subsections E, F and G."

The 2019 amendment deleted former (A)(3), which read: "Interest on the amount credited pursuant to section 38-844.05, subsection C, paragraph 3 at a rate equal to two percent but only if the average annual return of the system

over the period of years established by the board for use in the calculation of the actuarial value of assets is at least two percent for the previous fiscal year."

Applicability

Laws 2019, 1st Reg. Sess., Ch. 38, § 16(A) provides, " *Section 38-844.08, Arizona Revised Statutes*, as amended by this act, apply retroactively to from and after July 19, 2011."

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-844.09

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-844.09. Internal revenue code compliance

The deferred retirement plan option shall not jeopardize in any way the tax qualified status of the system under the rules of the internal revenue service. The board may adopt additional provisions to the extent necessary or appropriate for the deferred retirement option plan to comply with applicable federal laws or rules.

History

Laws 2000, Ch. 340, § 1; *Laws 2010, 2nd Reg. Sess., Ch. 200, § 38*, effective April 28, 2010.

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-844.10

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

Notice

This section has more than one version with varying effective dates.

38-844.10. Deferred retirement option plan; employer; extension approval [Repealed effective January 1, 2028]

Notwithstanding the age and service requirements prescribed in *section 38-844.03*, an employer may approve, for a member of the public safety personnel retirement system who is participating in the deferred retirement option plan on the effective date of this section, an extension of the member's period of participation for up to an additional twenty-four months.

History

2022 2nd Reg. Sess. Ch. 351, § 3, effective July 6, 2022.

Annotations

Notes

Editor's Notes

A former section of this number, relating to reverse deferred retirement option plan was repealed by *Laws 2005, Ch. 258, § 2*, effective June 30, 2010.

Research References & Practice Aids

Hierarchy Notes:

38-844.10. Deferred retirement option plan; employer; extension approval [Repealed effective January 1, 2028]

End of Document

A.R.S. § 38-844.10

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

Notice

This section has more than one version with varying effective dates.

38-844.10. Deferred retirement option plan; employer; extension approval [Repealed effective January 1, 2028]

History

2022 2nd Reg. Sess. Ch. 351, § 3, effective July 6, 2022; repealed by *2022 2nd Reg. Sess. Ch. 351, § 4*, effective January 1, 2028.

End of Document

A.R.S. § 38-845

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-845. Amount of retirement benefit

A. A member who meets the requirements for a normal pension, who becomes a member of the system before January 1, 2012 and who has twenty years of credited service shall receive a monthly amount that equals fifty percent of the member's average monthly benefit compensation. If the member retires with other than twenty years of credited service, the foregoing amount shall be:

1. Reduced by four percent for each year of credited service under twenty years, with pro rata reduction for any fractional year.

2. Increased by a monthly amount equal to two percent of the member's average monthly benefit compensation multiplied by the number of the member's years of credited service in excess of twenty years, with pro rata increase for any fractional year, except that if a member retires with twenty-five or more years of credited service the amount shall be increased by a monthly amount equal to two and one-half percent of the member's average monthly benefit compensation multiplied by the number of the member's years of credited service in excess of twenty years, with pro rata increase for any fractional year.

B. A member who meets the requirements for an accidental disability pension shall receive a monthly amount, which shall be computed in the same manner as a normal pension, using the member's average monthly benefit compensation before termination of employment and the member's actual credited service or twenty years of credited service, whichever is greater. Notwithstanding any other provision of this section, the accidental disability pension for a member shall be a monthly amount that equals not less than fifty percent of the member's average monthly benefit compensation.

C. A member who meets the requirements for an ordinary disability pension shall receive a monthly amount that is equal to a fraction times the member's normal pension that is computed according to subsection A, G or H of this section if the member had twenty years of credited service. The fraction is the result obtained by dividing the member's actual years of credited service, not to exceed twenty years of credited service, by the member's required credited service for the applicable normal retirement date.

D. A member who meets the requirements for a temporary disability pension shall receive a monthly amount that is equal to one-twelfth of fifty percent of the member's annual compensation received immediately prior to the date on which the member's disability was incurred.

E. A member who meets the requirements for a catastrophic disability pension is entitled to receive a monthly amount computed as follows:

1. For the first sixty months, ninety percent of the member's average monthly benefit compensation before termination of employment.

2. After sixty months, sixty-two and one-half percent of the member's average monthly benefit compensation before termination of employment or computed in the same manner as a normal pension

using the member’s average monthly benefit compensation before termination of employment and the member’s actual credited service, whichever is greater.

F. A member who was employed before September 15, 1989 by an employer participating in the system and who retires on or after November 1, 2001 is entitled to receive a tax equity benefit allowance consisting of a permanent increase of two percent of the member's base benefit retroactive to the day of retirement.

G. A member who meets the requirements for a normal pension, who becomes a member of the system on or after January 1, 2012 and before July 1, 2017 and who has twenty-five years of credited service shall receive a monthly amount that equals sixty-two and one-half percent of the member's average monthly benefit compensation. If the member has at least fifteen years of credited service, but less than twenty-five years of service, the monthly amount shall be equal to the member's average monthly benefit compensation multiplied by the number of whole and fractional years of credited service multiplied by the appropriate percentage specified in subsection H of this section. If the member has twenty-five years of service and retires with other than twenty-five years of credited service, the foregoing amount shall be:

1. Reduced by four percent for each year of credited service under twenty-five years, with pro rata reduction for any fractional year.

2. Increased by a monthly amount equal to two and one-half percent of the member's average monthly benefit compensation multiplied by the number of the member's years of credited service in excess of twenty-five years, with pro rata increase for any fractional year.

H. A member who becomes a member of the system on or after July 1, 2017 and who retires on or after the member's normal retirement date shall receive a monthly amount equal to the member's average monthly benefit compensation multiplied by the number of whole and fractional years of credited service multiplied by the following:

1. 1.50 percent if the member has at least fifteen years of credited service but less than seventeen years of credited service.

2. 1.75 percent if the member has at least seventeen years of credited service but less than nineteen years of credited service.

3. 2.00 percent if the member has at least nineteen years of credited service but less than twenty-two years of credited service.

4. 2.25 percent if the member has at least twenty-two years of credited service but less than twenty-five years of credited service.

5. 2.50 percent if the member has at least twenty-five years of credited service.

I. Notwithstanding subsections A, G and H of this section, the maximum amount payable as a normal pension is eighty percent of the average monthly benefit compensation.

History

Laws 1990, 2nd Reg. Sess., Ch. 325, § 3; *Laws 1991, 1st Reg. Sess., Ch. 156, § 2*; *Laws 1992, 2nd Reg. Sess., Ch. 228, § 2*; *Laws 1992, 2nd Reg. Sess., Ch. 341, § 2*; *Laws 1993, 1st Reg. Sess., Ch. 77, §§ 1*, *11*; *Laws 1995, 1st Reg. Sess., Ch. 205, §§ 4*, *5*; *Laws 2000, Ch. 284, § 1*; *Laws 2002, Ch. 335, § 6*; *Laws 2004, Ch. 325, § 3*; *Laws 2011, 1st Reg. Sess., Ch. 357, § 31*; *2015 1st Reg. Sess. Ch. 64, § 3*, effective July 3, 2015; *2016 2nd Reg. Sess. Ch. 2, § 8*, effective August 6, 2016; *2017 1st Reg. Sess. Ch. 266, § 2*, effective August 9, 2017; *2021 1st Reg. Sess. Ch. 330, § 2*, effective September 29, 2021.

Annotations

Notes

Editor's Notes

Laws 2011, 1st Reg. Sess., Ch. 357, § 58 provides, “The legislature intends by this act: 1. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that a retired member who returns to work for an employer may have on the Arizona state retirement system. Through the establishment of the alternate contribution rate the legislature intends to assure employers that the use of leased, contracted or retired employees and services will have a minimal, if any, actuarial impact on the Arizona state retirement system. 2. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that is caused by distorting the actuarial assumption relating to age related rates of retirement that a retired member who returns to work for an employer may have on the elected officials’ retirement plan, the public safety personnel retirement system and the corrections officer retirement plan.”

Amendment Notes

The 2015 amendment deleted “the provisions of” following “Notwithstanding” in the second sentence of (A)(2) and (G)(2); added “of this section” in the first sentence of (C); deleted former (H), which read: “In addition to the amounts received under subsection A, B, C, D, E or G and subject to the approval of the employer, the pension includes the ability of a member to purchase the handgun or shotgun issued by the employer to the member at less than fair market value”; and made stylistic changes.

The 2016 amendment substituted “subsection A, G OR H” for “subsection A or G” in the first sentence of (C); added “and before July 1, 2017” in the first sentence of the introductory language of (G); and added (H) and (I).

The 2017 amendment deleted the former last sentences of (A)(2) and (G)(2), which read: “Notwithstanding this subsection, the maximum amount payable as a normal pension shall be eighty percent of the average monthly benefit compensation”; in the introductory paragraph of (G), added the second to the last sentence and substituted “member has twenty-five years of service and retires” for “member retires” in the last sentence; and substituted “subsections A, G and H” for “subsection H” in (I).

The 2021 amendment added the second sentence of (B); and substituted “the member’s required credited service for the applicable normal retirement date” for “twenty” in the second sentence of (C).

Legislative intent.

Laws 2016, 2nd Reg. Sess., Ch. 2, § 21 provides, “A. The legislature recognizes that in order to have a sound public retirement system that benefits this state, taxpayers and members of the retirement system, pursuant to article XXIX, Constitution of Arizona, the public retirement system must be funded with contributions and investment earnings based on actuarial methods and assumptions that are consistent with generally accepted actuarial standards. The legislature finds that the current structure of the public safety personnel retirement system does not achieve this goal and that the current system imperils the retirement security that the members of that system have come to expect. For these reasons, the legislature intends to modify and amend the provisions of the current system for both current and new members to make the system viable and sustainable now and into the future.

B. The legislature further finds:

1. That the current structure of the public safety personnel retirement system does not lead to the goal of attaining one hundred percent funded status and jeopardizes the future payment of benefits to current and future retirees of the retirement program.

2. That the current structure of the public safety personnel retirement system, which requires a fixed employee contribution rate, requires a contribution rate from employees that is insufficient in relation to the cost associated with the benefits required by the plan design and therefore places a greater financial burden on employers. By moving to a shared cost structure, public safety employees will bear increased responsibility for the fiscal health of the fund and, as the fund improves its funded status and approaches fully funded or overfunded status, the employees will realize decreased contribution costs that will be lower than currently required.

3. That the current method of funding benefit increases to retirees of the public safety personnel retirement system is flawed and makes it highly unlikely that this fund will achieve its actuarially assumed earning rates during positive and negative investment environments and creates an undesirable possibility of greater investment risk on the part of the fund's trustees. It is fundamentally unsound to provide a benefit increase during periods when the funded status of the retirement program is less than seventy percent. Changing the manner of funding these benefit increases is intended to improve the funded status of the public safety personnel retirement system and is in the best interests of the members and beneficiaries of this retirement program in that it will preserve future benefits for plan participants.

4. It is necessary to change the future plan and system structures for nonvested members to take into consideration the increased life expectancy of members and future employees and make the reforms necessary to preserve the funded status of the retirement program in future years.

5. To protect the future benefits of retired, active and future employees, it is necessary to make the changes outlined in this act to preserve the funded status of this retirement program and return the program to fiscal solvency.

C. It is the legislature's intent that this act does not impair or amend any agreement between an employee and employer that addresses participation in or contributions to alternative retirement plans or compensation arrangements not administered through the public safety personnel retirement system."

JUDICIAL DECISIONS

Credited Service.

Because the sheriff's department did not participate in the public safety personnel retirement system (PSPRS) until after the plaintiff's tenure was over, his period of employment as a sheriff's deputy could not be used in calculating his PSPRS retirement benefits. *Alexander v. Fund Manager, Pub. Safety Personnel Retirement Sys., 166 Ariz. 589, 804 P.2d 122, 77 Ariz. Adv. Rep. 22, 1990 Ariz. App. LEXIS 421 (Ariz. Ct. App. 1990)*.

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-845.01

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-845.01. Maximum annual pension; limitations; definition

A. The maximum annual pension for a limitation year shall not exceed the following:

1. For limitation years beginning before 1995, the lesser of ninety thousand dollars, as indexed for inflation, or one hundred per cent of the member's average monthly benefit compensation.

2. For limitation years beginning in 1995 and ending before 2002, ninety thousand dollars, as indexed for inflation.

3. For limitation years ending in and after 2002, one hundred sixty thousand dollars, as indexed for inflation.

B. The limitations prescribed in subsection A shall be determined under section 415 of the internal revenue code and the regulations that are then in effect under that section.

C. Notwithstanding this section, the pension payable under this system may be reduced to the extent necessary, as determined by the system, to prevent disqualification of the system under section 415 of the internal revenue code, which imposes additional limitations on the pension payable to members who also may be participating in another tax qualified pension plan or other plan of this state. The system shall advise affected members of any additional limitation of their pension required by this section.

D. For the purposes of this section, "limitation year" means the system's fiscal year.

History

Recent legislative history: *Laws 2009, Ch. 35, § 14*.

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-845.02

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-845.02. Payment of pension

The board shall not make a retroactive payment of a pension to a person that is more than one hundred eighty days before the date of the person's application for benefits.

History

Recent legislative history: *Laws 2011, 1st Reg. Sess., Ch. 347, § 3*; *Laws 2013, 1st Reg. Sess., Ch. 203, § 5*.

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-845.03

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-845.03. Early retirement

Members who are hired on or after July 1, 2017 and who have earned at least fifteen years of credited service may retire at fifty-two and one-half years of age and will receive an actuarially equivalent retirement benefit to the benefit amount prescribed in *section 38-845*, subsection H.

History

2016 2nd Reg. Sess. Ch. 2, § 9, effective August 6, 2016.

Annotations

Notes

Legislative intent.

Laws 2016, 2nd Reg. Sess., Ch. 2, § 21 provides, “A. The legislature recognizes that in order to have a sound public retirement system that benefits this state, taxpayers and members of the retirement system, pursuant to article XXIX, Constitution of Arizona, the public retirement system must be funded with contributions and investment earnings based on actuarial methods and assumptions that are consistent with generally accepted actuarial standards. The legislature finds that the current structure of the public safety personnel retirement system does not achieve this goal and that the current system imperils the retirement security that the members of that system have come to expect. For these reasons, the legislature intends to modify and amend the provisions of the current system for both current and new members to make the system viable and sustainable now and into the future.

B. The legislature further finds:

1. That the current structure of the public safety personnel retirement system does not lead to the goal of attaining one hundred percent funded status and jeopardizes the future payment of benefits to current and future retirees of the retirement program.

2. That the current structure of the public safety personnel retirement system, which requires a fixed employee contribution rate, requires a contribution rate from employees that is insufficient in relation to the cost associated with the benefits required by the plan design and therefore places a greater financial burden on employers. By moving to a

shared cost structure, public safety employees will bear increased responsibility for the fiscal health of the fund and, as the fund improves its funded status and approaches fully funded or overfunded status, the employees will realize decreased contribution costs that will be lower than currently required.

3. That the current method of funding benefit increases to retirees of the public safety personnel retirement system is flawed and makes it highly unlikely that this fund will achieve its actuarially assumed earning rates during positive and negative investment environments and creates an undesirable possibility of greater investment risk on the part of the fund's trustees. It is fundamentally unsound to provide a benefit increase during periods when the funded status of the retirement program is less than seventy percent. Changing the manner of funding these benefit increases is intended to improve the funded status of the public safety personnel retirement system and is in the best interests of the members and beneficiaries of this retirement program in that it will preserve future benefits for plan participants.

4. It is necessary to change the future plan and system structures for nonvested members to take into consideration the increased life expectancy of members and future employees and make the reforms necessary to preserve the funded status of the retirement program in future years.

5. To protect the future benefits of retired, active and future employees, it is necessary to make the changes outlined in this act to preserve the funded status of this retirement program and return the program to fiscal solvency.

C. It is the legislature's intent that this act does not impair or amend any agreement between an employee and employer that addresses participation in or contributions to alternative retirement plans or compensation arrangements not administered through the public safety personnel retirement system."

Severability.

Laws 2016, 2nd Reg. Sess., Ch. 2, § 23 provides, "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."

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-846

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-846. Death benefits

A. The surviving spouse of a deceased retired member shall be paid a surviving spouse's pension if the spouse was married to the member for a period of at least two consecutive years at the time of the member's death. Payment of a surviving spouse's pension shall commence as of the last day of the month following the retired member's date of death. The last payment shall be made as of the last day of the month in which the surviving spouse's death occurs.

B. The surviving spouse of a deceased member shall be paid a surviving spouse's pension if the spouse was married to the member on the date of the member's death. Payment of a surviving spouse's pension commences as of the last day of the month following the member's date of death. The last payment shall be made as of the last day of the month in which the surviving spouse's death occurs.

C. The surviving spouse of a deceased retired member is entitled to receive a monthly amount equal to four-fifths of the monthly amount of pension that the decedent would have received immediately before death.

D. The surviving spouse of a deceased member who was not killed in the line of duty or did not die from injuries suffered in the line of duty is entitled to receive a monthly amount calculated in the same manner as an accidental disability pension is calculated pursuant to *section 38-845*, subsection B. The surviving spouse of a deceased member who is killed in the line of duty or dies from injuries suffered in the line of duty is entitled to receive a monthly amount equal to the deceased member's average monthly benefit compensation less any amount payable for an eligible child under this section. A member who was eligible for or receiving a temporary disability pension at the time of the member's death is not deemed to be retired for the purposes of this subsection. For the purposes of this subsection, "killed in the line of duty" means the decedent's death was the direct and proximate result of the performance of the decedent's public safety duties and does not include suicide. For actuarial valuation purposes, the actuarial present value of the amount computed under this subsection for a surviving spouse of a deceased member who is killed in the line of duty or who dies from injuries suffered in the line of duty, plus any amount payable for an eligible child under this section, shall be deposited directly into the employer account and charged against the investment earnings of the fund before those earnings are distributed to each employer.

E. A surviving spouse shall file a written application with the system in order to receive a survivor benefit.

F. If at least one eligible child is surviving at the death of a member or retired member, but no surviving spouse's pension then becomes payable, a guardian's or conservator's pension shall be payable to the person who is serving, or who is deemed by the local board to be serving, as the legally appointed guardian or custodian of the eligible child. If an eligible child of a member or retired member is surviving at the member's or retired member's death, the eligible child is entitled to receive a child's pension payable to the person who is serving or who is deemed by the local board to be serving as the legally appointed guardian or custodian of the eligible child until the eligible child reaches eighteen years of age, at which time the eligible

child’s pension shall be paid directly to the eligible child if the person remains eligible to receive the pension and is not subject to a guardianship or conservatorship due to disability or incapacity. The pension

of a child with a disability who is eighteen years of age or older and who is subject to a guardianship or conservatorship due to disability or incapacity shall continue to be paid to the guardian or conservator if the child remains eligible for the pension payment. A child's pension or a guardian's or conservator's pension terminates if the child is adopted. In the case of a child with a disability, the child's pension or the guardian's or conservator's pension terminates if the child ceases to be under a disability or ceases to be a dependent of the surviving spouse or guardian. The member may also direct by designation to the local board that the guardian or conservator pension or child's pension be paid to the trustee of a trust created for the benefit of the eligible child. A guardian's or conservator's pension shall also become payable if at least one eligible child is surviving when a surviving spouse's pension terminates. The guardian or conservator shall file a written application with the system in order to receive the guardian's or conservator's pension and child's pension.

G. The board shall pay a guardian's or conservator's pension during the same period in which a pension is payable to at least one eligible child. The guardian, conservator or designated trustee is entitled to receive the same monthly amount as would have been payable to the decedent's surviving spouse had a surviving spouse's pension become payable on the decedent's death.

H. Each eligible child is entitled to a monthly amount equal to one-tenth of the monthly amount of pension that the deceased member or retired member would have received immediately before death. The pension for a child of a deceased member shall be calculated in the same manner as an accidental disability is calculated pursuant to *section 38-845*, subsection B. A deceased member shall be assumed to be retired for reasons of accidental disability immediately before the member's death. If there are three or more children eligible for a child's pension, a maximum of two shares of the child's pension shall be payable, the aggregate of such shares to be apportioned in equal measure to each eligible child.

I. If a member has accumulated contributions remaining in the system at the date of death of the last beneficiary, a lump sum refund of such accumulated contributions shall be payable to the person whom the member has designated to the local board as the member's refund beneficiary, or if the member's refund beneficiary is not then surviving, to the designated contingent refund beneficiary, or if the designated contingent refund beneficiary is not then surviving or if the surviving designated beneficiary does not apply for the benefit within twelve months from the date of the member's death, at the election of the local board to the person's nearest of kin as determined by the local board or to the estate of the deceased member. The amount of the lump sum refund shall be the remaining accumulated contributions. The beneficiary or person who is claiming to be the nearest of kin shall file a written application in order to receive the refund.

J. In calculating the right to and the amount of the surviving spouse's pension, the law in effect on the date of the death of the member or retired member controls, unless the law under which the member retired provides for a greater benefit amount for a surviving spouse.

History

Recent legislative history: *Laws 1991, 1st Reg. Sess., Ch. 270, § 9*; *Laws 1997, 1st Reg. Sess., Ch. 239, § 12*; *Laws 1999, Ch. 50, § 5*; *Laws 2002, Ch. 335, § 7*; *Laws 2006, Ch. 264, § 7*; *Laws 2010, 2nd Reg. Sess., Ch. 118, § 6*; *Laws 2010, 2nd Reg. Sess., Ch. 200, § 39*; *Laws 2012, 2nd Reg. Sess., Ch. 136, § 6*; *Laws 2013, 1st Reg. Sess., Ch. 203, § 6*; *Laws 2014, 2nd Reg. Sess., Ch. 215, § 173*; *Laws 2014, 2nd Reg. Sess., Ch. 274, § 1*.

Annotations

Notes

Editor's Notes
Text of section as amended by *Laws 2014, 2nd Reg. Sess., Chs. 215* and *274*, blended.

Laws 2014, 2nd Reg. Sess., Ch. 215, § 222 provides, “This act replaces the term ‘disabled’, ‘handicap’, ‘handicapped’ or ‘handicapping’ in each of the statutes in which it appears in the Arizona Revised Statutes, except references to the proper name of a federal act, and requires this state to use the term ‘persons with disabilities’. It is the intent of the legislature that agencies, boards, commissions, departments, officers and other administrative units of this state make similar changes in their respective administrative rules.”

JUDICIAL DECISIONS

Legislative Intent.

Former Spouse Excluded.

Legislative Intent.

The intent behind this section is to provide for current survivors of plan members, even at the expense of community property interests of former spouses. *Parada v. Parada, 196 Ariz. 428, 999 P.2d 184, 320 Ariz. Adv. Rep. 4, 2000 Ariz. LEXIS 31 (Ariz. 2000)*.

Former Spouse Excluded.

A former spouse is not a surviving spouse and may not collect death benefits under this section. *Parada v. Parada, 196 Ariz. 428, 999 P.2d 184, 320 Ariz. Adv. Rep. 4, 2000 Ariz. LEXIS 31 (Ariz. 2000)*.

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-846.01

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-846.01. Deferred annuity; exception

A. If any member who has at least ten years of credited service terminates employment for reasons other than retirement or disability, the member may elect to receive a deferred annuity, except that if the annuitant withdraws all or part of the annuitant's accumulated contributions in the system all rights in and to a deferred annuity shall be forfeited by the annuitant. A deferred annuity is a lifetime monthly payment actuarially equivalent to the annuitant's accumulated contributions in the system plus an equal amount paid by the employer and shall commence on application on or after the sixty-second birthday of the annuitant. The annuity is not a retirement benefit and annuitants are not entitled to receive any amount prescribed by *section 38-845*, subsection F or *section 38-846*, 38-856.05 or 38-857.

B. This section does not apply to a member who becomes a member of the system on or after January 1, 2012. For a member who is hired on or after January 1, 2012 and before July 1, 2017, a member who attains a normal retirement date is eligible for retirement and a retirement benefit even if the member terminates employment with an employer before the age requirement for normal retirement if the member attains the service requirement for normal retirement. For a member who is hired on or after July 1, 2017, a member who attains a normal retirement date is eligible for retirement and a retirement benefit even if the member terminates employment with an employer before the age requirement for normal retirement if the member attains the credited service requirement for normal retirement. Once a member described in this subsection reaches the normal retirement age, the member may receive payments made under *section 38-845*.

History

Laws 2009, Ch. 35, § 15; *Laws 2011, 1st Reg. Sess., Ch. 357, § 32*; *2016 2nd Reg. Sess. Ch. 2, § 10*, effective August 6, 2016; *2017 1st Reg. Sess. Ch. 269, § 10*, effective May 3, 2017.

Annotations

Notes

Editor's Notes

Laws 2011, 1st Reg. Sess., Ch. 357, § 58 provides, "The legislature intends by this act: 1. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that a retired member who returns to work for an

employer may have on the Arizona state retirement system. Through the establishment of the alternate contribution rate the legislature intends to assure employers that the use of leased, contracted or retired employees and

services will have a minimal, if any, actuarial impact on the Arizona state retirement system. 2. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that is caused by distorting the actuarial assumption relating to age related rates of retirement that a retired member who returns to work for an employer may have on the elected officials' retirement plan, the public safety personnel retirement system and the corrections officer retirement plan."

By *Laws 2009, Ch. 35, § 32*, this section applies to prospective members of the public safety personnel retirement system as well as members of the public safety personnel retirement system on the effective date of this act [September 30, 2009] who have not already applied for and begun receiving benefits pursuant to section 38 846.01, Arizona Revised Statutes, in effect before the effective date of this act and *section 38-856, Arizona Revised Statutes.*

Amendment Notes

The 2016 amendment, in (B), substituted "For a member who is hired on or after January 1, 2012 and before July 1, 2017, a person member" for "Such a person" in the second sentence and added the last two sentences.

The 2017 amendment substituted "38-856.05" for "38-856, 38-856.02" preceding "or 38-857" at the end of (A).

Legislative intent.

Laws 2016, 2nd Reg. Sess., Ch. 2, § 21 provides, "A. The legislature recognizes that in order to have a sound public retirement system that benefits this state, taxpayers and members of the retirement system, pursuant to article XXIX, Constitution of Arizona, the public retirement system must be funded with contributions and investment earnings based on actuarial methods and assumptions that are consistent with generally accepted actuarial standards. The legislature finds that the current structure of the public safety personnel retirement system does not achieve this goal and that the current system imperils the retirement security that the members of that system have come to expect. For these reasons, the legislature intends to modify and amend the provisions of the current system for both current and new members to make the system viable and sustainable now and into the future.

B. The legislature further finds:

1. That the current structure of the public safety personnel retirement system does not lead to the goal of attaining one hundred percent funded status and jeopardizes the future payment of benefits to current and future retirees of the retirement program.

2. That the current structure of the public safety personnel retirement system, which requires a fixed employee contribution rate, requires a contribution rate from employees that is insufficient in relation to the cost associated with the benefits required by the plan design and therefore places a greater financial burden on employers. By moving to a shared cost structure, public safety employees will bear increased responsibility for the fiscal health of the fund and, as the fund improves its funded status and approaches fully funded or overfunded status, the employees will realize decreased contribution costs that will be lower than currently required.

3. That the current method of funding benefit increases to retirees of the public safety personnel retirement system is flawed and makes it highly unlikely that this fund will achieve its actuarially assumed earning rates during positive and negative investment environments and creates an undesirable possibility of greater investment risk on the part of the fund's trustees. It is fundamentally unsound to provide a benefit increase during periods when the funded status of the retirement program is less than seventy percent. Changing the manner of funding these benefit increases is intended to improve the funded status of the public safety personnel retirement system and is in the best interests of the members and beneficiaries of this retirement program in that it will preserve future benefits for plan participants.

4. It is necessary to change the future plan and system structures for nonvested members to take into consideration the increased life expectancy of members and future employees and make the reforms necessary to preserve the funded status of the retirement program in future years.

5. To protect the future benefits of retired, active and future employees, it is necessary to make the changes outlined in this act to preserve the funded status of this retirement program and return the program to fiscal solvency.

C. It is the legislature's intent that this act does not impair or amend any agreement between an employee and employer that addresses participation in or contributions to alternative retirement plans or compensation arrangements not administered through the public safety personnel retirement system."

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-846.02

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-846.02. Termination of membership

A. On termination of employment for any reason other than death or retirement, within twenty days after filing a completed application with the board, a member who becomes a member of the system before January 1, 2012 is entitled to receive the following amounts, less any benefit payments the member has received or any amount the member may owe to the system:

1. If the member has less than five years of credited service with the system, the member may withdraw the member's accumulated contributions from the system.

2. If the member has five or more years of credited service with the system, the member may withdraw the member's accumulated contributions plus an amount equal to the amount determined as follows:

(a) 5.0 to 5.9 years of credited service, twenty-five percent of all member contributions deducted from the member's salary pursuant to *section 38-843*, subsection C.

(b) 6.0 to 6.9 years of credited service, forty percent of all member contributions deducted from the member's salary pursuant to *section 38-843*, subsection C.

(c) 7.0 to 7.9 years of credited service, fifty-five percent of all member contributions deducted from the member's salary pursuant to *section 38-843*, subsection C.

(d) 8.0 to 8.9 years of credited service, seventy percent of all member contributions deducted from the member's salary pursuant to *section 38-843*, subsection C.

(e) 9.0 to 9.9 years of credited service, eighty-five percent of all member contributions deducted from the member's salary pursuant to *section 38-843*, subsection C.

(f) 10.0 or more years of credited service, one hundred percent of all member contributions deducted from the member's salary pursuant to *section 38-843*, subsection C.

B. If a member who becomes a member of the system before January 1, 2012 has more than ten years of credited service with the system, leaves the monies prescribed in subsection A of this section on account with the system for more than thirty days after termination of employment and after that time period requests a refund of those monies, the member is entitled to receive the amount prescribed in subsection A of this section plus interest at a rate determined by the board for each year computed from and after the member's termination of employment.

C. On termination of employment for any reason other than death or retirement, within twenty days after filing a completed application with the board, a member who becomes a member of the system on or after January 1, 2012 is entitled to receive a lump sum payment equal to the member's accumulated contribution plus interest at a rate determined by the board as of the date of termination, less any benefit payments the member has received as of the date of termination or any amount the member may owe to the system.

D. A member who withdraws the amount prescribed in subsection A, B or C of this section from the system or who elects a transfer pursuant to section 38-846.06 forfeits all rights to benefits under the system and rights to rehearing and appeal, except as provided in *section 38-849*.

History

Laws 1999, Ch. 327, § 23; *Laws 2010, 2nd Reg. Sess., Ch. 200, § 40*; *Laws 2011, 1st Reg. Sess., Ch. 357, § 33*; *2015 1st Reg. Sess. Ch. 64, § 4*, effective July 3, 2015; *2017 1st Reg. Sess. Ch. 269, § 11*, effective May 3, 2017; *2021 1st Reg. Sess. Ch. 120, § 4*, effective September 29, 2021.

Annotations

Notes

Editor's Notes

For legislative findings related to this section, see *Laws 2011, 1st Reg. Sess., Ch. 357, § 55*.

Laws 2011, 1st Reg. Sess., Ch. 357, § 58 provides, “The legislature intends by this act: 1. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that a retired member who returns to work for an employer may have on the Arizona state retirement system. Through the establishment of the alternate contribution rate the legislature intends to assure employers that the use of leased, contracted or retired employees and services will have a minimal, if any, actuarial impact on the Arizona state retirement system. 2. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that is caused by distorting the actuarial assumption relating to age related rates of retirement that a retired member who returns to work for an employer may have on the elected officials’ retirement plan, the public safety personnel retirement system and the corrections officer retirement plan.”

Amendment Notes

The 2015 amendment added (E) through (G) and made stylistic changes.

The 2017 amendment, in the last sentence of (F), substituted “nonspouse rollover is subject to” for “nonspouse rollover is not subject to” and “and the mandatory withholding” for “or the mandatory withholding”; made stylistic changes.

The 2021 amendment, in (D), deleted the former first and second sentences, which read: “If the amount prescribed in subsection A, B or C of this section includes monies that are an eligible rollover distribution and the member elects to have the distribution paid directly to an eligible retirement plan or individual retirement account or annuity and specifies the eligible retirement plan or individual retirement account or annuity to which the distribution is to be paid, the distribution shall be made in the form of a direct trustee-to-trustee transfer to the specified eligible retirement plan. The distribution shall be made in the form and at the time prescribed by the board” and substituted “section 38-846.06” for “this section”; and deleted former (E) through (G).

Applicability

By *Laws 2021, 1st Reg. Sess., Ch. 120, § 7*, applies retroactively to from and after January 1, 2020.

JUDICIAL DECISIONS

Withdrawal of Funds.

Additional Cases of Historical Interest (1955 — 1984)
Governments: Local Governments: Employees & Officials

Labor & Employment Law: Disability & Unemployment Insurance: Disability Benefits: Claim Procedures

Pensions & Benefits Law: Governmental Employees: Police Pensions

Withdrawal of Funds.

When employee withdrew his contributions from the retirement system, he ceased to be a member and therefore was not eligible for benefits under the fund. *Fund Manager, Pub. Safety Personnel Retirement Sys. v. Tucson Police & Fire Pub. Safety Personnel Retirement Sys. Bd., 147 Ariz. 1, 708 P.2d 92, 1985 Ariz. App. LEXIS 645 (Ariz. Ct. App. 1985)*.

Additional Cases of Historical Interest (1955 — 1984)

Governments: Local Governments: Employees & Officials

Leschinsky v. Public Safety Personnel Retirement Sys., 27 Ariz. App. 618, 557 P.2d 550, 1976 Ariz. App. LEXIS 678 (Ariz. Ct. App. 1976).

Overview: *The police officer was not eligible to receive disability benefits because his employment was terminated prior to his normal retirement date by reason of misconduct, not by reason of accidental disability.*

- Former Ariz. Rev. Stat. *§ 38-846(A)* (now *Ariz. Rev. Stat. § 38-846.02*), which deals with police officers, states: Upon termination of employment for any reason other than death or retirement, a member shall receive a lump sum payment equal to his accumulated contribution as of the date of termination.

Labor & Employment Law: Disability & Unemployment Insurance: Disability Benefits: Claim Procedures

Leschinsky v. Public Safety Personnel Retirement Sys., 27 Ariz. App. 618, 557 P.2d 550, 1976 Ariz. App. LEXIS 678 (Ariz. Ct. App. 1976).

Overview: *The police officer was not eligible to receive disability benefits because his employment was terminated prior to his normal retirement date by reason of misconduct, not by reason of accidental disability.*

- Former Ariz. Rev. Stat. *§ 38-846(A)* (now *Ariz. Rev. Stat. § 38-846.02*), which deals with police officers, states: Upon termination of employment for any reason other than death or retirement, a member shall receive a lump sum payment equal to his accumulated contribution as of the date of termination.

Pensions & Benefits Law: Governmental Employees: Police Pensions

Leschinsky v. Public Safety Personnel Retirement Sys., 27 Ariz. App. 618, 557 P.2d 550, 1976 Ariz. App. LEXIS 678 (Ariz. Ct. App. 1976).

Overview: *The police officer was not eligible to receive disability benefits because his employment was terminated prior to his normal retirement date by reason of misconduct, not by reason of accidental disability.*

- Former Ariz. Rev. Stat. *§ 38-846(A)* (now *Ariz. Rev. Stat. § 38-846.02*), which deals with police officers, states: Upon termination of employment for any reason other than death or retirement, a member shall receive a lump sum payment equal to his accumulated contribution as of the date of termination.

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-846.03

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-846.03. Reinstatement of surviving spouse's pension

A. A surviving spouse whose pension was terminated by reason of remarriage is entitled to reinstatement of the surviving spouse's pension if the surviving spouse is otherwise qualified for a surviving spouse's pension and applies for reinstatement with the public safety personnel retirement system and no other person is currently receiving a guardian's or conservator's pension for an eligible child of the member or retired member. The level of pension payments shall be that amount which was received by the surviving spouse at the date the surviving spouse's pension was terminated, adjusted to reflect ad hoc and scheduled increases from the date of termination to the date of reinstatement.

B. A surviving spouse who is receiving a guardian's or conservator's pension by reason of remarriage and who is otherwise eligible may apply for reinstatement of a surviving spouse's pension. If the surviving spouse's pension becomes payable the guardian's or conservator's pension is terminated.

C. Reinstated surviving spouse's pensions are not retroactive. Payment of a reinstated surviving spouse's pension shall commence as of the first day of the month following receipt by the public safety personnel retirement system of a properly executed written application for reinstatement from the surviving spouse.

History

Laws 1989, 1st Reg. Sess., Ch. 310, § 8.

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-846.04

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-846.04. Reinstatement of credited service; effect of prior law

A. A member who received a severance refund on termination of employment as provided in *section 38-846.02*, who is subsequently reemployed by an employer and who may have redeposited the amount withdrawn with interest as provided in *section 38-849* or a member who redeems prior service pursuant to statute is subject to the benefits and duties in effect at the following times for the specified situations:

1. At the time of the member's reemployment if the member is reemployed by an employer other than the same employer.

2. At the time of the member's reemployment if the member is reemployed by the same employer at least ninety days after the date of termination.

3. At the time of the member's most recent termination if the member is reemployed by the same employer in any capacity within ninety days after the date of termination.

B. Subsection A of this section does not apply if a court of competent jurisdiction orders reinstatement of benefits and duties under a prior law.

C. If a member was initially employed on or after July 1, 2017, regardless of whether the member received a severance refund or redeposits the amount withdrawn with interest, the member shall return to the system as irrevocably elected pursuant to *section 38-842.01*.

D. A member who transfers credited service from one employer to another employer pursuant to *section 38-853* retains the benefits and duties in effect at the time of the member's transfer.

History

Recent legislative history: *Laws 2011, 1st Reg. Sess., Ch. 357, § 34*; *2017 1st Reg. Sess. Ch. 269, § 12*, effective May 3, 2017; *2018 2nd Reg. Sess. Ch. 42, § 3*, effective August 3, 2018.

Annotations

Notes

Editor's Notes

Laws 2011, 1st Reg. Sess., Ch. 357, § 58 provides, "The legislature intends by this act: 1. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that a retired member who returns to work for an

employer may have on the Arizona state retirement system. Through the establishment of the alternate contribution rate the legislature intends to assure employers that the use of leased, contracted or retired employees and services will have a minimal, if any, actuarial impact on the Arizona state retirement system. 2. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that is caused by distorting the actuarial assumption relating to age related rates of retirement that a retired member who returns to work for an employer may have on the elected officials' retirement plan, the public safety personnel retirement system and the corrections officer retirement plan."

Amendment Notes

The 2017 amendment reorganized (A), added "at the following times for the specified situations:" at the end of the introductory language, in (A)(1), deleted "most recent" preceding "reemployment" and added "if the member is reeemployed by an employer other than the same employer" following "reemployment"; added (A)(2) and (3); added the (B) designator; in (B), substituted "Subsection A of this section" for "This subsection"; added (C); and redesignated former (B) as (D).

The 2018 amendment, in the introductory language of (A), substituted "employer and who may have redeposited" for "employer and who redeposits."

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-846.05

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-846.05. Retiree pool account; transfers; funding

A. The retiree pool account is established in the fund for the purpose of sharing the actuarial liability attributable to uncontrollable costs for the employers of members who are hired on or after July 1, 2017 and who are determined eligible for a normal retirement benefit pursuant to *section 38-844* or for an accidental, ordinary or catastrophic disability pension pursuant to *section 38-844* and for survivors of members who are hired on or after July 1, 2017 and who are determined eligible for a death benefit pursuant to *section 38-846*.

B. For members who are determined eligible for a normal retirement benefit pursuant to *section 38-844*, an amount equal to the actuarial present value of future benefit payments, calculated as of the member's retirement date, shall be transferred from the employer's account to the retiree pool account.

C. For a member who is determined eligible for an accidental, ordinary or catastrophic disability pension pursuant to *section 38-844* and who has not reached the member's normal retirement date, an amount equal to the actuarial present value of future benefit payments already accrued, calculated as of the date of disability retirement, shall be transferred from the employer's account to the retiree pool account. If a member who is determined eligible for an accidental, ordinary or catastrophic disability pension has reached the member's normal retirement date, the amount transferred to the retiree pool account is calculated in the same manner as a normal retirement pursuant to subsection B of this section.

D. For a survivor of a deceased member determined eligible for a death benefit pursuant to *section 38-846*, if the member was not retired and had not reached the member's normal retirement date, an amount equal to the actuarial present value of future survivor benefit payments already accrued, calculated as of the survivor's retirement date, shall be transferred from the employer's account to the retiree pool account. If the deceased member had reached the member's normal retirement date, an amount equal to the actuarial present value of future survivor benefit payments, plus any amount payable, calculated as of the survivor's retirement date, shall be transferred from the employer's account to the retiree pool account.

E. The retiree pool account shall remain one hundred percent funded. In any fiscal year that the retiree account is not one hundred percent funded as of June 30, the amount necessary to adjust the retiree pool account up or down to one hundred percent funded shall be transferred from or to the investment earnings of the fund before those earnings are distributed to each employer's account.

History

2017 1st Reg. Sess. Ch. 235, § 3, effective May 1, 2017.

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-846.06

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-846.06. Eligible rollover distributions; direct rollovers

A. Notwithstanding any other provision of this article, a member or the member's surviving spouse beneficiary who is entitled to receive an eligible rollover distribution may elect to directly roll over all or part of that distribution to an eligible retirement plan.

B. A member's beneficiary who is not the member's spouse may elect to directly roll over all or part of an eligible rollover distribution from the system on the death of the member under the same terms and conditions as apply to a member or the member's surviving spouse beneficiary pursuant to this section, except that a nonspouse beneficiary may elect to make a direct rollover only to an eligible retirement plan as defined in *section 38-842*, paragraph 25, subdivision (a) or (b).

C. If a member or the member's beneficiary elects to have an eligible rollover distribution paid directly to an eligible retirement plan, that distribution shall be made in the form of a direct trustee-to-trustee transfer to the specified eligible retirement plan. The distribution shall be made in the form and at the time prescribed by the board.

D. All rollovers made pursuant to this section are subject to the direct rollover requirements under section 401(a)(31) of the internal revenue code, the rollover notice requirements under section 402(f) of the internal revenue code and the mandatory withholding requirements under section 3405(c) of the internal revenue code. The period for providing the rollover notice as required under section 402(f) of the internal revenue code is not less than thirty days and not more than one hundred eighty days before the date of distribution.

History

2021 1st Reg. Sess. Ch. 120, § 5, effective September 29, 2021.

Annotations

Notes

Applicability

By *Laws 2021, 1st Reg. Sess., Ch. 120, § 7*, applies retroactively to from and after January 1, 2020.

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-847

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-847. Local boards

A. To the extent outlined in this section, the administration of the system and responsibility for making the provisions of the system effective for each employer are vested in a local board. The department of public safety, the Arizona game and fish department, the department of emergency and military affairs, the university of Arizona, Arizona state university, northern Arizona university, each county sheriff's office, each county attorney's office, each county parks department, each municipal fire department, each eligible fire district, each community college district, each municipal police department, the department of law, the department of liquor licenses and control, the Arizona department of agriculture, the Arizona state parks board, each Indian reservation police agency and each Indian reservation firefighting agency shall have a local board. A nonprofit corporation operating pursuant to *sections 28-8423* and *28-8424* shall have one local board for all of its members. Each local board shall be constituted as follows:

1. For political subdivisions or Indian tribes, the mayor or chief elected official or a designee of the mayor or chief elected official approved by the respective governing body as chairperson, two members elected by secret ballot by members employed by the appropriate employer and two citizens, one of whom shall be the head of the merit system, or the head's designee from among the other members of the merit system, if it exists for the group of members, appointed by the mayor or chief elected official and with the approval of the governing body of the city or the governing body of the employer. The appointed two citizens shall serve on both local boards in a city or Indian tribes where both fire and police department employees are members.

2. For state agencies and nonprofit corporations operating pursuant to *sections 28-8423* and *28-8424*, two members elected by secret ballot by the members employed by the appropriate employer and three citizens appointed by the governor. Each state agency local board shall elect a chairperson.

3. For fire districts, the chairperson of the fire district governing board or the chairperson's designee, two members elected by secret ballot by members employed by the fire district and two citizens appointed by the chairperson of the fire district governing board, one of whom is a resident of the fire district and one of whom has experience in personnel administration but who is not required to be a resident of the fire district.

4. For joint powers authorities organized pursuant to *section 48-805.01*, the joint powers authority board chairperson or a designee approved by the governing body, two members elected by secret ballot by members employed by the joint powers authority and two citizens, one of whom is a resident of one of the partner entities and one of whom has experience in personnel administration but who is not required to be a resident of a partner entity.

B. On the taking effect of this system for an employer, the appointments and elections of local board members shall take place with one elective and appointive local board member serving a term ending two years after the effective date of participation for the employer and other local board members serving a term

ending four years after the effective date. Thereafter, every second year, and as a vacancy occurs, an office shall be filled for a term of four years in the same manner as previously provided.

C. Each local board shall be fully constituted pursuant to subsection A of this section within sixty days after the employer's effective date of participation in the system. If the deadline is not met, on the written request of any member who is covered by the local board or the employer to the board of trustees, the board of trustees may appoint all vacancies of the local board pursuant to subsection A of this section and designate whether each appointive position is for a two-year or four-year term. If the board of trustees cannot find individuals to serve on the local board who meet the requirements of subsection A of this section, the board of trustees may appoint individuals to serve as interim local board members until qualified individuals are appointed or elected. Each local board shall meet at least twice a year. Each member of a local board, within ten days after the member's appointment or election, shall take an oath of office that, so far as it devolves on the member, the member shall diligently and honestly administer the affairs of the local board and that the member shall not knowingly violate or willingly allow to be violated any of the provisions of law applicable to the system. Within one hundred eighty days after appointment or election, each board member shall complete local board training as prescribed by the board of trustees, including open meeting laws, ethics, legal review and fiduciary responsibilities and duties.

D. Except as limited by subsection E of this section, a local board shall have such powers as may be necessary to discharge the following duties:

1. To decide all questions of eligibility for membership and disability and in the line of duty death benefits under the system.

2. To prescribe procedures to be followed by claimants in filing applications for disability and in the line of duty death benefits.

3. To make a determination as to the right of any claimant to a disability and in the line of duty death benefit, to issue opinions on questions of whether benefits are consistent with and allowable under the system and to afford any claimant or the board of trustees, or both, a right to a rehearing on the original determination. Except as otherwise required by law, unless all parties involved in a matter presented to the local board for determination otherwise agree, the local board shall commence a hearing on the matter within ninety days after the date the matter is presented to the local board for determination. If a local board fails to commence a hearing as provided in this paragraph, on a matter presented to the local board for determination, the relief demanded by the party petitioning the local board is deemed granted and approved by the local board.

4. To request and receive from the employers and from members such information as is necessary for the proper administration of the system and action on claims for eligibility for membership and disability and in the line of duty death benefits, and to forward such information to the board of trustees.

5. To distribute, in such manner as the local board determines to be appropriate, information explaining the system received from the board of trustees.

6. To furnish the employer, the board of trustees and the legislature, on request, with such annual reports with respect to the administration of the system as are reasonable and appropriate.

7. To receive and review the actuarial valuation of the system for its group of members.

8. To receive and review reports of the financial condition and of the receipts and disbursements of the fund from the board of trustees.

9. To appoint medical boards as provided in *section 38-859*.

10. To sue and be sued to effectuate the duties and responsibilities set forth in this article.

E. A local board may not add to, subtract from, modify or waive any of the terms of the system, change or add to any benefits provided by the system or waive or fail to apply any requirement of eligibility for membership or disability and in the line of duty death benefits under the system. Notwithstanding any limitations periods imposed in this article, including subsection D, paragraph 3 and subsections G and H of this section, if the board of trustees determines a local board decision violates the internal revenue code or threatens to impair the system's status as a qualified plan under the internal revenue code, the local board's

decision is not final and binding and the board of trustees may refrain from implementing or complying with the local board decision.

F. A local board shall establish and adopt such rules as it deems necessary for its administration and to adjudicate claims and disputes. At a minimum, the board's rules shall incorporate the model uniform rules for local board procedure that are issued by the board of trustees. All rules and decisions of a local board shall be uniformly and consistently applied to all members in similar circumstances. If a claim or dispute is presented to a local board for determination but the local board has not yet adopted uniform rules of procedure for adjudication of the claim or dispute, the local board shall adopt and use the model uniform rules of local board procedure that are issued by the board of trustees' fiduciary counsel to adjudicate the claim or dispute.

G. Except as otherwise provided in this article, any action by a majority vote of the members of a local board that is not inconsistent with the provisions of the system and the internal revenue code shall be final, conclusive and binding on all persons affected by it unless a timely application for a rehearing or appeal is filed as provided in this article. Not later than twenty days after taking action, the local board shall submit to the board of trustees the minutes from the local board meeting that include the name of the member affected by its decision, a description of the action taken and an explanation of the reasons and all documents submitted to the local board for the action taken, including the reports of a medical board. The board of trustees may require additional records from the local board or the employer or may require that the local board conduct a rehearing on the matter. The board of trustees may not implement and comply with any local board action that does not comply with the internal revenue code or that threatens to jeopardize the system's status as a qualified plan under the internal revenue code.

H. A claimant may apply for or the board of trustees may require a rehearing before the local board within the time periods prescribed in this subsection, except that if a decision of a local board violates the internal revenue code or threatens to jeopardize the system's status as a qualified plan under the internal revenue code, any limitation period for the board of trustees to require a rehearing of a local board decision does not apply. An application for a rehearing shall be filed in writing with a member of the local board or its secretary within sixty days after:

1. The applicant-claimant receives notification of the local board's original action by certified mail, by attending the meeting at which the action is taken or by receiving benefits from the system pursuant to the local board's original action, whichever occurs first.

2. The applicant-board of trustees receives notification of the local board's original action as prescribed by subsection G of this section by email or certified mail.

I. A hearing before a local board on a matter remanded from the superior court is not subject to a rehearing before the local board.

J. Decisions of local boards are subject to judicial review pursuant to title 12, chapter 7, article 6.

K. When making a ruling, determination or calculation, the local board shall be entitled to rely on information furnished by the employer, a medical board, the board of trustees, independent legal counsel or the actuary for the system.

L. Each member of a local board is entitled to one vote. A majority is necessary for a decision by the members of a local board at any meeting of the local board.

M. The local board shall adopt such bylaws as it deems desirable. The local board shall elect a secretary who may, but need not, be a member of the local board. The secretary of the local board shall keep a record and prepare minutes of all meetings in compliance with chapter 3, article 3.1 of this title and forward the minutes and all necessary communications to the board of trustees as prescribed by subsection G of this section. Within one hundred eighty days after election, the local board's secretary shall complete local board training as prescribed by the board of trustees, including open meeting laws, ethics, legal review and fiduciary responsibilities and duties.

N. The fees of the medical board and of the local board's independent legal counsel and all other expenses of the local board necessary for the administration of the system shall be paid by the employer and not the board of trustees or system at such rates and in such amounts as the local board shall approve. Each local board shall hire an independent legal counsel who is not an employee of or contracted with the employer or any employee organization and owes its duty of loyalty only to the local board in connection with its representation of the local board. The independent legal counsel may not represent a member of the plan before any local board or any judicial appeal of a local board decision. The local board's independent legal counsel shall review the model uniform rules for local board procedure that are issued by the board of trustees.

O. The local board shall issue directions to the board of trustees concerning all benefits that are to be paid from the employer's account pursuant to the provisions of the fund. The local board shall keep on file, in such manner as it may deem convenient or proper, all reports from the board of trustees and the actuary.

P. The local board and the individual members of the local board shall be indemnified from the assets of the employer for any judgment against the local board or its members, including attorney fees and costs, arising from any act, or failure to act, made in good faith pursuant to the provisions of the system, including expenses reasonably incurred in the defense of any claim relating to the act or failure to act.

Q. A local board shall submit to the board of trustees the names of the members of the local board and the local board's secretary and independent legal counsel and shall submit any changes to those positions within ten days after the change.

R. An employer and a local board shall submit any reports, data, paperwork or other materials that are requested by the board of trustees for any reason, including local board action or inaction or to investigate a complaint regarding a local board. If the board of trustees or its designee through an audit or investigation finds that the local board is not in compliance with statute or the model uniform rules for local board procedure, the board of trustees shall notify the local board of the noncompliance and the local board shall have sixty days to take corrective action. If the local board fails to take adequate corrective action, the board of trustees may act on behalf of the local board until the matter is resolved. The board of trustees or its designee shall work with the local board members to take the appropriate corrective actions, including appointing any vacant or noncompliant local board member positions, if necessary, to bring the local board and its membership, policies and procedures into compliance.

History

Laws 1989, 1st Reg. Sess., Ch. 197, § 2; *Laws 1990, 2nd Reg. Sess., Ch. 411, § 3*; *Laws 1992, 2nd Reg. Sess., Ch. 340, § 1*; *Laws 1992, 2nd Reg. Sess., Ch. 341, § 3*; *Laws 1994, 2nd Reg. Sess., Ch. 130, § 2*; *Laws 1995, 1st Reg. Sess., Ch. 205, § 6*; *Laws 1997, 1st Reg. Sess., Ch. 1, § 427*; *Laws 1997, 1st Reg. Sess., Ch. 239, § 13*; *Laws 1999, Ch. 327, § 24*; *Laws 2000, Ch. 329, § 2*; *Laws 2001, Ch. 353, § 3*; *Laws 2008, Ch. 59, § 1*; *Laws 2010, 2nd Reg. Sess., Ch. 118, § 7*; *Laws 2010, 2nd Reg. Sess., Ch. 347, § 4*; *Laws 2011, 1st Reg. Sess., Ch. 200, § 41*; *Laws 2011, 1st Reg. Sess., Ch. 27, § 26*; *Laws 2012, 2nd Reg. Sess., Ch. 136, § 7*; *Laws 2013, 1st Reg. Sess., Ch. 203, § 7*; *Laws 2013, 1st Reg. Sess., Ch. 216, § 5*; *2016 2nd Reg. Sess. Ch. 323, § 2*, effective August 6, 2016; *2021 1st Reg. Sess. Ch. 34, § 2*, effective January 1, 2022; *2022 2nd Reg. Sess. Ch. 112, § 12*, effective September 24, 2022.

Annotations

Notes

Editor's Notes

Another version of this section, created from amendments by *Laws 2021, Ch. 251, § 1*, was repealed by *Laws 2022, Ch. 112, § 13*, effective September 24, 2022.

Amendment Notes

The 2016 amendment, in (A)(3), substituted “the chairperson of the fire district governing board or the chairperson’s designee” for “organized pursuant to section 48-804, the secretary-treasurer as chairman” following “fire districts” and substituted “chairperson of the fire district governing board” for “secretary-treasurer” following “appointed by the” and made a stylistic change.

The 2021 amendment by ch. 34 added “To the extent outlined in this section” in the first sentence of (A); substituted “chairperson” for “chairman” in (A)(1), (A)(2), and (A)(4); in (C), substituted “two-year or four-year term” for “two year or four year term” in the second sentence, substituted “allow” for “permit” in the fifth sentence, and added the last sentence; rewrote (D); in the first sentence of (E), substituted “may not” for “shall have no power to” and added “disability and in the line of duty death”; in (F), rewrote the first sentence and added the second sentence; in (G), substituted “Not later than” for “No later than” in the second sentence and added the third sentence; rewrote the first sentence of the introductory paragraph of (H); added “email or” in (H)(2); added the last sentence of (M); in (N), rewrote the second sentence and added the last sentence; and added (Q) and (R).

The 2022 amendment, in (N), deleted “or member” following “employee organization” in the second sentence and added the third sentence.

Applicability

By *Laws 2022, 2nd Reg. Sess., Ch. 112, § 16*B, applies retroactively to from and after December 31, 2021.

JUDICIAL DECISIONS

Legislative Intent.

Award Proper.

Boards and Commissions.

Eligible Employees.

Indemnification.

Jurisdiction.

Parties.

Additional Cases of Historical Interest (1955 — 1984)

Administrative Law: Judicial Review: Reviewability: Exhaustion of Remedies

Civil Procedure: Justiciability: Exhaustion of Remedies: Administrative Remedies

Labor & Employment Law: Collective Bargaining & Labor Relations: Exhaustion of Remedies

Legislative Intent.

The legislature did not intend to alter the common meaning of good faith by coupling the words “good faith” with the words “pursuant to the provisions of the system”; rather the latter phrase denotes a board’s actions in performance of its statutory administrative or adjudicative responsibilities, whether or not such actions are ultimately adjudged correct. *Fund Manager, Pub. Safety Personnel Retirement Sys. v. Department of Pub. Safety Local Retirement Bd., 157 Ariz. 324, 757 P.2d 128, 11 Ariz. Adv. Rep. 81, 1988 Ariz. App. LEXIS 246 (Ariz. Ct. App. 1988)*.

Award Proper.

Retirement board acted pursuant to the provisions of the retirement system when it granted benefits to an injured officer and when it later affirmed that decision upon administrative review. *Fund Manager, Pub. Safety Personnel Retirement Sys. v. Department of Pub. Safety Local Retirement Bd., 157 Ariz. 324, 757 P.2d 128, 11 Ariz. Adv. Rep. 81, 1988 Ariz. App. LEXIS 246 (Ariz. Ct. App. 1988)*.

Boards and Commissions.

A board or commission which is a creation of a statute intended for a special purpose has only limited powers and can exercise no powers which are not expressly or implicitly granted. *Fund Manager, Pub. Safety Personnel Retirement Sys. v. Tucson Police Pub. Safety Personnel Retirement Sys. Bd., 137 Ariz. 536, 672 P.2d 201, 1983 Ariz. App. LEXIS 565 (Ariz. Ct. App. 1983)*.

Eligible Employees.

Prior to deciding that security guards should be covered under the public safety personnel retirement system, it was necessary for the local board of the university of Arizona to determine not only that the security guards in question were “regularly assigned to hazardous duty” but also that they were included within one of the expressly enumerated groups of eligible employees, since “security guards” have never been one of the expressly listed groups. *Arizona Bd. of Regents ex rel. University of Ariz. v. State, 160 Ariz. 150, 771 P.2d 880, 30 Ariz. Adv. Rep. 19, 1989 Ariz. App. LEXIS 65 (Ariz. Ct. App. 1989)*.

Indemnification.

Nothing in the words, “in good faith pursuant to the provisions of the system,” forecloses local boards from indemnification for honest mistakes in the performance of their adjudicative and administrative responsibilities. *Fund Manager, Pub. Safety Personnel Retirement Sys. v. Department of Pub. Safety Local Retirement Bd., 157 Ariz. 324, 757 P.2d 128, 11 Ariz. Adv. Rep. 81, 1988 Ariz. App. LEXIS 246 (Ariz. Ct. App. 1988)*.

Jurisdiction.

There was no jurisdictional impediment to the filing of a special action complaint to seek judicial review of whether the fund manager of the public safety personnel retirement system should be compelled to accept the university of Arizona’s determination that security guards were eligible for membership in the system. *Arizona Bd. of Regents ex rel. University of Ariz. v. State, 160 Ariz. 150, 771 P.2d 880, 30 Ariz. Adv. Rep. 19, 1989 Ariz. App. LEXIS 65 (Ariz. Ct. App. 1989)*.

Parties.

Security guards were indispensable parties to a proceeding deciding whether the security guards had a right to membership in the public safety personnel retirement system. *Arizona Bd. of Regents ex rel. University of Ariz. v. State, 160 Ariz. 150, 771 P.2d 880, 30 Ariz. Adv. Rep. 19, 1989 Ariz. App. LEXIS 65 (Ariz. Ct. App. 1989)*.

Additional Cases of Historical Interest (1955 — 1984)

Administrative Law: Judicial Review: Reviewability: Exhaustion of Remedies

Fund Manager, Pub. Safety Personnel Retirement Sys. v. Tucson Police Pub. Safety Personnel Retirement Sys. Bd., 137 Ariz. 536, 672 P.2d 201, 1983 Ariz. App. LEXIS 565 (Ariz. Ct. App. 1983).

Overview: *A retirement board of appeals lacked jurisdiction to determine if an employee was eligible to receive a disability pension where the legislature had limited its authority to determining if the employee was disabled and, if so, the type of disability.*

- Pursuant to former Ariz. Rev. Stat. *§ 38-847.01* (now *Ariz. Rev. Stat. § 38-847*), the legislature did not intend either expressly or impliedly to give the disability board of appeals jurisdiction to hear questions of whether or not a person is eligible for benefits. All the disability board was empowered to decide is whether the local board was correct in determining that the applicant for benefits was or was not disabled under the law, and if so, the nature, extent, cause and type of the disability.

Civil Procedure: Justiciability: Exhaustion of Remedies: Administrative Remedies

Fund Manager, Pub. Safety Personnel Retirement Sys. v. Tucson Police Pub. Safety Personnel Retirement Sys. Bd., 137 Ariz. 536, 672 P.2d 201, 1983 Ariz. App. LEXIS 565 (Ariz. Ct. App. 1983).

Overview: *A retirement board of appeals lacked jurisdiction to determine if an employee was eligible to receive a disability pension where the legislature had limited its authority to determining if the employee was disabled and, if so, the type of disability.*

- Pursuant to former Ariz. Rev. Stat. *§ 38-847.01* (now *Ariz. Rev. Stat. § 38-847*), the legislature did not intend either expressly or impliedly to give the disability board of appeals jurisdiction to hear questions of whether or not a person is eligible for benefits. All the disability board was empowered to decide is whether the local board was correct in determining that the applicant for benefits was or was not disabled under the law, and if so, the nature, extent, cause and type of the disability.

Labor & Employment Law: Collective Bargaining & Labor Relations: Exhaustion of Remedies

Fund Manager, Pub. Safety Personnel Retirement Sys. v. Tucson Police Pub. Safety Personnel Retirement Sys. Bd., 137 Ariz. 536, 672 P.2d 201, 1983 Ariz. App. LEXIS 565 (Ariz. Ct. App. 1983).

Overview: *A retirement board of appeals lacked jurisdiction to determine if an employee was eligible to receive a disability pension where the legislature had limited its authority to determining if the employee was disabled and, if so, the type of disability.*

- Pursuant to former Ariz. Rev. Stat. *§ 38-847.01* (now *Ariz. Rev. Stat. § 38-847*), the legislature did not intend either expressly or impliedly to give the disability board of appeals jurisdiction to hear questions of whether or not a person is eligible for benefits. All the disability board was empowered to decide is whether the local board was correct in determining that the applicant for benefits was or was not disabled under the law, and if so, the nature, extent, cause and type of the disability.

Research References & Practice Aids

38-847. Local boards

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-847.01

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-847.01. Membership in retirement plan; eligibility

A. Each employee of an eligible group shall participate in the plan on proper determination of eligibility for membership by the local board pursuant to *section 38-847*, subsection D.

B. The employer shall provide to the local board all necessary information to render a decision on the employee's eligibility for membership. The information shall include:

1. The date the employee was hired or appointed to the position.

2. The employee's position title.

3. A description of the essential functions for the position.

C. An employee receiving a pension from the plan is not subject to this section, but is subject to *section 38-849*.

History

Recent legislative history: *Laws 2013, 1st Reg. Sess., Ch. 216, § 6*.

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-847.02

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-847.02. Voluntary local board consolidation; membership; duties

A. A local board may enter into an intergovernmental agreement with other local boards to consolidate the boards for the respective employers.

B. The consolidated local board shall work with the board of trustees to ensure that the new board is duly empaneled consistent with the representation outlined in *section 38-847*, subsection A and that all appointments or elections for local board members are completed in a timely manner. The consolidated local board shall submit to the board of trustees the names of the members of the consolidated local board and the consolidated local board's secretary and independent legal counsel and shall submit any changes to those positions within ten days after the change.

C. The consolidated local board shall decide eligibility for membership and disability and in the line of duty death benefits and have all of the duties and responsibilities of a local board pursuant to this article.

D. Within one hundred eighty days after appointment or election, all consolidated local board members and the local board's secretary shall complete local board training as prescribed by the board of trustees, including open meeting laws, ethics, legal review and fiduciary responsibilities and duties. The local board's independent legal counsel shall review the model uniform rules for local board procedure that are issued by the board of trustees.

E. The local board's independent legal counsel may not be employed by or contracted with the employer or any employee organizations. The independent legal counsel may not represent a member of the plan before any local board or any judicial appeal of a local board decision.

History

2021 1st Reg. Sess. Ch. 34, § 3, effective January 1, 2022.

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

38-847.02. Voluntary local board consolidation; membership; duties

End of Document

A.R.S. § 38-847.03

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-847.03. Uniform medical review; administrator; disability decisions; definitions

A. Within ten days after a local board receives an application for disability benefits or in the line of duty death benefits, the local board secretary shall submit the application to the administrator.

B. After a local board has made a determination on the application, or the application is deemed granted pursuant to *section 38-847*, subsection D, paragraph 3 or *section 38-893*, subsection D, paragraph 2 for disability benefits or in the line of duty death benefits, the administrator or the administrator's designee shall review the findings. The administrator may contract with medical professionals to review applications under this section.

C. The board of trustees or the administrator may require additional records from the local board or the employer or may require that the local board conduct a rehearing on the matter.

D. If the board of trustees disagrees with the decision of the local board after a rehearing requested pursuant to subsection C of this section, the decision is subject to judicial review pursuant to title 12, chapter 7, article 6.

E. For the purposes of this section:

1. "Administrator" means the administrator appointed by the board pursuant to *section 38-848*.
2. "Local board" means a local board formed under *section 38-847*, *38-847.02*, *38-893* or *38-893.01*.

History

2021 1st Reg. Sess. Ch. 34, § 3, effective January 1, 2022.

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

38-847.03. Uniform medical review; administrator; disability decisions; definitions

End of Document

A.R.S. § 38-847.04

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-847.04. Board of trustees; determination of retirement benefits; definitions

A. Each employer, within ten days after receiving a completed retirement application from a member, shall submit the retirement application to the board. The board or its designee shall decide all questions of eligibility for service credits and retirement benefits and will determine the amount, manner and time of payment of the retirement benefits. If the board or its designee finds discrepancies in the information received, the board or its designee shall contact the employer and applicant and resolve the discrepancies before the start date of the benefits.

B. For the purposes of this section, “employer” and “member” have the same meanings prescribed in *section 38-842* or *38-881*.

History

2021 1st Reg. Sess. Ch. 34, § 3, effective January 1, 2022.

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-848

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-848. Board of trustees; powers and duties; reporting requirements; independent trust fund; administrator; agents and employees; advisory committee

A. The board of trustees shall consist of nine members and shall have the rights, powers and duties that are set forth in this section. The term of office of members shall be five years to expire on the third Monday in January of the appropriate year. The board shall select a chairperson from among its members each calendar year. Members are eligible to receive compensation in an amount of $50 a day, but not to exceed $1,000 in any one fiscal year, and are eligible for reimbursement of expenses pursuant to chapter 4, article 2 of this title. The board consists of the following members appointed as follows:

1. Two members representing law enforcement, one of whom is appointed by the president of the senate and one of whom is appointed by the governor. A statewide association representing law enforcement in this state shall forward nominations to the appointing elected officials, providing at least three nominees for each position. At least one of the members appointed under this paragraph shall be an elected local board member.

2. Two members representing firefighters, one of whom is appointed by the speaker of the house of representatives and one of whom is appointed by the governor. A statewide association representing firefighters in this state shall forward nominations to the appointing elected officials, providing at least three nominees for each position. At least one of the members appointed under this paragraph shall be an elected local board member.

3. Three members representing cities and towns in this state, one of whom is appointed by the president of the senate, one of whom is appointed by the speaker of the house of representatives and one of whom is appointed by the governor. An association representing cities and towns in this state shall forward nominations to the appointing elected officials, providing at least three nominees for each position. These nominees shall represent taxpayers or employers and may not be members of the system.

4. One member who represents counties in this state and who is appointed by the governor. An association representing county supervisors in this state shall forward nominations to the governor, providing at least three nominees for the position. These nominees shall represent taxpayers or employers and may not be members of the system.

5. One member who is appointed by the governor from a list of three nominees forwarded by the board. The board shall select the nominees to forward to the governor from a list of at least five nominees received from the advisory committee.

B. Each appointment made pursuant to subsection A of this section shall be chosen from the list of nominees provided to the appointing elected official. For any appointment made by the governor pursuant to

subsection A of this section, before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor to obtain 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. A board member may be reappointed. Notwithstanding *section 38-295*, a board member may be removed from office only for cause by the appointing power or because the board member has vacated the member's seat on the board. A board member who is removed for cause shall be provided written notice and an opportunity for a response. The appointing power may remove a board member based on written findings that specify the reason for removal. Any vacancy that occurs other than by expiration of a term shall be filled for the balance of the term. All vacancies shall be filled in the same manner as the initial appointment. A board member vacates the office if the member either:

1. Is absent without excuse from three consecutive regular meetings of the board.
2. Resigns, dies or becomes unable to perform board member duties.

C. The members of the board who are appointed pursuant to subsection A of this section and who are not members of the system shall be independent, qualified professionals who are responsible for the performance of fiduciary duties and other responsibilities required to preserve and protect the fund and shall have at least ten years' substantial experience as any one or a combination of the following:

1. A portfolio manager acting in a fiduciary capacity.
2. A securities analyst.
3. A senior executive or principal of a trust institution, investment organization or endowment fund acting either in a management or an investment-related capacity.
4. A chartered financial analyst in good standing as determined by the chartered financial analyst institute.
5. A current or former professor or instructor at the college or university level in the field of economics, finance, actuarial science, accounting or pension-related subjects.
6. An economist.
7. Any other senior executive engaged in the field of public or private finances or with experience with public pension systems.
8. A senior executive in insurance, banking, underwriting, auditing, human resources or risk management.

D. All monies in the fund shall be deposited and held in a public safety personnel retirement system depository. Monies in the fund shall be disbursed from the depository separate and apart from all monies or funds of this state and the agencies, instrumentalities and subdivisions of this state, except that the board may commingle the assets of the fund and the assets of all other plans entrusted to its management in one or more group trusts, subject to the crediting of receipts and earnings and charging of payments to the appropriate employer, system or plan. The monies shall be secured by the depository in which they are deposited and held to the same extent and in the same manner as required by the general depository law of this state. For purposes of making the decision to invest in securities owned by the fund or any plan or trust administered by the board, the fund and assets of the plans and the plans' trusts are subject to the sole management of the board for the purpose of this article except that, on the board's election to invest in a particular security or make a particular investment, the assets comprising the security or investment may be chosen and managed by third parties approved by the board. The board may invest in portfolios of securities chosen and managed by a third party. The board's decision to invest in securities such as mutual funds, commingled investment funds, exchange traded funds, private equity or venture capital limited partnerships, real estate limited partnerships or limited liability companies and real estate investment trusts whose assets are chosen and managed by third parties is not an improper delegation of the board's investment authority.

E. All contributions under this system and other retirement plans that the board administers shall be forwarded to the board and shall be held, invested and reinvested by the board as provided in this article. All property and monies of the fund and other retirement plans that the board administers, including income from investments and from all other sources, shall be retained for the exclusive benefit of members, as provided in the system and other retirement plans that the board administers, and shall be used to pay benefits to members or their beneficiaries or to pay expenses of operation and administration of the system and fund and other retirement plans that the board administers.

F. The board shall have the full power in its sole discretion to invest and reinvest, alter and change the monies accumulated under the system and other retirement plans and trusts that the board administers as provided in this article. In addition to its power to make investments managed by others, the board may delegate the authority the board deems necessary and prudent to investment management pursuant to *section 38-848.03*, as well as to the administrator, employed by the board pursuant to subsection M, paragraph 6 of this section, and any deputy or assistant administrators to invest the monies of the system and other retirement plans and trusts that the board administers if the administrator, investment management and any deputy or assistant administrators follow the investment policies that are adopted by the board. The board may commingle securities and monies of the fund, the elected officials' retirement plan, the corrections officer retirement plan and other plans or monies entrusted to its care, subject to the crediting of receipts and earnings and charging of payments to the account of the appropriate employer, system or plan. In making every investment, the board shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income from their funds as well as the probable safety of their capital, if:

1. Not more than eighty percent of the combined assets of the system or other plans that the board manages is invested at any given time in corporate stocks, based on the cost value of the stocks irrespective of capital appreciation.

2. Not more than five percent of the combined assets of the system or other plans that the board manages is invested in corporate stock issued by any one corporation, other than corporate stock issued by corporations chartered by the United States government or corporate stock issued by a bank or insurance company.

3. Not more than five percent of the voting stock of any one corporation is owned by the system and other plans that the board administers, except that this limitation does not apply to membership interests in limited liability companies.

4. Corporate stocks and exchange traded funds eligible for direct purchase are restricted to stocks and exchange traded funds that, except for bank stocks, insurance stocks, stocks acquired for coinvestment in connection with the system's or the plans' or trusts' commingled investments and interests in limited liability companies and mutual funds, are any of the following:

(a) Listed or approved on issuance for listing on an exchange registered under the securities exchange act of 1934, as amended (*15 United States Code sections 78a* through *78pp*).

(b) Designated or approved on notice of issuance for designation on the national market system of a national securities association registered under the securities exchange act of 1934, as amended (*15 United States Code sections 78a* through *78pp*).

(c) Listed or approved on issuance for listing on an exchange registered under the laws of this state or any other state.

(d) Listed or approved on issuance for listing on an exchange of a foreign country with which the United States is maintaining diplomatic relations at the time of purchase, except that not more than twenty percent of the combined assets of the system and other plans that the board manages is

invested in foreign securities, based on the cost value of the stocks irrespective of capital appreciation.

(e) An exchange traded fund that is recommended by the chief investment officer of the system, that is registered under the investment company act of 1940 (*15 United States Code sections 80a- 1* through *80a-64*) and that is both traded on a public exchange and based on a publicly recognized index.

G. Notwithstanding any other law, the board is not required to invest in any type of investment that is dictated or required by any entity of the federal government and that is intended to fund economic development projects, public works or social programs, but may consider such economically targeted investments pursuant to its fiduciary responsibility. The board, on behalf of the system and all other plans or trusts the board administers, may invest in, lend monies to or guarantee the repayment of monies by a limited liability company, limited partnership, joint venture, partnership, limited liability partnership or trust in which the system and plans or trusts have a financial interest, whether the entity is closely held or publicly traded and that, in turn, may be engaged in any lawful activity, including venture capital, private equity, the ownership, development, management, improvement or operation of real property and any improvements or businesses on real property or the lending of monies.

H. Conference call meetings of the board that are held for investment purposes only are not subject to chapter 3, article 3.1 of this title, except that the board shall maintain minutes of these conference call meetings and make them available for public inspection within twenty-four hours after the meeting. The board shall review the minutes of each conference call meeting and shall ratify all legal actions taken during each conference call meeting at the next scheduled meeting of the board.

I. The board is not liable for the exercise of more than ordinary care and prudence in the selection of investments and performance of its duties under the system and is not limited to so-called “legal investments for trustees”, but all monies of the system and other plans that the board administers shall be invested subject to all of the conditions, limitations and restrictions imposed by law.

J. Except as provided in subsection F of this section, the board may:

1. Invest and reinvest the principal and income of all assets that the board manages without distinction between principal and income.

2. Sell, exchange, convey, transfer or otherwise dispose of any investments made on behalf of the system or other plans the board administers in the name of the system or plans by private contract or at public auction.

3. Also:

(a) Vote on any stocks, bonds or other securities.

(b) Give general or special proxies or powers of attorney with or without power of substitution.

(c) Exercise any conversion privileges, subscription rights or other options and make any payments incidental to the exercise of the conversion privileges, subscription rights or other options.

(d) Consent to or otherwise participate in corporate reorganizations or other changes affecting corporate securities, delegate discretionary powers and pay any assessments or charges in connection therewith.

(e) Generally exercise any of the powers of an owner with respect to stocks, bonds, securities or other investments held in or owned by the system or other plans whose assets the board administers.

4. Make, execute, acknowledge and deliver any other instruments that may be necessary or appropriate to carry out the powers granted in this section.

5. Register any investment held by the system or other plans whose assets the board administers in the name of the system or plan or in the name of a nominee or trust.

6. At the expense of the system or other plans that the board administers, enter into an agreement with any bank or banks for the safekeeping and handling of securities and other investments coming into the possession of the board. The agreement shall be entered into under terms and conditions that secure the proper safeguarding, inventory, withdrawal and handling of the securities and other investments. Access to and deposit or withdrawal of the securities from any place of deposit selected by the board is not allowed and may not be made except as the terms of the agreement provide.

7. Appear before local boards and the courts of this state and political subdivisions of this state through counsel or an appointed representative to protect the fund or the assets of other plans that the board administers. The board is not responsible for the actions or omissions of the local boards under this system but may require a review or rehearing of actions or omissions of local boards. A limitation period does not prohibit the board or administrator from contesting or require the board or administrator to implement or comply with a local board decision that violates the internal revenue code or that threatens to impair the tax-qualified status of the system or any plan administered by the board or administrator.

8. Empower the fund administrator to take actions on behalf of the board that are necessary for the protection and administration of the fund or the assets of other plans that the board administers pursuant to the guidelines of the board.

9. Do all acts, whether or not expressly authorized, that may be deemed necessary or proper for the protection of the investments held in the fund or owned by other plans or trusts that the board administers.

10. Settle threatened or actual litigation against any system or plan that the board administers.

K. Investment expenses and operation and administrative expenses of the board shall be accounted for separately and allocated against investment income.

L. The board, as soon as possible within a period of six months following the close of any fiscal year, shall transmit to the governor and the legislature a comprehensive annual financial report on the operation of the system and other plans that the board administers that contains, among other things:

1. A balance sheet.

2. A statement of income and expenditures for the year.

3. A report on an actuarial valuation of its assets and liabilities.

4. A list of investments owned.

5. The total rate of return, yield on cost, and percentage of cost to market value of the fund and the assets of other plans that the board administers.

6. Any other statistical and financial data that may be necessary for the proper understanding of the financial condition of the system and other plans that the board administers and the results of their operations. A synopsis of the annual report shall be published for the information of members of the system, the elected officials' retirement plan or the corrections officer retirement plan.

7. An analysis of the long-term level percent of employer contributions and compensation structure and whether the funding methodology is sufficient to pay one hundred percent of the unfunded accrued liability under the elected officials' retirement plan.

8. An estimate of the aggregate employer contribution rate for the public safety personnel retirement system for the next ten fiscal years and an estimate of the aggregate employer contribution rate for the corrections officer retirement plan for the next ten fiscal years.

9. An estimate of the employer contribution rates for the next ten fiscal years for each of the following employers within the public safety personnel retirement system:

(a) Department of liquor licenses and control.

(b) Department of public safety.

(c) Northern Arizona university.

(d) University of Arizona.

(e) Arizona state university.

(f) Arizona game and fish department.

(g) Department of law.

(h) Department of emergency and military affairs.

(i) Arizona state parks board.

10. An estimate of the employer contribution rates for the next ten fiscal years for each of the following employers within the corrections officer retirement plan:

(a) State department of corrections.

(b) Department of public safety.

(c) The judiciary.

(d) Department of juvenile corrections.

11. An estimate of the aggregate fees paid for private equity investments and other alternative investments, including management fees and performance fees and carried interest.

M. The board shall:

1. Maintain the accounts of the system and other plans that the board administers and issue statements to each employer annually and to each member who requests a statement.

2. Report the results of the actuarial valuations to the local boards and employers.

3. Contract on a fee basis with an independent investment counsel to advise the board in the investment management of the fund and assets of other plans that the board administers and with an independent auditing firm to audit the board’s accounting.

4. Allow the auditor general to make an annual audit and transmit the results to the governor and the legislature.

5. Contract on a fee basis with an actuary who shall make actuarial valuations of the system and other plans that the board administers, be the technical adviser of the board on matters regarding the operation of the funds created by the provisions of the system, the elected officials’ retirement plan, the corrections officer retirement plan and the public safety cancer insurance policy program and perform other duties required in connection therewith. The actuary must be a member of a nationally recognized association or society of actuaries.

6. Employ, as administrator, a person, state department or other body to serve at the pleasure of the board.

7. Establish procedures and guidelines for contracts with actuaries, auditors, investment counsel and legal counsel and for safeguarding of securities.

8. Issue a request for proposals every five years for an external auditor. The board is not required to change its auditor after issuing the request for proposals.

9. Develop a policy regarding routine stress testing of the retirement systems and plans administered by the board at the employer level and system level. The stress test shall use industry standards, such as the inclusion of assumptions regarding investment returns, inflation, population growth, payroll growth and employer contributions. For the purposes of this paragraph, "stress test" means an assessment of the risk exposure of the retirement system or plan, including scenario analysis, simulation analysis and sensitivity analysis.

N. The administrator, under the direction of the board, shall:

1. Administer this article.

2. Be responsible for the recruitment, hiring and day-to-day management of employees.

3. Invest the monies of the system and other plans that the board administers as the board deems necessary and prudent as provided in subsections F and J of this section and subject to the investment policies and fund objectives adopted by the board.

4. Establish and maintain an adequate system of accounts and records for the system and other plans that the board administers, which shall be integrated with the accounts, records and procedures of the employers so that the system and other plans that the board administers operate most effectively and at minimum expense and that duplication of records and accounts is avoided.

5. In accordance with the board's governance policy and procedures and the budget adopted by the board, hire employees and services the administrator deems necessary and prescribe their duties, including the hiring of one or more deputy or assistant administrators to manage the system's operations, investments and legal affairs.

6. Be responsible for income, the collection of the income and the accuracy of all expenditures.

7. Recommend to the board annual contracts for the system's actuary, auditor, investment counsel, legal counsel and safeguarding of securities.

8. Perform additional duties and powers prescribed by the board and delegated to the administrator.

O. The system is an independent trust fund and the board is not subject to title 41, chapter 6. Contracts for goods and services approved by the board are not subject to title 41, chapter 23. As an independent trust fund whose assets are separate and apart from all other funds of this state, the system and the board are not subject to the restrictions prescribed in *section 35-154* or article IX, sections 5 and 8, Constitution of Arizona. Loans, guarantees, investment management agreements and investment contracts that are entered into by the board are contracts memorializing obligations or interests in securities that the board has concluded, after thorough due diligence, do not involve investments in Sudan or Iran or otherwise provide support to terrorists or in any way facilitate illegal immigration into the United States. These contracts do not involve the procurement, supply or provision of goods, equipment, labor, materials or services that would require the warranties required by *section 41-4401*.

P. The board, the administrator, the deputy or assistant administrators and all persons employed by them are subject to title 41, chapter 4, article 4. The administrator, deputy or assistant administrators and other employees of the board are entitled to receive compensation pursuant to *section 38-611*.

Q. In consultation with the director of the department of administration, the board may enter into employment agreements and establish the terms of those agreements with persons holding any of the following system positions:

1. Administrator.

2. Deputy or assistant administrator.

3. Chief investment officer.

4. Deputy chief investment officer.

5. Fiduciary or investment counsel.

R. The attorney general or an attorney approved by the attorney general and paid by the fund is the attorney for the board and shall represent the board in any legal proceeding or forum that the board deems appropriate. The board, administrator, deputy or assistant administrators and employees of the board are not personally liable for any acts done in their official capacity in good faith reliance on the written opinions of the board's attorney.

S. At least once in each five-year period after the effective date, the actuary shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries of the system and other plans that the board administers and shall make a special valuation of the assets and liabilities of the monies of the system and plans. Taking into account the results of the investigation and special valuation, the board shall adopt for the system and other plans that the board administers those mortality, service and other tables deemed necessary.

T. On the basis of the tables the board adopts, the actuary shall make a valuation of the assets and liabilities of the funds of the system and other plans that the board administers at least every year. By November 1 of each year the board shall provide a preliminary report and by December 1 of each year provide a final report to the governor, the speaker of the house of representatives and the president of the senate on the contribution rate for the ensuing fiscal year.

U. Neither the board nor any member or employee of the board shall directly or indirectly, for the board, the member or the employee or as an agent, in any manner use the monies or deposits of the fund except to make current and necessary payments, nor shall the board or any member or employee become an endorser or surety or in any manner an obligor for monies loaned by or borrowed from the fund or the assets of any other plans that the board administers.

V. Financial or commercial information that is provided to the board, employees of the board and attorneys of the board in connection with investments in which the board has invested or investments the board has considered for investment is confidential, proprietary and not a public record if the information is information that would customarily not be released to the public by the person or entity from whom the information was obtained.

W. A person who is a dealer as defined in *section 44-1801* and who is involved in securities or investments related to the board's investments is not eligible to serve on the board.

X. The public safety personnel retirement system advisory committee is established and shall serve as a liaison between the board and the members and employers of the system. The president of the senate and the speaker of the house of representatives shall each appoint to the committee one member. The remaining members of the committee shall be appointed by the chairperson of the board from names submitted to the chairperson by associations representing law enforcement, firefighters, state government, counties, cities and towns and tribal governments. The committee shall select a chairperson from among its members each calendar year. The committee members appointed by the chairperson of the board shall consist of the following ten members:

1. A member who is a law enforcement officer.

2. A member who is a firefighter.

3. A member of the elected officials' retirement plan.

4. A member of the corrections officer retirement plan.

5. A retiree from the public safety personnel retirement system.

6. A representative from a city or town in this state.

7. A representative from a county in this state.

8. A representative from a fire district in this state.
9. A representative from a state employer.
10. A representative from a tribal government located in this state.

History

Laws 1995, 1st Reg. Sess., Ch. 223, § 2; Laws 1997, 1st Reg. Sess., Ch. 210, § 25; Laws 1997, 1st Reg. Sess., Ch. 239, § 14; Laws 1998, Ch. 113, § 30; Laws 1999, Ch. 262, § 21; Laws 2005, Ch. 319, § 1; Laws 2005, Ch. 331, § 7; Laws 2006, Ch. 264, § 8; Laws 2008, Ch. 125, § 2; Laws 2010, 2nd Reg. Sess., Ch. 118, § 8; Laws 2010, 2nd Reg. Sess., Ch. 200, § 42; Laws 2012, 2nd Reg. Sess., Ch. 63, § 1; Laws 2012, 2nd Reg. Sess., Ch. 321, § 99; Laws 2013, 1st Reg. Sess., Ch. 203, § 8; Laws 2013, 1st Reg. Sess., Ch. 217, § 9; Laws 2014, 2nd Reg. Sess., Ch. 14, § 1; Laws 2014, 2nd Reg. Sess., Ch. 190, § 8; 2016 2nd Reg. Sess. Ch. 2, § 11, effective August 6, 2016; 2016 2nd Reg. Sess. Ch. 121, § 6, effective August 6, 2016; 2016 2nd Reg. Sess. Ch. 178, § 8, effective August 6, 2016; 2017 1st Reg. Sess. Ch. 327, § 20, effective August 9, 2017; 2018 2nd Reg. Sess. Ch. 42, § 4, effective August 3, 2018; 2018 2nd Reg. Sess. Ch. 279, § 22, effective August 3, 2018; 2019 1st Reg. Sess. Ch. 36, § 9, effective August 27, 2019; 2021 1st Reg. Sess. Ch. 34, § 4, effective January 1, 2022; 2021 1st Reg. Sess. Ch. 251, § 2, effective September 29, 2021; 2022 2nd Reg. Sess. Ch. 72, § 2, effective September 24, 2022; 2022 2nd Reg. Sess. Ch. 73, § 11, effective September 24, 2022.

Annotations

Notes

Editor's Notes

Laws 2010, 2nd Reg. Sess., Ch. 200, § 81 provides, “The board of trustees established by section 38-848, Arizona Revised Statutes, shall not use former members of the board as special advisors to assist the board in fulfilling its statutorily prescribed duties.”

Laws 2012, 2nd Reg. Sess., Ch. 321, § 169 provides, “In order to promote public confidence in government, governmental integrity, increased accountability and the efficient delivery of services to its citizens, this act intends to reform this state’s outdated personnel system. The current system consists of rules and regulations adopted many years ago that served a valuable purpose at the time, but now actually makes it difficult to manage the workforce effectively. The current emphasis on job security rewards longevity over performance that often results in the retention of lower performers and the separation of our best talent. The new personnel system pursuant to this act is intended to support this state’s ability to attract, hire and retain high-performing employees.”

Laws 2014, 2nd Reg. Sess., Ch. 14, § 12 provides, “It is the intent of the legislature that the monies in the underground storage tank assurance account established by section 49-1015, Arizona Revised Statutes, be used to fund a new and revised underground storage tank corrective action program and implement both the new corrective action program and the existing underground storage tank leak prevention program. The new program must require the department of environmental quality to use assurance account monies to conduct a baseline assessment of all existing underground storage tanks to determine whether they are leaking and to perform any corrective action necessary in consultation with the owner and operator. The department of environmental quality shall use assurance account monies to remove underground storage tanks at the request of the owner or operator. The new program must include a requirement that all owners and operators of underground storage tanks who use private insurance to meet financial responsibility requirements obtain a standard policy to be developed by the department of environmental quality in cooperation with the department of insurance and insurance carriers. The new program also shall provide

the department of environmental quality with the authority to prohibit delivery of fuel to any underground storage tank system that fails to meet the requirements of the new program and to establish reasonable deductibles to be paid by owners and operators to defray the costs for the baseline assessments, corrective actions and tank removals."

Laws 2016, 2nd Reg. Sess., Ch. 2, § 19 provides, "A. For the initial appointments to the board of trustees of the public safety personnel retirement system, on or before August 1, 2016, associations representing public safety personnel, cities and towns in this state and counties in this state shall establish a list of nominees who are qualified pursuant to *section 38-848, Arizona Revised Statutes*, and willing to serve on the board. The list shall include at least three nominees for each position on the board, which will be forwarded to the appointing elected officials.

B. Each member of the board of trustees of the public safety personnel retirement system shall be selected from the list of nominees presented to the appointing elected officials for each position on the board. The following elected officials shall make the following appointments:

1. The governor shall appoint:

(a) One member representing law enforcement in this state.

(b) One member representing firefighters in this state.

(c) One member representing cities and towns in this state.

(d) One member representing counties in this state.

(e) One member as specified in *section 38-848, subsection A, paragraph 5, Arizona Revised Statutes.*

2. The president of the senate shall appoint:

(a) One member representing law enforcement in this state.

(b) One member representing cities and towns in this state.

3. The speaker of the house of representatives shall appoint:

(a) One member representing firefighters in this state.

(b) One member representing cities and towns in this state.

C. The appointments shall be made in the following order:

1. On or before November 1, 2016, the governor shall make one appointment to the board from the list of nominees followed by one appointment made in turn from the president of the senate and the speaker of the house of representatives until eight members are appointed to the board.

2. The eight members initially appointed to the board pursuant to paragraph 1 of this subsection shall elect a chairperson who shall appoint the advisory committee pursuant to *section 38-848, subsection X, Arizona Revised Statutes.* The advisory committee shall forward to the newly appointed board of trustees of the public safety personnel retirement system at least five nominees who are qualified pursuant to *section 38-848, Arizona Revised Statutes*, and willing to serve on the board for the appointment of the ninth member of the board. From that list of nominees, the newly appointed board of trustees of the public safety personnel retirement system shall forward to the governor at least three nominees for the appointment of the ninth member of the board, which shall be made on or before December 1, 2016.

D. If the board members specified in subsection B of this section, except the board member specified in *section 38-848, subsection A, paragraph 5, Arizona Revised Statutes*, are not appointed by November 1, 2016, the elected official

who fails to make an appointment forfeits the appointment and the appointment will be made within fifteen days by the next elected official in the rotation specified in subsection C, paragraph 1 of this section. This rotation shall continue until the eight board members are appointed.

E. Notwithstanding *section 38-848, Arizona Revised Statues*, the initial terms of the public safety personnel retirement system board members are:

1. Four terms ending on January 1, 2019 that include:

(a) One member representing law enforcement who is appointed by the governor.

(b) One member representing firefighters who is appointed by the governor.

(c) Two members representing cities and towns in this state, one of whom is appointed by the speaker of the house of representatives and one of whom is appointed by the president of the senate.

2. Five terms ending on January 1, 2021 that include:

(a) One member representing law enforcement who is appointed by the president of the senate.

(b) One member representing firefighters who is appointed by the speaker of the house of representatives.

(c) One member representing cities and towns in this state who is appointed by the governor.

(d) One member representing counties in this state who is appointed by the governor.

(e) The member specified in *section 38-848, subsection A, paragraph 5, Arizona Revised Statutes.*

F. The subsequent appointments shall be made as prescribed in section 38 848, Arizona Revised Statutes."

A version of *§ 38-848* amended by *Laws 2021, 1st Reg. Sess., Ch. 405, § 15* was repealed by *Laws 2022, 2nd Reg. Sess., Ch. 72, § 1* and *Laws 2022, 2nd Reg. Sess., Ch. 73, § 10*, effective September 24, 2022.

Text of section as amended by *Laws 2022, 2nd Reg. Sess., Chs. 72* and *73*, blended.

Amendment Notes

The first 2016 amendment, in the introductory language (A), added "Beginning January 1, 2017" twice, substituted "nine members" for "seven members" in the first sentence, added the third sentence, and substituted "as follows" for "by the governor pursuant to section 38 211" in the last sentence; rewrote (A)(1) through (A)(5), which formerly read "1. Two elected members from a local board to represent the employees. 2. One member to represent this state as an employer of public safety personnel. This member shall have the qualifications prescribed in subsection T of this section. 3. One member to represent the cities as employers of public safety personnel. 4. An elected county or state official or a judge of the superior court, court of appeals or supreme court. 5. Two public members. These members shall have the qualifications prescribed in subsection T of this section"; added (B), (C), and (W); redesignated former (B) through (S) as (D) through (U) and (U) as (V); deleted former (T); updated the internal references; and made stylistic changes.

The second 2016 amendment added (J)(11); substituted "monies" for "funds" in (L)(3) in the third sentence of (M); and made stylistic changes.

The third 2016 amendment substituted "sections 78a through 78pp" for "sections 78a through 78ll" in (D)(4)(a) and (D)(4)(b); substituted "public safety" for "firefighter, peace officer and corrections officer" in the first sentence of (K)(5); and made stylistic changes.

The 2017 amendment added the second and third sentences of (B) and substituted “funds of this state” for “monies of this state” in the third sentence of (O).
The first 2018 amendment by chapter 42, effective August 3, 2018, inserted “deputy or” wherever it appears in (F), (N), (P), and (R); in (X), deleted “Beginning January 1, 2017” at the beginning; and made stylistic changes.

The second 2018 amendment by chapter 279, effective August 3, 2018, in the second sentence of (T), substituted “December 1 of each year” for “December 15 of each year”; in the first sentence of the introductory language of (X), deleted “Beginning January 1, 2017” at the beginning; and made a stylistic change.

The 2019 amendment, in (J)(7), in the last sentence, substituted “A limitation period does not prohibit” for “No limitations period precludes” and “require the board” for “requires the board”; substituted “December 31” for “December 1” in the second sentence of (T); and made stylistic changes.

The 2021 amendment by ch. 34, in the introductory language of (A), deleted “Beginning January 1, 2017” at the beginning of the first and last sentences; in (J)(7), substituted “require” for “seek” in the second sentence and deleted former third sentence, which read: “The board does not have a duty to review actions of the local boards but may do so in its discretion in order to protect the fund”; substituted “Allow” for “Permit” in (M)(4); and substituted “for the board, the member or the employee” for “for himself” in (U).

The 2021 amendment by ch. 251 deleted “Beginning January 1, 2017” at the beginning of the first and last sentences of (A); substituted “to obtain” for “for the purpose of obtaining” in the second sentence of (B); in (L)(11), added “and other alternative investments” and “and carried interest”; substituted “Allow” for “Permit” in (M)(4); added (M)(8) and (M)(9); and in the introductory paragraph of (X), added the second sentence, added “remaining members of the” in the third sentence, and added “members appointed by the chairperson of the board” in the last sentence.

The 2022 amendment by ch. 72, § 2, substituted “percentage” for “percent” in (L)(5); and deleted “who is either a legislator or a legislative staff member” at the end of the second sentence of the introductory language of (X).

The 2022 amendment by ch. 73, § 11, substituted “percentage” for “percent” in (L)(5); and substituted “December 1” for “December 31” in the second sentence of (T).

Legislative Intent

Laws 2016, 2nd Reg. Sess., Ch. 2, § 21 provides, “A. The legislature recognizes that in order to have a sound public retirement system that benefits this state, taxpayers and members of the retirement system, pursuant to article XXIX, Constitution of Arizona, the public retirement system must be funded with contributions and investment earnings based on actuarial methods and assumptions that are consistent with generally accepted actuarial standards. The legislature finds that the current structure of the public safety personnel retirement system does not achieve this goal and that the current system imperils the retirement security that the members of that system have come to expect. For these reasons, the legislature intends to modify and amend the provisions of the current system for both current and new members to make the system viable and sustainable now and into the future.

B. The legislature further finds:

1. That the current structure of the public safety personnel retirement system does not lead to the goal of attaining one hundred percent funded status and jeopardizes the future payment of benefits to current and future retirees of the retirement program.

2. That the current structure of the public safety personnel retirement system, which requires a fixed employee contribution rate, requires a contribution rate from employees that is insufficient in relation to the cost associated with the benefits required by the plan design and therefore places a greater financial burden on employers. By moving to a shared cost structure, public safety employees will bear increased responsibility for the fiscal health of the fund and, as the fund improves its funded status and approaches fully funded or overfunded status, the employees will realize decreased contribution costs that will be lower than currently required.

3. That the current method of funding benefit increases to retirees of the public safety personnel retirement system is flawed and makes it highly unlikely that this fund will achieve its actuarially assumed earning rates during positive and negative investment environments and creates an undesirable possibility of greater investment risk on the part of the fund's trustees. It is fundamentally unsound to provide a benefit increase during periods when the funded status of the retirement program is less than seventy percent. Changing the manner of funding these benefit increases is intended to improve the funded status of the public safety personnel retirement system and is in the best interests of the members and beneficiaries of this retirement program in that it will preserve future benefits for plan participants.

4. It is necessary to change the future plan and system structures for nonvested members to take into consideration the increased life expectancy of members and future employees and make the reforms necessary to preserve the funded status of the retirement program in future years.

5. To protect the future benefits of retired, active and future employees, it is necessary to make the changes outlined in this act to preserve the funded status of this retirement program and return the program to fiscal solvency.

C. It is the legislature's intent that this act does not impair or amend any agreement between an employee and employer that addresses participation in or contributions to alternative retirement plans or compensation arrangements not administered through the public safety personnel retirement system."

Severability

Laws 2016, 2nd Reg. Sess., Ch. 2, § 23 provides, "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."

JUDICIAL DECISIONS

Constitutionality.

Construction.

Legislative Intent.

Legal Services.

Procurement Procedure.

State Agency.

Constitutionality.

The addition of the contract provisions of subsection L, which were made retroactive, did not constitute the making of a donation to an individual, association, or corporation in violation of *Ariz. Const. art. 9, § 7*. *Fund Manager, Pub. Safety Personnel Retirement Sys. v. Corbin, 161 Ariz. 348, 778 P.2d 1244, 14 Ariz. Adv. Rep. 13, 1988 Ariz. App. LEXIS 256 (Ariz. Ct. App. 1988)*.

Construction.

The fund manager of the public safety personnel retirement system, even though not listed as a state agency in the state's organization chart or in any other official publication, is a state agency, and the employees of the fund manager are subject to administrative salary recommendations of department of administration. *Fund Manager, Pub. Safety*

Personnel Retirement Sys. v. Arizona Dep't of Admin., 151 Ariz. 93, 725 P.2d 1127, 1986 Ariz. App. LEXIS 571 (Ariz. Ct. App. 1986) (decided under former § 41-763).

Legislative Intent.

The broad grant of authority in subsection G(9) evidences legislative intent that the fund manager have considerable discretion in the management of the system; the power to choose legal counsel is a necessary component of such authority. *Fund Manager, Pub. Safety Personnel Retirement Sys. v. Superior Court, 152 Ariz. 255, 731 P.2d 620, 1986 Ariz. App. LEXIS 682 (Ariz. Ct. App. 1986)*.

Legal Services.

While *§ 41-192* says that no state agency other than the attorney general's office may employ counsel, notwithstanding other laws, this "notwithstanding" language cannot be taken literally. Subsection K(6) of this section, *§§ 38-883*, subsection B(1), and 41-2513, subsection B were all enacted or amended long after the adoption of *§ 41-192*, subsection E, each clearly and specifically contemplating that the fund manager may lawfully expend monies for private counsel after the attorney general has approved the chosen counsel. *Fund Manager, Pub. Safety Personnel Retirement Sys. v. Superior Court, 152 Ariz. 255, 731 P.2d 620, 1986 Ariz. App. LEXIS 682 (Ariz. Ct. App. 1986)*.

The attorney general may not require, as a condition to approval of the fund manager's legal representation by private counsel, the fund manager's agreement that its private counsel will submit all opinions and advice to the attorney general for review or that the fund manager may not commence any legal action or appeal any decision without the attorney general's prior approval. *Fund Manager, Pub. Safety Personnel Retirement Sys. v. Superior Court, 152 Ariz. 255, 731 P.2d 620, 1986 Ariz. App. LEXIS 682 (Ariz. Ct. App. 1986)*.

Procurement Procedure.

The fund manager, being a state agency which expends public monies, must comply with the procurement code, *§ 41-2501*, et seq. *Fund Manager, Pub. Safety Personnel Retirement Sys. v. Superior Court, 152 Ariz. 255, 731 P.2d 620, 1986 Ariz. App. LEXIS 682 (Ariz. Ct. App. 1986)*.

State Agency.

Although the Arizona Public Safety Personnel Retirement System is and independent trust fund and not subject to state debt limits, it is nevertheless a state agency. *Pivotal Colo. II, L.L.C. v. Ariz. Pub. Safety Pers. Ret. Sys., 234 Ariz. 369, 322 P.3d 186, 2014 Ariz. App. LEXIS 40 (Ariz. Ct. App. 2014)*.

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-848.01

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-848.01. Qualified governmental excess benefit arrangement; definitions

A. The board may establish a qualified governmental excess benefit arrangement for the sole purpose of enabling the board to continue to apply the same formula for determining benefits payable to all employees covered by the system whose benefits under the system are limited by section 415 of the internal revenue code.

B. The board shall administer the qualified governmental excess benefit arrangement. The board has full discretionary fiduciary authority to determine all questions arising in connection with the arrangement, including its interpretation and any factual questions arising under the arrangement.

C. All members and retired members of the system are eligible to participate in the qualified governmental excess benefit arrangement if their benefits under the system would exceed the limitations imposed by section 415 of the internal revenue code.

D. On or after the effective date of the qualified governmental excess benefit arrangement, the employer shall pay to each eligible member of the system who retires on or after the effective date and to each retired member who retired before the effective date and that member's beneficiary, if required, a supplemental pension benefit equal to the amount by which the benefit that would have been payable under the system, without regard to any provisions in the system incorporating the limitation on benefits imposed by section 415 of the internal revenue code, exceeds the benefit actually payable taking into account the limitation imposed on the system by section 415 of the internal revenue code. The board shall compute and pay the supplemental pension benefits under the same terms and conditions and to the same person as the benefits payable to or on account of a retired member under the system.

E. The employer shall not fund benefits payable under the qualified governmental excess benefit arrangement. The employer shall pay benefits payable under the qualified governmental excess benefit arrangement out of the general assets of the employer. For administrative purposes, the employer may establish a grantor trust for the benefit of eligible members. The employer shall be treated as grantor of the trust for purposes of section 677 of the internal revenue code. The rights of any person to receive benefits under the qualified governmental excess benefit arrangement are limited to those of a general creditor of the employer.

F. The terms and conditions contained in the system, other than those relating to the benefit limitation imposed by section 415 of the internal revenue code, apply, unless the terms and conditions are inconsistent with the purpose of the qualified governmental excess benefit arrangement.

G. For the purposes of this section:

1. "Internal revenue code" has the same meaning prescribed in *section 42-1001*.
2. "Qualified governmental excess benefit arrangement" means a portion of the system if:

(a) The portion is maintained solely to provide to members of the system that part of a member's annual benefit that is otherwise payable under the terms of the system and that exceeds the limitations imposed by section 415 of the internal revenue code.

(b) Under that portion, a direct or indirect election to defer compensation is not provided at any time to the member.

(c) Excess benefits are not paid from a trust that is a part of the system unless the trust is maintained solely for the purpose of providing excess benefits.

History

Laws 1997, 1st Reg. Sess., Ch. 239, § 15; *Laws 1998, Ch. 1, § 112*; *Laws 2010, 2nd Reg. Sess., Ch. 200, § 43*, effective April 28, 2010.

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-849

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

38-849. Limitations on receiving pension; violation; classification; reemployment after severance; reinstatement of service credits; reemployment of retired member or member with a disability; definition

A. If a member is convicted of, or discharged because of, theft, embezzlement, fraud or misappropriation of an employer's property or property under the control of the employer, the member shall be subject to restitution and fines imposed by a court of competent jurisdiction. The court may order the restitution or fines to be paid from any payments otherwise payable to the member from the retirement system.

B. A person who knowingly makes any false statement or who falsifies or allows to be falsified any record of the system with an intent to defraud the system is guilty of a class 5 felony. If any change or error in the records results in any member or beneficiary receiving from the system more or less than the member or beneficiary would have been entitled to receive had the records been correct, the local board shall correct such error, and as far as practicable shall adjust the payments in such manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. If a member is convicted of a crime specified in this subsection, *section 13-713* applies.

C. If a member who received a severance refund on termination of employment pursuant to *section 38-846.02* becomes reemployed with the same employer within two years after the former member's termination date, the member may have forfeited credited service attributable to service rendered during a prior period of service as an employee restored on satisfaction of each of the following conditions:

1. The member files with the system a written application for reinstatement of forfeited credited service within ninety days after again becoming an employee.

2. The retirement fund is paid the total amount previously withdrawn pursuant to *section 38-846.02* plus compound interest from the date of withdrawal to the date of repayment. Interest shall be computed at the rate of nine percent for each year compounded each year from the date of withdrawal to the date of repayment. Forfeited credited service shall not be restored until complete payment is received by the fund.

3. The required payment is completed within one year after returning to employee status.

D. If a member who received a severance refund on termination of employment, as provided in *section 38-846.02*, is subsequently reemployed by an employer, the member's prior service credits shall be cancelled and service shall be credited only from the date the member's most recent reemployment period commenced. However, a present active member of the system who forfeited credited service, received a severance refund pursuant to *section 38-846.02* and becomes reemployed with the same employer two years or more after the member's termination date or becomes reemployed with another employer may elect to redeem any part of that forfeited credited service by paying into the system any amounts required pursuant to this subsection. A present active member who elects to redeem any part of forfeited credited

service for which the member is deemed eligible by the board shall pay into the system the amounts previously paid or transferred to the member as a severance refund plus an amount that is computed by the

system's actuary that is necessary to equal the increase in the actuarial present value of projected benefits resulting from the redemption calculated using the actuarial methods and assumptions prescribed by the system's actuary. On satisfaction of this obligation, the member's prior service credits shall be reinstated.

E. If a retired member becomes reemployed in any capacity by the employer from which the member retired before six months after the date of retirement or in the same position at any time following retirement:

1. The following apply:

(a) Within ten days after the retired member is reemployed, the local board shall advise the system in writing of the retired member's reemployment.

(b) The system shall not make pension payments to the retired member during the period of reemployment.

(c) Employee contributions shall not be made on the retired member's account, nor shall any service be credited during the period of reemployment. On subsequent termination of employment by the retired member, the retired member is entitled to receive a pension based on the member's service and compensation before the date of the member's reemployment. The employer shall pay the alternate contribution rate pursuant to *section 38-843.05*.

(d) Any pension payments received by the retired member, who retired on or after July 1, 2009, during the period of reemployment are considered overpayments pursuant to *section 38-850*, unless subsection B of this section applies. If the board determines in the board's sole discretion, for a member who retired on or after July 1, 2009, that the retired member's reemployment during the six-month period and the failure of the employer or the local board to suspend the member's pension were not intentional to circumvent the requirements of this subsection, the pension payments received by the retired member after the retired member's reemployment are subject to repayment up to only the amount received between the date of the member's reemployment and the expiration of the six-month period.

2. The retired member, who retired on or after July 1, 2009 and who is reemployed terminates employment, may be subsequently reemployed with the employer from which the member retired and resume receiving pension payments after a period of six months, less the period of time the retired member was not reemployed after retirement with the employer from which the member retired, if at least sixty days of the six months are consecutive.

3. Paragraph 1, subdivisions (a), (b) and (d) of this subsection do not apply if any of the following occurs:

(a) The retired member becomes reemployed after sixty consecutive days from the member's retirement date as a result of participating in an open competitive new hire process except if the retired member is hired for the same position or if the retired member has a prearranged reemployment agreement with the employer.

(b) The retired member is hired as a fire inspector or arson investigator.

(c) The retired member who is receiving an accidental disability, ordinary disability, catastrophic disability or temporary disability pension accepts a job reassignment as an accommodation in accordance with the Americans with disabilities act of 1990 due to a disability that is directly related to the retired member being awarded an accidental disability, ordinary disability, catastrophic disability or temporary disability benefit.

F. If a retired member is assigned voluntary duties acting as a limited authority peace officer, pursuant to the Arizona peace officer standards and training board rules, employee contributions shall not be made on the retired member's account, and any service shall not be credited during the period of reemployment. The employer shall not pay the alternate contribution rate pursuant to *section 38-843.05*.

G. If after six months after the date of retirement a retired member becomes reemployed by the employer from which the member retired in a position other than the same position from which the member retired, employee contributions shall not be made on the retired member's account, and any service shall not be credited during the period of reemployment. The employer shall pay the alternate contribution rate pursuant to *section 38-843.05*.

H. At any time following retirement, if the retired member becomes employed by an employer, other than the employer from which the member retired, in a position ordinarily filled by an employee of an eligible group, employee contributions shall not be made on the retired member's account, and any service shall not be credited during the period of reemployment. The employer shall pay the alternate contribution rate pursuant to *section 38-843.05*.

I. If a member who retired under an accidental or ordinary disability becomes reemployed as an employee of an eligible group, *section 38-844* applies and a determination shall be made by the local board as to whether subsection E, F, G or H of this section applies.

J. The local board shall review all reemployment determinations and voluntary assignments as described in subsection F of this section. If the local board or the system is not provided the necessary information required by the system to make a reemployment determination, the local board and the system shall suspend pension payments until information is received and a determination is made regarding whether the reemployment meets the requirements of subsection E, F, G, H or I of this section.

K. A person who defrauds the system or who takes, converts, steals or embezzles monies owned by or from the system and who fails or refuses to return the monies to the system on the board's written request is subject to civil suit by the system in the superior court in Maricopa county. On entry of an order finding the person has defrauded the system or taken, converted, stolen or embezzled monies owned by or from the system, the court shall enter an order against that person and for the system awarding the system all of its costs and expenses of any kind, including attorney fees, that were necessary to successfully prosecute the action. The court shall also grant the system a judicial lien on all of the nonexempt property of the person against whom judgment is entered pursuant to this subsection in an amount equal to all amounts awarded to the system, plus interest at the rate prescribed by *section 44-1201*, until all amounts owed are paid to the system.

L. Notwithstanding any other provision of this article, the board may offset against any benefits otherwise payable by the system to an active or retired member or survivor any court ordered amounts awarded to the board and system and assessed against the member or survivor.

M. Notwithstanding any other provision of this article, a member who retires having met all of the qualifications for retirement and who subsequently becomes an elected official, by election or appointment, is not considered reemployed by the same employer.

N. For the purposes of this section, "same position" means a position in which the member performs substantially similar duties that were performed and exercises substantially similar authority that was exercised by the retired member before retirement.

History

Laws 1997, 1st Reg. Sess., Ch. 239, § 16; *Laws 1999, Ch. 327, § 25*; *Laws 2000, Ch. 307, § 1*; *Laws 2004, Ch. 325, § 4*; *Laws 2006, Ch. 264, § 9*; *Laws 2009, Ch. 35, § 16*; *Laws 2010, 2nd Reg. Sess., Ch. 118, § 10*; *Laws 2011, 1st Reg. Sess., Ch. 99, § 11*; *Laws 2011, 1st Reg. Sess., Ch. 347, § 5*; *Laws 2011, 1st Reg. Sess., Ch. 357, § 35*; *Laws 2012, 2nd Reg. Sess., Ch. 136, § 8*; *Laws 2013, 1st Reg. Sess., Ch. 203, § 9*; *Laws 2014, 2nd Reg. Sess., Ch. 215, § 174*; *2016 2nd Reg. Sess. Ch. 323, § 3*, effective August 6, 2016; *2017 1st Reg. Sess. Ch. 269, §*

13, effective May 3, 2017; 2019 1st Reg. Sess. Ch. 36, § 11, effective August 27, 2019; 2019 1st Reg. Sess. Ch. 302, § 3, effective August 27, 2019; 2021 1st Reg. Sess. Ch. 23, § 5, effective September 29, 2021; 2022 2nd Reg. Sess. Ch. 24, § 1, effective September 24, 2022.

Annotations

Notes

Editor's Notes

Laws 2014, 2nd Reg. Sess., Ch. 215, § 222 provides, “This act replaces the term ‘disabled’, ‘handicap’, ‘handicapped’ or ‘handicapping’ in each of the statutes in which it appears in the Arizona Revised Statutes, except references to the proper name of a federal act, and requires this state to use the term ‘persons with disabilities’. It is the intent of the legislature that agencies, boards, commissions, departments, officers and other administrative units of this state make similar changes in their respective administrative rules.”

Another version of this section as amended by Laws 2010, 2nd Reg. Sess., Ch. 200, § 45 is repealed by Laws 2011, 1st Reg. Sess., Ch. 99, § 12, Ch. 347, § 6 and Ch. 357, § 36, effective July 20, 2011.

Laws 2011, 1st Reg. Sess., Ch. 357, § 58 provides, “The legislature intends by this act: 1. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that a retired member who returns to work for an employer may have on the Arizona state retirement system. Through the establishment of the alternate contribution rate the legislature intends to assure employers that the use of leased, contracted or retired employees and services will have a minimal, if any, actuarial impact on the Arizona state retirement system. 2. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that is caused by distorting the actuarial assumption relating to age related rates of retirement that a retired member who returns to work for an employer may have on the elected officials’ retirement plan, the public safety personnel retirement system and the corrections officer retirement plan.”

Amendment Notes

The 2016 amendment added (M); redesignated former (M) as (N); and made a stylistic change.

The 2017 amendment, in (E)(2), substituted “any of the following occur” for “either” in the introductory language and added (E)(2)(c).

The first 2019 amendment substituted “after the date” for “from the date” in the introductory language of (E); substituted “occurs” for “occur” at the end of the introductory language of (E)(2); in (E)(2)(c), added “Notwithstanding section 38-844”, and added “who is receiving an accidental disability, ordinary disability, catastrophic disability or temporary disability and who.”

The second 2019 amendment substituted “allows to be” for “permits to be” in the first sentence of (B); substituted “twelve months after” for “one year from” in the introductory language of (E) and in (G); added (E)(1)(d) and (E)(1)(e); and made a stylistic change.

The 2021 amendment redesignated former (E)(1)(e) and (E)(2) as (E)(2) and (E)(3); in (E)(2), substituted “The retired member, who retired” for “If a retired member who retired” and deleted “the retired member” following “employment”; substituted “subdivisions (a), (b) and (d)” for “subdivisions (a) and (b)” in the introductory language of (E)(3); and in (E)(3)(c), deleted “Notwithstanding section 38-844” at the beginning and substituted “pension” for “and who.”

The 2022 amendment substituted “amount that is computed” for “amount, computed” in the third sentence of (D); substituted “six months” for “twelve months” in the introductory language of (E), twice in (E)(2), and in the first

sentence of (G); substituted “six-month period” for “twelve-month period” twice in the second sentence of (E)(1)(d); and substituted “except if the retired member is hired for the same position or if the retired member has a prearranged reemployment agreement with the employer” for “for an entry level, nonsupervisory position, except if the retired member is hired for the same position” in (E)(3)(a).

JUDICIAL DECISIONS

Return to Unqualified Employment.

Department of public safety communications technician was entitled to automatic reinstatement in the public safety personnel retirement system pursuant to subsection C when he was reemployed within two years in his former position which no longer qualified for membership in the public safety personnel retirement system. *Norton v. Arizona Dep't of Pub. Safety Local Retirement Bd., 150 Ariz. 303, 723 P.2d 652, 1986 Ariz. LEXIS 234 (Ariz. 1986)*.

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-848.04

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-848.04. Board fiduciary obligations and duties; enforcement; definitions

A. The board and any other fiduciary of the system shall discharge their duties:

1. Solely in the interest of the members and beneficiaries.

2. For the exclusive purpose of providing benefits to members and beneficiaries and paying reasonable expenses in administering the plans and systems administered by the board.

3. With the care, skill and caution under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose.

4. Impartially, taking into account any differing interests of members and beneficiaries.

5. Incurring only costs that are appropriate and reasonable.

6. Pursuant to a good faith interpretation of the law governing the retirement plans and systems administered by the board.

B. In investing and managing assets of the retirement plans and systems administered by the board, a trustee with authority to invest and manage assets:

1. Shall consider at least the following:

(a) The general economic conditions.

(b) The possible effect of inflation or deflation.

(c) The role that each investment or course of action plays within the overall portfolio of the retirement plans and systems administered by the board or appropriate grouping of plans or systems.

(d) The expected total return from income and the appreciation of capital.

(e) The needs for liquidity, regularity of income and preservation or appreciation of capital.

(f) For defined benefit plans, the adequacy of funding for the plan based on reasonable actuarial factors.

2. Shall diversify the investments of the retirement plans and systems administered by the board or appropriate grouping of plans or systems unless the trustee reasonably determines that, because of special circumstances, it is clearly prudent not to do so.

3. Shall make a reasonable effort to verify facts relevant to the investment and management of assets of a retirement plan or system.

4. May invest in any kind of property or type of investment consistent with this article.

5. May consider benefits created by an investment in addition to investment return only if the trustee determines that the investment providing these collateral benefits would be prudent even without the collateral benefits.

C. A trustee with authority to invest and manage assets of a retirement plan or system shall adopt a statement of investment objectives and policies for each retirement plan and system administered by the board or appropriate grouping of plans or systems. The statement must include the desired rate of return on assets overall, the desired rates of return and acceptable levels of risk for each asset class, asset-allocation goals, guidelines for the delegation of authority and information on the types of reports to be used to evaluate investment performance. At least annually, the trustee shall review the statement and change or reaffirm it.

D. In evaluating the performance of a trustee or any other fiduciary of the plan or system:

1. Compliance with this section must be determined in light of the facts and circumstances existing at the time of the trustee's or fiduciary's decision or action and not by hindsight.

2. The trustee's investment and management decisions must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the retirement plans and systems administered by the board or appropriate grouping of plans or systems.

E. An employer, member, beneficiary or fiduciary may maintain an action in which the court may award reasonable attorney fees and costs to either party:

1. To enjoin an act, practice or omission that violates this section.

2. For appropriate equitable relief to redress the violation of or to enforce this section.

F. For the purposes of this section:

1. "Fiduciary" means a person who does any of the following:

(a) Exercises any discretionary authority to manage a retirement plan or system administered by the board.

(b) Exercises any authority to invest or manage assets of a retirement plan or system administered by the board.

(c) Provides investment advice for a fee or other direct or indirect compensation with respect to assets of the system or has any authority or responsibility to do so.

(d) Serves as a trustee or member of the board.

2. "Trustee" means a person who has ultimate authority to manage a retirement system or plan or to invest or manage its assets.

History

2016 2nd Reg. Sess. Ch. 2, § 12, effective August 6, 2016.

Annotations

Notes

Legislative intent.

Laws 2016, 2nd Reg. Sess., Ch. 2, § 21 provides, “A. The legislature recognizes that in order to have a sound public retirement system that benefits this state, taxpayers and members of the retirement system, pursuant to article XXIX, Constitution of Arizona, the public retirement system must be funded with contributions and investment earnings based on actuarial methods and assumptions that are consistent with generally accepted actuarial standards. The legislature finds that the current structure of the public safety personnel retirement system does not achieve this goal and that the current system imperils the retirement security that the members of that system have come to expect. For these reasons, the legislature intends to modify and amend the provisions of the current system for both current and new members to make the system viable and sustainable now and into the future.

B. The legislature further finds:

1. That the current structure of the public safety personnel retirement system does not lead to the goal of attaining one hundred percent funded status and jeopardizes the future payment of benefits to current and future retirees of the retirement program.

2. That the current structure of the public safety personnel retirement system, which requires a fixed employee contribution rate, requires a contribution rate from employees that is insufficient in relation to the cost associated with the benefits required by the plan design and therefore places a greater financial burden on employers. By moving to a shared cost structure, public safety employees will bear increased responsibility for the fiscal health of the fund and, as the fund improves its funded status and approaches fully funded or overfunded status, the employees will realize decreased contribution costs that will be lower than currently required.

3. That the current method of funding benefit increases to retirees of the public safety personnel retirement system is flawed and makes it highly unlikely that this fund will achieve its actuarially assumed earning rates during positive and negative investment environments and creates an undesirable possibility of greater investment risk on the part of the fund's trustees. It is fundamentally unsound to provide a benefit increase during periods when the funded status of the retirement program is less than seventy percent. Changing the manner of funding these benefit increases is intended to improve the funded status of the public safety personnel retirement system and is in the best interests of the members and beneficiaries of this retirement program in that it will preserve future benefits for plan participants.

4. It is necessary to change the future plan and system structures for nonvested members to take into consideration the increased life expectancy of members and future employees and make the reforms necessary to preserve the funded status of the retirement program in future years.

5. To protect the future benefits of retired, active and future employees, it is necessary to make the changes outlined in this act to preserve the funded status of this retirement program and return the program to fiscal solvency.

C. It is the legislature's intent that this act does not impair or amend any agreement between an employee and employer that addresses participation in or contributions to alternative retirement plans or compensation arrangements not administered through the public safety personnel retirement system.”

Severability.

Laws 2016, 2nd Reg. Sess., Ch. 2, § 23 provides, “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.”

Research References & Practice Aids

Hierarchy Notes:
A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-848.03

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-848.03. Appointed investment management

A. The board may appoint investment management. Investment management shall have:

1. The highest professional and fiduciary recommendations.

2. Not less than three years' experience at handling institutional investments of at least two hundred fifty million dollars. This paragraph is satisfied if investment management, the individual retained by investment management or individual employees in a firm of investment managers meet this requirement.

3. Had responsibility for investment decision making as an insurance company investment fund, an investment division of a bank, a mutual fund, an investment organization or institution, a pension fund or an investment adviser who is designated as a chartered financial analyst by the chartered financial analyst institute.

B. A bank serving as investment management does not have a conflict of interest because it is also a depository in which any monies administered by the board are deposited.

C. The board shall appoint investment management for a term of one year and may appoint the investment management to succeeding terms. The board may remove investment management for not complying with this article or for failure to comply with or adhere to the board's investment goals, objectives or policies.

D. Investment management appointed by the board:

1. May purchase and sell in the name of the system and other plans that the board administers any of the securities and investments held by the system or plans.

2. Subject to any restrictions imposed by the board, is responsible for making all investment decisions relating to the investments the board has assigned investment management to manage.

E. Investment management shall not directly or indirectly:

1. Except for the fees agreed to be paid by the board to investment management or as otherwise agreed by the board, have any interest in the investments being managed by investment management for the board.

2. Borrow monies, funds or deposits of the system or other plans that the board administers or use these monies in any manner except as directed under this article.

3. Be an endorser, surety or obligor on investments made under this article.

F. Subject to the limitations in this article, the board may authorize the administrator, chief investment officer and other in-house investment professionals employed by the board to make discretionary investments for

the system and other plans or trusts that the board administers that do not exceed fifty per cent of the assets of the system and other plans or trusts measured at cost.

G. To exercise the responsibilities prescribed in this article, the board may enter into contracts that may be interpreted and enforced under the laws of a jurisdiction other than this state and that are not subject to *section 35-214* or *38-511* or title 41, chapter 23.

History

Laws 2008, Ch. 125, § 3; *Laws 2010, 2nd Reg. Sess., Ch. 118, § 9*; *Laws 2010, 2nd Reg. Sess., Ch. 200, § 44*, effective April 28, 2010.

Annotations

Notes

Editor's Notes

Text of section as amended by *Laws 2010, 2nd Reg. Sess., Chs. 118* and *200*, blended.

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-848.02

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-848.02. Board of trustees; report on employer and employee costs; posting funding ratio

A. On or before December 1 of each year, the board of trustees shall provide to the legislature and the joint legislative budget committee and shall post on its website the shared cost structure of employees and employers, the funding status and the rate of return. The report to the legislature shall include when the trigger to the reduction in the employee rates is being met.

B. The board of trustees shall post on its website for each plan the board administers each employer's funding ratio.

History

Laws 2011, 1st Reg. Sess., Ch. 357, § 63; *2017 1st Reg. Sess. Ch. 163, § 2*, effective August 9, 2017; *2018 2nd Reg. Sess. Ch. 279, § 23*, effective August 3, 2018; *2019 1st Reg. Sess. Ch. 36, § 10*, effective August 27, 2019; *2022 2nd Reg. Sess. Ch. 73, § 13*, effective September 24, 2022.

Annotations

Notes

Editor's Notes

Laws 2011, 1st Reg. Sess., Ch. 357, § 58 provides, "The legislature intends by this act: 1. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that a retired member who returns to work for an employer may have on the Arizona state retirement system. Through the establishment of the alternate contribution rate the legislature intends to assure employers that the use of leased, contracted or retired employees and services will have a minimal, if any, actuarial impact on the Arizona state retirement system. 2. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that is caused by distorting the actuarial assumption relating to age related rates of retirement that a retired member who returns to work for an employer may have on the elected officials' retirement plan, the public safety personnel retirement system and the corrections officer retirement plan."

Pursuant to authority of *section 41-1304.02*, this section, enacted as section 63 of *Laws 2011, 1st Reg. Sess., Ch. 357*, was added to Arizona Revised Statutes as *section 38-848.02* by the reviser.

A version of *§ 38-848.02* amended by *Laws 2021, 1st Reg. Sess., Ch. 405, § 16* was repealed by *Laws 2022, 2nd Reg. Sess., Ch. 73, § 12*, effective September 24, 2022.

Amendment Notes

The 2017 amendment added the (A) designation to the existing language; and added (B).

The 2018 amendment, in the first sentence of (A), substituted “December 1 of each year” for “December 31 of each year” and “committee and shall post on its website” for “committee and post on its website”; and made a stylistic change.

The 2019 amendment substituted “December 31” for “December 1” in (A).

The 2022 amendment substituted “December 1” for “December 31” in (A).

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-850

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-850. Assurances and liabilities; board of trustee discretion; overpayments; underpayments

A. Nothing contained in the system shall be construed as a contract of employment between an employer and any employee, or as a right of any employee to be continued in the employment of an employer, or as a limitation of the rights of an employer to discharge any of its employees, with or without cause.

B. No employee shall have any right to, or interest in, any assets of the fund on termination of his employment or otherwise, except as provided from time to time under the system, and then only to the extent of the benefits payable to such employee out of the assets of the fund. All payments of benefits as provided for in the system shall be made solely out of the assets of the fund, and the employers, the board and any member of the board are not liable for payment of benefits in any manner.

C. Benefits, employee contributions or employer contributions, including interest, earnings and all other credits, payable under this system shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, prior to actually being received by the person entitled to the benefit, contribution, earning or credit, under the terms of the system, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any such right hereunder shall be void. The fund shall not in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements or torts of any person entitled to such rights hereunder. This subsection does not preclude arrangements for the withholding of taxes from benefit payments, arrangements for the recovery of benefit overpayments, arrangements for the transfer of benefit rights to another plan or arrangements for direct deposit of benefit payments in an account in a bank, savings and loan association or credit union if the arrangement is not part of an arrangement constituting an assignment or alienation.

D. The employers, the board of trustees, the board of trustees' administrator, deputy or assistant administrators and employees and any member of a local board do not guarantee the fund in any manner against loss or depreciation, and none of them shall be liable for any act or failure to act, that is made in good faith pursuant to the provisions of the system. The employers are not responsible for any act or failure to act of a local board or any of its members or for any act or failure to act of the board of trustees. A local board and the individual members of a local board are not responsible for any act or failure to act of any employer or the board of trustees.

E. The board, in its discretion, may make payment to a person entitled to any payment under the system who is under a legal disability in any one or more of the following ways:

1. Directly to such person.
2. To his legal guardian or conservator.
3. To his spouse or to any other person charged with his support to be expended for his benefit.

F. If, through misstatement or computation error, benefits are underpaid or overpaid, there is no liability for any more than the correct benefit sums under the system. Overpayments may be deducted from future

payments under the system, and underpayments may be added to future payments under the system. A member or other benefit recipient may elect to repay in a lump sum any overpayment in lieu of receiving reduced benefits under the system.

G. This section does not exempt employee benefits of any kind from a writ of attachment, a writ of execution, a writ of garnishment and orders of assignment issued by a court of record that are the result of a judgment taken for arrearages for child support or for a child support debt or restitution or fines imposed in accordance with *section 38-849*, subsection A.

History

Recent legislative history: *Laws 1989, 1st Reg. Sess., Ch. 267, § 14*; *Laws 2004, Ch. 325, § 5*; *Laws 2006, Ch. 264, § 10*; *Laws 2010, 2nd Reg. Sess., Ch. 200, § 46*; *2018 2nd Reg. Sess. Ch. 42, § 5*, effective August 3, 2018.

Annotations

Notes

Amendment Notes

The 2018 amendment, in (D), inserted “deputy or” following “trustees’ administrator”; and made stylistic changes.

JUDICIAL DECISIONS

Alienation of Benefits.

Creditor Rights.

Divorce.

—Benefits for Former Spouses.

—Characterization of Benefits.

Additional Cases of Historical Interest (1955 — 1984)

Labor & Employment Law: Disability & Unemployment Insurance: Disability Benefits: Benefit Entitlements

Alienation of Benefits.

The anti-alienation provision of subsection C is not applicable to satisfaction of the ownership interest of the non-employee former spouse. *Koelsch v. Koelsch, 148 Ariz. 176, 713 P.2d 1234, 1986 Ariz. LEXIS 173 (Ariz. 1986)*.

Creditor Rights.

The clear language of subsection C precludes the trial court from ordering a retirement system beneficiary to place his benefits in a trust fund for the benefit of a creditor. *Stokes v. Stokes, 143 Ariz. 590, 694 P.2d 1204, 1984 Ariz. App. LEXIS 652 (Ariz. Ct. App. 1984)*.

Divorce.

—Benefits for Former Spouses.

Retirement agencies cannot be forced to pay a non-employee former spouse his or her share before the employee spouse retires; thus, when the employee spouse continues to work, he or she must reimburse the non-employee former spouse. Once the employee spouse retires, however, there is no reason why the retirement agencies should not send checks to both the employee and the non-employee former spouses. *Koelsch v. Koelsch, 148 Ariz. 176, 713 P.2d 1234, 1986 Ariz. LEXIS 173 (Ariz. 1986)*.

The antiassignment provision in subsection (C) does not apply to transfers that occur after a nonemployee spouse becomes an owner under a marriage dissolution decree, and at her death, spouse could transfer the ownership interest she got through the divorce to her parents. *Snyder v. Tucson Police Pub. Safety Personnel Retirement Sys. Bd., 198 Ariz. 239, 8 P.3d 1153, 306 Ariz. Adv. Rep. 17, 1999 Ariz. App. LEXIS 185 (Ariz. Ct. App. 1999)*, reaff'd, *201 Ariz. 137, 32 P.3d 420, 357 Ariz. Adv. Rep. 22, 2001 Ariz. App. LEXIS 144 (Ariz. Ct. App. 2001)*.

Assignment, by decedent and his second wife, of fifty percent of surviving spouse benefits to decedent's first wife was not valid. *Parada v. Parada, 196 Ariz. 428, 999 P.2d 184, 320 Ariz. Adv. Rep. 4, 2000 Ariz. LEXIS 31 (Ariz. 2000)*.

Statute does not bar deceased's parents from collecting retirement benefits owed to her estate from divorce settlement with ex-husband, but the benefits would cease upon the ex-husband's death. *Snyder v. Tucson Police Pub. Safety Pers. Ret. Sys. Bd., 201 Ariz. 137, 32 P.3d 420, 357 Ariz. Adv. Rep. 22, 2001 Ariz. App. LEXIS 144 (Ariz. Ct. App. 2001)*.

—Characterization of Benefits.

The retirement benefits provided under the personnel retirement system are deferred compensation for services previously rendered and are therefore property acquired during the marriage. *Haynes v. Haynes, 148 Ariz. 191, 713 P.2d 1249, 1984 Ariz. App. LEXIS 660 (Ariz. Ct. App. 1984)*, aff'd in part, vacated in part, *148 Ariz. 176, 713 P.2d 1234, 1986 Ariz. LEXIS 173 (Ariz. 1986)*.

Subsection C does not mandate that retirement benefits under the system are separate property. *Haynes v. Haynes, 148 Ariz. 191, 713 P.2d 1249, 1984 Ariz. App. LEXIS 660 (Ariz. Ct. App. 1984)*, aff'd in part, vacated in part, *148 Ariz. 176, 713 P.2d 1234, 1986 Ariz. LEXIS 173 (Ariz. 1986)*.

A judicial determination that the benefits accruing under the personnel retirement system during marriage were community property was not in contravention of this section. *Haynes v. Haynes, 148 Ariz. 191, 713 P.2d 1249, 1984 Ariz. App. LEXIS 660 (Ariz. Ct. App. 1984)*, aff'd in part, vacated in part, *148 Ariz. 176, 713 P.2d 1234, 1986 Ariz. LEXIS 173 (Ariz. 1986)*.

Additional Cases of Historical Interest (1955 — 1984)

Labor & Employment Law: Disability & Unemployment Insurance: Disability Benefits: Benefit Entitlements

Stokes v. Stokes, 143 Ariz. 590, 694 P.2d 1204, 1984 Ariz. App. LEXIS 652 (Ariz. Ct. App. 1984).

Overview: *A wife did not have an ownership interest in a husband's portion of monthly disability pension benefits.*

- *Ariz. Rev. Stat. § 38-850(C)* provides that benefits, employee contributions or employer contributions including interest, earnings and all other credits, payable under this system shall not be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy

of any kind, either voluntary or involuntary, prior to actually being received by the person entitled to the benefit contribution, earning or credit, under the terms of the system, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, charge or otherwise dispose of any such right hereunder shall be void.

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-851

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-851. Participation of new employers

A. This state, any municipality, county or other political subdivision of the state, any Indian tribe or any public or quasi-public organization created wholly or partly by, or deriving its powers from, the legislature, may request to become a participating employer in the system on behalf of a designated eligible employee group. Such a request shall be made by the state departmental director or after a proper resolution has been adopted by the governing body of the political subdivision, Indian tribe or public organization, and after such resolution has been approved by any other party or officer required by law to approve the resolution. A certified copy of such resolution shall be filed with the board. This state or the political subdivision, Indian tribe or public organization shall be considered as a participating employer on proper execution of a joinder agreement in which the employer unconditionally accepts the provisions of the system and binds the employer's designated eligible employees to those provisions. All members of an eligible group shall be designated for membership, unless written consent to the contrary is obtained from the board. A member shall be qualified for participation in order to obtain written consent to the contrary from the board.

B. The effective date of participation in the system by this state or a political subdivision, Indian tribe or public organization shall be the July 1 next succeeding the approval of its participation, unless the board consents to another date, as shall be specifically stipulated in the joinder agreement.

C. The new employer shall designate the departments, groups or other classifications of public safety employees that are eligible to participate in the system and shall agree to make contributions each year that are sufficient to meet both the normal cost on a level cost method attributable to inclusion of its employees and the prescribed interest on the past service cost for its employees.

D. This state or any political subdivision, Indian tribe or public organization that is contemplating participation in the system shall request a preliminary actuarial survey to determine the estimated cost of participation, the benefits to be derived and such other information as may be deemed appropriate. The cost of such a survey shall be paid by this state or the political subdivision, Indian tribe or public organization requesting it.

E. As a condition to participation in the system an Indian tribe employer, by resolution of the governing body, shall:

1. Agree that all disputes involving interpretation of state statutes involving the system, and any amendments to such statutes, will be resolved through the court system of this state.

2. Agree to be bound by state statutes and laws that regulate and interpret the provisions of the system, including eligibility to membership in the system, service credits and the rights of any claimant to benefits and the amount of such benefits.

3. Agree to meet any requirement that the board may prescribe to ensure timely payment of member and employer contributions and any other amounts due from the employer to the system.

4. Include in the joinder agreement any other provision deemed necessary by the board for the administration or enforcement of the agreement.

F. Assets under any existing public employee defined benefit retirement program, except a military retirement program, necessary to equal the actuarial present value of projected benefits to the extent funded on a market value basis as of the most recent actuarial valuation attributable to the employer's designated employee group, calculated using the actuarial methods and assumptions adopted by the existing public employee retirement program, shall be transferred from such program to this fund no later than sixty days after the employer's effective date. That portion of the transferred assets that is attributable to employee contributions, including interest credits thereon, shall be properly allocated to each affected employee of the employer and credited to the employee's initial accumulated contributions, in accordance with a schedule furnished by the employer to the board.

History

Laws 1992, 2nd Reg. Sess., Ch. 341, § 4; *Laws 1997, 1st Reg. Sess., Ch. 239, § 17*; *Laws 2001, Ch. 280, § 6*; *Laws 2001, Ch. 380, § 11*; *Laws 2006, Ch. 264, § 11*; *Laws 2010, 2nd Reg. Sess., Ch. 200, § 47*, effective April 28, 2010.

Annotations

JUDICIAL DECISIONS

Transfers. Unfunded

Liability.

Transfers.

Because pension benefits the plaintiff earned while employed by the sheriff's department were not "attributable" to his employment as a game warden, the local board was not obligated to transfer the plaintiff's benefits from the Arizona state retirement system to the public safety personnel retirement system (PSPRS) when the game and fish department permitted wardens to participate in the PSPRS. *Alexander v. Fund Manager, Pub. Safety Personnel Retirement Sys., 166 Ariz. 589, 804 P.2d 122, 77 Ariz. Adv. Rep. 22, 1990 Ariz. App. LEXIS 421 (Ariz. Ct. App. 1990)*.

Unfunded Liability.

The difference between the amount of money necessary to fund a public safety personnel retirement system (PSPRS) member's prospective benefits and the amount transferred from the Arizona state retirement system attributable to that employee's prior service is known as the "unfunded liability" and pursuant to *§ 38-843*, subsection B, that unfunded liability is normally paid by the employer for the prior credited service of employees which the employer designates as eligible for participation in the PSPRS. *Alexander v. Fund Manager, Pub. Safety Personnel Retirement Sys., 166 Ariz. 589, 804 P.2d 122, 77 Ariz. Adv. Rep. 22, 1990 Ariz. App. LEXIS 421 (Ariz. Ct. App. 1990)*.

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

38-851. Participation of new employers

End of Document

A.R.S. § 38-852

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-852. Taxation of benefits; exemption of contributions and securities

The employer contributions and the securities in the several funds provided for in this article shall be exempt from state, county and municipal taxes. Employee and employer contributions that are withdrawn from the system after December 31, 1974 by a public officer or employee from the accounts of the system and not received as benefits therefrom and benefits, annuities and pensions received by a public officer or employee from the system after December 31, 1988 shall be subject to tax pursuant to title 43.

History

Laws 1989, 1st Reg. Sess., Ch. 312, § 9; *Laws 1991, 1st Reg. Sess., Ch. 155, § 2*.

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-852.01

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-852.01. Benefits not to be reduced by social security payments

From and after the effective date of this section, all benefits now or hereafter received pursuant to this article or prior retirement systems shall not be reduced because of any payment received as benefits under the federal old age and survivors insurance system.

History

Last legislative year: 1973.

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-853

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-853. Transfer of credited service

A member who terminates employment with an employer and accepts a position with the same or another employer participating in the system, after completing an application that is acceptable to the board, shall have the member's credited service transferred to the member's record with the new employer provided the member leaves the member's accumulated contributions on deposit with the fund. The termination of employment shall not constitute a break in service. However, the period not employed shall not be considered as service.

History

Laws 1997, 1st Reg. Sess., Ch. 239, § 18; *Laws 2006, Ch. 264, § 12*; *Laws 2010, 2nd Reg. Sess., Ch. 200, § 48*; *Laws 2012, 2nd Reg. Sess., Ch. 136, § 9*; *2017 1st Reg. Sess. Ch. 269, § 14*, effective May 3, 2017.

Annotations

Notes

Amendment Notes

The 2017 amendment deleted (B), and made a related change.

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-853.01

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-853.01. Redemption of prior service; calculation

A. Except as provided in subsection B of this section, an active member of the system who has at least five years of service with the system may elect to redeem up to sixty months of any part of the following prior service or employment by paying into the system any amounts required under subsection C of this section if the prior service or employment is not on account with any other retirement system:

1. Prior service in this state as an employee with an employer now covered by the system or prior service with an agency of the United States government, a state of the United States or a political subdivision of this state or of a state of the United States as a full-time paid firefighter, full-time paid certified peace officer or full-time paid corrections officer engaged in law enforcement duties.

2. Subject to any limitations prescribed by federal law, prior employment as an employee of a corporation that contracted with an employer now covered by the system to provide firefighting services on behalf of that employer as a full-time paid firefighter or that provided firefighting services for a political subdivision of this state.

B. An active member who became a member of the system before January 1, 2012 may redeem any amount of eligible prior service as specified in subsection A of this section without having to have accrued any minimum amount of credited service.

C. An active member who elects to redeem any part of the prior service or employment for which the employee is deemed eligible by the board under this section shall pay into the system the amounts previously withdrawn by the member, if any, as a refund of the member's accumulated contributions plus accumulated interest as determined by the board and the additional amount, if any, computed by the system's actuary that is necessary to equal the increase in the actuarial present value of projected benefits resulting from the redemption calculated using the actuarial methods and assumptions prescribed by the system's actuary.

D. A member electing to redeem service pursuant to this section may pay for service being redeemed in the form of a lump sum payment to the system, a trustee-to-trustee transfer or a direct rollover of an eligible distribution from a plan described in section 402(c)(8)(B)(iii), (iv), (v) or (vi) of the internal revenue code or a rollover of an eligible distribution from an individual retirement account or annuity described in section 408(a) or (b) of the internal revenue code.

History

Laws 2002, Ch. 13, § 1; *Laws 2002, Ch. 271, § 1*; *Laws 2008, Ch. 227, § 2*; *Laws 2009, Ch. 35, § 17*; *Laws 2010, 2nd Reg. Sess., Ch. 118, § 11*; *Laws 2010, 2nd Reg. Sess., Ch. 200, § 49*; *Laws 2011, 1st Reg. Sess., Ch. 357, § 37*; *Laws 2012, 2nd Reg. Sess., Ch. 136, § 10*; *Laws 2012, 2nd Reg. Sess., Ch. 348, § 5*; *Laws 2014, 2nd Reg.*

Sess., Ch. 190, § 9; 2016 2nd Reg. Sess. Ch. 90, § 4, effective August 6, 2016; 2019 1st Reg. Sess. Ch. 38, § 9, effective April 1, 2019.

Annotations

Notes

Editor's Notes

Laws 2011, 1st Reg. Sess., Ch. 357, § 58 provides, “The legislature intends by this act: 1. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that a retired member who returns to work for an employer may have on the Arizona state retirement system. Through the establishment of the alternate contribution rate the legislature intends to assure employers that the use of leased, contracted or retired employees and services will have a minimal, if any, actuarial impact on the Arizona state retirement system. 2. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that is caused by distorting the actuarial assumption relating to age related rates of retirement that a retired member who returns to work for an employer may have on the elected officials’ retirement plan, the public safety personnel retirement system and the corrections officer retirement plan.”

Laws 2008, Ch. 227, § 3 provides: “If an employer in the public safety personnel retirement system elects to include its fire fighters who have prior service working as a fire fighter for a corporation that contracted with an employer to provide fire fighting services as part of its eligible group, the employer shall amend the joinder agreement with the fund manager of the public safety personnel retirement system or execute a joinder agreement if the employer entered the system on July 1, 1968.”

Amendment Notes

The 2016 amendment, in (B), deleted the second sentence, which read: “The discount rate used by the actuary for the redemption calculation pursuant to this subsection is an amount equal to the lesser of the assumed rate of return that is prescribed by the board or an amount equal to the yield on a ten-year treasury note as of March 1 that is published by the federal reserve board plus two per cent. The discount rate is effective beginning in the next fiscal year, and the board shall recalculate the rate each year.”

The 2019 amendment, in (A), substituted “Except as provided in subsection B of this section, an” for “Each present” and “subsection C” for “subsection B”; added (B); redesignated former (B) and (C) as (C) and (D); and substituted “An active member” for “Any present active member” in (C).

Applicability

Laws 2019, 1st Reg. Sess., Ch. 38, § 16(A) provides, “ Section 38-853.01, Arizona Revised Statutes, as amended by this act, apply retroactively to from and after July 19, 2011.”

JUDICIAL DECISIONS

Construction.

Unfunded Liability.

Construction.

Sections 38-921 and *38-922* should be interpreted in pari materia with this section; the legislature's enactment does not intend to change the law but merely to explain or expand this section. *Alexander v. Fund Manager, Pub. Safety Personnel Retirement Sys., 166 Ariz. 589, 804 P.2d 122, 77 Ariz. Adv. Rep. 22, 1990 Ariz. App. LEXIS 421 (Ariz. Ct. App. 1990)*.

Unfunded Liability.

An employee cannot avoid his obligation to pay an unfunded liability simply by electing not to withdraw his Arizona state retirement system benefits. *Alexander v. Fund Manager, Pub. Safety Personnel Retirement Sys., 166 Ariz. 589, 804 P.2d 122, 77 Ariz. Adv. Rep. 22, 1990 Ariz. App. LEXIS 421 (Ariz. Ct. App. 1990)*.

The difference between the amount of money necessary to fund a public safety personnel retirement system (PSPRS) member's prospective benefits and the amount transferred from the Arizona state retirement system attributable to that employee's prior service is known as the "unfunded liability," and pursuant to *§ 38-843*, subsection B, that unfunded liability is normally paid by the employer for the prior credited service of employees which the employer designates as eligible for participation in the PSPRS. *Alexander v. Fund Manager, Pub. Safety Personnel Retirement Sys., 166 Ariz. 589, 804 P.2d 122, 77 Ariz. Adv. Rep. 22, 1990 Ariz. App. LEXIS 421 (Ariz. Ct. App. 1990)*.

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-853.02

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-853.02. Purchase of service; payment

A member who purchases service pursuant to this article or *section 38-922* or *38-924* shall make payments directly to the system in whole or in part by any one or a combination of the following methods:

1. In lump sum payments.

2. Through an arrangement with the system that the payments be made in installment payments over a period of time.

3. Subject to the limitations prescribed in sections 401(a)(31) and 402(c) of the internal revenue code, accepting a direct transfer of any eligible rollover distribution or a contribution by a member of an eligible rollover distribution from one or more:

(a) Retirement programs that are qualified under section 401(a) or 403(a) of the internal revenue code.

(b) Annuity contracts described in section 403(b) of the internal revenue code.

(c) Eligible deferred compensation plans described in section 457(b) of the internal revenue code that are maintained by a state, a political subdivision of a state or any agency or instrumentality of a state or a political subdivision of a state.

4. Subject to the limitations prescribed in section 408(d)(3)(A)(ii) of the internal revenue code, accepting from a member a rollover contribution of that portion of a distribution from an individual retirement account or individual retirement annuity described in section 408(a) or 408(b) of the internal revenue code that is eligible to be rolled over and would otherwise be includable as gross income.

History

Recent legislative history: *Laws 2012, 2nd Reg. Sess., Ch. 348, § 6*; *Laws 2013, 1st Reg. Sess., Ch. 203, § 10*.

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

38-853.02. Purchase of service; payment

End of Document

A.R.S. § 38-854

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-854. Guarantees from prior systems

A. An employee covered under the prior systems set forth in *sections 9-912 to 9-934*, inclusive, and in *sections 9-951 to 9-971*, inclusive, or prior statutes amended thereby and antecedent thereto, and covered under such prior systems on June 30, 1968, and who becomes a member of this system shall nevertheless retain the right to elect, prior to retirement, benefits under this system or to elect benefits under the employee's prior system for which the employee's service and age make the employee eligible, provided that an employee shall elect in writing at the time benefits are claimed the system under which the employee elects to have the employee's eligibility for benefits and the amount thereof determined. Such election shall be irrevocable on retirement and shall be filed with the employee's local board.

B. An employee of the state highway patrol who was a member of the state highway patrol retirement system on June 30, 1968 and who became a member on July 1, 1968 and who qualifies for a pension under the system, shall have the employee's pension determined in an actuarial equivalent form of payment such that the system's benefits shall not be less than the amount payable during this period under the preexisting system. Any such employee shall nevertheless retain rights to elect to receive any benefit for which the employee's service and age make the employee eligible, including but not limited to the following:

1. The employee shall be entitled to a pension if the employee's employment terminates after attainment of age sixty and completion of at least twenty years of service in an amount equal to fifty per cent of the employee's average monthly compensation.

2. The employee shall be entitled to a separation benefit in the form of a deferred vested pension if the employee's employment terminates after completion of at least twenty years of service, provided that the employee leaves the employee's accumulated contributions on deposit with the fund.

History

Laws 1995, 1st Reg. Sess., Ch. 32, § 16.

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

38-854. Guarantees from prior systems

End of Document

A.R.S. § 38-855

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-855. Transfer outside the public safety personnel retirement system

A member who changes employment or transfers or is assigned to a position in which such member is no longer eligible to be a member of this system, because of a change in duties or otherwise, with the same or another public employer of this state maintaining a retirement program for public officers or employees authorized by law may have all credited service transferred to the retirement system or program applicable to the new position. If the member does not transfer credited service as provided in this section within two years after the change in employment or transfer, the member shall request a refund of member contributions or shall have the credited service transferred pursuant to this section. Any transfer of credited service pursuant to this section to a state retirement system or plan shall be made pursuant to article 7 of this chapter and must be approved by the board.

History

Laws 1989, 1st Reg. Sess., Ch. 310, § 9; *Laws 1997, 1st Reg. Sess., Ch. 239, § 19*; *Laws 2010, 2nd Reg. Sess., Ch. 200, § 50*, effective April 28, 2010.

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-856

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-856. Benefit increases [Repealed]

History

Recent legislative history: *Laws 1998, Ch. 264, § 2*; *Laws 1999, Ch. 50, § 6*; repealed by *Laws 2016, 2nd Reg. Sess., Ch. 2, § 13*, effective August 6, 2016.

End of Document

A.R.S. § 38-856.01

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-856.01. Lump sum payment of benefit increases [Repealed]

History

Recent legislative history: *Laws 2009, Ch. 35, § 18*; *Laws 2010, 2nd Reg. Sess., Ch. 200, § 51*; *2015 1st Reg. Sess. Ch. 64, § 5*; repealed by *Laws 2016, 2nd Reg. Sess., Ch. 2, § 13*, effective August 6, 2016.

End of Document

A.R.S. § 38-856.02

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-856.02. Future benefit increases for retirees and survivors; applicability [Repealed]

History

Recent legislative history: *Laws 2011, 1st Reg. Sess., Ch. 357, § 38*; repealed by *Laws 2016, 2nd Reg. Sess., Ch. 2, § 13*, effective August 6, 2016.

End of Document

A.R.S. § 38-856.03

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-856.03. Ad hoc increase in retirement benefits; analysis by the joint legislative budget committee [Repealed]

History

Recent legislative history: *Laws 2011, 1st Reg. Sess., Ch. 357, § 38*; repealed by *Laws 2016, 2nd Reg. Sess., Ch. 2, § 13*, effective August 6, 2016.

A.R.S. § 38-856.04

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-856.04. Transfers to the excess investment earning account prohibited; retroactivity [Repealed]

History

Recent legislative history: *Laws 2011, 1st Reg. Sess., Ch. 357, § 62*; repealed by *Laws 2016, 2nd Reg. Sess., Ch. 2, § 13*, effective August 6, 2016.

End of Document

A.R.S. § 38-856.05

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-856.05. Cost-of-living adjustment; members hired on or before June 30, 2017

A. For members hired on or before June 30, 2017, each retired member or survivor of a retired member is eligible to receive a compounding cost-of-living adjustment in the base benefit as provided in this section. The first payment under this section shall be made immediately following the first year the cost-of-living adjustment specified in subsection C of this section is paid. The cost-of-living adjustment shall be made on July 1 each year thereafter.

B. A retired member or a survivor of a retired member shall receive annually a cost-of-living adjustment in the base benefit based on the average annual percentage change in the metropolitan Phoenix-Mesa consumer price index published by the United States department of labor, bureau of labor statistics, with the immediately preceding year as the base year for making the determination, not to exceed annually two percent of the retired member's or survivor's base benefit.

C. In the first year of a member's retirement, the cost-of-living adjustment specified in subsection B of this section shall be prorated based on the date of retirement.

D. The system actuary shall include the projected cost of providing the cost-of-living adjustment specified in subsection B of this section in the calculation of normal cost and accrued liability.

History

Recent legislative history: *Laws 2016, 2nd Reg. Sess., Ch. 2, § 14*.

A.R.S. § 38-856.06

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-856.06. Cost-of-living adjustment; members hired on or after July 1, 2017; definition

A. For members who are hired on or after July 1, 2017, each eligible retired member or survivor of a retired member may receive a compounding cost-of-living adjustment in the base benefit as provided in this section.

B. A retired member or survivor of a retired member is eligible to receive a cost-of-living adjustment under this section beginning the earlier of the first calendar year after the seventh anniversary of the retired member's retirement or when the retired member is or would have been sixty years of age.

C. A cost-of-living adjustment shall be paid on July 1 each year that the funded ratio for members who are hired on or after July 1, 2017 is seventy percent or more, as reported in the most recent actuarial valuation.

D. An eligible retired member or survivor of a retired member shall receive annually a cost-of-living adjustment in the base benefit based on the average annual percentage change in the metropolitan Phoenix-Mesa consumer price index published by the United States department of labor, bureau of labor statistics, with the immediately preceding year as the base year for making the determination, not to exceed annually the following:

1. Two percent of the retired member's or survivor's base benefit if the funded ratio for members who are hired on or after July 1, 2017 is ninety percent or more, as reported in the most recent actuarial valuation.

2. One and one-half percent of the retired member's or survivor's base benefit if the funded ratio for members who are hired on or after July 1, 2017 is eighty percent or more but less than ninety percent, as reported in the most recent actuarial valuation.

3. One percent of the retired member's or survivor's base benefit if the funded ratio for members who are hired on or after July 1, 2017 is seventy percent or more but less than eighty percent, as reported in the most recent actuarial valuation.

E. The system actuary shall include the projected cost of providing the cost-of-living adjustment specified in subsection D of this section in the calculation of normal cost and accrued liability.

F. For the purposes of this section, "funded ratio" means the ratio of the market value of assets to the actual accrued liabilities.

History

2016 2nd Reg. Sess. Ch. 2, § 14, effective August 6, 2016.

38-856.06. Cost-of-living adjustment; members hired on or after July 1, 2017; definition

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-857

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-857. Group health and accident coverage for retired members; payment; forfeiture of interest

A. On notification, the board shall pay from the assets of the separate account established pursuant to subsection G of this section part of the single coverage premium of any group health and accident insurance for each retired member or survivor of the system who receives a pension and who has elected to participate in the coverage provided by *section 38-651.01* or *38-782* or any other retiree health and accident insurance coverage provided or administered by a participating employer of the system or a tax- exempt welfare benefit trust described in section 501(c)(9) of the internal revenue code that provides for the payment of sickness, accident, hospitalization and medical expenses and is designed for the benefit of public safety personnel in this state. The board shall pay up to:

1. One hundred fifty dollars per month for each retired member or survivor of the system who is not eligible for medicare.

2. One hundred dollars per month for each retired member or survivor of the system who is eligible for medicare.

B. On notification, the board shall pay from assets of the separate account established pursuant to subsection G of this section part of the family coverage premium of any group health and accident insurance each month for a benefit recipient who elects family coverage and otherwise qualifies for payment pursuant to subsection A of this section. The board shall pay up to:

1. Two hundred sixty dollars per month if the retired member or survivor of the system and one or more dependents are not eligible for medicare.

2. One hundred seventy dollars per month if the retired member or survivor of the system and one or more dependents are eligible for medicare.

3. Two hundred fifteen dollars per month if either:

(a) The retired member or survivor of the system is not eligible for medicare and one or more dependents are eligible for medicare.

(b) The retired member or survivor of the system is eligible for medicare and one or more dependents are not eligible for medicare.

C. The board shall not pay from assets of the fund more than the amount prescribed in this section for a benefit recipient as a member or survivor of the system.

D. A retired member or survivor of the system may elect to purchase individual health care coverage and receive a payment pursuant to this section through the retired member's former employer if that former employer assumes the administrative functions associated with the payment, including verification that the

payment is used to pay for health insurance coverage if the payment is made to the retired member or survivor of the system.

E. This section does not apply to a retired member of the system who becomes a member on or after September 13, 2013 and who is reemployed and participates in health care coverage provided by the member's new employer.

F. This section does not apply to a survivor of the system whose deceased spouse becomes a member on or after September 13, 2013 and who is reemployed and participates in health care coverage provided by the survivor's new employer.

G. The board shall establish a separate account that consists of the benefits provided in this section. The board shall deposit the benefits provided by this section in the account. The board shall not use or divert any part of the corpus or income of the account for any purpose other than the provision of benefits pursuant to this section unless the liabilities to provide the benefits pursuant to this section are satisfied. If the liabilities to provide the benefits described in this section are satisfied, the board shall return any amount remaining in the account to the employer.

H. Payment of the benefits provided by this section is subject to the following conditions:

1. The payment of the benefits is subordinate to the payment of retirement benefits payable by the system.

2. The total of the contributions for the benefits and actual contributions for life insurance protection, if any, shall not exceed twenty-five percent of the total actual employer and employee contributions to the system, minus the contributions to fund past service credits, after the day the account is established.

3. The contributions by the employer to the account shall be reasonable and ascertainable.

I. If a member who is eligible for benefits under this section forfeits the member's interest in the account before the termination of the plan, an amount equal to the amount of the forfeiture shall be applied as soon as possible to reduce employer contributions to fund the benefits provided by this section.

History

Laws 1989, 1st Reg. Sess., Ch. 310, § 11; *Laws 1990, 2nd Reg. Sess., Ch. 235, § 5*; *Laws 1992, 2nd Reg. Sess., Ch. 228, § 3*; *Laws 1994, 2nd Reg. Sess., Ch. 207, § 5*; *Laws 1995, 1st Reg. Sess., Ch. 32, § 17*; *Laws 1997, 1st Reg. Sess., Ch. 239, § 20*; *Laws 2001, Ch. 376, § 3*; *Laws 2001, Ch. 383, § 3*; *Laws 2003, Ch. 247, § 3*; *Laws 2005, Ch. 297, § 3*; *Laws 2007, Ch. 253, § 3*; *Laws 2010, 2nd Reg. Sess., Ch. 200, § 52*; *Laws 2011, 1st Reg. Sess., Ch. 347, § 7*; *Laws 2013, 1st Reg. Sess., Ch. 203, § 11*; *2015 1st Reg. Sess. Ch. 64, § 6*, effective September 29, 1988; *2017 1st Reg. Sess. Ch. 269, § 15*, effective May 3, 2017.

Annotations

Notes

Editor's Notes

A version of this section, which was amended by *Laws 2007, Ch. 253, § 4*, effective July 1, 2008, was repealed by *Laws 2008, Ch. 233, § 1*.

Amendment Notes

The 2015 amendment substituted "September 13, 2013" for "the effective date of this amendment to this section" in (E) and (F); added (I); and made stylistic changes.

The 2017 amendment added “or a tax-exempt welfare benefit trust described in section 501(c)(9) of the internal revenue code that provides for the payment of sickness, accident, hospitalization and medical expenses and is designed for the benefit of the public safety personnel in this state” at the end of the first sentence of the introductory language of (A).

Retroactive applicability.

Amendment by *Laws 2015, 1st Reg. Sess., Ch. 64*, applies retroactively to from and after September 29, 1988.

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-858

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-858. Credit for military service

A. Except as provided in subsection B of this section, a member of the system who has at least five years of service with the system may receive credited service for periods of active military service performed before employment with the member's current employer if:

1. The member was honorably separated from the military service.
2. The period of military service for which the member receives credited service does not exceed sixty months.
3. The period of military service for which the member receives credited service is not on account with any other retirement system, except as provided by *10 United States Code section 12736* or except if the member is not yet eligible for a military retirement benefit.
4. The member pays the cost to purchase the prior active military service. The cost is the amount necessary to equal the increase in the actuarial present value of projected benefits resulting from the additional credited service.
5. The amount of benefits purchased pursuant to this subsection is subject to limits established by section 415 of the internal revenue code.

B. A member who became a member of the system before January 1, 2012 may receive credited service for eligible prior active military service as specified in subsection A of this section without having to have accrued any minimum amount of credited service in the system.

C. An active member of the system who volunteers or is ordered to perform military service may receive credited service for not more than sixty months of military service as provided by the uniformed services employment and reemployment rights act of 1994 (38 United States Code part III, chapter 43). The member's employer shall make employer contributions and the member shall make the member contributions pursuant to subsection D of this section if the member meets the following requirements:

1. Was an active member of the system on the day before the member began military service.
2. Entered into and served in the armed forces of the United States or any military reserve unit of any branch of the armed forces of the United States or is a member of the national guard.
3. Complies with the notice and return to work provisions of *38 United States Code section 4312*.

D. Contributions made pursuant to subsection C of this section shall be for the period of time beginning on the date the member began military service and ending on the later of one of the following dates:

1. The date the member is separated from military service.
2. The date the member is released from service-related hospitalization or two years after initiation of service-related hospitalization, whichever date is earlier.

3. The date the member dies as a result of or during military service.

E. Notwithstanding any other law, on payment of the contributions made pursuant to subsection C of this section, the member shall be credited with service for retirement purposes for the period of military service of not more than sixty months. The member shall submit a copy of the military discharge certificate (DD- 256A) and a copy of the military service record (DD-214) or its equivalent with the member's application when applying for credited service corresponding to the period of military service.

F. The employer and the member shall make contributions pursuant to subsection C of this section as follows:

1. Contributions shall be based on the compensation that the member would have received but for the period that the member was ordered into active military service.

2. If the employer cannot reasonably determine the member's rate of compensation for the period that the member was ordered into military service, contributions shall be based on the member's average rate of compensation during the twelve-month period immediately preceding the period of military service.

3. If a member has been employed less than twelve months before being ordered into military service, contributions shall be based on the member's compensation being earned immediately preceding the period of military service.

4. The member has up to three times the length of military service, not to exceed sixty months, to make the member contributions. Once the member has made the member contributions or on receipt of the member's death certificate, the employer shall make the employer contributions in a lump sum. Death benefits shall be calculated as prescribed by law.

5. If the member's employer pays military differential wage pay to members serving in the military, contributions shall be paid to the system pursuant to *section 38-843* for any military differential wage pay paid to the member while performing military service.

G. In computing the length of total credited service of a member for the purpose of determining retirement benefits or eligibility, the period of military service, as prescribed by this section, shall be included.

H. If a member performs military service due to a presidential call-up, not to exceed forty-eight months, the employer shall make the employer and member contributions computed pursuant to subsection F of this section on the member's return and in compliance with subsection C of this section.

I. In addition to, but not in duplication of, the provisions of subsection C of this section, beginning December 12, 1994 contributions, benefits and credited service provided pursuant to this section shall be provided pursuant to section 414(u) of the internal revenue code, and this section shall be interpreted in a manner consistent with that internal revenue code section.

J. For plan years beginning after December 31, 2008, a member who does not currently perform services for an employer by reason of qualified military service as defined in section 414(u)(5) of the internal revenue code is not considered having a severance from employment during that qualified military service. Any payments by the employer to the member during the qualified military service shall be considered compensation to the extent those payments do not exceed the amounts the member would have received if the member had continued to perform services for the employer rather than entering qualified military service.

K. For deaths occurring from and after December 31, 2006, in the case of a member who dies while performing qualified military service as defined in section 414(u)(5) of the internal revenue code, the survivors of the member are entitled to any benefits, other than benefit accruals relating to the period of qualified military service, provided under the system as though the member resumed and then terminated employment on account of death.

History

Laws 1990, 2nd Reg. Sess., Ch. 325, § 4; Laws 2009, Ch. 35, § 20; Laws 2011, 1st Reg. Sess., Ch. 357, § 39; 2015 1st Reg. Sess. Ch. 64, § 7; 2016 2nd Reg. Sess. Ch. 90, § 5, effective August 6, 2016; 2019 1st Reg. Sess. Ch. 36, § 12, effective August 27, 2019; 2019 1st Reg. Sess. Ch. 38, § 10, effective April 1, 2019.

Annotations

Notes

Editor's Notes

Laws 2011, 1st Reg. Sess. Ch. 357, § 58 provides, “The legislature intends by this act: 1. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that a retired member who returns to work for an employer may have on the Arizona state retirement system. Through the establishment of the alternate contribution rate the legislature intends to assure employers that the use of leased, contracted or retired employees and services will have a minimal, if any, actuarial impact on the Arizona state retirement system. 2. To establish an alternate contribution rate in order to mitigate the potential actuarial impact that is caused by distorting the actuarial assumption relating to age related rates of retirement that a retired member who returns to work for an employer may have on the elected officials’ retirement plan, the public safety personnel retirement system and the corrections officer retirement plan.”

A former version of this section, entitled “Credit for military service; national guard or reserve members; payment of contributions during active military service,” was repealed by Laws 2009, Ch. 35, § 19, effective September 30, 2009.

Text of section as amended by Laws 2019, 1st Reg. Sess., Chs. 36 and 38 blended.

Amendment Notes

The 2015 amendment added (I) and (J).

The 2016 amendment substituted “five years” for “ten years” in the introductory language of (A) and added “of 1994” in the first sentence of the introductory language of (B).

The first 2019 amendment added “or any military reserve unit of any branch of the armed forces of the United States” in (B)(2) (now (C)(2)) and made stylistic changes.

The second 2019 amendment added “Except as provided in subsection B of this section” in the introductory paragraph of (A); added (B); redesignated former (B) through (J) as (C) through (K); substituted “subsection D” for “subsection C” in the introductory paragraph of (C); substituted “subsection C” for “subsection B” in the introductory paragraph of (D); substituted “subsection C” for “subsection B” in (E) and in the introductory language of (F); in (H), substituted “subsection F” for “subsection E” and “subsection C” for “subsection B”; substituted “subsection C” for “subsection B” in (I); and made stylistic changes.

Applicability

Laws 2019, 1st Reg. Sess., Ch. 38, § 16(A) provides, “ Section 38-858, Arizona Revised Statutes, as amended by this act, apply retroactively to from and after July 19, 2011.”

Research References & Practice Aids

38-858. Credit for military service

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-859

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-859. Medical boards; purposes; composition; medical examinations

A. The purposes of a medical board are to:

1. Identify a physical or mental condition or injury that existed or occurred prior to the member's date of membership in the system and for which benefits may otherwise be limited by *section 38-844*, subsection D.

2. Evaluate a member's eligibility for an accidental disability pension.

3. Evaluate a member's eligibility for an ordinary disability pension.

4. Evaluate a member's eligibility for a temporary disability pension.

5. Evaluate a member's eligibility for a catastrophic disability pension.

6. For the purposes of *section 38-846*, determine through appropriate medical evidence the proximate cause of death for members who are killed in the line of duty if the death occurs more than one year after the date of injury.

B. For the purpose of determining a disability, the medical board shall be composed of a designated physician or physicians working in a clinic other than the employer's regular employee or contractee. Employees employed after October 1, 1992 shall undergo a medical examination for the purpose of identifying a physical or mental condition or injury that existed or occurred prior to a member's date of membership in the system and for which benefits may otherwise be limited by *section 38-844*, subsection D, and for this purpose, the medical board shall be composed of a designated physician or physicians working in a clinic that may be the employer's regular employee or contractee.

C. A finding of accidental, ordinary, temporary or catastrophic disability shall be based on medical evidence by a designated physician or a physician working in a clinic that is appointed by the local board pursuant to *section 38-847*, subsection D, paragraph 9 that established the disability. The local board shall resolve material conflicts in medical evidence. If required, the local board may employ other physicians or clinics to report on special cases. With the approval of the local board, a designated physician or physicians working in a clinic that is employed by the local board may employ occupational specialists to assist the designated physician or physicians working in a clinic in rendering an opinion.

D. All employees shall undergo medical examinations before a designated physician or a physician working in a clinic that is appointed by the local board pursuant to and for the reasons prescribed in this article. An employee who fails to comply with this subsection waives all rights to disability benefits under this article.

E. The examining physician or clinic shall report the results of examinations to the local board, and the secretary of the local board shall preserve the report as a permanent record. Medical examinations

conducted pursuant to this article shall be conducted by a physician and shall not be conducted or utilized for the purposes of hiring, advancement, discharge, job training or other terms, conditions and privileges of

employment unrelated to the receipt of or qualification for pension benefits or service credits under the system.

F. This section does not affect or impair the right of an employer to prescribe medical or physical standards for employees or prospective employees.

History

Recent legislative history: *Laws 1992, 2nd Reg. Sess., Ch. 340, § 2*; *Laws 2004, Ch. 325, § 7*; *Laws 2012, 2nd Reg. Sess., Ch. 136, § 11*; *Laws 2013, 1st Reg. Sess., Ch. 203, § 12*.

Annotations

JUDICIAL DECISIONS

Eligibility for Medical Board.

Independent Report.

Eligibility for Medical Board.

Because firefighter did not meet the threshold statutory eligibility requirement under *A.R.S. § 38-844(B), the* City of Phoenix Fire Pension Board was not required to appoint a medical board under the provisions of this section, or otherwise process his application for disability benefits before denying it. *Hosea v. City of Phoenix Fire Pension Bd., 224 Ariz. 245, 229 P.3d 257, 581 Ariz. Adv. Rep. 36, 2010 Ariz. App. LEXIS 61 (Ariz. Ct. App. 2010)*.

Independent Report.

Unchallenged independent medical report accepted by the Guadalupe Public Safety Retirement Local Board established that the employee was physically unable to continue to perform his job; because the employee met the statutory requirements, he qualified for a pension. *Parkinson v. Guadalupe Pub. Safety Ret. Local Bd., 214 Ariz. 274, 151 P.3d 557, 496 Ariz. Adv. Rep. 49, 2007 Ariz. App. LEXIS 14 (Ariz. Ct. App. 2007)*.

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

A.R.S. § 38-860

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-860. Domestic relations orders; procedures; payments

A. Notwithstanding any other law, in a judicial proceeding for annulment, dissolution of marriage or legal separation that provides for the distribution of community property, or in any judicial proceeding to amend or enforce such a property distribution, a court in this state may issue a domestic relations order that provides that all or any part of a participant's benefit or refund in the system that would otherwise be payable to that participant shall instead be paid by the system to an alternate payee. The value of a participant's benefit shall be the value on the earliest date of service of the petition for annulment, dissolution of marriage or legal separation.

B. A domestic relations order is not effective against the system unless the domestic relations order is approved by the system and qualifies as a plan approved domestic relations order. To qualify as a plan approved domestic relations order, a domestic relations order shall comply with any policies or procedures adopted pursuant to subsection K of this section and shall also meet all of the following requirements:

1. The domestic relations order shall state the name and the last known mailing address of the participant and the name and last known mailing address of the alternate payee that is covered by the domestic relations order.

2. The domestic relations order shall clearly state the amount or percentage of the participant's benefits that is payable by the system to the alternate payee or the precise manner in which the amount or percentage is to be determined.

3. The domestic relations order shall state the number of payments or periods to which the domestic relations order applies, if applicable.

4. The domestic relations order shall state that the domestic relations order applies to the system.

5. The domestic relations order shall not require the system to provide any type or form of benefit or any option not otherwise provided by this article.

6. The domestic relations order shall not require the system to provide increased benefits determined on the basis of actuarial value.

7. The domestic relations order shall not require the payment of benefits to an alternate payee if the benefits are required to be paid to another alternate payee under a separate plan approved domestic relations order.

8. The domestic relations order shall have been issued by a court of competent jurisdiction of a state, territory or possession of the United States.

C. On receipt by the system of a certified copy of a domestic relations order and a written request for a determination that the domestic relations order is a plan approved domestic relations order, the system

shall promptly issue a written notice of receipt stating that the domestic relations order and request were received to the participant and alternate payee at the addresses on file, if any.

D. The system has a determination period to issue a written determination indicating whether a domestic relations order qualifies as a plan approved domestic relations order. If the participant is receiving benefits during the determination period and if the system can determine the amount of the benefits that currently would be payable to the alternate payee if the domestic relations order were a plan approved domestic relations order, the system shall hold the segregated funds and shall pay the remaining portion of the benefits to the participant. If the system determines the domestic relations order is a plan approved domestic relations order, the system shall pay the participant and alternate payee pursuant to the plan approved domestic relations order in the month following the month in which the determination was issued or in the month following the month in which a benefit is payable under the plan approved domestic relations order, whichever is later. If the system determines the domestic relations order fails to qualify as a plan approved domestic relations order, the system shall specify in its determination how the domestic relations order is deficient and how it may be amended to qualify as a plan approved domestic relations order. If the participant is currently receiving benefits and if the system can determine the amount of segregated funds that would be payable to the alternate payee if the domestic relations order were a plan approved domestic relations order, the system shall hold the segregated funds during the cure period to allow the parties to submit a certified copy of an amended domestic relations order and a written request for a determination that the amended domestic relations order is a plan approved domestic relations order. During the cure period, the system shall pay the participant's portion to the participant. At the end of the cure period, if the issue of whether an amended domestic relations order qualifies as a plan approved domestic relations order remains undetermined or if an amended domestic relations order is determined not to be a plan approved domestic relations order, the system shall pay the segregated funds and the participant's portion to the participant. The participant shall hold the segregated funds in trust for the alternate payee as provided in subsection J of this section. If an amended domestic relations order that is submitted after the expiration of the cure period is determined to be a plan approved domestic relations order, the system shall make payments to an alternate payee under the plan approved domestic relations order only prospectively. A determination by the system that a domestic relations order is not a plan approved domestic relations order does not prohibit a participant or alternate payee from submitting an amended domestic relations order to the system.

E. Each participant and alternate payee is responsible for maintaining a current mailing address on file with the system. The system has no duty to attempt to locate any participant or alternate payee. The system has no duty to provide a notice of receipt or determination or pay benefits by means other than mailing the notice or payments to the participant or alternate payee at the last known address that is on file with the system. If the address of an alternate payee is unknown to the system, but benefits are payable to the alternate payee pursuant to a plan approved domestic relations order, the system shall either:

1. Hold the alternate payee's portion until the alternate payee provides the system with a current address. Once the system is notified of the alternate payee's current address, the system shall prospectively pay the alternate payee's portion to the alternate payee.

2. Pay the alternate payee's portion to the participant, who shall hold the alternate payee's portion in trust as provided in subsection J of this section, until the alternate payee is located. At that time, the participant shall pay the alternate payee's portion directly to the alternate payee.

F. If the address of a participant is unknown to the system, but benefits are payable to the participant pursuant to a plan approved domestic relations order, the system shall hold the participant's portion until the participant provides the system with a current address.

G. If the alternate payee identified in a plan approved domestic relations order predeceases the participant and the plan approved domestic relations order does not otherwise provide for the disposition of the alternate payee's interest, the system shall pay the alternate payee's portion to the personal representative of the deceased alternate payee pursuant to this subsection. The personal representative is responsible for maintaining a current mailing address on file with the system. The system has no duty to attempt to locate any personal representative. The system is not responsible for making benefit payments to a personal representative until the personal representative has both:

1. Persuaded the system that the personal representative is authorized to receive payments designated for the deceased alternate payee.

2. Provided the system with an address to which the payments should be sent.

H. If, within thirty days after the date the system verifies an alternate payee's death, a personal representative does not make demand on the system for the alternate payee's portion, the system shall either:

1. Hold the alternate payee's portion until the time a personal representative makes a proper demand for payment of the alternate payee's portion.

2. Remit the alternate payee's portion to the participant, who shall hold the amounts in trust for the estate of the alternate payee until the personal representative is identified. At that time, the participant shall pay the alternate payee's portion paid by the system to the participant to the personal representative.

Thereafter, the plan shall prospectively pay the alternate payee's portion to the personal representative.

I. Amounts held or paid pursuant to this section shall not accrue interest unless otherwise prescribed by this article.

J. The system is not liable to the participant, the alternate payee, any personal representative of the estate of an alternate payee or any other person for any amount paid, withheld or disbursed by the system pursuant to this section. If one or more payments are made by the system to a person not otherwise entitled to receive the payments, the recipient of the payment is designated a constructive trustee for the payment received and, together with the marital community, if any, is the sole party against whom an action may be brought to recover the payment.

K. The system may adopt policies and procedures that govern the implementation of this section.

History

Recent legislative history: *Laws 2007, Ch. 87, § 4*; *Laws 2010, 2nd Reg. Sess., Ch. 231, § 3*; *Laws 2012, 2nd Reg. Sess., Ch. 136, § 12*; *2023 1st Reg. Sess. Ch. 34, § 3*, effective October 30, 2023.

Annotations

Notes

Amendment Notes

The 2023 amendment added "The value of a participant's benefit shall be the value on the earliest date of service of the petition for annulment, dissolution of marriage or legal separation" in (A); added "of this section" in (B) and (D); deleted "such a time as" following "portion until" in (E)(1); and (E)(2), added "of this section" and deleted "such a time as" preceding "the alternate payee."

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-861

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-861. Future benefit increases; payment; cost calculation; definition

A. Any future benefit increase adopted by the legislature or any participating employer for any member of the system shall be fully paid in the year of enactment of the benefit and may not be amortized over any period of years. A benefit for members hired before July 1, 2017 shall be paid by the employer and the cost of the benefit for members hired on or after July 1, 2017 shall be split equally between the employer and the member.

B. The plan actuary shall calculate the cost of the benefit increase using all of the following:

1. A discount rate equal to the ten-year treasury constant maturity rate for the fiscal year in which the benefit is enacted.

2. An expected rate of return on assets equal to the ten-year treasury constant maturity rate for the fiscal year in which the benefit is enacted.

3. A mortality table based on the most recent proposal from the retirement plans experience committee of the society of actuaries that is not older than the RP-2014 mortality table.

4. All other actuarial assumptions approved by the board for the most recent fiscal year valuation.

C. For the purposes of this section, “future benefit increase” includes any benefit increase that leads to a change in the present value of future benefits or a change to accrued liabilities.

History

Laws 2016, 2nd Reg. Sess., Ch. 2, § 14; *2017 1st Reg. Sess. Ch. 235, § 4*, effective May 1, 2017.

Annotations

Notes

Editor's Notes

Another *§ 38-861*, as added by *Laws 2016, 2nd, Reg. Sess., Ch. 90, § 6* was renumbered by the reviser as *§ 38-862*.

Amendment Notes

38-861. Future benefit increases; payment; cost calculation; definition

The 2017 amendment, in (A), inserted “or any participating employer” following “legislature” in the first sentence and deleted “pursuant to section 38-843, subsection G” at the end.

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-862

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-862. Discount rate; service purchase; transfer of service credits

A. Beginning July 1, 2017, the discount rate specified in subsection B of this section applies to service purchases or transfers of service credits to the system pursuant to the following sections:

1. *Section 38-849*, subsection D.
2. *Section 38-853.01*, subsection C.
3. *Section 38-858*, subsection A or B.
4. *Sections 38-921*, *38-922*, *38-923* and *38-924*.

B. For members enrolled in the system:

1. Before July 1, 2017, the discount rate is the assumed rate of return that is prescribed by the board.
2. On or after July 1, 2017, the discount rate is an amount equal to the lesser of the assumed rate of return that is prescribed by the board or an amount equal to the yield on a ten-year treasury note as of March 1 that is published by the federal reserve board plus two percent. The discount rate is effective beginning in the next fiscal year, and the board shall recalculate the rate each year.

History

Laws 2016, 2nd Reg. Sess., Ch. 90, § 6; *2019 1st Reg. Sess. Ch. 38, § 11*, effective April 1, 2019.

Annotations

Notes

Editor's Notes

Enacted as *A.R.S. § 38-861* and renumbered by the reviser.

Amendment Notes

The 2019 amendment substituted “subsection C” for “subsection B” in (A)(2); added “or B” at the end of (A)(3); redesignated former (B) as (B)(2); added the introductory language of (B); added (B)(1); and added “On or after July 1, 2017” in (B)(2).

Applicability

Laws 2019, 1st Reg. Sess., Ch. 38, § 16(B) provides, " *Section 38-862, Arizona Revised Status*, as amended by this act, apply retroactively to from and after June 30, 2017."

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-863

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-863. Employer disclosure; funding ratio

An employer shall disclose the employer's funding ratio for each of the employer's eligible groups under the system on the employer's public website.

History

2017 1st Reg. Sess. Ch. 163, § 3, effective August 9, 2017.

Annotations

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-863.01

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-863.01. Pension funding policies; employers

A. Each governing body of an employer shall annually:

1. Adopt a pension funding policy for the system for employees who were hired before July 1, 2017. The pension funding policy shall include funding objectives that address at least the following:

(a) How to maintain stability of the governing body's contributions to the system.

(b) How and when the governing body's funding requirements of the system will be met.

(c) Defining the governing body's funded ratio target under the system and the timeline for reaching the targeted funded ratio.

2. Formally accept the employer's share of the assets and liabilities under the system based on the system's actuarial valuation report.

B. The governing body shall post the pension funding policy on the governing body's public website and transmit the pension funding policy to the board.

History

2018 2nd Reg. Sess. Ch. 112, § 1, effective August 3, 2018; *2021 1st Reg. Sess. Ch. 251, § 3*, effective September 29, 2021.

Annotations

Notes

Amendment Notes

The 2021 amendment deleted "Beginning on or before July 1, 2019" at the beginning of the introductory language of (A); and added "and transmit the pension funding policy to the board" in (B).

Research References & Practice Aids

Hierarchy Notes:

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

A.R.S. § 38-863.02

Current through chapter 1 of the 56th Legislature's 2nd Regular session (2024), including all legislation enacted through March 1, 2024

LexisNexis® Arizona Annotated Revised Statutes > Title 38 Public Officers and Employees (Chs. 1 — 8) > Chapter 5 Social Security and Retirement (Arts. 1 — 8) > Article 4. Public Safety Personnel Retirement System (§§ 38-841 — 38-863.02)

38-863.02. Pension funding policies; board; employers' pension funding policies; posting; popular annual financial report

A. The board shall annually review and adopt a pension funding policy for each defined benefit retirement plan and system administered by the board that analyzes and reviews the methods to ensure systematic funding of all retirement benefit payments for the members of each defined benefit retirement plan and system and that outlines the strategy to achieve financial solvency of each plan and system.

B. The board shall annually consolidate the pension funding policies of employers adopted pursuant to *section 38-863.01* and post the document on the system's public website.

C. On or before June 30 of each year, the board shall submit a popular annual financial report to the governor, the president of the senate and the speaker of the house of representatives and post to the system's public website that includes the following:

1. For each retirement system and plan that is administered by the board:
   - **(a)** Funding status.
   - **(b)** Aggregate contribution rates.
   - **(c)** Demographic updates.
2. For the aggregate of the systems and plans administered by the board:
   - **(a)** Investment returns.
   - **(b)** An analysis of the system's aggregate experience over the previous year.
   - **(c)** Major policy and governance changes.
   - **(d)** Future trends and objectives.

History

2021 1st Reg. Sess. Ch. 251, § 4, effective September 29, 2021.

Annotations

Research References & Practice Aids

Hierarchy Notes:

38-863.02. Pension funding policies; board; employers' pension funding policies; posting; popular annual financial report

A.R.S. Title 38, Ch. 5, Art. 4

End of Document

DEPARTMENT OF ADMINISTRATION
Title 2, Chapter 6

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: May 7, 2024

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

FROM: Council Staff

DATE: April 18, 2024

SUBJECT: **DEPARTMENT OF ADMINISTRATION**
Title 2, Chapter 6

Summary

This Five-Year Review Report (5YRR) from the Arizona Department of Administration - Benefits Services Division (Division) relates to sixteen (16) rules in Title 2, Chapter 6, Articles 1-4 regarding General Provisions, Insurance Plans, Eligibility Criteria, and Appeals and Grievances, respectively. Specifically, these rules relate to insurance benefits plans made available by the Division, eligibility criteria, enrollment periods, effective dates, and the procedures for requesting a review of either a plan provider decision or an agency decision.

In the prior report for these rules, which was approved by the Council in October 2019, the Division did not propose to take any action related to the rules.

Proposed Action

In the current report, the Division does not propose to take any action related to the rules.

1. Has the agency analyzed whether the rules are authorized by statute?

The Division cites both general and specific statutory authority for the rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Division indicates the economic impact of the rules has not differed significantly from that projected in the economic impact statement (EIS) submitted with the last rulemaking effective October 1, 2019. The rules directly affect state agencies and employees and not small businesses or consumers.

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 rules provide clear processes for the administration of benefits that provide clarity and predictability in such a way that complicated events can be managed efficiently. The Division believes that the rules will impose the least burden and costs to persons regulated by the rules.

4. Has the agency received any written criticisms of the rules over the last five years?

The Division indicates it did not receive any written criticism of the rules within the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Division indicates the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Division indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Division indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Division 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 Division indicates none of the listed rules are more stringent than corresponding federal law. Regarding R2-6-103 Authority of the Director, there is no federal law pertaining to the authority of the ADOA director. ADOA Directors authority is prescribed by state 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 Division indicates the rules in Title 2, Chapter 6 were adopted prior to July 29, 2010. In addition, the rules do not require issuance of a regulatory permit, license or agency authorization.

11. Conclusion

This 5YRR from the Division relates to sixteen (16) rules in Title 2, Chapter 6, Articles 1-4 regarding General Provisions, Insurance Plans, Eligibility Criteria, and Appeals and Grievances, respectively. Specifically, these rules relate to insurance benefits plans made available by the Division, eligibility criteria, enrollment periods, effective dates, and the procedures for requesting a review of either a plan provider decision or an agency decision. The Division indicates the rules are clear, concise, understandable, consistent, effective, and enforced as written and does not intend to to take any action related to the rules.

Council staff recommends approval of this report.

Katie Hobbs
Governor

Ben Henderson
Interim Director

ARIZONA DEPARTMENT OF ADMINISTRATION

BENEFIT SERVICES DIVISION
100 NORTH FIFTEENTH AVENUE • SUITE 301
PHOENIX, ARIZONA 85007
(602) 542-5008

October 6, 2023

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 302
Phoenix, Arizona 85007

RE: Arizona Department of Administration; Five-year Review Report
Arizona Administrative Code (A.A.C.) Title 2, Chapter 6 Benefit Services

Dear Ms. Sornsin:

Please find enclosed the Five Year Review Report of the Arizona Department of Administration - Benefit Services Division for Title 2, Chapter 6 of the Arizona Administrative Code which is due on December 31, 2023.

The Arizona Department of Administration - Benefit Services Division hereby certifies compliance with A.R.S § 41-1091.

For questions about this report, please contact Tracie Carruthers at 602-542-6515 or tracie.carruthers@azdoa.gov.

Sincerely,

Elizabeth Alvarado-Thorson
Cabinet Executive Director
Executive Deputy Director

cc: Paul Shannon, Benefits Services Director
Yvette Medina, Deputy Assistant Director
Mary Moreno, Plan Administration Manager
Sveno Olson, Operations Manager
Monika Lukisikova-Hickcox, Finance Administrator
Tracie Carruthers, Plan Administrator

Arizona Department of Administration - Benefit Services Division

5 YEAR REVIEW REPORT

Title 2 - Chapter 6

September 13, 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 41-703(3)

Specific Statutory Authority: A.R.S. § 38-653; A.R.S. § 38-651.03; A.R.S. § 38-651.05; A.R.S. § 38-651

2. The objective of each rule:

Rule	Objective
R2-6-101 Definitions	This rule provides definitions of words and terms used in the Benefit Services Rules. The definitions are necessary for understanding the terminology used throughout these rules.
R2-6-103 Authority of the Director	This rule describes the authority of the ADOA Director pertaining to the insurance plans made available by the agency, including provisions for the ADOA Director to delegate specific authority to an agency head. A.R.S. § 41-703(11) provides general authority for the ADOA Director to delegate administrative functions, duties and powers as the Director deems necessary. The rule is necessary to outline the ADOA Director's scope and authority for parties subject to the Benefit Rules.
R2-6-105 Times for Enrollment	The rule describes when eligible individuals may enroll in the insurance plans made available by the agency. The rule is necessary so affected individuals know how many days/months they have after a specific event to enroll for insurance benefits.
R2-6-106 Effective Date of Coverage	The rule outlines the effective dates of coverage upon initial enrollment, notification of a qualified life event, eligibility for Medicare, or other approved changes. The rule is necessary so affected individuals know when insurance coverage commences and changes to coverage become effective.
R2-6-107 Termination of Coverage	The rule outlines when insurance coverage terminates for an employee, an eligible dependent. a retiree or former elected officials, a surviving spouse or dependent and a COBRA member. The rule is necessary so affected individuals understand when insurance coverage terminates.
R2-6-108 COBRA	The rule sets forth the notification requirements for COBRA-qualifying events and stipulates that the State shall not pay any of the cost for COBRA coverage. The rule is necessary so affected individuals are aware of the notification requirements and if an individual elected COBRA, he/she will be responsible for all costs plus an administrative fee.

R2-6-201 Insurance Plans	This rule sets forth the types of insurance plans the agency will make available to eligible individuals. The rule is necessary so that affected individuals are aware of the types of insurance plans the State offers.
R2-6-202 Long Term Disability Insurance	The rule provides that employees will be automatically enrolled in a long-term disability (LTD) plan, the plan in which an employee is enrolled is dependent on the retirement plan to which the employee is contributing, and payments and benefits may offset the amount an employee receives under an LTD plan. The rule is necessary so employees are aware of the automatic enrollment and offset provision.
R2-6-203 Flexible Spending Accounts	The rule identifies the types of flexible spending accounts that employees may establish and specifies that such accounts are regulated by federal law. The rule is necessary so employees are aware they may establish a flexible spending account, which can provide certain tax benefits and, if an employee establishes such an account, of the requirement to annually sign a salary reduction order for the account.
R2-6-204 Employee Flexible Benefit Plan	This rule establishes the state's health and supplemental life insurance plans and flexible spending accounts as pre-tax plans under the Internal Revenue Service regulations and sets forth the requirements that the agency comply with Section 125 of the Internal Revenue Code pertaining to pre and post-tax treatment of compensation. The rule is necessary for understanding how an employee's compensation will be treated in a flexible benefit plan.
R2-6-205 Performance Standards for Health, Dental, Vision Insurance Plans	The rule sets forth the minimum performance standards for health, dental and vision insurance plans. The rule is necessary so that plan providers are aware of the minimum performance standards with which they must comply in the areas of cost competitiveness, utilization review, network development/access, conversion and implementation, report and accuracy and timeliness, quality outcomes and customer satisfaction.
R2-6-301 Eligibility to Participate in Health, Dental, and Vision Insurance Plans	This rule sets forth who is eligible to participate in the State's health, dental and vision insurance plans, the eligibility exception for an employee who is on approved leave without pay and coverage of a newborn infant. The rule is necessary to specify that employees, officers, retirees, former elected officials, eligible dependents and surviving spouse and dependents may participate in the insurance plans by enrolling at specified times and by paying the cost of each plan chosen. The rule also provides notice to satisfy the Newborns' and Mothers' Health Protection Act (Newborns' Act) disclosure requirement.
R2-6-302 Eligibility to Participate in Life and Short-term Disability Insurance Plans	This rule sets forth who is eligible to participate in the State's life and short-term disability insurance plans and limitations of the plans, where applicable. The rule is necessary to specify that employees, officers, former elected officials, eligible dependents and a surviving spouse for a former elected official may participate in these insurance plans by enrolling at specified times and, except for basic life insurance which is provided to an employee or officer at no charge, by paying the cost of each plan chosen.

R2-6-303 Audit of Dependent Eligibility	This rule provides notice that the agency will conduct audits to verify dependent eligibility, the acceptable documentation for eligibility and the action that will be taken by the agency if a member chosen for audit fails to produce evidence of dependent eligibility within the required time frame, including terminating the insurance coverage of the individual whose eligibility was not proven. The rule is necessary so that members are aware of the agency's audit process and requirements.
R2-6-401 Appeal of a Plan Provider Decision	The rule delineates the authority delegated to the plan providers by the agency and outlines that a member who wishes to appeal a decision by the plan provider is required to follow the appeal procedures as outlined in the plan. The rule is necessary so that members are aware of the authority that has been delegated to the plan providers and the method for appealing a plan provider's decision.
R2-6-402 Grievance of Department's Decision	The rule identifies insurance benefit-related matters that may be grieved through the agency's benefits grievance procedure, the process for filing a grievance and how and when the agency will provide a response. The rule is necessary so that members are aware of which insurance benefits matters are grievable, the method for filing benefits grievance and when the member can expect a response.

3. Are the rules effective in achieving their objectives? Yes ✔ No ___

4. Are the rules consistent with other rules and statutes? Yes ✔ No ___

5. Are the rules enforced as written? Yes ✔ No ___

6. Are the rules clear, concise, and understandable? Yes ✔ No __

7.Has the agency received written criticisms of the rules within the last five years? Yes __ No ✔

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

The economic impact of the rules has not differed significantly from that projected in the economic impact statement (EIS) submitted with the last rulemaking effective October 1, 2019 . The rules directly affect state agencies and employees and not small businesses or consumers.

9. Has the agency received any business competitiveness analyses of the rules? Yes __ No ✔

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

Yes

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

The rules provide clear processes for the administration of benefits that provide clarity and predictability in such a way that complicated events can be managed efficiently. The agency believes that the rules will impose the least burden and costs to persons regulated by the rules.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No ✔

None of the listed rules are more stringent than corresponding federal law. Regarding R2-6-103 Authority of the Director, there is no federal law pertaining to the authority of the ADOA director. ADOA Directors authority is prescribed by state laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Not applicable. The rules in Title 2, Chapter 6 were adopted prior to July 29, 2010. In addition, the rules do not require issuance of a regulatory permit, license or agency authorization.

14. Proposed course of action

The rules remain effective, and no repeal or amendment is projected.

Supp. 17-2

Arizona Administrative CODE
www.azsos.gov
Published by the Department of State ~ Office of the Secretary of State

Supplement to the
Arizona Administrative Code
The official compilation of Arizona Rules

Replacement Check List

For rules filed in the second quarter
between April 1 - June 30
2017

Within the stated calendar quarter, this Title contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

TITLE 2. Administration

Chapter 6. Department of Administration - Benefit Services Division

Sections, Parts, Exhibits, Tables or Appendices modified
R2-6-101, R2-6-102, R2-6-104 through R2-6-108, R2-6-201, R2-6-204, R2-6-301 through R2-6-303

☐ REMOVE Supp. 09-1
Pages: 1 - 10

☐ REPLACE with Supp. 17-2
Pages: 1 - 11

The agency's contact person who can answer questions about rules in this Chapter:

Name: Kayla Stivason
Address: Arizona Department of Administration, Benefit Services Division
100 N. 15th Ave., Suite 260
Phoenix, AZ 85007
Telephone: (602) 364-0803
E-mail: Kayla.Stivason@azdoa.gov

Disclaimer: Please be advised the person listed is the contact of record as submitted in the rulemaking package for this supplement. The contact and other information may change and is provided as a public courtesy.

PUBLISHER
Arizona Department of State
Office of the Secretary of State, Administrative Rules Division

PREFACE

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

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION
June 30, 2017

RULES

A.R.S. § 41-1001(17) states: "'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."

THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2017 is cited as Supp. 17-1.

HOW TO USE THE CODE

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

ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering system separated into subsections.

HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules 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 the introduction of a chapter can be found at the Secretary of State's website, www.azsos.gov/services/legislative-filings.

EXEMPTIONS FROM THE APA

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

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

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

In the Administrative Code the Office includes editor's notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

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

EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1, R1-1-113.

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

TITLE 2. ADMINISTRATION

CHAPTER 6. DEPARTMENT OF ADMINISTRATION - BENEFIT SERVICES DIVISION

Editor's Note: New 2 A.A.C. 6 made by final rulemaking at 15 A.A.C. 258, effective March 7, 2009 (Supp. 09-1).

Editor's Note: 2 A.A.C. 6 expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

Laws 1983, Ch. 98, 167 changed the heading from Public Buildings Maintenance Division to Public Buildings Maintenance; 168 transferred authority for operation of Public Buildings Maintenance to the Director of Administration effective July 27, 1983.

Article 1, consisting of Sections R2-6-101 through R2-6-112, Article 2, consisting of Sections R2-6-201 through R2-6-212, Article 3, consisting of Section R2-6-301, Article 4, consisting of Section R2-6-401 adopted effective July 27, 1983.

Former Sections R2-6-101 through R2-6-112, R2-6-201 through R2-6-212, R2-6-301 readopted with conforming changes.

Former Section R2-1-201 renumbered as Section R2-6-401 and readopted with conforming changes.

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R2-6-101 through R2-6-108, made by final rulemaking at 15 A.A.C. 258, effective March 7, 2009 (Supp. 09-1).

Article 1, consisting of Sections R2-6-101 through R2-6-114, expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

Article 1, consisting of Sections R2-6-101 through R2-6-114, adopted effective September 16, 1997 (Supp 97-3).

Article 1, consisting of Sections R2-6-101 through R2-6-109, renumbered to Article 2, Sections R2-6-201 through R2-6-209, effective September 16, 1997 (Supp 97-3).

Article 1, consisting of Sections R2-6-101 through R2-6-109, adopted effective August 31, 1984.

Former Article 1, consisting of Sections R2-6-101 through R2-6-112, repealed effective August 31, 1984.

Section

ARTICLE 2. INSURANCE PLANS

Article 2, consisting of Sections R2-6-201 through R2-6-205 made by final rulemaking at 15 A.A.C. 258, effective March 7, 2009 (Supp. 09-1).

Article 2, consisting of Sections R2-6-201 through R2-6-209, expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

Article 2, consisting of Sections R2-6-201 through R2-6-209, renumbered from Article 1, Sections R2-6-101 through R2-6-109, effective September 16, 1997 (Supp 97-3).

Article 2, consisting of Sections R2-6-201 through R2-6-212 repealed effective September 16, 1997 (Supp. 97-3).

Section

ARTICLE 3. ELIGIBILITY CRITERIA

Article 3, consisting of Sections R2-6-301 through R2-6-303, made by final rulemaking at 15 A.A.C. 258, effective March 7, 2009 (Supp. 09-1).

Article 3, consisting of Sections R2-6-301 through R2-6-311, expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

Article 3, consisting of Sections R2-6-301 through R2-6-311, adopted, effective September 16, 1997 (Supp 97-3).

Article 3, consisting of Section R2-6-301, renumbered to Article 5, Section R2-6-501, effective September 16, 1997 (Supp 97-3).

Section

ARTICLE 4. APPEALS AND GRIEVENCES

Article 4, consisting of Sections R2-6-401 through R2-6-402, made by final rulemaking at 15 A.A.C. 258, effective March 7, 2009 (Supp. 09-1).

Article 4, consisting of Sections R2-6-401 through R2-6-409, expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

Article 4, consisting of Sections R2-6-401 through R2-6-409, adopted effective September 16, 1997 (Supp 97-3).

Article 4, consisting of Section R2-6-401, repealed effective September 16, 1997 (Supp 97-3).

Section

ARTICLE 5. EXPIRED

Article 5, consisting of Section R2-6-501, expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

Article 5, consisting of Section R2-6-501, renumbered from Article 3, Section R2-6-301, effective September 16, 1997 (Supp 97-3).

ARTICLE 1. GENERAL PROVISIONS

R2-6-101. Definitions

In this Chapter, unless otherwise specified:

1. "Accident and health insurance," as used in A.R.S. Title 38, Chapter 4, Article 4, means health insurance and dental insurance.
2. "Agency" means a department, board, office, authority, commission, or other governmental budget unit of the state.
3. "Agency head" means the chief executive officer of an agency.
4. "Appeal" means a request to a plan provider for review of a decision made by the plan provider.
5. "Approved leave" means an employee's or officer's absence from assigned work that is authorized by the employee's or officer's supervisor.
6. "Base pay" means the fixed compensation paid to an employee or officer. Base pay excludes pay for overtime, shift differential, bonuses, special performance adjustment, special incentive program, or other allowance.
7. "Basic life insurance" means the amount of life insurance that the Department provides at no charge to an employee or officer.
8. "Child" means an individual who falls within one or more of the following categories:
   a. A natural child, adopted child, stepchild, or foster child of an employee, officer, retiree, or former elected official who is younger than 26;
   b. A child who is younger than 26 for whom the employee, officer, retiree, or former elected official has court-ordered guardianship;
   c. A child who is younger than 26 and placed in the home of the employee, officer, retiree, or former elected official by court order pending adoption; or
   d. A natural child, adopted child, stepchild or foster child of an employee, officer, retiree, or former elected official:
      i. Who was disabled as defined at 42 U.S.C. 1382c before the age of 26;
      ii. Who continues to be disabled as defined at 42 U.S.C. 1382c;
      iii. Who is dependent for support and maintenance upon the employee, officer, retiree, or former elected official; and
      iv. For whom the employee, officer, retiree, or former elected official had custody before the child was 26.
9. "COBRA" means Consolidated Omnibus Budget Reconciliation Act of 1986, which is a federal law that provides the opportunity to continue group health insurance coverage that might otherwise be terminated.
10. "COBRA member" means a former member or formerly eligible dependent of a member or former member who opts to continue health insurance through COBRA after no longer meeting the eligibility standards in Article 3.
11. "Compensation" means the total taxable remuneration provided by the state to an employee or officer in exchange for the employee's or officer's services.
12. "Creditable coverage" has the same meaning as prescribed at 29 U.S.C. 1181.
13. "Day" means a calendar day.
14. "Dental insurance" means an arrangement under which a policy holder makes advance payment to an insurer and the insurer pays amounts on behalf of an insured for certain preventive, diagnostic, and remedial care of the insured's teeth and gums.
15. "Department" means the Arizona Department of Administration.
16. "Director" means the Director of the Department or the Director's designee.
17. "Disability income insurance" means a form of insurance that insures a specified portion of the compensation of an employee or officer against the risk that disability will make working impossible.
18. "Eligible dependent" means a member's spouse or child, who is lawfully present in the U.S.
19. "Employee" for the purposes of eligibility, means an individual who is hired by the state, including the state universities, and who is regularly scheduled to work at least 20 hours per week for at least 90 days, but does not include:
   a. A patient or inmate employed at a state institution;
   b. A non-state employee, officer, or enlisted personnel of the National Guard of Arizona;
   c. A seasonal, temporary, or variable hour employee, unless the employee is determined to have been paid for an average of at least 30 hours per week using a 12-month measurement period;
   d. An individual who fills a position designed primarily to provide rehabilitation to the individual;
   e. An individual hired by a state university or college for whom the state university or college does not contribute to a state-sponsored retirement plan unless the individual is:
      i. A non-immigrant alien employee,
      ii. Participating in a medical residency or post-doctoral training program,
      iii. On federal appointment with Cooperative Extension, or
      iv. A retiree who has returned to work under A.R.S. § 38-766.01.
20. "Employee flexible benefit plan," is the State of Arizona Cafeteria Plan as approved by the Internal Revenue Service and means the insurance plans specified in R2-6-204, the value of which is excludable from an employee's or officer's compensation under Section 125 of the Internal Revenue Code.
21. "Flexible spending account" means a financial arrangement under which an employee or officer authorizes the Department to reduce the employee's or officer's compensation on a pre-tax basis by a specified amount that the employee or officer uses to pay for eligible out-of-pocket expenses for health care, dependent care, or both.
22. "Former elected official" means an individual who was elected by popular vote in this state to serve, but who no longer serves as a:
   a. State official;
   b. County official;
   c. Justice of the Supreme Court;
   d. Judge of the court of appeals or superior court;
   e. Full-time superior court commissioner except a full-time superior court commissioner who did not make a timely election of membership under the judges' retirement plan repealed on August 7, 1985; and
   f. Official of an incorporated city or town if the incorporated city or town has executed an agreement with the state for coverage of the official.
23. "Grievance" means a written expression of dissatisfaction about any benefits matter other than a decision by a plan provider.
24. "Health insurance" means an arrangement under which a policy holder makes advance payments to an insurer and

the insurer pays amounts on behalf of an insured for routine, preventive, and emergency health-care procedures and pharmaceuticals.

25. "Incumbent" means the employee or officer who currently holds a position or office.
26. "Institution" means a facility that provides supervision or care for residents on a 24-hours-per-day, seven-days-per-week basis.
27. "Life insurance" means a contract between an insurer and a policy holder under which the insurer agrees to pay a sum of money upon the occurrence of an insured's death in exchange for the policy holder paying a stipulated amount at regular intervals.
28. "Long-term disability insurance" means an insurance product that replaces part of an employee's or officer's compensation after an initial waiting period for the duration of time that the employee or officer is medically determined to be totally disabled as a result of a covered injury, illness, or pregnancy.
29. "Manifest error" means an act or failure to act that clearly is or has caused a mistake.
30. "Member" means an employee, officer, retiree, or former elected official who meets the criteria at R2-6-301(B), who enrolls in one or more of the insurance plans made available by the Department.
31. "Officer" means an individual who:
    a. Is elected or appointed to a state office, including a member of the state legislature; or
    b. Is a member of a state board, commission, or council and serves at least 1,000 hours per year.
32. "Open enrollment" means a specified period during which a member may make additions, changes, or deletions to the member's participation in the insurance plans made available by the Department.
33. "Ophthalmic goods" means eyeglasses or contact lenses for which a prescription is required and components of the eyeglasses.
34. "Plan provider" means an entity that enters into a contract with the Department to provide an insurance plan to members and their eligible dependents.
35. "Plan year" means a specified period of 12 consecutive months during which a member is able to change the member's participation in the insurance plans made available by the Department only if the member experiences a qualified life event.
36. "QMCSO" means qualified medical child support order and has the same meaning as prescribed at 29 U.S.C. 1169.
37. "Qualified life event" means a change in a member's dependents, employment status, or residence that entitles the member to change the member's or an eligible dependent's participation in the insurance plans made available by the Department before the next open enrollment period. Qualified life event includes:
    a. Change in marital status caused by marriage, divorce, legal separation, annulment, or death of spouse;
    b. Change in dependent status caused by birth, adoption, placement for adoption, court-ordered guardianship, death, or dependent eligibility due to age;
    c. Change in employment status or work schedule that affects a member's eligibility to participate in the insurance plans made available by the Department; and
    d. Change in residence that affects available insurance plan options.
38. "Retiree" means an employee or officer who is retired under a state-sponsored retirement plan or who receives long-term disability payments under a plan made available by the Department.
39. "Salary-reduction order" means a document signed by an employee or officer who elects to participate in the employee flexible benefit plan authorizing the state to reduce the employee's or officer's compensation under Section 125 of the Internal Revenue Code.
40. "Seasonal employee" means an individual who is employed by the state for not more than six months of the year and whose state employment is dependent on an easily identifiable increase in work associated with a specific and reoccurring season. Seasonal employees do not include employees of education entities who work during the active portions of the academic year.
41. "Short-term disability insurance" means an insurance product that replaces part of an employee's or officer's compensation for a predetermined period if the employee or officer is medically determined to be unable to work due to illness, pregnancy, or a non-work-related injury.
42. "Spouse" means a member's husband or wife under Arizona law.
43. "Supplemental life insurance" means life insurance that is in addition to basic life insurance.
44. "Surviving dependent," as used in A.R.S. § 38-651.01(A) or A.R.S. § 38-1114, means:
    a. An insured eligible dependent of an insured retiree who dies, or
    b. An insured spouse or insured eligible dependent child of an insured employee or officer who dies when eligible for retirement under the Arizona State Retirement System, or
    c. An insured or uninsured dependent of a deceased law enforcement officer killed in the line of duty.
45. "Surviving spouse," as used in A.R.S. § 38-651.01(B) or A.R.S. § 38-1114, means the insured spouse of:
    a. An incumbent elected official who dies when the incumbent elected official would be qualified for eligibility under R2-6-301(B) if the incumbent elected official had not been in office at the time of death, or
    b. An insured former elected official who dies when qualified for eligibility under R2-6-301(B), or
    c. An insured or uninsured spouse of a deceased law enforcement officer killed in the line of duty.
46. "Temporary employee" means an appointment made for a maximum of 1,500 hours worked in any agency in each calendar year. A temporary appointment employee may work full time for a portion of the year, intermittently, on a seasonal basis, or on an as needed basis.
47. "Variable hour employee" means an individual who is employed by the state, if based on the facts and circumstances at the employee's start date, for whom the state cannot determine whether the employee is reasonably expected to be employed an average of at least 30 hours per week, including any paid leave, because the employee's hours are variable or otherwise uncertain.
48. "Vision insurance" means a form of insurance that provides coverage for the services rendered by an eye-care professional and for the purchase of ophthalmic goods.

Historical Note

Adopted effective August 31, 1984 (Supp. 84-4). Former Section R2-6-101 renumbered to R2-6-201, new Section R2-6-101 adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section amended by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-102. Repealed

Historical Note

Adopted effective August 31, 1984 (Supp. 84-4). Former Section R2-6-102 renumbered to R2-6-202, new Section R2-6-102 adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section repealed by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-103. Authority of the Director

A. Within the limits prescribed by law, the Director shall determine the type, structure, and components of the insurance plans made available by the Department.

B. The Director has authority to administer the insurance plans made available by the Department including:
1. Construing and interpreting each plan;
2. Deciding questions of eligibility; and
3. Determining the amount of and manner and time that benefits are paid.

C. The Director shall determine whether an insurance plan made available by the Department needs to be amended or terminated.

D. The Director shall establish a procedure for ensuring that a member makes timely payments for participation in an insurance plan made available by the Department.

E. If the Director determines that it is in the best interest of the state and consistent with law, the Director may delegate authority regarding the insurance plans to an agency head.

F. The Director shall determine whether a manifest error exists and correct the manifest error.

Historical Note

Adopted effective August 31, 1984 (Supp. 84-4). Former Section R2-6-103 renumbered to R2-6-203, new Section R2-6-103 adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1).

R2-6-104. Repealed

Historical Note

Adopted effective August 31, 1984 (Supp. 84-4). Former Section R2-6-104 renumbered to R2-6-204, new Section R2-6-104 adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section repealed by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-105. Times for Enrollment

A. An employee, officer, retiree, or former elected official may enroll or may enroll an eligible dependent in one or more of the insurance plans made available by the Department only at the following times:
1. Within 31 days of becoming eligible to participate in an insurance plan,
2. Within 31 days of a qualified life event, and
3. At open enrollment.

B. A surviving dependent, as defined in R2-6-101, who wishes to continue enrollment in the health, dental, and vision insurance plans made available by the Department shall enroll within six months after the death that makes the surviving dependent eligible to continue enrollment.

C. A surviving spouse, as defined in R2-6-101, who wishes to continue enrollment in the health, dental, vision, or life insurance plans made available by the Department shall enroll within 31 days after the death of the incumbent or former elected official.

D. If a surviving spouse or surviving dependent of a deceased law enforcement officer killed in the line of duty was enrolled in the health insurance program made available by the Department or the health insurance program that is offered by the state retirement system or a plan from which the surviving spouse or surviving dependent is receiving benefits at the time the law enforcement officer was killed in the line of duty or died from injuries suffered in the line of duty, and is eligible to receive health insurance premium payments but is no longer enrolled in either health insurance program, the employer shall allow the surviving spouse and any surviving dependent to enroll in the employer's health insurance program to receive health insurance premium payments pursuant to A.R.S. § 38-1114.

E. To be covered under the health or dental insurance plans made available by the Department, a retiree shall enroll at the time specified in subsection (A) and shall maintain enrollment in the health or dental insurance plan. If a retiree terminates participation in both the health and dental insurance plans made available by the Department, neither the retiree nor the retiree's eligible dependent is eligible to enroll at a later time.

Historical Note

Adopted effective August 31, 1984 (Supp. 84-4). Former Section R2-6-105 renumbered to R2-6-205, new Section R2-6-105 adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section amended by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-106. Effective Date of Coverage

A. If an individual enrolls in an insurance plan made available by the Department or provides notice of a qualified life event within the time specified in R2-6-105, the Department shall ensure that the insurance coverage becomes effective on the following dates:
1. Newly hired employee or officer. The date determined by the Director following submission of a properly completed enrollment form and supporting documentation;
2. Retiree, former elected official, surviving dependent, or surviving spouse. The first day of the first pay period following the end of active coverage or the first day of the first month following submission of a properly completed enrollment form and supporting documentation, whichever is applicable;
3. Qualified life event change other than a change in the number of dependents due to birth, adoption, legal placement for adoption, or grant of legal guardianship:
   a. Non-university employee or officer. The first day of the first pay period following submission of a properly completed enrollment form and supporting documentation;

b. University employee. The date determined by the Director; and

c. Retiree, former elected official, surviving dependent, or surviving spouse. The first of the month following submission of a properly completed enrollment form and supporting documentation; and

4. Change in the number of dependents due to birth, adoption, legal placement for adoption, or grant of legal guardianship. On the date of birth, adoption, legal placement for adoption, or grant of legal guardianship if a properly completed enrollment form and supporting documentation are submitted.

B. If a retiree, former elected official, eligible dependent, surviving dependent, or surviving spouse becomes eligible for Medicare, the retiree, former elected official, eligible dependent, surviving dependent, or surviving spouse may cancel or reduce coverage under the health plan made available by the Department. If a retiree, former elected official, eligible dependent, surviving dependent, or surviving spouse ceases to be eligible for Medicare, the retiree, former elected official, eligible dependent, surviving dependent, or surviving spouse may enroll or increase coverage under the health plan made available by the Department. A change made under this subsection becomes effective on the first day of the first month following submission of a properly completed enrollment form and supporting documentation if the enrollment form and supporting documentation are submitted within 31 days of the change in Medicare eligibility.

C. If a member experiences one of the following changes in coverage, the member may make a corresponding change to the member's coverage under the health plan made available by the Department by submitting a properly completed enrollment form and supporting documentation within 31 days of the change. A change made under this subsection becomes effective on the first day of the first pay period or first month, as applicable, following submission of a properly completed enrollment form and supporting documentation:

1. Elected coverage provided under the plan is significantly restricted or eliminated,
2. Non-elected coverage provided under the plan is significantly improved,
3. The member's spouse makes a change in the coverage provided by the spouse's employer,
4. The member or an eligible dependent loses coverage under another group health plan sponsored by a governmental or educational entity, or
5. The member becomes subject to a QMCSO or another person becomes subject to a QMCSO that requires the other person to provide health insurance for the member's eligible dependent.

Historical Note

Adopted effective August 31, 1984 (Supp. 84-4). Former Section R2-6-106 renumbered to R2-6-206, new Section R2-6-106 adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section amended by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-107. Termination of Coverage

A. Insurance coverage of an employee or officer and the employee's or officer's eligible dependent terminates at 11:59 p.m. on the last day of the period for which an insurance premium was paid if the employee or officer ceases to be eligible to participate in the insurance plan.

B. Insurance coverage of an eligible dependent terminates at 11:59 p.m. on the last day of the month that the individual is an eligible dependent under this Chapter.

C. Insurance coverage of a retiree or former elected official terminates:

1. Automatically if the retiree or former elected official dies, or
2. At 11:59 p.m. on the last day of the period for which the last insurance premium was paid.

D. Insurance coverage of a surviving dependent or surviving spouse terminates:

1. At 11:59 p.m. on the last day of the period for which the last insurance premium was paid, or
2. Shall be in accordance with A.R.S. § 38-1114 for surviving spouse and dependents of a deceased law enforcement officer killed in the line of duty, including the termination of payments for health insurance premiums payable by the employer.

E. Insurance coverage of a COBRA member terminates at 11:59 p.m. on the last day that the COBRA member is eligible for coverage under COBRA or of the period for which the last insurance premium was paid.

F. By providing written notice to the Director at any time, an employee, officer, or former elected official, as applicable, may cease purchasing:

1. Supplemental life insurance in excess of $35,000;
2. Life insurance for an eligible dependent; or
3. Short-term disability insurance.

Historical Note

Adopted effective August 31, 1984 (Supp. 84-4). Former Section R2-6-107 renumbered to R2-6-207, new Section R2-6-107 adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section amended by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-108. COBRA

A. When a member or an insured eligible dependent ceases to be eligible to participate in the health, dental, or vision insurance plans made available by the Department because of a change in the work status of the member, the Director shall inform the member or eligible dependent of whether the member or eligible dependent is eligible for coverage under COBRA.

B. When an insured eligible dependent of a member ceases to be eligible to participate in the health, dental, or vision insurance plans made available by the Department because the member dies or because of divorce, legal separation, or ceasing to meet the criteria for a child, the member or affected dependent shall provide written notice of the change to the Director within 60 days of the change. The Director shall inform the affected dependent whether the affected dependent is eligible for coverage under COBRA. The Department shall not make COBRA coverage available to an affected dependent if notice is not provided as specified in this subsection.

C. When an employee or officer ceases to be eligible for a health care flexible spending account because of termination of status as an employee or officer, the Director shall inform the former employee or officer and all qualified beneficiaries of whether they are eligible for coverage under COBRA.

D. The state shall not pay any of the cost for COBRA coverage. An individual who elects COBRA coverage shall pay all costs plus a small amount for administrative expenses.

E. COBRA coverage is determined by federal law.

Historical Note
Adopted effective August 31, 1984 (Supp. 84-4). Former Section R2-6-108 renumbered to R2-6-208, new Section R2-6-108 adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section amended by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-109. Expired

Historical Note
Adopted effective August 31, 1984 (Supp. 84-4). Former Section R2-6-109 renumbered to R2-6-209, new Section R2-6-109 adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-110. Expired

Historical Note
Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-111. Expired

Historical Note
Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-112. Expired

Historical Note
Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-113. Expired

Historical Note
Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-114. Expired

Historical Note
Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

ARTICLE 2. INSURANCE PLANS

R2-6-201. Insurance Plans

A. As provided by law, any expenditure of public monies for an insurance plan described in this Chapter is contingent upon the legislature making an appropriation for the plan and the availability of funds.

B. The Department shall make available the following types of insurance plans:
1. Health insurance,
2. Dental insurance,
3. Vision insurance,
4. Flexible spending account,
5. Life insurance, and
6. Short-term disability insurance.

C. The Department shall comply with all federal, state, and local laws regarding use and disclosure of protected health information of an individual who participates in an insurance plan made available by the Department.

Historical Notes
Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-6-201 repealed, new Section R2-6-201 renumbered from R2-6-101 effective September 16, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2514, effective July 15, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section amended by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-202. Long-term Disability Insurance

A. The state shall automatically enroll an employee or officer in a long-term disability insurance plan. The long-term disability insurance plan in which an employee or officer is enrolled depends on the state-sponsored retirement plan to which the employee or officer contributes.

B. The state may offset the amount that an employee or officer receives under a long-term disability insurance plan by amounts that the employee or officer receives as Social Security payments, retirement benefits, and other disability benefits.

Historical Note
Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-6-202 repealed, new Section R2-6-202 renumbered from R2-6-102 effective September 16, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2514, effective July 15, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1).

R2-6-203. Flexible Spending Accounts

A. The state shall provide an employee or officer with the opportunity to establish a flexible spending account for:
1. Health-care expenses,
2. Dependent-care expenses, or
3. Both health-care and dependent-care expenses.

B. An employee or officer who elects to establish a flexible spending account shall annually sign a salary reduction order specific for the flexible spending account.

C. A flexible spending account is regulated by federal law.

Historical Note
Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-6-203 repealed, new Section R2-6-203 renumbered from R2-6-103 effective September 16, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2514, effective July 15, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1).

R2-6-204. Employee Flexible Benefit Plan

A. The Director shall ensure that the premium paid by an employee or officer for participation in the insurance plans listed in R2-6-201(1) through (3) and for a maximum of

$35,000 in supplemental life insurance and the amount set aside in a flexible spending account reduces the employee's or officer's compensation as allowed by Section 125 of the Internal Revenue Code.

B. The Director shall ensure that the premium paid by an employee or officer to enroll a dependent in the insurance plans listed in R2-6-201(1) through (3) reduces the employee's or officer's compensation as allowed by Section 125 of the Internal Revenue Code.

C. The Director shall ensure that the amount paid by the state to enable a dependent of an employee or officer to participate in the insurance plans listed in R2-6-201(1) through (3) increases the employee's or officer's compensation and is taxed as required by law.

D. If an employee or officer experiences a qualified life event during a plan year that adds or deletes a dependent, the Director shall ensure that the compensation of the employee or officer is adjusted accordingly and taxed as required by law.

E. The Director shall ensure that the method of adjusting an employee's or officer's compensation under this Section is not changed or canceled until the end of a plan year.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-6-204 repealed, new Section R2-6-204 renumbered from R2-6-104 effective September 16, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2514, effective July 15, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section amended by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-205. Performance Standards for Health, Dental, and Vision Insurance Plans

As required under A.R.S. § 38-651, the Department establishes and shall require that a plan provider comply with the following minimum performance standards:

1. Cost competitiveness. A plan provider shall offer the Department a discount from full-billed charges that is significant and an administrative fee that is reasonable when compared with the discount and administrative fee of other potential plan providers.
2. Utilization review. A plan provider of medical management services shall employ utilization review standards that are generally accepted in the industry and specified by the Department in contract.
3. Network development and access. A plan provider of a medical network shall comply with the access and availability requirements that the Department develops based on the location of participants and specifies in contract.
4. Conversion and implementation. A plan provider shall fully perform in accordance with all requirements that the Department specifies in contract from the date on which the contract begins until the date on which the contract ends or is terminated after giving proper notice.
5. Report accuracy and timeliness. A plan provider shall ensure that all reports are complete, accurate, and submitted as specified in contract.
6. Quality outcomes. A plan provider shall comply with the quality-outcome standards that the Department specifies in contract. The Department may offset expenses, costs, or damages incurred as a result of the plan provider failing to comply with the specified quality-outcome standards against any sums due to the plan provider.
7. Customer satisfaction. The Department shall annually measure the extent to which participants are satisfied with a plan provider's services.

Historical Notes

Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-6-205 repealed, new Section R2-6-205 renumbered from R2-6-105 effective September 16, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2514, effective July 15, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1).

R2-6-206. Expired

Historical Notes

Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-6-206 repealed, new Section R2-6-206 renumbered from R2-6-106 effective September 16, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2514, effective July 15, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-207. Expired

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-6-207 repealed, new Section R2-6-207 renumbered from R2-6-107 effective September 16, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2514, effective July 15, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-208. Expired

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-6-208 repealed, new Section R2-6-208 renumbered from R2-6-108 effective September 16, 1997 (Supp. 97-3). Section repealed; new Section adopted by final rulemaking at 5 A.A.R. 2514, effective July 15, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-209. Expired

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-6-209 repealed, new Section R2-6-209 renumbered from R2-6-109 effective September 16, 1997 (Supp. 97-3). Section repealed; new Section adopted at 5 A.A.R. 2514, effective July 15, 1999 (Supp. 99-2). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-210. Repealed

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Repealed effective September 16, 1997 (Supp. 97-3).

R2-6-211. Repealed

Historical Note
Adopted effective July 27, 1983 (Supp. 83-4). Repealed effective September 16, 1997 (Supp. 97-3).

R2-6-212. Repealed

Historical Note
Adopted effective July 27, 1983 (Supp. 83-4). Repealed effective September 16, 1997 (Supp. 97-3).

ARTICLE 3. ELIGIBILITY CRITERIA

R2-6-301. Eligibility to Participate in Health, Dental, and Vision Insurance Plans

A. Employees, officers, and retirees. An employee, officer, or retiree may participate in the health, dental, and vision insurance plans made available by the Department by enrolling at the time specified in R2-6-105 and agreeing to pay the contracted cost of each insurance plan chosen.

B. Former elected officials. A former elected official may participate in the health, dental, and vision insurance plans made available by the Department if the former elected official:
1. Has at least five years of credited service in the Elected Officials' Retirement Plan established at A.R.S. § 38-802;
2. Participated in a group health, dental, or vision insurance plan made available to elected officials at the time of leaving office;
3. Served as an elected official on or after January 1, 1983;
4. Enrolls at the time specified in R2-6-105; and
5. Agrees to pay the contracted cost of the insurance plan.

C. Eligible dependents. A member may enroll an eligible dependent in the health, dental, and vision insurance plans made available by the Department at the time specified in R2-6-105. The member who enrolls an eligible dependent shall pay the contracted cost of the insurance plan.

D. Surviving dependents. A surviving dependent, as defined at R2-6-101, may continue coverage under the health, dental, and vision insurance plans made available by the Department by enrolling at the time specified in R2-6-105 and paying the contracted cost of the insurance plan.

E. Surviving spouse. A surviving spouse, as defined at R2-6-101, may continue coverage under the health, dental, and vision insurance plans made available by the Department by enrolling at the time specified in R2-6-105 and paying the contracted cost of the insurance plan.

F. Eligibility exception. An employee or officer who is on approved leave without pay and the enrolled eligible dependents of the employee or officer may continue enrollment in the health, dental, and vision insurance plans made available by the Department under the conditions specified in R2-5A-C602.

G. Coverage of a newborn infant.
1. The state shall provide health insurance to an infant born to a member or the member's spouse from the time the infant is born until the infant reaches its 31st day. To ensure that the infant continues to have health insurance coverage, the member shall enroll the infant in the health insurance plan made available by the Department before the infant reaches its 31st day.
2. In compliance with the Newborns' and Mothers' Health Protection Act of 1996, the state shall provide health insurance to an infant born to a member's eligible dependent other than the member's spouse. As permitted under the Newborns' and Mothers' Health Protection Act of 1996, the state shall limit health insurance provided under this subsection to 48 hours for a vaginal delivery and 96 hours for delivery by cesarean section. A member who wishes to obtain health insurance for the infant beyond the time required under the Newborns' and Mothers' Health Protection Act of 1996, may enroll the infant in the health insurance plan made available by the Department if the infant is eligible.

Historical Note
Adopted effective July 27, 1983 (Supp. 83-4). Former Section R2-6-301 renumbered to R2-6-501, new Section R2-6-301 adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section amended by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-302. Eligibility to Participate in Life and Short-term Disability Insurance Plans

A. Employees and officers.
1. Life insurance. An employee or officer may participate in the life and short-term disability insurance plans made available by the Department by enrolling at the time specified in R2-6-105. The state shall provide basic life insurance to an employee or officer at no charge.
2. Short-term disability insurance. An employee or officer who chooses to participate in the short-term disability insurance plan made available by the Department shall agree to pay the contracted cost of the plan.
3. Supplemental life insurance. The state shall make supplemental life insurance available to an employee or officer. An employee or officer may purchase an amount of supplemental life insurance that, does not exceed three times the employee's or officer's base pay, rounded down to the nearest $5,000 or the maximum amount established by the Director, whichever is less. An employee or officer who chooses to participate in the supplemental life insurance plan shall agree to pay the contracted cost for the supplemental life insurance.

B. Former elected officials. A former elected official may purchase life insurance made available by the Department if the former elected official meets the criteria at R2-6-301(B)(1) and (3).

C. Eligible dependents. An employee, officer, or former elected official who meets the criteria at R2-6-301(B)(1) and (3) may purchase life insurance through the plan made available by the Department for an eligible dependent in an amount determined by the Director. An employee, officer, or former elected official who chooses to purchase life insurance for an eligible dependent shall agree to pay the contracted cost for the life insurance.

D. Surviving spouse of a former elected official. Under A.R.S. § 38-651.02(C), the surviving spouse of a former elected official who met the criteria at R2-6-301(B)(1) and (3) at the time of death may continue to purchase life insurance through the plan made available by the Department if the surviving spouse:
1. Makes application within the time specified in R2-6-105,
2. Agrees to pay the contracted cost for the life insurance, and
3. Is receiving a monthly survivor's retirement check from the Elected Officials' Retirement Plan.

Historical Note
Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section amended by final

rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-303. Audit of Dependent Eligibility

A. A member shall not enroll an individual in an insurance plan made available by the Department unless the individual is an eligible dependent as defined in R2-6-101.

B. The Department shall conduct audits to determine whether individuals enrolled by members in an insurance plan made available by the Department are eligible dependents. The Department shall choose a particular member for audit either randomly or in response to uncertainty concerning dependent eligibility.

C. If a member is chosen for audit, the Department shall provide the member with written notice and 60 days in which to produce evidence that an individual enrolled by the member in an insurance plan made available by the Department is an eligible dependent. The Director may extend the 60-day requirement in an individual case. Evidence of dependent eligibility may include one or more of the following:

1. Marriage certificate,
2. Birth certificate,
3. Receipts for insurance payments made while on leave without pay,
4. Court order regarding adoption or placement for adoption,
5. Court order regarding guardianship,
6. Documentation of foster-child placement,
7. Tax return,
8. Declaration of disability from the Social Security Administration,
9. Documentation of Arizona residence, or
10. Other documentation acceptable to the Director.

D. If a member chosen for audit fails to produce evidence of dependent eligibility within the time specified in subsection (C), the Department shall:

1. Upon providing advance notice of at least 30 days to the member, terminate insurance coverage of the individual whose eligibility was not proven;
2. Require that the member reimburse the Department for all premiums and claims paid since October 1, 2004, on behalf of the individual whose eligibility was not proven; and
3. Report an employee or officer who misrepresented dependent eligibility to the employee's or officer's agency for possible disciplinary action.

Historical Note

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1). Section amended by final rulemaking at 23 A.A.R. 1719, effective June 6, 2017 (Supp. 17-2).

R2-6-304. Expired

Historical Note

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-305. Expired

Historical Note

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-306. Expired

Historical Note

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-307. Expired

Historical Note

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-308. Expired

Historical Note

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-309. Expired

Historical Note

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-310. Expired

Historical Note

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-311. Expired

Historical Note

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

ARTICLE 4. APPEALS AND GRIEVANCES

R2-6-401. Appeal of a Plan-provider Decision

A. The Department has delegated to each plan provider the authority to:

1. Interpret and apply the terms of the plan provider's particular insurance plan;
2. Determine whether a particular benefit is included in the plan and, if included, the amount of payment to be made under the plan; and
3. Perform a full and fair review of any decision by the plan provider regarding benefits included in or payments to be made under the plan if the decision is appealed in accordance with the plan provider's specified procedures.

B. An individual who is enrolled in an insurance plan made available by the Department and who wishes to appeal a decision by the plan provider shall follow the appeal procedures specified in the applicable plan description.

Historical Note

Adopted effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002

(Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1).

R2-6-402. Grievance of a Department Decision

A. An individual who participates in one or more of the insurance plans made available by the Department may file a grievance with the Director regarding:
1. Determination of creditable coverage,
2. Determination of whether a medical child support order is qualified,
3. Determination of eligibility,
4. Dissatisfaction with care,
5. Dissatisfaction with an insurance plan,
6. Dissatisfaction with a plan provider,
7. Access to care, and
8. Inconsistent application of statute or rule.

B. To file a grievance, an individual shall submit a letter to the Director that contains the following information:
1. Name and contact information of the individual filing the grievance,
2. Name of the particular insurance plan that is the subject of the grievance,
3. Nature of the grievance, and
4. Nature of the resolution requested.

C. The Director shall provide a written response to a grievance within 60 days.

Historical Note

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4). New Section made by final rulemaking at 15 A.A.R. 258, effective March 7, 2009 (Supp. 09-1).

R2-6-403. Expired

Historical Note

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-404. Expired

Historical Note

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-405. Expired

Historical Note

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-406. Expired

Historical Note

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-407. Expired

Historical Note

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-408. Expired

Historical Note

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

R2-6-409. Expired

Historical Note

Adopted effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

ARTICLE 5. EXPIRED

R2-6-501. Expired

Historical Note

Section R2-6-501 renumbered from R2-6-301 and amended effective September 16, 1997 (Supp. 97-3). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 5017, effective September 30, 2002 (Supp. 02-4).

41-703. Duties of director

The director shall:

1. Be directly responsible to the governor for the direction, control and operation of the department.

2. Provide assistance to the governor and legislature as requested.

3. Adopt rules the director 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, determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons as may be necessary in the performance of the department's duties and contract for the services of outside advisors, consultants and aides as may be reasonably necessary.

6. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of monies.

7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of the department's purposes, objectives and programs.

8. Accept and disburse grants, gifts, donations, matching monies 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.

9. Establish and maintain separate financial accounts as required by federal law or regulations.

10. Advise and make recommendations to the governor and the legislature on all matters concerning the department's objectives.

11. Delegate the administrative functions, duties and powers as the director deems necessary to carry out the efficient operation of the department.

38-653. Rules and regulations

The department of administration shall adopt and promulgate rules and regulations necessary to administer the provisions of this article.

38-651.03. Expenditure of funds for disability income insurance

The department of administration may expend public funds appropriated for such purpose to procure disability income coverage for full-time officers and employees of the state, its departments and agencies. The department of administration by rule shall adopt standards for integrating such coverage with other forms of income protection and for eligibility of officers and employees. Such coverage shall provide two-thirds of the gross monthly salary of such officer or employee after a waiting period prescribed by the department of administration.

38-651.05. Flexible or cafeteria employee benefit plan; fund

A. The department of administration is authorized to establish a flexible or cafeteria employee benefit plan that may provide for deductions or salary reductions for group life insurance, disability insurance, group accidental death and dismemberment insurance, long-term care coverage, health and accident insurance or other authorized employee benefits, which meet the requirements of the United States internal revenue code of 1986 and regulations thereunder and to adopt rules for its administration.

B. The department of administration shall determine the frequency of payroll deductions for purposes of this section for those state officers or employees under payroll systems under the direction of the department of administration. For all other state officers or employees under other state payroll systems, the appropriate state agency, board, commission or institution shall determine the frequency of payroll deductions for purposes of this section.

C. The flexible or cafeteria employee benefit plan fund is established. Monies received by the department of administration from employee contributions to the flexible or cafeteria employee benefit plan established pursuant to subsection A of this section shall be deposited in the fund or deposited directly with a third party under contract with the department of administration to administer the plan. Investment earnings shall be deposited to the credit of the fund.

D. The department of administration shall use any monies remaining in the fund or on deposit with a third party under contract to administer the plan at the end of each fiscal year in the following priority:

1. To cover the costs to this state of administering the flexible or cafeteria employee benefit plan under subsection A of this section.

2. After payment of the administrative costs, the remainder shall be used to reduce in a uniform manner the employee and employer contributions to benefits included under a flexible or cafeteria employee benefit plan.

38-651. Expenditure of monies for health and accident insurance; definition

A. The department of administration may expend public monies appropriated for such purpose to procure health and accident coverage for full-time officers and employees of this state and its departments and agencies. The department of administration may adopt rules that provide that if an employee dies while the employee's surviving spouse's health insurance is in force, the surviving spouse is entitled to no more than thirty-six months of extended coverage at one hundred two per cent of the group rates by paying the premiums. Except as provided by sections 38-1114 and 38-1141, no public monies may be expended to pay all or any part of the premium of health insurance continued in force by the surviving spouse. The department of administration shall seek a variety of plans, including indemnity health insurance, hospital and medical service plans, dental plans and health maintenance organizations. On a recommendation of the department of administration and the review of the joint legislative budget committee, the department of administration may self-insure for the purposes of this subsection. If the department of administration self-insures, the department may contract directly with preferred provider organizations, physician and hospital networks, indemnity health insurers, hospital and medical service plans, dental plans and health maintenance organizations. If the department self-insures, the department shall provide that the self-insurance program include all health coverage benefits that are mandated pursuant to title 20. The self-insurance program shall include provisions to provide for the protection of the officers and employees, including grievance procedures for claim or treatment denials, creditable coverage determinations, dissatisfaction with care and access to care issues. The department of administration by rule shall designate and adopt performance standards, including cost competitiveness, utilization review issues, network development and access, conversion and implementation, report timeliness, quality outcomes and customer satisfaction for qualifying plans. The qualifying plans for which the standards are adopted include indemnity health insurance, hospital and medical service plans, closed panel medical and dental plans and health maintenance organizations, and for eligibility of officers and employees to participate in such plans. Any indemnity health insurance or hospital and medical service plan designated as a qualifying plan by the department of administration must be open for enrollment to all permanent full-time state employees, except that any plan established prior to June 6, 1977 may be continued as a separate plan. Any closed panel medical or dental plan or health maintenance organization designated as the qualifying plan by the department of administration must be open for enrollment to all permanent full-time state employees residing within the geographic area or area to be served by the plan or organization. Officers and employees may select coverage under the available options.

B. The department of administration may expend public monies appropriated for such purpose to procure health and accident coverage for the dependents of full-time officers and employees of this state and its departments and agencies. The department of administration shall seek a variety of plans, including indemnity health insurance, hospital and medical service plans, dental plans and health maintenance organizations. On a recommendation of the department of administration and the review of the joint legislative budget committee, the department of administration may self-insure for the purposes of this subsection. If the department of administration self-insures, the department may contract directly with preferred provider organizations, physician and hospital networks, indemnity health insurers, hospital and medical service plans, dental plans and health maintenance organizations. If the department self-insures, the department shall provide that the self-insurance program include all health coverage benefits that are mandated pursuant to title 20. The self-insurance program shall include provisions to provide for the protection of the officers and employees, including grievance procedures for claim or treatment denials, creditable coverage determinations, dissatisfaction with care and access to care issues. The department of administration by rule shall designate and adopt performance standards, including cost competitiveness, utilization review issues, network development and access, conversion and implementation, report timeliness, quality outcomes and customer satisfaction for qualifying plans. The qualifying plans for which the standards are adopted include indemnity health insurance, hospital and medical service plans, closed panel medical and dental plans and health maintenance organizations, and for eligibility of the dependents of officers and employees to participate in such plans. Any indemnity health insurance or hospital and medical service plan designated as a qualifying plan by the department of administration must be open for enrollment to all permanent full-time state employees, except that any plan established prior to June 6, 1977 may be continued as a separate plan. Any closed panel medical or dental plan or health maintenance organization designated as a qualifying plan by the department of administration must be open for enrollment to all permanent

full-time state employees residing within the geographic area or area to be served by the plan or organization. Officers and employees may select coverage under the available options.

C. The department of administration may designate the Arizona health care cost containment system established by title 36, chapter 29 as a qualifying plan for the provision of health and accident coverage to full-time state officers and employees and their dependents. The Arizona health care cost containment system shall not be the exclusive qualifying plan for health and accident coverage for state officers and employees either on a statewide or regional basis.

D. Except as provided in section 38-652, public monies expended pursuant to this section each month shall not exceed:

1. Five hundred dollars multiplied by the number of officers and employees who receive individual coverage.

2. One thousand two hundred dollars multiplied by the number of married couples if both members of the couple are either officers or employees and each receives individual coverage or family coverage.

3. One thousand two hundred dollars multiplied by the number of officers or employees who receive family coverage if the spouses of the officers or employees are not officers or employees.

E. Subsection D of this section:

1. Establishes a total maximum expenditure of public monies pursuant to this section.

2. Does not establish a minimum or maximum expenditure for each individual officer or employee.

F. In order to ensure that an officer or employee does not suffer a financial penalty or receive a financial benefit based on the officer's or employee's age, gender or health status, the department of administration shall consider implementing the following:

1. Requests for proposals for health insurance that specify that the carrier's proposed premiums for each plan be based on the expected age, gender and health status of the entire pool of employees and officers and their family members enrolled in all qualifying plans and not on the age, gender or health status of the individuals expected to enroll in the particular plan for which the premium is proposed.

2. Recommendations from a legislatively established study group on risk adjustments relating to a system for reallocating premium revenues among the contracting qualifying plans to the extent necessary to adjust the revenues received by any carrier to reflect differences between the average age, gender and health status of the enrollees in that carrier's plan or plans and the average age, gender and health status of all enrollees in all qualifying plans.

G. Each officer or employee shall certify on the initial application for family coverage that the officer or employee is not receiving more than the contribution for which eligible pursuant to subsection D of this section. Each officer or employee shall also provide the certification on any change of coverage or marital status.

H. If a qualifying health maintenance organization is not available to an officer or employee within fifty miles of the officer's or employee's residence and the officer or employee is enrolled in a qualifying plan, the officer or employee shall be offered the opportunity to enroll with a health maintenance organization when the option becomes available. If a health maintenance organization is available within fifty miles and it is determined by the department of administration that there is an insufficient number of medical providers in the organization, the department may provide for a change in enrollment from plans designated by the director when additional medical providers join the organization.

I. Notwithstanding subsection H of this section, officers and employees who enroll in a qualifying plan and reside outside the area of a qualifying health maintenance organization shall be offered the option to enroll with

a qualified health maintenance organization offered through their provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization, if:

1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.

2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the officer or employee to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the officer or employee.

3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the officer or employee to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are paid pursuant to any agreement between the health maintenance organization and the officer or employee living outside the area of the qualifying health maintenance organization.

J. The department of administration shall allow any school district in this state that meets the requirements of section 15-388, a charter school in this state that meets the requirements of section 15-187.01 or a city, town, county, community college district, special taxing district, authority or public entity organized pursuant to the laws of this state that meets the requirements of section 38-656 to participate in the health and accident coverage prescribed in this section, except that participation is only allowed in a health plan that is offered by the department and that is subject to title 20, chapter 1, article 1. A school district, a charter school, a city, a town, a county, a community college district, a special taxing district, an authority or any public entity organized pursuant to the laws of this state rather than this state shall pay directly to the benefits provider the premium for its employees.

K. The department of administration shall determine the actual administrative and operational costs associated with school districts, charter schools, cities, towns, counties, community college districts, special taxing districts, authorities and public entities organized pursuant to the laws of this state participating in the state health and accident insurance coverage. These costs shall be allocated to each school district, charter school, city, town, county, community college district, special taxing district, authority and public entity organized pursuant to the laws of this state based on the total number of employees participating in the coverage. This subsection only applies to a health plan that is offered by the department and that is subject to title 20, chapter 1, article 1.

L. Insurance providers contracting with this state shall separately maintain records that delineate claims and other expenses attributable to participation of a school district, charter school, city, town, county, community college district, special taxing district, authority and public entity organized pursuant to the laws of this state in the state health and accident insurance coverage and, by November 1 of each year, shall report to the department of administration the extent to which state costs are impacted by participation of school districts, charter schools, cities, towns, counties, community college districts, special taxing districts, authorities and public entities organized pursuant to the laws of this state in the state health and accident insurance coverage. By December 1 of each year, the director of the department of administration shall submit a report to the president of the senate and the speaker of the house of representatives detailing the information provided to the department by the insurance providers and including any recommendations for possible legislative action.

M. Notwithstanding subsection J of this section, any school district in this state that meets the requirements of section 15-388, a charter school in this state that meets the requirements of section 15-187.01 or a city, town, county, community college district, special taxing district, authority or public entity organized pursuant to the laws of this state that meets the requirements of section 38-656 may apply to the department of administration to participate in the self-insurance program that is provided by this section pursuant to rules adopted by the department. A participating entity shall reimburse the department for all premiums and administrative or other insurance costs. The department shall actuarially prescribe the annual premium for each participating entity to reflect the actual cost of each participating entity.

N. Any person that submits a bid to provide health and accident coverage pursuant to this section shall disclose any court or administrative judgments or orders issued against that person within the last ten years before the submittal.

O. For the purposes of this section, "dependent" means a spouse under the laws of this state, a child who is under twenty-six years of age or a child who was disabled before reaching nineteen years of age, who continues to be disabled under 42 United States Code section 1382c and for whom the employee had custody before reaching nineteen years of age.

DEPARTMENT OF CHILD SAFETY
Title 21, Chapter 5, Article 2

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: May 7, 2024

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

FROM: Council Staff

DATE: **April 8, 2024**

SUBJECT: **DEPARTMENT OF CHILD SAFETY**
Title 21, Chapter 5, Article 2

Summary

This Five Year Review Report (5YRR) from the Department of Child Safety (Department) covers nine (9) rules in Title 21, Chapter 5, Article 2 related to Independent Living and Transitional Independent Living Programs. The Department provides services and supports to assist foster youth transition to adulthood. The purpose of these rules is to provide information about the services available, eligibility criteria, and outlines the process for when a service is being denied or terminated. Some services provided to the youth include individual assistance in obtaining or removing barriers to getting a high school diploma, enrollment in post-secondary education, career exploration, vocational training, job placement and retention, training and opportunities to practice daily living skills. Additionally, for eligible youth ages 18 through 20 years old, the Department provides financial and housing assistance, counseling, employment readiness and obtainment, education and other support services to complement their own efforts to achieve self- sufficiency.

Proposed Action

The Department plans to amend R21-5-201(9)(31) and 204, which requires a participant be a resident of Arizona. This causes challenges if a participant chooses to attend school out of state. The Department plans to eliminate that requirement and send the Notice of Final Rulemaking to GRRC by May 2025.

1. **Has the agency analyzed whether the rules are authorized by statute?**

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department states that the rules under this Article pertain to services and support the Department provides to children who are or were placed in out-of-home care and have reached an age where the Department provides important services and support to assist foster youth transition to adulthood. The Department indicates the purpose of these rules is to provide information about the services available, eligibility criteria, and outlines the process for when a service is being denied or terminated.

The Department indicates that youth participation in these programs vary. They state that on September 21, 2023, there were 1,467 youth participating in these programs compared to 1,701 youth participating on December 31, 2017. The Department states that program services are funded through a combination of federal and state dollars. The Department indicates that Federal dollars are awarded through the Chafee Program and that $4,585,780 was appropriated for the state of Arizona of FFY 2023, where as in FFY 2018 $5,138,520 was appropriated. The subsidy is a monthly stipend to assist eligible youth with room and board costs while they pursue education and employment goals and is provided in lieu of any other foster care payment. The Department indicates that in July 2022 to June 2023, the actual cost to provide Independent Living Subsidy was $9,442,379 as compared to the June 2017 to July 2018 subsidy of $3,744,479. In addition, the average number of monthly youths receiving the Independent Living Subsidy was 665 in FY 2023 as compared to 499 in FY 2018. The Department states that funds to provide the Independent Living Subsidy are appropriated annually and are a combination of federal and state funding.

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 of Child Safety believes that the current rules pose the least burden and costs to the regulated person by these rules.

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 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 their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Department states the rules are enforced as written.

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

The rules are not more stringent than corresponding federal laws.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department has determined that A.R.S. § 41-1037 does not apply to these rules as they do not require the issuance of a regulatory permit, license or agency authorization.

11. **Conclusion**

This Five Year Review Report from the Department of Child Safety covers nine (9) rules in Title 21, Chapter 5, Article 2 related to Independent Living and Transitional Independent Living Programs. As indicated above, the rules are enforced as written, clear, concise, and understandable, and effective in achieving their objective.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

ARIZONA
DEPARTMENT
of CHILD SAFETY

David Lujan, Cabinet Executive Officer/Executive Deputy Director
Katie Hobbs, Governor

October 27, 2023

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

RE: Arizona Department of Child Safety, A.A.C. Title 21, Chapter 5, Article 2 Five-Year-Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year-Review Report of the Arizona Department of Child Safety (DCS) for A.A.C. Title 21, Chapter 5, Article 2 which is due on October 31, 2023.

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

For questions about this report, please contact Angie Trevino, Rules Development Specialist, at 602-619-3163 or angelica.trevino@azdcs.gov.

Sincerely,

David Lujan
Cabinet Executive Officer/Executive Deputy Director

Enclosure

P.O. Box 6030 ♦ Site Code C010-23 ♦ Phoenix, AZ 85005-6030
Telephone (602) 255-2500

ARIZONA DEPARTMENT OF CHILD SAFETY

Five-Year-Review Report

Title 21. Child Safety

Chapter 5. Permanency and Support Services

Article 2. Independent Living and Transitional Independent Living Programs

October 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 8-453(A)(5)

Specific Statutory Authority: A.R.S. §§ 8-521, 8-453(A)(9)(b), 8-521.01, 8-453(A)(18)

2. The objective of each rule:

Rule	Objective
R21-5-201. Definitions	The objective of this rule is to provide uniform understanding of terminology used by the Department.
R21-5-202. Provision of Services	The objective of this rule is to inform of the availability of Independent Living services, Independent Living Subsidy, and Transitional Independent Living Program provided by the Department to eligible youth.
R21-5-203. Denial of Services	The objective of this rule is to explain that services may be denied if eligibility requirements are not met.
R21-5-204. Eligibility	The objective of this rule is to establish the eligibility requirements for Independent Living Services, Independent Living Subsidy, and the Transitional Independent Living Program.
R21-5-205. Services for Foster Youth 18 through 20 Years of Age in Out-of-home Care	The objective of this rule is to provide information and criteria on services the Department may provide to youth ages 18 through 20 years.
R21-5-206. Transitional Independent Living Program	The objective of this rule is to describe the Transitional Independent Living Program including the assistance the Department may provide and the information the eligible youth is required to provide.

R21-5-207. Re-entry Into Out-of-home Care	The objective of this rule is to state the Department's process upon receipt of a request from a youth to re-enter out-of-home care with the Department.

R21-5-208. Termination of Services	The objective of this rule is to establish the Department's process when terminating or denying services and supports under the Independent Living Services, Transitional Independent Living Program, or Independent Living Subsidy services.
R21-5-209. Grievance Process	The objective of this rule is to provide information on the grievance process.

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 rules under this Chapter and Article pertain to services and supports the Department provides children who are or were placed in out-of-home care and have reached an age where the Department provides important services and support to assist foster youth transition to adulthood. The purpose of these rules is to provide information about the services available, eligibility criteria, and outlines the process for when a service is being denied or terminated.

Services and support provided to the youth includes individual assistance in obtaining or removing barriers to getting a high school diploma, enrollment in post-secondary education, career exploration, vocational training, job placement and retention, training and opportunities to practice daily living skills. Additionally, for eligible youth ages 18 through 20 years old, the Department provides financial and housing assistance, counseling, employment readiness and obtainment, education and other support services to complement their own efforts to achieve self-sufficiency. The Department does not charge a fee to eligible youth for their participation in these services. The Department contracts for transitional living support services.

Though the Department has some specialized units supporting these youth and young adults, it is not a statewide

organizational structure; therefore, costs associated with providing these services and supports is not readily quantifiable. The Department does not anticipate allotting any new full-time employees or making changes to those currently allotted. There are no political subdivisions affected by these rules.

Youth participation in these programs vary. On September 21, 2023, there were 1,467 youth participating in these programs. In comparing this to the 2018 Five-Year-Review Report it indicated that on December 31, 2017, there were 1,701 youths participating. Program services are funded through a combination of federal and state dollars. Federal dollars are awarded through the Chafee Program. $4,585,780 was appropriated for the state of Arizona for FFY 2023, where as in FFY2018 $5,138,520 was appropriated. One of the services offered under this program is the Independent Living Subsidy or Maintenance. This subsidy is a monthly stipend to assist eligible youth with room and board costs while they pursue education and employment goals and is provided in lieu of any other foster care maintenance payment. In July 2022 to June 2023, the actual cost to provide Independent Living Subsidy was $9,442,370. The 2018 Five-Year-Review Report indicated that from June 2017 to July 2018, the actual cost to provide Independent Living Subsidy was $3,744,470.00. In FY 2023, the average monthly number of youth receiving the Independent Living Subsidy was 665 whereas in FY 2018 the average monthly number of youth receiving the Independent Living Subsidy was 499. The monthly subsidy stipend for FY 2023 was $1200 in comparison to the average monthly subsidy stipend for FY 2018 was $625. Funds to provide the Independent Living Subsidy are appropriated annually and are a combination of federal and state funding.

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 course of action was indicated in the 2018 Five-Year-Review Report.

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

The Department of Child Safety believes that the current rules pose the least burden and costs to the regulated person by these rules.

12. Are the rules more stringent than corresponding federal laws? **Yes ____ No _X_**

42 U.S.C. §§ 675 and 677. The rules are not more stringent than corresponding federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency

authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

The Department has determined that A.R.S. § 41-1037 does not apply to these rules. These rules do not require the issuance of a regulatory permit, license or agency authorization.

14. Proposed course of action

The Department has reviewed the current rules and plans to make one change to the rules. R21-5-201(9)(31) and 204 require that a participant be a resident of Arizona. This causes challenges if a participant chooses to attend school out of state. The Department plans to eliminate that requirement. The Department plans to send the Notice of Final Rulemaking to GRRC by May 2025.

The Department does not plan to make any other changes to the current rules. The rules were created in 2014 based on the federal Title IV-E Program, in order to comply with that program. SB1728, passed last legislative session requires the Department to create new rules for the Young Adult Program, so the Department will be requesting rulemaking to comply with that law.

ARTICLE 1. INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

R21-5-101. Definitions

The definitions contained in A.R.S. § 8-548 and the following definitions apply in this Article:

1. "Child" means any person less than the age of 18 years.
2. "Compact" or 'ICPC" means the Interstate Compact on the Placement of Children.
3. "Compact Administrator" means the same as A.R.S. § 8-548.
4. "Compact State" means a state that is a member of the Interstate Compact on the Placement of Children.
5. "Department" or "DCS" means the Arizona Department of Child Safety.
6. "Interstate placement" means any movement of a child from one state to another state for the purpose of establishing a suitable living environment and providing necessary care.
7. "Intra-state placement" means the placement of a child within a state by an agency of that state.
8. "Placement" means the same as in A.R.S. § 8-548.
9. "Receiving state" means the same as in A.R.S. § 8-548.
10. "Sending agency" means the same as in A.R.S. § 8-548.
11. "Sending state" means the state where the sending agency is located, or the state in which the court holds exclusive jurisdiction over a child, which causes, permits, or enables the child to be sent to another state.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

R21-5-102. Authority

The ICPC is governed by A.R.S. §§ 8-548 through 8-548.06 and the ICPC regulations. ICPC regulations are posted on the Association of Administrators of the Interstate Compact on the Placement of Children website. These regulations supplement those authorities and must be read in conjunction with them.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

R21-5-103. Conditions of Placement

No person, court, or public or private agency in a Compact State shall place a child in another Compact State until the Compact Administrator in the receiving state has notified the Compact Administrator in the sending state, on a prescribed form, that such placement does not appear to be contrary to the interests of the child and does not violate any applicable laws of the receiving state.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

R21-5-104. Financial Responsibility

The sending person, court, or public or private agency shall be held financially responsible for:

1. Sending the child to the receiving state;
2. Returning the child to the sending state; and
3. Treatment of the child during the period of placement.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

R21-5-105. Applicability

A. Except as listed in subsection (B), the ICPC applies to the placement of:

1. Children in another Compact State by an agency, court or person, which has care or custody of the children.
2. Foreign-born children who are brought under the jurisdiction of a Compact State by an international child placing agency.

B. In addition to the children listed in statute that are not subject to ICPC, the ICPC does not apply:

1. When a child is placed in an institution caring for the mentally ill, mentally impaired, epileptic, or in any institution primarily educational in character or in any hospital or other medical facility.
2. To the placement of children into and out of the United States when the other jurisdiction involved is a foreign country.
3. When a sending court or agency seeks an independent (not ICPC related) courtesy check for placement with a parent from whom the child was not removed, the responsibility for credentials and quality of the courtesy check rests directly with the sending court or agency and the person or party in the receiving state who agrees to conduct the courtesy check without invoking the protection of the ICPC home study process. This does not prohibit a sending state from requesting an ICPC.
4. The Compact does not apply in court cases of paternity, divorce, custody, and probate pursuant to which or in situations where children are being placed with parents or relatives or non-relatives.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

R21-5-106. Placement Approval

Sending and receiving states must obtain approval from the Compact Administrator in both the sending and receiving states prior to the placement of a child in another Compact State.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

R21-5-107. Operations

In providing services provided under this Article, the sending and the receiving state shall:

1. Maintain all information required by state and federal law.
2. Comply with all federal and their respective state laws and regulations regarding the disclosure and use of confidential health and personal information.
3. Comply with all federal and their respective state non-discrimination laws and regulations.
4. Ensure that interpreters, including assistance for the visually or hearing impaired, are available to those receiving services at no cost.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 2979, effective January 2, 2016 (Supp. 15-4).

ARTICLE 2. INDEPENDENT LIVING AND TRANSITIONAL INDEPENDENT LIVING PROGRAMS

R21-5-201. Definitions

The following definitions apply to this Article:

1. "Active participation" means the foster youth is demonstrating efforts toward completion of case plan goals such as regular attendance at school or employment that results in school credits or earned wages.
2. "Aftercare services" means assistance and support available to eligible, former foster youth living in Arizona after the Department, tribal foster care, or other state foster care case is dismissed, and includes services available through the Transitional Independent Living Program.
3. "Age of majority" means that a person is at least 18 years old.
4. "Approved living arrangement" means a residence that has been reviewed by the assigned Child Safety Worker or other responsible agency staff and approved within the individual case plan.
5. "Arizona Young Adult Program" means a group of programs and services designed to assist eligible youth to make a successful transition to adulthood. The programs and services include Independent Living Services, the Independent Living Subsidy Program, Voluntary Out-of-home Care for Foster Youth 18 through 20 Years of Age, and the Transitional Independent Living Program.
6. "Child placing agency" means the same as in A.R.S. § 8-501(A)(1)(a)(iii), and includes a Child Welfare Agency that OLR licenses as a Placing Agency to place a child in a licensed foster home, or facility.
7. "Child Welfare Agency" means the same as in A.R.S. § 8-501.
8. "Child Safety Worker" means the same as in A.R.S. § 8-801.
9. "Custody of the Department" means that the foster youth:
   a. Is in out-of-home care under the supervision of the Department while the subject of a dependency petition, as an adjudicated dependent, or placed voluntarily under A.R.S. § 8-806; or
   b. Is 18, 19, or 20 years of age, a resident of Arizona, and has signed an individual case plan agreement for voluntary out-of-home care. This includes foster youth who were dually adjudicated (dependent and delinquent) and released from a secure setting prior to, or on the foster youth's 19th birthday.
10. "Department" or "DCS" means the Arizona Department of Child Safety.
11. "Eligible youth" means a person who meets the qualifications in A.R.S. § 8-521 for the Independent Living Program, the qualifications in A.R.S. § 8-521.01 for the Transitional Independent Living Program, or is a person who was formerly in another state's child welfare program who would otherwise be eligible.
12. "Employment" means:
    a. Paid employment;
    b. Participation in employment-readiness activities, which include career assessment and exploration, and part time enrollment in an employment or career readiness education program;
    c. Volunteer positions;
    d. Job-shadowing;
    e. Internship; or
    f. Other paid or unpaid employment-related activities.
13. "Extraordinary purchase" means an expenditure by an eligible youth that impedes an eligible youth's ability to meet the financial obligations outlined in the eligible youth's budget.
14. "Foster youth" means a person in the custody of the Department.
15. "Full-time student" means an eligible youth enrolled in an education program identified by the program as being full-time due to the number of credits, credit hours, or other measure of enrollment.
16. "Independent Living Program" means the program authorized by A.R.S § 8-521 to provide an Independent Living Subsidy and educational case management to a foster youth.
17. "Independent Living Services" or "IL Services" means an array of assistance and support services, including those provided under the Independent Living Program, that the Departments provides, contracts, refers, or otherwise arranges that are designed to help a foster youth transition to adulthood by building skills and resources necessary to ensure personal safety, well-being, and permanency into adulthood.
18. "Independent Living Subsidy" or "IL Subsidy" means a monthly stipend provided under the Independent Living Program to a foster youth, to assist in meeting monthly living expenses. This stipend replaces any foster care maintenance payment from the Department for support of the foster youth's daily living expenses.
19. "Individual case plan" means an agreement between an eligible foster youth and the Department, directed by the foster youth that documents specific services and assistance that support the foster youth's goals in relation to:
    a. Natural supports including permanent connections to and relationships with family and community, including peer and community mentors;
    b. A safe, stable, desired living arrangement, which may include a permanent arrangement such as guardianship or adoption;
    c. Daily living skills;
    d. Secondary and postsecondary education and training;
    e. Employment and career planning;
    f. Physical health, including reproductive health;
    g. Life care planning;
    h. Emotional health;
    i. Mental health;
    j. Spiritual or faith needs;
    k. Interpersonal relationships; and
    l. Age-appropriate extra-curricular, enrichment, and social activities.
20. "Individual service plan" means an agreement that is directed by an eligible youth in the TIL Program that documents specific services and assistance to support the eligible youth's goals including, as applicable:
    a. Financial,
    b. Housing,
    c. Counseling,
    d. Employment,
    e. Education, and
    f. Other appropriate support and services.
21. "Life skills assessment" means a measure of an eligible youth's ability to function in a variety of areas such as daily living skills, knowledge of community resources, and budgeting, as determined by a validated assessment tool.
22. "Medical professional" means a doctor of medicine or osteopathy, physician's assistant, or registered nurse practitioner licensed in A.R.S. Title 32, or a doctor of medi-

cine licensed and authorized to practice in another state or foreign country. A medical professional from another state or foreign country must provide verification of valid and current licensure in that state or country.

23. "Misuse of funds" means that an eligible youth has expended money provided by the Department for specific purposes (such as education or living expenses) on an item that is not permitted by law (such as illegal drugs and alcohol), or on an extraordinary purchase that is not included in an approved budget or individual case or service plan, to the degree that the funds are not available for necessary items and purchases approved within the case plan, service plan, or budget.
24. "Natural supports" means relationships and connections that occur in everyday life, independent of formal services, with people or groups who provide personal or other support during a person's lifetime.
25. "Out-of-home care" means a placement approved by the Department such as a licensed foster home, residential group care facility operated by a Child Welfare Agency, therapeutic residential facility, independent living setting, approved unlicensed independent living setting, or in a relative or non-relative placement. Out-of-home care excludes a detention facility, forestry camp, training school, or any other facility operated primarily for the detention of a child who is determined delinquent.
26. "Personal Crisis" means an unexpected event or series of events in an eligible youth's life that prevents or impedes participation in scheduled services or activities.
27. "Residential group care facility" means a Child Welfare Agency that is licensed to receive more than five children for 24-hour social, emotional, or educational supervised care and maintenance at the request of a child, child placing agency, law enforcement agency, parent, guardian, or court. A residential group care facility provides care in a residential setting for children for an extended period of time.
28. "Responsible agency staff" means the assigned Child Safety Worker, another identified Department employee, or contracted staff.
29. "Service team members" means the eligible youth, the youth's attorney(s), the Guardian ad Litem (GAL), the Court Appointed Special Advocate (CASA), tribal child welfare staff, other parties to the dependency case, contract, or other service providers, responsible agency staff, and other adults involved with the youth or supporting the youth's activities or employment.
30. "Substantial non-compliance" means an eligible youth's:
    a. Termination from an educational, vocational, or employment program due to lack of attendance or failure to make satisfactory progress as defined by the program for reasons unrelated to physical health including pregnancy, emotional, or mental health;
    b. Persistent lack of communication during a 60-day period with the assigned Child Safety Worker or other responsible agency staff known to the youth that results in a loss of contact with the eligible youth, or interferes with the Department's ability to provide services and supervision or to document individual case plan or service plan progress;
    c. Persistent misuse of funds provided to support individual case plan or service plan goals; or
    d. For an eligible foster youth, failure to communicate unexpected changes in the living arrangement as agreed to in the individual case plan or the Independent Living Subsidy agreement.
31. "Transitional Independent Living Program" or "TIL Program" means a program of services for residents of Arizona who are eligible youth under A.R.S. § 8-521.01, that provides assistance and support in counseling, education, vocation, employment, and the attainment or maintenance of housing.
32. "Transitional Independent Living Services" or "TIL Services" means those services the Department provides through the Transitional Independent Living Program under A.R.S. § 8-521.01, and may include assistance and support with health care, money management, housing, counseling, education, vocational training, and employment. The Department or its contractors provide services through a written agreement with the eligible youth.
33. "Validated assessment tool" means a written or verbal survey tool that can demonstrate empirical evidence for reliability and validity.
34. "Work day" means Monday through Friday, excluding Arizona state holidays.
35. "Young Adult Transitional Insurance" means a category of health care coverage under the state Medicaid program (Arizona Health Care Cost Containment System or AHCCCS) for Medicaid eligible youth who have reached the age of majority in foster care.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4). Amended by emergency rulemaking at 25 A.A.R. 771, effective March 21, 2019, for 180 days (Supp. 19-1). Emergency amendments renewed at 25 A.A.R. 2485, for an additional 180 days effective September 18, 2019 (Supp. 19-3). Emergency expired; amended by final rulemaking at 26 A.A.R. 241, effective March 15, 2020 (Supp. 20-1).

R21-5-202. Provision of Services

A. The Department shall provide services and stipends for the IL Services, IL Subsidy, and TIL services to eligible youth in a manner that is fair and equitable.

B. The Department shall provide Independent Living Services to eligible foster youth based on needs identified by the eligible foster youth, by service team recommendations, or the findings of a life skills assessment. The services shall address needs identified in the eligible foster youth's individual case plan and may include one or more of the following, depending on the individual case plan goals:
1. Information and assistance to create and maintain a network of natural supports;
2. Independent living skills training;
3. Program incentives;
4. Information and assistance in life care and health care planning, including enrollment in a health plan;
5. Educational, career, and vocational planning;
6. Financial assistance for post-secondary education and training;
7. Out-of-home care for foster youth 18 through 20 years of age; or
8. Aftercare services through the Transitional Independent Living Program.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

R21-5-203. Denial of Services

The Department shall deny services if a person does not meet the eligibility requirements of A.R.S. §§ 8-806, 8-521, 8-521.01, and R21-5-204.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

R21-5-204. Eligibility

A. Independent Living Services. In order to be eligible for IL Services a person shall:
1. Be at least 16 years of age and less than 21 years of age;
2. Be in the custody of the Department or tribal child welfare agency;
3. Reside in out-of-home care;
4. Be referred by the eligible youth's assigned Child Safety Worker, other Department staff, or a tribal social services representative; and
5. Be a resident of Arizona if 18, 19, or 20 years of age.

B. Independent Living Subsidy.
1. In order to be eligible for the IL Subsidy, a person shall:
   a. Be at least 17 years of age, in the custody of the Department, and employed or a full-time student.
   b. With the assistance of the responsible agency staff, complete the Independent Living Subsidy Agreement or other approved forms designated by the Department.
2. Conditions for approval and continuation in the Independent Living Subsidy Program include:
   a. Active participation in activities outlined in the individual case plan;
   b. Adherence to the terms of the IL Subsidy Agreement, including:
      i. Communication with the Child Safety Worker;
      ii. Maintenance of a Department-approved living arrangement, including approval of a roommate, except those assigned by school or work; and
      iii. Participation in scheduled meetings to review progress and update the individual case plan and IL Subsidy Agreement.
3. Eligible youth 18, 19, and 20 years of age who are temporarily residing out of state for the purpose of education or vocational training, and who maintain Arizona residency, may receive the Independent Living Subsidy under the same conditions as above.

C. Transitional Independent Living Program. Under A.R.S. § 8-521.01, in order to be eligible for the Transitional Independent Living Program, a person must be less than 21 years of age and have been in out-of-home care and in the custody of the Department, a licensed residential group care facility, or a tribal child welfare agency while 16, 17, or 18 years of age. Persons who were in another state's child welfare agency under the same conditions are also eligible.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

R21-5-205. Out-of-home Care Services for Foster Youth 18 through 20 Years of Age

A. The Department may provide out-of-home care services and supervision to a foster youth less than 21 years of age, who reached the age of 18 years while in the custody of the Department, and was either in out-of-home care or in secure care, as defined by A.R.S. § 8-201, through a delinquency action, when the foster youth:
1. Requests out-of-home care;
2. Has residency in the state of Arizona;
3. Participates in developing an individual case plan agreement for out-of-home care; and
4. Demonstrates acceptance of personal responsibility for his or her part of the agreement through active participation in the individual case plan.

B. The foster youth, Child Safety Worker, and involved service team members shall develop the individual case plan for out-of-home care:
1. Within the 90-day period prior to the foster youth's 18th birthday for foster youth continuing in out-of-home care past 18 years of age;
2. Within ten work days for foster youth who enter out-of-home care during the 90-day period prior to the foster youth's 18th birthday; and
3. For eligible youth re-entering foster care at 18 years of age or older, within seven work days of the eligible youth's return to Department care and supervision.

C. The individual case plan shall outline the services and supports to be provided under R21-5-202(B) and include at least one of the following activities:
1. Completion of secondary education or a program leading to an equivalent credential;
2. Enrollment in an institution that provides post-secondary education or vocational education;
3. Participation in a program or activity designed to promote or remove barriers to employment; or
4. Employment of at least 80 hours per month.

D. Foster youth participating in out-of-home care shall demonstrate acceptance of personal responsibility by actively participating in an individual case plan, unless prevented by a documented behavioral health or medical condition, or other personal crisis or life event, such as pregnancy, birth, necessary maternity leave as determined by a medical professional, adoption, or guardianship of a child.

E. The Child Safety Worker shall support the foster youth to address any documented condition, crisis, or life event listed in subsection (D), by:
1. Facilitating a youth led discussion that includes a review of the supports and services available as intervention strategies, to assist in resolving the condition, crisis, or concern;
2. Documenting the foster youth's preferred intervention strategy for addressing the condition, crisis, or concern; and
3. Expeditiously providing or otherwise arranging the preferred intervention strategy.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4). Amended by emergency rulemaking at 25 A.A.R. 771, effective March 21, 2019, for 180 days (Supp. 19-1). Emergency amendments renewed at 25 A.A.R. 2485, for an additional 180 days effective September 18, 2019 (Supp. 19-3). Emergency expired; amended by final rulemaking at 26 A.A.R. 241, effective March 15, 2020 (Supp. 20-1).

R21-5-206. Transitional Independent Living Program

A. The Transitional Independent Living Program provides services to eligible youth, under A.R.S. § 8-521.01 that comple-

ments their own efforts toward becoming self-sufficient. The Department may provide the following assistance, depending on individual service plan goals:

1. Financial,
2. Housing,
3. Counseling,
4. Employment,
5. Education, and
6. Other appropriate support and services.

B. The eligible youth requesting services through the Transitional Independent Living Program shall provide the following information to the responsible agency staff:

1. Identifying information including:
   a. Name (and any aliases); and
   b. Date of birth;
2. Information regarding the eligible youth's former foster care status such as the state or tribal child welfare system where the youth was in care, and approximate dates of care, if known; and
3. Any available contact information for the youth, including:
   i. Phone number,
   ii. Friend or family phone number,
   iii. Email address, and
   iv. Any other communication method identified by the youth.

C. An eligible youth and responsible agency staff shall develop an individual service plan for the eligible youth to receive these services.

D. The individual service plan shall address the level of need based on the items noted in subsection (A).

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

R21-5-207. Re-entry Into Out-of-home Care

A. The Department shall facilitate re-entry into out-of-home care for eligible youth participating in the Transitional Independent Living Program.

B. On request for re-entry by the eligible youth, the Department shall confirm the eligible youth's request to receive out-of-home care, supervision, and other services with the youth and within ten work days:

1. Facilitate a meeting with the eligible youth to review the requirements under R21-5-205;
2. Assist the eligible youth to develop an individual case plan that includes an effective date for reopening the Department case;
3. Identify the name and contact information of the Child Safety Worker or responsible agency staff assigned to the case;
4. Identify the out-of-home care type selected such as, foster home, residential group care facility, Independent Living Program, or other arrangement;
5. Notify the identified Child Safety Worker or responsible agency staff assigned to the case; and
6. Complete all necessary authorizations for out-of-home care and other services to reasonably ensure a smooth transition from the TIL Services to the IL Services.

C. If the eligible youth reports he or she is in crisis and unsafe, the Department shall immediately assess the youth's safety and assist the youth to secure a safe living arrangement and to manage the crisis.

D. An eligible youth may request to postpone re-entry, decline re-entry at any time, or re-initiate the request any time prior to the eligible youth's 21st birthday. The responsibilities of the Department to process the request for re-entry shall begin upon the Department's receipt of the eligible youth's request for re-entry under subsection (B).

E. Supports and services shall continue for youth who re-enter out-of-home care, as outlined in R21-5-205.

F. If the Department denies re-entry, the Department shall provide the youth with written notification of the reason for this decision and the youth's grievance and appeal rights within 15 work days of the request for re-entry.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

R21-5-208. Termination of Services

A. The Department may terminate IL Services, including out-of-home care for foster youth 18 through 20 years of age, and TIL services if the eligible youth:

1. Reaches the age of 21 years;
2. Reaches the age of 18 years and does not desire continued services;
3. Makes a voluntary decision to terminate services; or
4. Demonstrates substantial non-compliance or otherwise refuses to meet the requirements of the individual case plan or individual service plan after the responsible agency staff or designee has made active efforts to engage the eligible youth in identifying and resolving issues, including assessing the effectiveness of current services, and identifying and providing additional or different support services.

B. The Department shall deny IL Services, including out-of-home care for foster youth age 18 through 20 years, and TIL services if the Department determines the person is:

1. Not eligible;
2. Unwilling to create an individual case or service plan; or
3. Not participating in the individual case or service plan.

C. The Child Safety Worker or responsible agency staff shall notify the person in writing of the Department's decision to terminate or deny services within ten work days of the person's application for services.

D. The notice shall include information on the person's right to grieve any decision to terminate or deny services.

E. Within ten work days of the notice to terminate or deny services, the Child Safety Worker or responsible agency staff shall contact the person to:

1. Assist the person through the grievance process including the completion and submittal of any required Department forms; or
2. Identify and engage a personal advocate to assist the person through the grievance process, including the completion and submittal of any required Department forms.

F. When termination of services to a foster youth is planned due to one of the reasons outlined in (A)(1) through (3) of this Section, the Child Safety Worker or responsible agency staff shall schedule a discharge staffing with the foster youth within ten work days of the foster youth's 21st birthday or the Department's receipt of the foster youth's notice to discontinue services to provide any necessary documents not previously provided, such as a birth certificate, social security card, state identification card, credit report, and a copy of the foster youth's health and education records.

G. The Department shall not terminate services for substantial non-compliance under subsection (A)(4) until the Child Safety Worker or responsible agency staff satisfies all responsibilities including:
1. Staffing of the individual case or service plan;
2. Adhering to the grievance process described in R21-5-209; and
3. Developing and implementing a discharge plan that provides information on available community resources, and connects the person to those resources.

H. Services shall remain in effect until the reasons for termination are resolved or the grievance or appeal process is completed.

I. For Independent Living Subsidy only, if the Department determines that continuation of the Independent Living Subsidy would place the foster youth at risk of immediate harm, the Child Safety Worker or responsible agency staff shall:
1. Document this fact in the case file progress notes, and
2. Arrange for a safe living arrangement and sufficient support services to reasonably ensure the foster youth's safety in the interim.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

R21-5-209. Grievance Process

A. A person eligible for services under R21-5-204 who disagrees with a Department adverse action decision to reduce, terminate, or deny services for that person may:
1. File a grievance under this Section;
2. Choose not to file a grievance and appeal the adverse action under A.A.C. Title 21, Chapter 1, Article 3 by filing a notice of appeal within 20 days after receipt of the adverse action decision reducing, terminating, or denying services; or
3. File a grievance, and if the person is dissatisfied with the results of the grievance process, appeal under A.A.C. Title 21, Chapter 1, Article 3 by filing a notice of appeal within 20 days after receipt of the grievance response letter.

B. In the event that a person disagrees with a Department decision to reduce, terminate, or deny services, the Child Safety Worker or responsible agency staff shall:
1. Inform the person of the formal grievance process;
2. Provide the person with the Department's grievance form and directions for submittal to the designated Department staff, such as the Department's Ombudsman's Office; and
3. Offer to assist the person in completing and submitting the form, or referring the person to the appropriate Department staff, such as the Department's Ombudsman, for assistance in completing and submitting the form.

C. Upon receipt of the grievance form, the Department shall:
1. Schedule a face-to-face meeting with the person who filed the grievance within seven work days from the date the grievance was received by the Department, or schedule a teleconference if a face-to-face meeting is not possible;
2. Evaluate the grievance to determine if the grievance can be resolved by the Department to the satisfaction of the person;
3. Mail a grievance response letter to the person within three work days of the meeting; and
4. Include an appeal form with the grievance response letter so the person may appeal the adverse action.

D. If the person agrees with the Department's decision to terminate services, the Child Safety Worker or responsible agency staff shall proceed with case closure including completing a discharge plan with the person that includes information on aftercare services and other community based support.

E. The Department shall retain documentation of all grievances in the case file according to the Department's retention schedule.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3255, effective January 24, 2016 (Supp. 15-4).

[redacted]

R21-5-301. Definitions

In addition to the definitions in A.R.S. § 8-101, the following definitions apply in this Article, Article 4 of this Chapter, and 21 A.A.C. 9:

1. "Adoptable child" means a child who is legally available for adoption but who has not been placed for adoption.
2. "Adoptee" means a child who is the subject of a legal petition for adoption.
3. "Adoption agency" means an individual or entity including a corporation, company, partnership, firm, association, or society, other than the Department, licensed by the Department to place a child for adoption.
4. "Adoption entity" or "entity" means the Department and includes an adoption agency, but does not include a private attorney who is licensed to practice law in the state of Arizona and who is only assisting in a direct placement adoption to the extent allowed by A.R.S. § 8-130(C).
5. "Adoption placement" or "placement" means the act of placing an adoptable child in the home of an adoptive parent who has filed or is contemplating filing, a petition to adopt the child.
6. "Adoption Registry" means the electronic database described in A.R.S. § 8-105.
7. "Adoption services" means activities conducted in furtherance of an adoption and includes the activities listed in A.A.C. R21-5-303 and R21-9-101(B).
8. "Adoptive parent" means an individual who has successfully completed the application process and has been certified by the court to adopt. An adoptive parent includes an individual who does not have a child placed in their home.
9. "Agency placement" means that a child is placed in an adoptive home chosen by the adoption agency.
10. "AHCCCS" means the Arizona Health Care Cost Containment System, which is the State's program for medical assistance available under Title XIX of the Social Security Act and state public insurance statutes under A.R.S. Title 36, Chapter 29.
11. "Applicant" means an individual who has applied to become an adoptive parent.
12. "Birth parent" means the biological mother or father of a child.
13. "Central Registry" means the information maintained by the Department of substantiated reports of child abuse or neglect for the purposes of A.R.S. § 8-804.
14. "Certification application" means the form that an applicant submits to an adoption entity or to the court to request a certification investigation to become certified as an adoptive parent.
15. "Certification investigation" means the process referred to in A.R.S. § 8-105(C) by which an adoption entity

8-453. Powers and duties

A. The director shall:

1. Carry out the purposes of the department prescribed in section 8-451.

2. Provide transparency by being open and accountable to the public for the actions of the department.

3. Develop a data system that enables persons and entities that are charged with a responsibility relating to child safety to access all relevant information relating to an abused, neglected or abandoned child as provided by law.

4. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ deputy directors and other key personnel based on qualifications that are prescribed by the director.

5. Adopt rules to implement the purposes of the department and the duties and powers of the director.

6. Petition, as necessary to implement the case plan established under section 8-824 or 8-845, for the appointment of a guardian or a temporary guardian under title 14, chapter 5 for children who are in custody of the department pursuant to court order. Persons applying to be guardians or temporary guardians under this section shall be fingerprinted. A foster parent or certified adoptive parent already fingerprinted is not required to be fingerprinted again, if the foster parent or certified adoptive parent is the person applying to be the guardian or temporary guardian.

7. Cooperate with other agencies of this state, county and municipal agencies, faith-based organizations and community social services agencies, if available, to achieve the purposes of this chapter.

8. Exchange information, including case specific information, and cooperate with the department of economic security for the administration of the department of economic security's programs.

9. Administer child welfare activities, including:

(a) Cross-jurisdictional placements pursuant to section 8-548.

(b) Providing the cost of care of:

(i) Children who are in temporary custody, are the subject of a dependency petition or are adjudicated by the court as dependent and who are in out-of-home placement, except state institutions.

(ii) Children who are voluntarily placed in out-of-home placement pursuant to section 8-806.

(iii) Children who are the subject of a dependency petition or are adjudicated dependent and who are in the custody of the department and ordered by the court pursuant to section 8-845 to reside in an independent living program pursuant to section 8-521.

(c) Providing services for children placed in adoption.

10. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

11. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.

12. Coordinate with, contract with or assist other departments, agencies and institutions of this state and local and federal governments in the furtherance of the department's purposes, objectives and programs.

13. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

14. Collect monies owed to the department.

15. Act as an agent of the federal government in furtherance of any functions of the department.

16. Carry on research and compile statistics relating to the child welfare program throughout this state, including all phases of dependency.

17. Cooperate with the superior court in all matters related to this title and title 13.

18. Provide the cost of care and transitional independent living services for a person under twenty-one years of age pursuant to section 8-521.01.

19. Ensure that all criminal conduct allegations and reports of imminent risk of harm are investigated.

20. Ensure the department's compliance with the Indian child welfare act of 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901 through 1963).

21. Strengthen relationships with tribal child protection agencies or programs.

B. The director may:

1. Take administrative action to improve the efficiency of the department.

2. Contract with a private entity to provide any functions or services pursuant to this title.

3. Apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this title.

4. Reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business. Volunteers reimbursed for expenses are not eligible for workers' compensation under title 23, chapter 6.

C. The department shall administer individual and family services, including sections on services to children and youth and other related functions in furtherance of social service programs under the social security act, as amended, title IV, parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services and other related federal acts and titles.

D. If the department has responsibility for the care, custody or control of a child or is paying the cost of care for a child, the department may serve as representative payee to receive and administer social security and veterans administration benefits and other benefits payable to the child. Notwithstanding any law to the contrary, the department:

1. Shall deposit, pursuant to sections 35-146 and 35-147, any monies it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use these monies to defray the cost of care and services expended by the department for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.

3. Shall maintain separate records to account for the receipt, investment and disposition of monies received for each child.

4. On termination of the department's responsibility for the child, shall release any monies remaining to the child's credit pursuant to the requirements of the funding source or, in the absence of any requirements, shall release the remaining monies to:

(a) The child, if the child is at least eighteen years of age or is emancipated.

(b) The person who is responsible for the child if the child is a minor and not emancipated.

E. Subsection D of this section does not apply to benefits that are payable to or for the benefit of a child receiving services under title 36.

F. Notwithstanding any other law, a state or local governmental agency or a private entity is not subject to civil liability for the disclosure of information that is made in good faith to the department pursuant to this section.

G. Notwithstanding section 41-192, the department may employ legal counsel to provide legal advice to the director. The attorney general shall represent the department in any administrative or judicial proceeding pursuant to title 41, chapter 1, article 5.

H. The total amount of state monies that may be spent in any fiscal year by the department for foster care as provided in subsection A, paragraph 9, subdivision (b) of this section may not exceed the amount appropriated or authorized by section 35-173 for that purpose. This section does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

8-521. Independent living program; conditions; eligibility; rules; progress reports; educational case management unit

A. The department or a licensed child welfare agency may establish an independent living program for youths who are the subject of a dependency petition or who are adjudicated dependent and are all of the following:

1. In the custody of the department, a licensed child welfare agency or a tribal child welfare agency.

2. At least seventeen years of age.

3. Employed or full-time students.

B. The independent living program may consist of a residential program of less than twenty-four hours a day supervision for youths under the supervision of the department through a licensed child welfare agency or a foster home under contract with the department. Under the independent living program, the youth is not required to reside at a licensed child welfare agency or foster home.

C. The director or the director's designee shall review and approve any recommendation to the court that a youth in the custody of the department be ordered to an independent living program.

D. For a youth to participate in an independent living program, the court must order such a disposition pursuant to section 8-845.

E. The department of child safety, a licensed child welfare agency or a tribal child welfare agency having custody of the youth shall provide the cost of care as required by section 8-453, subsection A, paragraph 9, subdivision (b), item (iii) for each youth placed in an independent living program pursuant to this section, except that the monthly amount provided shall not be less than $1,200.

F. The department shall adopt rules pursuant to title 41, chapter 6 to carry out this section.

G. The department shall provide quarterly progress reports to the court and to local foster care review boards for each youth participating in the independent living program.

H. The local foster care review boards shall review at least once every six months the case of each youth participating in the independent living program.

I. The department shall establish an educational case management unit within the division consisting of two case managers to develop and coordinate educational case management plans for youths participating in the independent living program and to assist youths in the program to do the following:

1. Graduate from high school.

2. Pass the statewide assessment pursuant to section 15-741.

3. Apply for postsecondary financial assistance.

4. Apply for postsecondary education.

8-521.01. Transitional independent living program

A. The department may establish a transitional independent living program for persons who meet the following qualifications:

1. The person is under twenty-one years of age.

2. The person was the subject of a dependency petition, adjudicated dependent or placed voluntarily pursuant to section 8-806.

B. The department shall provide care and services that complement the person's own efforts to achieve self-sufficiency and to accept personal responsibility for preparing for and making the transition to adulthood. The care and services provided shall be based on an individualized written agreement between the department and the person.

C. Care and services may be provided as follows:

1. If the person was in out-of-home placement or in the independent living program when the person became eighteen years of age, the department may provide out-of-home placement, independent living or other transitional living support services.

2. If the person was in out-of-home placement in the custody of the department, a licensed child welfare agency or a tribal child welfare agency while the person was sixteen, seventeen or eighteen years of age, the department may provide transitional living support services.

DEPARTMENT OF CHILD SAFETY
Title 21, Chapter 3, Articles 1 & 2

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: May 7, 2024

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

FROM: Council Staff

DATE: **April 4, 2024**

SUBJECT: **DEPARTMENT OF CHILD SAFETY**
Title 21, Chapter 3, Articles 1 & 2

Summary

This Five Year Review Report (5YRR) from the Arizona Department of Child Safety (Department) covers one (1) rule in Title 21, Chapter 3, Article 1 related to Definitions and four (4) rules in Article 2 related to Receipt and Screening of Communication. The rules in Chapter 3 pertain to procedures regarding receipt, screening, and follow-up of calls received at the Department's Centralized Intake Hotline, also referred to as the Child Abuse Hotline and the purpose of the rules is to communicate the Department's responsibility to maintain a Centralized Intake Hotline for the public to report suspicions of child abuse and neglect.

The Department completed its course of action indicated in the previous five-year-review report approved by Council November of 2018. The Notice of Final Rulemaking for Title 21, Chapter 3, Article 2 was approved by Council July 2023.

Proposed Action

The Department has no proposed 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 Department states that the rules under Chapter 3 pertain to procedures regarding receipt, screening, and follow-up of calls received at the Department's Centralized Intake Hotline, at times referred to as the Child Abuse Hotline. The purpose of the rules is to communicate the Department's responsibility to maintain a Centralized Intake Hotline for the public to report suspicions of child abuse and neglect. The Department indicates that stakeholders include children that are the subject of an allegation of abuse or neglect, persons investigated on suspicion of perpetrating abuse or neglect of a child and the Department.

The Department indicates that in the fiscal year that covered dates from July 2021 to June 2022 there were 152,856 incoming communications to the Centralized Intake Hotline: 85,018 calls were concerning child abuse or neglect; 45,590 calls (53.7%) met the statutory requirements of abuse or neglect. Further, the average time for the Hotline to answer a call was 4 minutes and 23 seconds. Additionally, 12.24% of the calls to the Hotline were abandoned before a Specialist answered the call. The Department indicates they continue to perform weekly quality assurance review of these communications to ensure accurate assessments and proper classification of communications.

The Department states it expended $8,063,413 in Fiscal Year 2022 for the functions of the Department's Centralized Intake Hotline as compared to $6,873,295 in Fiscal Year 2017. The Department ongoing estimated budget for the Hotline is $9.4 million and is a combination of federal and sate funding.

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

The Department believes that the current rules pose the least burden and cost to the regulated person by this rule. The Department indicates it does not charge a fee for this public service.

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 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 their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Department 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 42 U.S.C. 5106a.

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 this subsection does not apply as the rules in Title 21, Chapter 3, Articles 1 and 2 do not require the issuance of a regulatory permit, license, or agency authorization.

11. **Conclusion**

This Five Year Review Report from the Arizona Department of Child Safety covers one rule in Title 21, Chapter 3, Article 1 related to Definitions and four rules in Article 2 related to Receipt and Screening of Communication. As indicated above, the rules are clear, concise, and understandable; effective in meeting their objective, 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 CHILD SAFETY

David Lujan, Cabinet Executive Officer/Executive Deputy Director
Katie Hobbs, Governor

December 14, 2023

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

RE: Arizona Department of Child Safety, A.A.C. Title 21, Chapter 3 Five-Year-Review Report

Dear Ms. Sornsin:

Please find enclosed the Five-Year-Review Report of the Arizona Department of Child Safety (DCS) for A.A.C. Title 21, Chapter 3 which is due on December 29, 2023.

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

For questions about this report, please contact Angie Trevino, Rules Development Specialist, at 602-619-3163 or angelica.trevino@azdcs.gov.

Sincerely,

David Lujan
Cabinet Executive Officer/Executive Deputy Director

Enclosure

P.O. Box 6030 ♦ Site Code C010-23 ♦ Phoenix, AZ 85005-6030
Telephone (602) 255-2500

ARIZONA DEPARTMENT OF CHILD SAFETY

Five-Year-Review Report

Title 21. Child Safety

Chapter 3. Department of Child Safety - Centralized Intake Hotline

Article 1. Definitions

Article 2. Receipt and Screening of Communications

December 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 8-453(A)(5)

Specific Statutory Authority: A.R.S. §§ 8-454 and 8-455

2. The objective of each rule:

Article 1. Definitions

Rule	Objective
R21-3-101. Definitions	The objective of this rule is to promote and facilitate uniform understanding of terminology used by the Department.

Article 2. Receipt and Screening of Communications

Rule	Objective
R21-3-201. Receipt of Information; Centralized Intake Hotline	The objective of this rule is to inform of the Department's responsibility for having a Hotline available for the community to report, anonymously if requested, suspected child abuse or neglect. Additionally, it informs that it is the Department's responsibility to determine if the information gathered meets DCS report criteria.
R21-3-202. Preliminary Screening	The objective of this rule is to list allegations that on their own do not meet the criteria for a DCS report.
R21-3-203. Disposition of Communication	The objective of this rule is to differentiate between a DCS report and a non-report and provide information on what the Department does with non-report information received by the Hotline.
R21-3-204. Quality Assurance	The objective of this rule is to advise of the Department's responsibility to review non-report communications, received by the Hotline, on a weekly basis.

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:**

General

The rules under Chapter 3 pertain to procedures regarding receipt, screening, and follow-up of calls received at the Department's Centralized Intake Hotline, at times referred to as the Child Abuse Hotline. The purpose of the rules is to communicate the Department's responsibility to maintain a Centralized Intake Hotline for the public to report suspicions of child abuse and neglect. The rules further provide information on how the information received is processed.

Persons directly impacted by these rules are children that are the subject of an allegation of abuse or neglect, persons investigated on suspicion of perpetrating abuse or neglect of a child, and the Department.

The Department as well as the public benefit from the rules in Chapter 3 as the rules inform that there is a Hotline available where they may report child abuse and neglect. The rules further inform the public on how the Department addresses information and concerns reported to the Hotline.

Cost bearers and beneficiaries from these rules include the following: children that are the subject of an allegation of abuse or neglect, persons investigated on suspicion of perpetrating abuse or neglect of a child, the Department, and the public. The Department does not anticipate allotting any new full-time employees or making changes to those currently allotted. The Department only anticipates hiring employees to fill vacancies as they arise. There are no political subdivisions affected by these rules. The rules provide information on the DCS Centralized Intake Hotline and how information received is processed. The Department's Centralized Intake Hotline is allocated111 full-time positions to operate a functioning and efficient Hotline to support all calls received, 24 hours a day, seven (7) days a week. The Hotline staff currently consists of the following: one (1) Program Administrator, two (2) Program Managers, one (1) Operations Manager, seven (7) support staff, eight (8) Quality Assurance Specialists, thirteen (13) Supervisors, seventy-nine (79) DCS Specialists. Due to departmental reorganization, Hotline positions decreased from 113, as reported in the 2018 Five-Year-Review Report, to the

current 111 positions. When necessary, the Department deploys vacant DCS Specialists from other units in order to ensure the resources are available to meet the needs of the public.

In fiscal year that covered dates from July 2021 to June 2022 there were 152,856 incoming communications to the Centralized Intake Hotline: 85,018 calls were concerning child abuse or neglect; 45,590 calls (53.7%) met the statutory requirements of abuse or neglect. The average time for the Hotline to answer a call was 4 minutes and 23 seconds. Additionally, 12.24% of the calls to the Hotline were abandoned before a Specialist answered the call. (Monthly Operational Outcomes Report October 2023) In comparison to the 2018 Five-Year-Review Report which provided the following information for a six (6) month period: *Between October 1, 2017 and March 31, 2018, there were 80,004 incoming communications to the Centralized Intake Hotline: 52,865 calls did not meet the criteria of child abuse or neglect; 24,093 calls met the statutory requirements of abuse or neglect. Of the 24,093 calls, 423 calls fell within the jurisdiction of military or tribal governments and were referred to those jurisdictions for response. Of the 80,004 calls, there were 3,046 calls that were abandoned before the Specialist answered the call. (DCS, Semi-annual report Child Welfare Reporting Requirements for the period of October 1, 2017 through March 31, 2018) The average time for Hotline staff to answer a call in June 2018 was thirty-two seconds. (Monthly Operational Outcomes Report, June 2018)*

The Department continues to perform weekly quality assurance reviews of these communications to ensure accurate assessments and proper classification of communications as reported in the 2018 Five-Year-Review Report.

The Department expended $8,063,413 in Fiscal Year 2022 for the functions of the Department's Centralized Intake Hotline. The ongoing estimated budget for the Department's Centralized Intake Hotline is $9.4 million. This is a combination of federal and state funding. The 2018 Five-Year-Review Report stated that the Department expended $6,873,295.00 in Fiscal Year 2017 for the functions in this Article.

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 Department of Child Safety has completed the course of action indicated in the previous five-year-review report. The Notice of Final Rulemaking for Title 21, Chapter 3, Article 2 was submitted to the Governor's Regulatory Review Council on May 9, 2023 and included amendments identified in the previous five-year-review report. Council approved rulemaking to Title 21, Chapter 3, Article 2 on July 5, 2023. The amendments became effective on September 10, 2023.

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

The Department of Child Safety believes that the current rules pose the least burden and costs to the regulated persons by this rule. The Department does not charge a fee for this public service.

12. **Are the rules more stringent than corresponding federal laws?** **Yes ___ No _X_**

42 U.S.C. 5106a.

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 Department has determined that A.R.S. § 41-1037 does not apply to these rules. The rules in Title 21, Chapter 3, Articles 1 and 2 do not require the issuance of a regulatory permit, license, or agency authorization.

14. **Proposed course of action**

The Department of Child Safety does not propose a course of action.

TITLE 21. CHILD SAFETY

CHAPTER 3. DEPARTMENT OF CHILD SAFETY - CENTRALIZED INTAKE HOTLINE

Authority: A.R.S. § 8-453(A)(5)

Editor's Note: Chapter 3 contains rules which were exempt from the regular rulemaking process under Laws 2014, 2nd Special Session, Ch. 1, Sec. 158. The law required the Department to post on its website proposed exempt rulemakings for a minimum of 30 days, at which time the public could provide written comments. In addition, at least two public hearings were held prior to the filing of the final exempt rules. Because the Department solicited comments on its proposed exempt rules, the rules filed with the Office of the Secretary of State are considered final exempt rules (Supp. 15-4).

ARTICLE 1. DEFINTIONS

Article 1, consisting of Section R21-3-101, made by final exempt rulemaking at 21 A.A.R. 3247, effective January 26, 2016 (Supp. 15-4).

Section
R21-3-101. Definitions

ARTICLE 2. RECEIPT AND SCREENING OF COMMUNICATIONS

Article 2, consisting of Sections R21-3-201 through R21-3-204, made by final exempt rulemaking at 21 A.A.R. 3247, effective January 26, 2016 (Supp. 15-4).

Section
R21-3-201. Receipt of Information; Centralized Intake Hotline
R21-3-202. Preliminary Screening
R21-3-203. Disposition of Communications
R21-3-204. Quality Assurance

ARTICLE 1. DEFINTIONS

R21-3-101. Definitions

The definitions in A.R.S. §§ 8-101, 8-201, 8-501, 8-455, 8-531 and 8-801, and the following definitions apply in this Chapter and Title 21, Chapter 4:

1. "Abuse" means the same as in A.R.S. § 8-201.
2. "Centralized Intake Hotline" or "the Hotline" means the same as in A.R.S. § 8-455.
3. "Child" means the same as in A.R.S. § 8-101.
4. "Child Safety Specialist" means the same as "child safety worker" as in A.R.S. § 8-801.
5. "Child safety services" means the same as in A.R.S. § 8-801.
6. "Child welfare agency" means the same as in A.R.S. § 8-501.
7. "Criminal conduct allegation" means the same as in A.R.S. § 8-201.
8. "Criminal investigation" means an investigation of criminal allegations conducted by a law enforcement agency.
9. "Criminal offense" means an allegation of abuse and neglect perpetrated by someone other than a parent, guardian, custodian, or other adult member of the child's household that, if true, would constitute a felony offense.
10. "Custodian" means a person defined in A.R.S. § 8-201.
11. "DCS Investigator" means a DCS employee who investigates allegations of child abuse or neglect pursuant to A.R.S. §§ 8-456 and 8-471.
12. "DCS Report" means a communication received by the Centralized Intake Hotline that alleges child abuse or neglect that meets the criteria for a report as set forth in A.R.S. § 8-455.
13. "Department" or "DCS" means the Arizona Department of Child Safety.
14. "Finding" means one of the following:
    a. The Department has determined during its investigation that probable cause exists to substantiate the allegation of abuse or neglect of a child, and
        i. The specific person responsible has been identified, or
        ii. The specific person responsible has not been identified,
    b. The Department has determined during its investigation that the allegation of abuse or neglect is unsubstantiated; or
    c. After a thorough search, the Department is unable to locate the alleged abused or neglected child.
15. "Guardian" means the same as a person who has the duty and authority of a "Guardianship of the person" in A.R.S. § 8-531.
16. "Household member" means a parent, guardian, custodian, or an adult who at the time of the alleged abuse or neglect resided in the child victim's home.
17. "Incoming communication" or "communication" means contact with DCS concerning alleged abuse or neglect of a child by any method that is received by or ultimately directed to the Centralized Intake Hotline.
18. "Intake Specialist" means the same as "hotline worker" in A.R.S. § 8-455 and means an employee of the Department trained in Centralized Intake Hotline procedures.
19. "Investigation" means using investigative techniques to search out and examine the facts to determine whether a child has been abused or neglected as provided for in A.R.S. §§ 8-456 and 8-471.
20. "Investigative protocols," also called "Joint investigative protocols" and "Multi-disciplinary Protocols," means a guide for the conduct of criminal conduct investigations mandated by A.R.S. § 8-817.
21. "Neglect" or "neglected" means the same as in A.R.S. § 8-201.
22. "OCWI Investigator" means a DCS Investigator who is assigned to the Office of Child Welfare Investigations, and whose primary duties and responsibilities are prescribed in A.R.S. § 8-471.
23. "Other child in the home" means a child residing in the same home as either the alleged child victim or the alleged perpetrator at the time of the alleged abuse or neglect.
24. "Out-of-Home placement" means the same as in A.R.S. § 8-501.
25. "Parent" means the same as in A.R.S. § 8-501.
26. "Probable cause" means some credible evidence that abuse or neglect occurred.
27. "PSRT" means the Department's Protective Services Review Team that administers the process described in A.R.S. § 8-811 for review and appeal of proposed substantiated findings of child abuse or neglect.
28. "Reporting Source" means a person who reports child abuse or neglect to the Department or to a peace officer as prescribed in A.R.S. § 13-3620, even if the communication does not meet the criteria for a DCS report as set forth in A.R.S. § 8-455.
29. "Response time" means the period of time designated by the Hotline and begins when a DCS report is assigned to a

DCS field unit for investigation and ends when the DCS Investigator initiates the investigation by an attempt to make in-person contact with the alleged child victim. Any proposed changes to the response time shall be submitted to the DCS Community Advisory Committee as established in A.R.S. § 8-459 for review and discussion prior to implementation.

30. "Safe haven provider" means the same as in A.R.S. § 13-3623.01.
31. "Substantiated" means that there is probable cause to believe the child was abused or neglected.
32. "Temporary custody" means the same as in A.R.S. § 8-821.
33. "Unsubstantiated" means that there was insufficient evidence to substantiate that the child was abused or neglected when the finding was entered into the Department's case management information system.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3247, effective January 26, 2016 (Supp. 15-4).

ARTICLE 2. RECEIPT AND SCREENING OF COMMUNICATIONS

R21-3-201. Receipt of Information; Centralized Intake Hotline

A. The Department shall operate a Centralized Intake Hotline to receive and screen communications of suspected abuse or neglect of a child.

B. The Department shall publicize on the Department's website the availability and the purposes of the Centralized Intake Hotline.

C. The Department shall accept an anonymous communication if the source refuses to provide identifying and contact information.

D. When the Centralized Intake Hotline receives an incoming communication, the Intake Specialist shall gather relevant information to determine whether it meets the criteria for a DCS Report as prescribed in A.R.S. § 8-455.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3247, effective January 26, 2016 (Supp. 15-4).

R21-3-202. Preliminary Screening

The following allegations standing alone do not meet the criteria for a DCS Report unless the communication also includes an allegation of child abuse or neglect as defined in A.R.S. § 8-201 and otherwise meets the criteria as set forth in A.R.S. § 8-455:

1. The child is absent from school;
2. The child is age eight years or older and has allegedly committed a delinquent act;
3. The sibling of a child eight years or older has allegedly committed a delinquent act;
4. The sibling or other child living in the home who is age eight years or older allegedly committed a delinquent act against the alleged child victim;
5. The child's parents are absent from the home or are unable to care for the child but made appropriate arrangements for the child's care;
6. The child is receiving treatment from an accredited Christian Science practitioner, or other religious or spiritual healer, but the child's health is not:
   a. In imminent risk of harm; or
   b. Endangered by the lack of medical care;
7. The child has minor hygienic problems;
8. The child is the subject of a custody or visitation dispute;
9. The spiritual neglect of a child or the religious practices or beliefs to which a child is exposed;
10. The child's parent, guardian, or custodian questions the use of or refuses to put the child on psychiatric medication but the child's health is not:
    a. In imminent risk of harm; or
    b. Endangered by the refusal to put the child on the recommended psychiatric medicine; or
11. The child is an unharmed newborn infant, who is seventy-two hours of age or younger, and whose parent or agent of the parent voluntarily delivered the parent's newborn to a safe haven provider as provided in A.R.S. §§ 8-528 and 13-3623.01.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3247, effective January 26, 2016 (Supp. 15-4).

R21-3-203. Disposition of Communications

A. DCS Report. If a communication meets criteria for a DCS Report, the Intake Specialist shall:

1. Enter the DCS Report information into the Department's case management information system;
2. Assign an appropriate response time, ranging from an immediate response to a response time not to exceed seven days;
3. Immediately transmit the DCS Report to the appropriate field unit; and
4. Inform the reporting source that the information meets criteria for a DCS Report, that the report will be sent to a field unit, and provide the reporting source, when identified, with contact information for the field unit.

B. Non-report. If a communication does not meet criteria for a DCS Report, the Intake Specialist:

1. Shall record the information regarding a child who is already in the Department's care, custody, and control, and forward it to the Child Safety Specialist managing that child's case;
2. Shall advise the reporting source to notify the appropriate law enforcement agency of an allegation of child abuse or neglect by a person other than a child's parent, guardian, custodian, or adult member of the household;
3. Shall inform the reporting source that the information does not meet criteria for a DCS Report, and that the information will be documented in the Department's case management information system; and
4. May refer the reporting source to a community resource, when appropriate.

C. Forwarding information on non-DCS Reports. If a communication does not meet criteria for a DCS Report, the Intake Specialist shall forward the information or allegations of abuse or neglect to:

1. The appropriate law enforcement agency concerning a felony criminal offense against a child;
2. The DCS Office of Licensing and Regulation, if the communication involves a DCS licensed out-of-home placement;
3. The appropriate child protection agency, if the child lives in another jurisdiction;
4. The appropriate licensing or certifying agency if a child is at a state licensed or certified child care home or facility;
5. The appropriate licensing agency if a child is at a state licensed behavioral health facility; or
6. The Arizona Department of Economic Security (DES) Adult Protective Services if the alleged victim is over the age of 18 years.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3247, effective January 26, 2016 (Supp. 15-4).

R21-3-204. Quality Assurance

The Department shall conduct a review at least weekly of communications concerning alleged abuse or neglect of a child, which do not meet criteria for a DCS Report, to verify the communications are properly classified.

Historical Note

New Section made by final exempt rulemaking at 21 A.A.R. 3247, effective January 26, 2016 (Supp. 15-4).

8-453. Powers and duties

A. The director shall:

1. Carry out the purposes of the department prescribed in section 8-451.

2. Provide transparency by being open and accountable to the public for the actions of the department.

3. Develop a data system that enables persons and entities that are charged with a responsibility relating to child safety to access all relevant information relating to an abused, neglected or abandoned child as provided by law.

4. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, employ deputy directors and other key personnel based on qualifications that are prescribed by the director.

5. Adopt rules to implement the purposes of the department and the duties and powers of the director.

6. Petition, as necessary to implement the case plan established under section 8-824 or 8-845, for the appointment of a guardian or a temporary guardian under title 14, chapter 5 for children who are in the custody of the department pursuant to court order. Persons applying to be guardians or temporary guardians under this section shall be fingerprinted. A foster parent or certified adoptive parent already fingerprinted is not required to be fingerprinted again, if the foster parent or certified adoptive parent is the person applying to be the guardian or temporary guardian.

7. Cooperate with other agencies of this state, county and municipal agencies, faith-based organizations and community social services agencies, if available, to achieve the purposes of this chapter.

8. Exchange information, including case specific information, and cooperate with the department of economic security for the administration of the department of economic security's programs.

9. Administer child welfare activities, including:

(a) Cross-jurisdictional placements pursuant to section 8-548.

(b) Providing the cost of care of:

(i) Children who are in temporary custody, are the subject of a dependency petition or are adjudicated by the court as dependent and who are in out-of-home placement, except state institutions.

(ii) Children who are voluntarily placed in out-of-home placement pursuant to section 8-806.

(iii) Children who are the subject of a dependency petition or are adjudicated dependent and who are in the custody of the department and ordered by the court pursuant to section 8-845 to reside in an independent living program pursuant to section 8-521.

(c) Providing services for children placed in adoption.

10. Formulate policies, plans and programs to effectuate the missions and purposes of the department.

11. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.

12. Coordinate with, contract with or assist other departments, agencies and institutions of this state and local and federal governments in the furtherance of the department's purposes, objectives and programs.

13. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.

14. Collect monies owed to the department.

15. Act as an agent of the federal government in furtherance of any functions of the department.

16. Carry on research and compile statistics relating to the child welfare program throughout this state, including all phases of dependency.

17. Cooperate with the superior court in all matters related to this title and title 13.

18. Provide the cost of care and transitional independent living services for a person under twenty-one years of age pursuant to section 8-521.01.

19. Ensure that all criminal conduct allegations and reports of imminent risk of harm are investigated.

20. Ensure the department's compliance with the Indian child welfare act of 1978 (P.L. 95-608; 92 Stat. 3069; 25 United States Code sections 1901 through 1963).

21. Strengthen relationships with tribal child protection agencies or programs.

B. The director may:

1. Take administrative action to improve the efficiency of the department.

2. Contract with a private entity to provide any functions or services pursuant to this title.

3. Apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this title.

4. Reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business. Volunteers reimbursed for expenses are not eligible for workers' compensation under title 23, chapter 6.

C. The department shall administer individual and family services, including sections on services to children and youth and other related functions in furtherance of social service programs under the social security act, as amended, title IV, parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services and other related federal acts and titles.

D. Notwithstanding any other law, a state or local governmental agency or a private entity is not subject to civil liability for the disclosure of information that is made in good faith to the department pursuant to this section.

E. Notwithstanding section 41-192, the department may employ legal counsel to provide legal advice to the director. The attorney general shall represent the department in any administrative or judicial proceeding pursuant to title 41, chapter 1, article 5.

F. The total amount of state monies that may be spent in any fiscal year by the department for foster care as provided in subsection A, paragraph 9, subdivision (b) of this section may not exceed the amount appropriated or authorized by section 35-173 for that purpose. This section does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

8-454. Department organization

A. The director shall organize the department to best implement the following functions:

1. Receiving, analyzing and efficiently responding to reports of possible abuse or neglect as provided in section 8-455.

2. Appropriately investigating the reports whether or not they involve criminal conduct allegations as provided in section 8-456.

3. Coordinating services necessary for the child or the child's family as provided in section 8-457.

4. Overseeing adoption pursuant to chapter 1 of this title and foster care pursuant to article 4 of this chapter.

5. Reviewing and reporting the actions of the department to ensure that the actions comply with statute and the rules and policies of the department and reporting significant violations as provided in section 8-458.

B. Subject to title 41, chapter 4, article 4, the director shall employ:

1. A chief of the office of child welfare investigations. The chief is the administrative head of the office of child welfare investigations and shall report directly to the director.

2. An inspector general. The inspector general is the administrative head of the inspections bureau and shall report directly to the director.

3. Administrators to serve as the administrative heads of the other bureaus of the department, who may report directly to the deputy director.

8-455. Centralized intake hotline; purposes; report of possible crime; DCS report; risk assessment tools; access to information; public awareness; definitions

A. The department shall operate and maintain a centralized intake hotline to protect children by receiving at all times communications concerning suspected abuse or neglect. If a person communicates suspected abuse or neglect to a department employee other than through the hotline, the employee shall refer the person or communication to the hotline.

B. The hotline is the first step in the safety assessment and investigation process and must be operated to:

1. Record communications made concerning suspected abuse or neglect.

2. Immediately take steps necessary to identify and locate prior communications and DCS reports related to the current communication using the department's data system and the central registry system of this state.

3. Quickly and efficiently provide information to a law enforcement agency or prepare a DCS report as required by this section.

4. Determine the proper initial priority level of investigation based on the report screening assessment and direct the DCS report to the appropriate part of the department based on this determination.

C. If a communication provides a reason to believe that a criminal offense has been committed and the communication does not meet the criteria for a DCS report, the hotline worker shall immediately provide the information to the appropriate law enforcement agency.

D. A hotline worker shall prepare a DCS report if the identity or current location of the child victim, the child's family or the person suspected of abuse or neglect is known or can be reasonably ascertained and all of the following are alleged:

1. The suspected conduct would constitute abuse or neglect.

2. The suspected victim of the conduct is under eighteen years of age.

3. The suspected victim of the conduct is a resident of or present in this state.

4. The person suspected of committing the abuse or neglect is the parent, guardian or custodian of the victim or an adult member of the victim's household.

E. Except for criminal conduct allegations, the department is not required to prepare a DCS report if all of the following apply:

1. The suspected conduct occurred more than three years before the communication to the hotline.

2. There is no information or indication that a child is currently being abused or neglected.

F. Investigations of DCS reports shall be conducted as provided in section 8-456 except for investigations containing allegations of criminal conduct, which shall be conducted as provided in section 8-471.

G. The department is not required to prepare a DCS report concerning alleged abuse or neglect if the alleged act or acts occurred in a foreign country and the child is in the custody of the federal government.

H. The department shall develop and train hotline workers to use uniform risk assessment tools to determine:

1. Whether the suspected conduct constitutes abuse or neglect and the severity of the suspected abuse or neglect.

2. Whether the suspected abuse or neglect involves criminal conduct, even if the communication does not result in the preparation of a DCS report.

3. The appropriate investigative track for referral based on the risk to the child's safety.

I. A DCS report must include, if available, all of the following:

1. The name, address or contact information for the person making the communication.

2. The name, address and other location or contact information for the parent, guardian or custodian of the child or other adult member of the child's household who is suspected of committing the abuse or neglect.

3. The name, address and other location or contact information for the child.

4. The nature and extent of the indications of the child's abuse or neglect, including any indication of physical injury.

5. Any information regarding possible prior abuse or neglect, including reference to any communication or DCS report involving the child, the child's siblings or the person suspected of committing the abuse or neglect.

J. Information gathered through the hotline must be made available to an employee of the department in order to perform the employee's duties. The office of child welfare investigations and the inspections bureau must have immediate access to all records of the hotline.

K. A representative of the:

1. Office of child welfare investigations must be embedded in the hotline to carry out the purposes of section 8-471.

2. Inspections bureau must be embedded in the hotline to carry out the purposes of section 8-458.

L. The department shall publicize the availability and the purposes of the centralized intake hotline.

M. For the purposes of this section:

1. "Centralized intake hotline" means the system developed pursuant to this section regardless of the communication methods or technologies used to implement the system.

2. "Criminal offense" means an allegation of conduct against a child by a person other than a parent, guardian or custodian of the child victim or another adult member of the child's household that, if true, would constitute a felony offense.

DEPARTMENT OF AGRICULTURE
Title 3, Chapter 10, Article 1

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: May 7, 2024

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

FROM: Council Staff

DATE: April 18, 2024

SUBJECT: **DEPARTMENT OF AGRICULTURE**
Title 3, Chapter 10, Article 1

Summary

This Five-Year Review Report (5YRR) from the Arizona Department of Agriculture (Department) relates to two (2) rules in Title 3, Chapter 10, Article 1 regarding Licensing Fees for the Citrus, Fruit, and Vegetable Division. Specifically, rule R3-10-101 specifies the fee charged for a customer applying for a citrus fruit dealer or shipper license. Rule R3-10-102 specifies the fee charged for a customer applying for a produce dealer or shipper license. A person may not transact business as a citrus fruit dealer or shipper or produce dealer or shipper without first obtaining a license as provided in this Article.

Proposed Action

In the current report, the Department does not propose to take any action regarding these rules.

1. Has the agency analyzed whether the rules are authorized by statute?

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

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Department indicates that a person may not transact business as a citrus fruit dealer or shipper without first obtaining a license as provided in this article. The Department states that the Citrus, Fruit, and Vegetable (CFV) Standardization program issues approximately 40 licenses annually and operates using the fees collected. In addition, a person may not transact business as a produce dealer or shipper without first obtaining a license as provided in this article. The CFV Standardization program issues approximately 340 licenses and operates using the fees collected. The Department indicates that the economic impact is consistent with what was estimated in the economic, small business and consumer impact statement for the rule. The Department indicates that these rules were originally established through exempt rulemaking.

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

The Department states that the CFV Advisory Council is a nine-member council appointed by the Governor, which is made up of seven specialty crop producers, one produce holder and one small producer, to oversee the Standardization program to ensure that these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying objective.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates it did not receive any written criticism of the rules within 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?

Not applicable. The Department indicates there is no corresponding federal law and these rules are only based on state statute.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines "general permit" to mean "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

Council staff believes the licenses issued by the Department for a citrus fruit dealer or shipper or produce dealer or shipper are in compliance with A.R.S. § 41-1037 as they are for activities in a class that are substantially similar in nature and are issued to qualified applicants if the applicant meets the applicable requirements of the license. Council staff believes the Department is in compliance with A.R.S. § 41-1037.

11. Conclusion

This 5YRR from the Department relates to two (2) rules in Title 3, Chapter 10, Article 1 regarding Licensing Fees for the Citrus, Fruit, and Vegetable Division. Specifically, rule R3-10-101 specifies the fee charged for a customer applying for a citrus fruit dealer or shipper license. Rule R3-10-102 specifies the fee charged for a customer applying for a produce dealer or shipper license. A person may not transact business as a citrus fruit dealer or shipper or produce dealer or shipper without first obtaining a license as provided in this Article.

The Department indicates the rules are clear, concise, understandable, consistent, effective, and enforced as written and does not intend to to take any action related to the rules.

Council staff recommends approval of this report.

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

November 28, 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 10, Article 1

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 10, Article 1. The Department reviewed all the rules in Articles 1. 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 Teressa Lopez at (602) 542-0945 or tlopez@azda.gov with any questions about this report.

Sincerely,

Paul E. Brierley
Director

cc: Ed Foster, Associate Director

Arizona Department of Agriculture
5 YEAR REVIEW REPORT
Title 3. Agriculture
Chapter 10. Department of Agriculture - Citrus, Fruit and Vegetable Division
Article 1
November 28, 2023

1. **Authorization of the rule by existing statutes**
General Statutory Authority:

Specific Authority: A.R.S. § 3-449 Annual Licensing; fees; application; penalty

Specific Authority: A.R.S. § 3-492 Licensing dealers and shippers; application; fees; penalty

2. **The objective of each rule:**

Rule	Objective
R3-10-101	The fee is charged when a customer applies for a citrus dealer license. A person may not transact business as a citrus fruit dealer or shipper without first obtaining a license as provided in this article. The Citrus, Fruit and Vegetable Standardization program issues approximately 40 licenses annually and operates using the fees collected.
R3-10-102	The fee is charged when a customer applies for a produce dealer or shipper license. A person may not transact business as a produce dealer or shipper without first obtaining a license as provided in this article. The Citrus, Fruit and Vegetable Standardization program issues approximately 340 licenses and operates using the fees collected.

3. **Are the rules effective in achieving their objectives?** **Yes XNo ___**
The rules in Article 1 are effective in achieving their objectives.

4. **Are the rules consistent with other rules and statutes?** **Yes X No ___**
The rules in Article 1 are consistent with other rules and statutes.

5. **Are the rules enforced as written?** **Yes X No ___**
The rules in Article 1 are enforced as written.

6. **Are the rules clear, concise, and understandable?** **Yes X No ___**
The rules in Article 1 are clear, concise, and understandable.

7. **Has the agency received written criticisms of the rules within the last five years?** **Yes ___ No X**
The Department has not received any comments regarding these rules in the time prior to the submission of this report.

8. **Economic, small business, and consumer impact comparison:**
The economic impact is consistent with what was estimated in the economic, small business and consumer impact statement prepared in the last rulemakings for the rule. The last economic impact statement was prepared prior to adoption of the rule in March, 1993 and found that the rule was written to be as simple as possible with the least stringent reporting or compliance requirements possible to meet the requirements of A.R.S. § 3-487, and compliance with the rule "should be at minimal cost; all necessary information should be at hand." These rules were originally established through eexempt rrulemaking.

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 course of action was indicated in the previous review.

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

The CFV Advisory Council is a nine-member council appointed by the Governor, which is made up of seven specialty crop producers, one produce holder and one small producer, oversee the Standardization program to ensure that these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying objective.

12. **Are the rules more stringent than corresponding federal laws?** **Yes ___No X**
There is no corresponding federal law. These rules are based only on state 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:**

None of these rules were adopted after July 29, 2010.

14. **Proposed course of action**
There is no proposed course of action for the rules in Article 1.

Original Rule Language

ARTICLE 1. LICENSING FEES

Section
R3-10-101. Citrus Fruit Dealer or Shipper Licensing Fee
R3-10-102. Fruit and Vegetable Dealer or Shipper Licensing Fee

ARTICLE 1. LICENSING FEES

R3-10-101. Citrus Fruit Dealer or Shipper Licensing Fee
A person may not transact business as a citrus fruit dealer or shipper without first obtaining a license as provided in Arizona Revised Statutes, Title 3, Chapter 3, Article 2. For fiscal year 2022, license fee shall be determined according to the annual gross sales based on the dealer's or shipper's previous fiscal year as follows:
1. If the annual gross sales are $500,000 or more, the annual fee is $112.50.
2. If the annual gross sales are between $200,000 and $500,000, the annual fee is $75.
3. If the annual gross sales are $200,000 or less, the annual fee is $37.50.
4. If the person was not in business the previous fiscal year, the annual fee is $37.50.

R3-10-102. Fruit and Vegetable Dealer or Shipper Licensing Fee
A person shall not act as a fruit or vegetable dealer or shipper without first obtaining a license as provided in Arizona Revised Statutes, Title 3, Chapter 3, Article 4. For fiscal year 2022, application for the license shall be filed with the supervisor and accompanied by a license fee determined according to the annual gross sales based on the dealer's or shipper's previous fiscal year as follows:
1. If the annual gross sales are $500,000 or more, the annual fee is $125.
2. If the annual gross sales are $200,000 and $500,000, the annual fee is $87.50.
3. If the annual gross sales are $200,000 or less, the annual fee is $50.
4. If the person was not in n business the previous fiscal year, the annual fee is $50.

Authorizing Statutes

3-449. Annual licensing; fees; application; penalty

A. A person may not transact business as a citrus fruit dealer or shipper without first obtaining a license as provided in this article. The license expires on August 1 of each year and is renewable annually. The license fee shall be determined according to the annual gross sales based on the dealer's or shipper's previous fiscal year as follows:
1. If the annual gross sales are five hundred thousand dollars or more, the annual fee is four hundred fifty dollars.
2. If the annual gross sales are between two hundred thousand dollars and five hundred thousand dollars, the annual fee is three hundred dollars.
3. If the annual gross sales are two hundred thousand dollars or less, the annual fee is one hundred fifty dollars.
4. If the person was not in business the previous fiscal year, the annual fee is one hundred fifty dollars.
B. If a person engages in business in more than one category as a dealer or shipper, the license designation shall be based on the category in which most of the licensee's business is conducted.
C. The license fees collected by the associate director shall be deposited in the citrus, fruit and vegetable trust fund.
D. The application for a dealer or shipper license shall contain the following information:
1. The full name of the person applying for the license.
2. Whether the applicant is an individual, partnership, firm, corporation, association, trust or cooperative association and the full name of each member of the partnership or firm, the full name of each officer and director of the association or corporation or the full name of each trustee.
3. The principal business address of the applicant in this state and elsewhere and the address where the applicant conducts the described business.
4. The name of the statutory agent in this state for service of legal notice.
5. The category of license for which the applicant is applying.
6. A statement of the facts, signed under penalty of perjury, entitling the applicant to a license under the applicable category and stating whether the applicant has ever had any license to handle citrus, fruit or vegetables in any state denied, suspended or revoked.
7. If the applicant acts as a commission merchant, a schedule of commissions and charges for services, which may not be altered during the term of the license except by written agreement between the parties involved.
E. The associate director shall issue to the applicant a license to conduct the business described for a period of one year unless it is revoked for cause.
F. An applicant who tenders a renewal application for a license that is received by the associate director after August 15 shall pay a penalty of twenty-five dollars. An applicant who tenders a renewal application for a license that is received after September 1 shall pay a penalty of fifty dollars. All penalties shall be deposited in the citrus, fruit and vegetable trust fund.

3-492. Licensing dealers and shippers; application; fees; penalty

A. A person may not act as a dealer or shipper without first obtaining a license as provided in this article. Application for the license shall be filed with the associate director and accompanied by a license fee determined according to the annual gross sales based on the dealer's or shipper's previous fiscal year as follows:
1. If the annual gross sales are five hundred thousand dollars or more, the annual fee is five hundred dollars.
2. If the annual gross sales are between two hundred thousand dollars and five hundred thousand dollars, the annual fee is three hundred fifty dollars.
3. If the annual gross sales are two hundred thousand dollars or less, the annual fee is two hundred dollars.
4. If the person was not in business the previous fiscal year, the annual fee is two hundred dollars.
B. If a person engages in business in more than one category as a dealer or shipper, the license designation shall be based on the category in which most of the licensee's business is conducted.
C. The monies received as license fees under this section shall be paid into the citrus, fruit and vegetable trust fund. The license shall expire on September 1 of each year and is renewable annually.

D. The application for a dealer or shipper license shall contain the following information:
1. The full name of the person applying for the license.
2. Whether the applicant is an individual, partnership, firm, corporation, association, trust or cooperative association and the full name of each member of the partnership or firm, the full name of each officer and director of the association or corporation or the full name of each trustee.
3. The principal business address of the applicant in this state and elsewhere and the address where the applicant conducts the described business.
4. The name of the statutory agent in this state for service of legal notice.
5. The category of license for which the applicant is applying.
6. A statement of the facts, signed under penalty of perjury, entitling the applicant to a license under the applicable category and stating whether the applicant has ever had any license to handle citrus, fruit or vegetables in any state denied, suspended or revoked.
7. If the applicant acts as a commission merchant, a schedule of commissions and charges for services, which may not be altered during the term of the license except by written agreement between the parties involved.
E. The associate director shall issue to the applicant a license to conduct the business described for a period of one year unless it is revoked for cause.
F. An applicant who tenders a renewal application for a license that is received by the associate director after September 15 shall pay a penalty of twenty-five dollars. An applicant who tenders a renewal application for a license that is received after October 1 shall pay a penalty of fifty dollars. All penalties shall be deposited in the citrus, fruit and vegetable trust fund.

F-6.

NATUROPATHIC PHYSICIANS MEDICAL BOARD
Title 4, Chapter 18, Article 9

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: May 7, 2024

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

FROM: Council Staff

DATE: **April 8, 2024**

SUBJECT: **NATUROPATHIC PHYSICIANS MEDICAL BOARD**
Title 4, Chapter 18, Article 9

Summary

This Five Year Review Report (5YRR) from the Naturopathic Physicians Medical Board (Board) covers four (4) rules in Title 4, Chapter 18, Article 9 related to Certificate to Dispense. The Board is required to issue licenses and certificates to applicants who are qualified to dispense a natural substance, a drug with the exception of a schedule II controlled substance that is an opioid, or a device, to a patient for a condition that is being diagnosed or treated by the physician.

The rules were originally created by final rulemaking July 6, 2013. A 5YRR should have been submitted by the Board in July of 2018. A 90 day reminder letter was not sent to the Board and the Board did not submit a 5YRR. This is the first 5YRR submitted to the Council for review since the rules were originally created.

Proposed Action

There is no proposed course of action as the rules were recently amended and approved by Council at the November 7, 2023 Council Meeting.

1. **Has the agency analyzed whether the rules are authorized by statute?**

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Board states that a recent Auditor General report recommended the Board adopt rules relating to the labeling, recordkeeping, storage, and packaging of natural substances, pursuant to A.R.S. § 32-1581(E). The Board indicates that they changed the rules relating to Article 9, and in addition, created a new Article (Article 10) to address the specifics required by A.R.S. § 32-1581(E). The Board indicates that these new rules seek to clarify when a certificate to dispense is required, the packaging and inventory requirements of the dispensing physician, the recordkeeping requirements of the dispensing physician, and when a physician is required to cooperate with inspections of dispensing practices. Stakeholders include Naturopathic Medical Doctors licensed by the Board and the Board. The Board believes there is no significant change between the estimated economic small business and consumer impact as outlined in the last rulemaking compared to the estimated economic small business and consumer impact of the current report.

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

The Board states that notwithstanding any costs imposed by statutes or caused by the rule of other agencies, the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Board has not received written criticism over the rules in the past five years outside the Auditor General which prompted the rulemaking approved by Council on November 7, 2023.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Board states 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 effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Board states the rules are enforced as written.

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

There are no corresponding federal laws related to this matter.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Board indicates that the rules comply with A.R.S. § 41-1037.

11. **Conclusion**

This Five Year Review Report from the Naturopathic Physicians Medical Board covers four rules in Title 4, Chapter 18, Article 9 related to Certificate to Dispense. As indicated above, the Board says the rules are clear, concise, and understandable, effective in achieving their objectives, 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.

State Of Arizona
Naturopathic Physicians Medical Board
"Protecting the Public's Health"
1740 W. Adams, Ste. 3002 Phoenix, AZ 85007
Phone: 602-542-8242, Email: info@nd.az.gov Website: nd.az.gov
Katie Hobbs - Governor

11/22/2023

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

RE: State of Arizona Naturopathic Physicians Medical Board, 5 YEAR REVIEW REPORT, TITLE 4, CHAPTER 18, ARTICALS 9.

Dear Ms. Sornsin,

Please find enclosed the Five Year Review Report of the State of Arizona Naturopathic Physicians Medical Board, for TITLE 4, CHAPTER 18, ARTICLE 9.

The State of Arizona Naturopathic Physicians Medical Board hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Gail Anthony at 602 542-8242 or gail.anthony@nd.az.gov.

Sincerely,

Gail Anthony

Gail Anthony, Executive Director
State of Arizona
Naturopathic Physicians Medical Board

STATE OF ARIZONA

NATUROPATHIC PHYSICIANS MEDICAL BOARD

FIVE-YEAR-REVIEW REPORT

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 18. NATUROPATHIC PHYSICIANS MEDICAL BOARD

ARTICLE 9. CERTIFICATE TO DISPENSE

November 2023
Amended April 2024

FIVE-YEAR-REVIEW SUMMARY

Statutory Authority

The Naturopathic Physicians Medical Board (Board) is statutorily vested with the duty to issue licenses and certificates to applicants who are qualified. A.R.S. § 32-1526. A.R.S. § 32-1504(A)(1) requires the Board to "adopt rules that are necessary or proper for the administration of this chapter." A.R.S. § 32-1581 sets out basic procedure and requirements for a certificate to dispense. A.R.S. § 32-1527 sets out the maximum application fee the Board may charge. A.R.S. § 32-1530 sets out specific exemptions for the certificate to dispense fee. A.R.S. § 32-1526 (D) requires the certificate to be renewed on or before July 1 of each year. Further, the certificate "automatically expires if not renewed within sixty days after the due date." A.R.S. § 32-1526 (H) allows the Board to reinstate a certificate on payment of all renewal and penalty fees. On November 14, 2023, it was brought to the Board's attention Title 4, Chapter 18, Article 9. had not been calendared for review. Once notified, the Board began this 5-year review report. The Board recently went through a rules package relating to Article 9, which was approved by GRRC at the November 7, 2023 committee meeting. The rule amended R4-18-902; Qualifications for a Certificate to Dispense, and R4-18-903; Application for a Certificate to Dispense, Renewal. The Board also added Article 10, Dispensing of a Natural Substance, Drug or Device. Including R4-18-1001; Certificate to Dispense Required, R4-18-1002; Packaging and Inventory, R4-18-1003; Recordkeeping and Reporting Shortages, and R4-18-104; Inspections. This change was prompted by a recent Auditor General report that specifically recommended the Board adopt rules relating to the labeling, recordkeeping, storage, and packaging of natural substances, pursuant to A.R.S. § 32-1581(E). While the Board found that R4-18-901 did define "dispense' by reference to A.R.S. § 32-1581(H)(2), which requires the labeling, recordkeeping, storage and packaging of natural substances to be consistent to chapter 18, the Board agreed to the recommendation of adopting more specific rules regarding the topic.

1. Authorization of the rule by existing statute

All of the rules have general statutory authority in A.R.S. § 32-1504(A)(1) and A.R.S. § 32-1504(A)(2). Specific statutory authority is as stated in each rule.

2. The objective of each rule

Rule	Objective
R4-18-901	The definitions in this rule apply to Article 9. and in addition, applicable definitions found in A.R.S. § 32-1581, A.R.S. § 32-1501 and A.R.S. § 12-2291. The objective is to provide clarity regarding specific terms as they apply to this Article.
R4-18-902	To specify the required qualifications to obtain a certificate to dispense.
R4-18-903	To specify the requirements of an application for a certificate to dispense.
R4-18-904	To specify required procedure when dispensing intravenous nutrients in order to avoid toxicity.

3. Are the rules effective in achieving their objective?

While the Board believed the prior rules to be effective in achieving their objective, based on a recommendation reflected in a recent Auditor General report, the rules were updated via a rules package, approved by GRRC on November 7, 2023.

4. Are the rules consistent with other rules and statutes?

While the Board believed the prior rules to be consistent with other rules and statues, based on a recommendation reflected in a recent Auditor General report, the rules were updated via a rules package approved by GRRC on November 7, 2023.

5. Are the rules enforced as written?

Yes

6. Are the rules clear, conciseness, and understandability?

Yes

7. Has the agency received written criticisms of the rule received within the last 5 years

No, with the exception of the Auditor General Report recommendation.

8. Has the agency performed an economic, small business and consumer impact comparison

In this comparison, minimal means less than $1,000, moderate means between $1,000 and $10,000, and substantial means greater than $10,000. The Board recently changed the rules relating to Article 9. and in addition, created a new article, Article 10. The Board has attached the economic impact statement (EIS) related to the rulemaking that was approved by GRRC at the November 7, 2023 committee meeting. The cost for an applicant to obtain a certificate or certificate holder to renew a certificate is minimal. The Board charges an initial application fee of $225.00, and does not charge for issuance of the certificate. The Board does charge a renewal fee annually of $225.00. According to A.R.S. § 32-1527, the Board may charge a maximum of $400.00 for the application, $50.00 for an issuance of the certificate and, $400.00 for a renewal of the certificate. The Board's fees are below the allowable fees. Pursuant to A.R.S. 41-1056(A)(6), there is no significant change between the estimated economic small business and consumer impact as outlined in the last rulemaking compared to the estimated economic small business and consumer impact of the current report. The Notice of Final Rulemaking relating to Article 9. was receipted by the Secretary of State on February 1, 2024.

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

No

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

Article 9 became a new section in 2013. Although it should have been included in the 2018 5-year review, it was not. This is the first report containing Article 9. As mentioned above, the Board's recently submitted rules package updating Article 9. was approved November 7, 2023.

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

Notwithstanding any costs imposed by statutes or caused by the rules of other agencies, the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

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

The rules are not related to federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037.

The rules comply with section 41-1037.

14. Proposed course of action

Because the rules have recently been updated, no further course of action is proposed at this time.

§ R4-18-901. Definitions

The following definitions apply in this Article:

1. "Applicant" means:

a. An individual applying for a license and a certificate to dispense; or

b. A licensee requesting a certificate to dispense only.

2. "Ausculation" means the act of listening to sounds within the human body either directly or through the use of a stethoscope or other means.

3. "Certificate to dispense" means an approval granted by the Board to dispense a natural substance, drug, or device.

4. "Dispense" means the same as in A.R.S. §32-1581(H).

5. "Drug" means the same as in A.R.S. §32-1501(15).

6. "Hour" means 50 to 60 minutes of participation.

7. "Medical record" means the same as in A.R.S. §12-2291.

8. "Nutrient" means the same as in A.R.S. §32-1501(15)(a)(iii).

9. "Physical examination" means an evaluation of the health of an individual's body using inspection, palpation, percussion, and auscultation to determine cause of illness or disease.

History:

New Section made by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2).

§ R4-18-902. Qualifications for a Certificate to Dispense

A. To qualify for a certificate to dispense, an applicant shall have completed before the submission date of the application, Board approved training in the safe administration of natural substances, drugs, or devices.

B. The Board approves documentation of the following as evidence of completion of Board approved training in the safe administration of natural substances, drugs, or devices:

1. Graduation from an approved school of naturopathic medicine after January 1, 2005 as referenced in A.R.S. §32-1525(B)(4); or

2. Completion of a 60 hour or more pharmacological course on natural substances, drugs, or devices that is offered, approved, or recognized by one of the organizations in R4-18-205(B)(1) or R4-18-205(B)(2), or by passing of The North American Board of Naturopathic Examiners (NABNE) add on Parenteral Medicine Examination.

C. If an applicant intends to administer a natural substance or drug intravenously, the Board approved training completed by the applicant shall include administration of a natural substance or drug by intravenous means.

History:

New Section made by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 30 A.A.R. 348, effective 4/1/2024.

§ R4-18-903. Application for a Certificate to Dispense; Renewal

A. An applicant for a certificate to dispense shall submit:

1. An application to the Board that contains:

a. The applicant's:

i. Full legal name;

ii. Naturopathic license number, if known; and

iii. Social Security number;

b. If a corporation, a statement of whether the corporation holds tax exempt status;

c. A statement of whether the applicant holds a drug enforcement number issued by the United States Drug Enforcement Administration, and if so, the drug enforcement number;

d. A statement of whether the applicant has ever had the authority to prescribe, dispense, or administer a natural substance, drug, or device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law, and if so, an explanation that includes:

i. The name and address of the federal or state agency or court having jurisdiction over the matter, and

ii. The disposition of the matter;

e. A statement, signed by the applicant, that the applicant agrees to conform to all federal and state statutes, regulations, and rules; and

f. The date the application is submitted; and

2. Unless exempted by A.R.S. §32-1530, the fee required by the Board.

B. A certificate holder shall renew a certificate to dispense on or before July 1 of each year by submitting:

1. An application to the Board that contains:

a. The applicant's full legal name;

b. If a corporation, a statement of whether the corporation holds tax exempt status;

c. A statement of whether the applicant has had the authority to prescribe, dispense, or administer a natural substance, drug, device limited, restricted, modified, denied, surrendered or revoked by a federal or state agency or court of law, during the one year period immediately preceding the renewal date and if so, an explanation that includes:

i. The name and address of the federal or state agency or court having jurisdiction over the matter; and

ii. The disposition of the matter; and

d. A statement, signed and dated by the applicant, verifying the information on the application is true and correct and the applicant is the licensee named on the application; and

2. Unless exempted by A.R.S. §32-1530, the fee required by the Board.

C. The Board shall grant or deny the certificate to dispense or renewal of certificate to dispense according to the time-frames in 4 A.A.C. 18, Article 7, Table 1.

History:

New Section made by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 30 A.A.R. 348, effective 4/1/2024.

§ R4-18-904. Dispensing; Intravenous Nutrients

A. To prevent toxicity due to the excessive intake of a natural substance, drug, or device, before dispensing the natural substance, drug, or device to an individual, a certified physician shall:

1. Conduct a physical examination of the individual,

2. Conduct laboratory tests as necessary that determine the potential for toxicity of the individual, and

3. Document the results of the physical examination and laboratory tests in the individual's medical record.

B. For the purposes of A.R.S. §32-1504(A)(8), a substance is considered a nutrient suitable for intravenous administration if it complies with A.R.S. §32-1501(15)(iii).

History:

New Section made by final rulemaking at 19 A.A.R. 1302, effective July 6, 2013 (Supp. 13-2). Amended by Final rulemaking at 21 A.A.R. 2009, effective 9/1/2015.

§ 32-1504. Powers and duties

A. The board shall:

1. Adopt rules that are necessary or proper for the administration of this chapter.

2. Administer and enforce all provisions of this chapter and all rules adopted by the board under the authority granted by this chapter.

3. Adopt rules regarding the qualifications of medical assistants who assist doctors of naturopathic medicine and shall determine the qualifications of medical assistants who are not otherwise regulated.

4. Adopt rules for the approval of schools of naturopathic medicine. The board may incorporate by reference the accrediting standards for naturopathic medical schools published by accrediting agencies recognized by the United States department of education or recognized by the council for higher education accreditation.

5. Adopt rules relating to clinical, internship, preceptorship and postdoctoral training programs, naturopathic graduate medical education and naturopathic continuing medical education programs. The rules for naturopathic continuing medical education programs shall require at least ten hours each year directly related to pharmacotherapeutics.

6. Periodically inspect and evaluate clinical, internship, preceptorship and postdoctoral training programs and naturopathic graduate medical education programs and randomly evaluate naturopathic continuing medical education programs.

7. Adopt rules relating to the dispensing of natural substances, drugs and devices.

8. Adopt rules necessary for the safe administration of intravenous nutrients. These rules shall identify and exclude substances that do not meet the criteria of nutrients suitable for intravenous administration.

9. Adopt and use a seal.

10. Have the full and free exchange of information with the licensing and disciplinary boards of other states and countries and with the American association of naturopathic physicians, the Arizona naturopathic medical association, the association of naturopathic medical colleges, the federation of naturopathic medical licensing boards and the naturopathic medical

societies of other states, districts and territories of the United States or other countries.

B. The board may:

1. Adopt rules that prescribe annual continuing medical education for the renewal of licenses issued under this chapter.

2. Employ permanent or temporary personnel it deems necessary to carry out the purposes of this chapter and designate their duties.

3. Adopt rules relating to naturopathic medical specialties and determine the qualifications of doctors of naturopathic medicine who may represent or hold themselves out as being specialists.

4. If reasonable cause exists to believe that the competency of an applicant or a person who is regulated by the board is in question, require that person to undergo any combination of physical, mental, biological fluid and laboratory tests.

5. Be a dues paying member of national organizations that support licensing agencies in their licensing and regulatory duties and pay the travel expenses involved for a designated board member or the executive director to represent the board at the annual meeting of these organizations.

6. Adopt rules for conducting licensing examinations required by this chapter.

7. Delegate to the executive director the board's authority pursuant to sections 32-1509 and 32-1551.

§ 32-1526. Licenses; certificates; issuance; renewal; failure to renew

A. The board shall issue licenses and certificates to applicants who are qualified under this chapter. The board shall only issue licenses under this chapter on the vote of a majority of the full board. Subject to review by the board at its next board meeting, the executive director may issue temporary licenses pursuant to section 32-1522.01, license renewals and certificates to qualified applicants.

B. Except as provided in section 32-4301, a license or certificate issued by the board expires unless renewed each year.

C. Each physician who holds an active license to practice naturopathic medicine in this state shall renew the license on or before January 1 of each year by supplying the executive director with information the board determines is necessary and payment of the annual renewal fee prescribed in section 32-1527.

D. A person who holds a certificate issued by the board shall renew the certificate on or before July 1 of each year by supplying the executive director with information the board determines is necessary and payment of the annual fee prescribed in section 32-1527.

E. A licensee or certificate holder whose license or certificate is current and who is not currently the subject of a probationary order or licensure suspension by the board may request, at any time, and shall be granted cancellation of the license or certificate.

F. A person who fails to renew a license or certificate by the due date shall pay a late renewal fee as prescribed in section 32-1527. Except as provided in section 32-4301, a license or certificate automatically expires if not renewed within sixty days after the due date.

G. The board may reinstate a license or certificate on payment of all renewal and penalty fees as prescribed in section 32-1527 and, if requested by the board, presentation of evidence satisfactory to the board that the applicant for reinstatement of an expired license is professionally able to engage or assist in the practice of naturopathic medicine and still possesses the professional knowledge required. If an applicant for reinstatement of an expired license has not been licensed and actively practicing in a jurisdiction of the United States or Canada in the three years immediately preceding the application, the board may issue a limited license that requires a period of general supervision by another licensed naturopathic physician not to exceed one year.

H. After a hearing, the board may refuse to reinstate a license or certificate for any grounds prescribed in section 32-1551.

I. The board and the executive director may prorate initial annual fees when a new application is approved by dividing the annual amount by twelve and multiplying the results by the number of months remaining until the next annual renewal date.

History:

Amended by L. 2023, ch. 9,s. 6, eff. 10/30/2023.

§ 32-1526. Licenses; certificates; issuance; renewal; failure to renew

A. The board shall issue licenses and certificates to applicants who are qualified under this chapter. The board shall only issue licenses under this chapter on the vote of a majority of the full board. Subject to review by the board at its next board meeting, the executive director may issue temporary licenses pursuant to section 32-1522.01, license renewals and certificates to qualified applicants.

B. Except as provided in section 32-4301, a license or certificate issued by the board expires unless renewed each year.

C. Each physician who holds an active license to practice naturopathic medicine in this state shall renew the license on or before January 1 of each year by supplying the executive director with information the board determines is necessary and payment of the annual renewal fee prescribed in section 32-1527.

D. A person who holds a certificate issued by the board shall renew the certificate on or before July 1 of each year by supplying the executive director with information the board determines is necessary and payment of the annual fee prescribed in section 32-1527.

E. A licensee or certificate holder whose license or certificate is current and who is not currently the subject of a probationary order or licensure suspension by the board may request, at any time, and shall be granted cancellation of the license or certificate.

F. A person who fails to renew a license or certificate by the due date shall pay a late renewal fee as prescribed in section 32-1527. Except as provided in section 32-4301, a license or certificate automatically expires if not renewed within sixty days after the due date.

G. The board may reinstate a license or certificate on payment of all renewal and penalty fees as prescribed in section 32-1527 and, if requested by the board, presentation of evidence satisfactory to the board that the applicant for reinstatement of an expired license is professionally able to engage or assist in the practice of naturopathic medicine and still possesses the professional knowledge required. If an applicant for reinstatement of an expired license has not been licensed and actively practicing in a jurisdiction of the United States or Canada in the three years immediately preceding the application, the board may issue a limited license that requires a period of general supervision by another licensed naturopathic physician not to exceed one year.

H. After a hearing, the board may refuse to reinstate a license or certificate for any grounds prescribed in section 32-1551.

I. The board and the executive director may prorate initial annual fees when a new application is approved by dividing the annual amount by twelve and multiplying the results by the number of months remaining until the next annual renewal date.

History:

Amended by L. 2023, ch. 9,s. 6, eff. 10/30/2023.

§ 32-1527. Fees

A. The board by a formal vote at an open public meeting shall establish fees, except as provided in section 32-1530, that the board determines are necessary to provide monies to conduct its business and that do not exceed the following:

1. For application for a license to practice naturopathic medicine and for certification to practice as a specialist, $400.

2. For application for a certificate to dispense, $400.

3. For issuance of a duplicate license or certificate, $100.

4. For endorsement of an Arizona license or certificate for the purpose of applying for a license, certificate or registration in another state or country, $50.

5. For initial issuance of a license or a certificate, $50.

6. For any annual renewal of a license or a certificate, $400.

7. For any late renewal of a license or an additional certificate, $200.

8. For an initial application to conduct or engage in an internship, a preceptorship or a postdoctoral training program, $100.

9. For examination of applicants, the cost of giving the examination to each applicant.

10. For an initial application to be certified as a naturopathic medical assistant, $100.

11. For a copy of the minutes of board meetings during the calendar year, $25 for each set of minutes.

12. For copying records, documents, letters, minutes, applications and files, $.25 per page.

13. For a copy of tapes or computerized diskettes not requiring programming, $100.

14. For written verification of a certificate or license, $5.

15. For submitting fingerprint cards to the department of public safety, the cost required by that department.

B. The board may charge a fee for services that it is not required to provide pursuant to this chapter but that the board determines are appropriate to carry out the intent and purpose of this chapter. A fee imposed pursuant to this subsection shall not exceed the board's costs of rendering the service.

History:

Amended by L. 2023, ch. 9,s. 7, eff. 10/30/2023.

§ 32-1530. Exemptions from certificate to dispense fees

A. A physician who practices at a public health facility operated by this state or a county or at a facility operated by a qualifying community health center established pursuant to section 36-2907.06 and who is exempt from paying registration fees pursuant to section 32-1921, subsection D for a certificate to dispense issued by the board if involved in the dispensing of devices and medications shall annually renew a certificate to dispense pursuant to section 32-1526 but is exempt from the annual renewal fee to dispense under section 32-1527.

B. A physician who is employed by and dispenses devices and medications at a facility that is operated by a not-for-profit corporation and who does not profit from the items dispensed shall annually renew a certificate to dispense pursuant to section 32-1526 but is exempt from the annual renewal fee to dispense under section 32-1527.

§ 32-1581. Dispensing of natural substances, drugs and devices; conditions; civil penalty; dispensing minerals; rules; definitions

A. A doctor of naturopathic medicine may dispense a natural substance, a drug, except a schedule II controlled substance that is an opioid, or a device to a patient for a condition that is being diagnosed or treated by the doctor if:

1. The doctor is certified to dispense by the board and the certificate has not been suspended or revoked by the board.

2. The natural substance, drug or device is dispensed and properly labeled with the following dispenser information:

(a) The dispensing doctor's name, address and telephone number and a prescription number or other method of identifying the prescription.

(b) The date the natural substance, drug or device is dispensed.

(c) The patient's name.

(d) The name and strength of the natural substance, drug or device, directions for proper and appropriate use and any cautionary statements for the natural substance, drug or device. If a generic drug is dispensed, the manufacturer's name must be included.

3. The dispensing doctor enters into the patient's medical record the name and strength of the natural substance, drug or device dispensed, the date the natural substance, drug or device is dispensed and the therapeutic reason.

4. The dispensing doctor keeps all prescription-only drugs, controlled substances and prescription-only devices in a secured cabinet or room, controls access to the cabinet or room by a written procedure and maintains an ongoing inventory of its contents.

B. Except in an emergency, a doctor of naturopathic medicine who dispenses a natural substance, drug or device without being certified to dispense by the board is subject to a civil penalty by the board of not less than three hundred dollars and not more than one thousand dollars for each transaction and may be prohibited from further dispensing for a period of time as determined by the board.

C. Before dispensing a natural substance, drug or device pursuant to this section, the treating doctor shall give the patient or the patient's legal guardian a written prescription and must inform the patient or the patient's legal guardian that the prescription may be filled by the prescribing doctor

or the pharmacy of the patient's choice. If the patient chooses to have the medication dispensed by the doctor, the doctor must retrieve the written prescription and place it in a prescription file kept by the doctor.

D. A doctor of naturopathic medicine shall provide direct supervision of a nurse or attendant involved in the dispensing process. For the purposes of this subsection, "direct supervision" means that a doctor of naturopathic medicine is present and makes the determination as to the necessary use or the advisability of the natural substance, drug or device to be dispensed.

E. The board shall enforce this section. The board shall adopt rules regarding the dispensing of a natural substance, drug or device, including the labeling, recordkeeping, storage and packaging of natural substances, that are consistent with the requirements of chapter 18 of this title. The board may conduct periodic inspections of dispensing practices to ensure compliance with this section and applicable rules.

F. This section does not prevent a licensed practical or professional nurse employed by a doctor of naturopathic medicine from assisting in the delivery of natural substances, drugs and devices in accordance with this chapter.

G. Before prescribing or dispensing a mineral to a patient, the treating physician shall perform necessary clinical examinations and laboratory tests to prevent toxicity due to the excessive intake of magnesium, calcium and other minerals. The board shall adopt rules necessary for the safe administration of minerals. These rules shall require prior certification of a physician who prescribes or dispenses minerals to a patient.

H. For the purposes of this section:

1. "Device" means an appliance, apparatus or instrument that is administered or dispensed to a patient by a doctor of naturopathic medicine.

2. "Dispense" means the delivery by a doctor of naturopathic medicine of a natural substance, drug or device to a patient and only for a condition being diagnosed or treated by that doctor, except for free samples packaged for individual use by licensed manufacturers or repackagers, and includes the prescribing, administering, packaging, labeling and security necessary to prepare and safeguard the natural substance, drug or device for delivery to the treating doctor's own patient.

History:

Amended by L. 2018, ch. 243,s. 4, eff. 8/3/2018.

ARIZONA GAME AND FISH COMMISSION
Title 12, Chapter 4, Article 4

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: May 7, 2024

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

FROM: Council Staff

DATE: April 18, 2024

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

Summary

This Five-Year Review Report (5YRR) from the Arizona Game and Fish Commission (Commission) relates to twenty-six (26) rules in Title 12, Chapter 4, Article 4 regarding Live Wildlife. The rules cover a range of issues including, but not limited to: definitions, possession of wildlife, license requirements, and captivity standards.

In the prior 5YRR, which was approved by the Council in June 2019, the Commission proposed to amend twenty (20) rules to improve their clarity, conciseness, understandability, and effectiveness. The Commission indicates it completed its prior proposed course of action through rulemaking that became effective on July 1, 2021.

Proposed Action

For reasons outlined in more detail below, the Commission is proposing to amend thirteen (13) rules to improve their clarity, conciseness, understandability, consistency, effectiveness, and enforcement. The Commission anticipates submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by March 2025

1. Has the agency analyzed whether the rules are authorized by statute?

The Commission cites both general and specific statutory authority for the rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Commission's intent in proposing the original rulemaking was to protect native wildlife and their habitats in many ways, including preventing the spread of disease, reducing the risk of released animals competing with native wildlife, discouraging illegal trade of native wildlife, and avoiding conflict between humans and wildlife which may threaten public health or safety. The Commission anticipated the original rulemaking would benefit stakeholders by clarifying rule language, creating consistency among existing Commission rules, reducing the burden on persons regulated by the rule where practical, and allowing the Department additional oversight where necessary; altogether, the Commission believed this would result in little or no impact on political subdivisions of the state, private and public employment, or state revenues. This five-year review determined that the rulemaking resulted in its anticipated economic impact.

Stakeholders are identified as the Department, the Commission, persons regulated by the rules, 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 Commission determined that the benefits of the rules outweigh any costs, and that—for a majority of the rulemaking—there were no less intrusive or costly alternative methods of achieving the purpose of the rules.

4. Has the agency received any written criticisms of the rules over the last five years?

The Commission indicates it received numerous written comments regarding these rules in the last five years which are outlined in more detail in Section 7 of the Commission's report along with the Commission's response. Council staff believes the Commission has adequately responded to written criticisms.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Commission indicates the rules are mostly clear, concise, and understandable, logically organized, and generally written in the active voice. However, the Commission proposes to further clarify the following rules as indicated in Section 6 of the report:

- R12-4-406. Restricted Live Wildlife
- R12-4-409 General Provisions and Penalties for Special Licenses
- R12-4-413. Private Game Farm License

- R12-4-414. Game Bird License
- R12-4-418. Scientific Activity License
- R12-4-421. Wildlife Service License
- R12-4-422. Sport Falconry License
- R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments
- R12-4-430 Importation, Handling, and Possession of Cervids

6. <u>Has the agency analyzed the rules' consistency with other rules and statutes?</u>

The Commission indicates the rules are generally consistent with other rules and statutes except for the following, as outlined in more detail in Section 4 of the Commission's report:

- R12-4-401. Live Wildlife Definitions
- R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License
- R12-4-406. Restricted Live Wildlife
- R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife
- R12-4-413. Private Game Farm License
- R12-4-423. Wildlife Rehabilitation License
- R12-4-430 Importation, Handling, and Possession of Cervids

7. <u>Has the agency analyzed the rules' effectiveness in achieving its objectives?</u>

The Commission indicates the rules are general effective in achieving their objectives except for the following, as outlined in more detail in Section 3 of the Commission's report:

- R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License
- R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife
- R12-4-409 General Provisions and Penalties for Special Licenses and R12-4-412. Special License Fees
- R12-4-430 Importation, Handling, and Possession of Cervids

8. <u>Has the agency analyzed the current enforcement status of the rules?</u>

The Commission indicates the rules are currently enforced as written except for the following:

- R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License:
    - The rule is enforced as written; however, because the rule allows persons to both propagate and gift live native herpetofauna (typically, reptiles), the rule is being unlawfully utilized by commercial wildlife traffickers to collect and unlawfully sell Arizona reptiles, both in-state and out-of-state. While both the personal

propagation and gifting of wild native amphibians and reptiles is a popular hobby with ethical herpetological enthusiasts, Department officers are increasingly encountering commercial reptile traffickers who claim the reptiles they are selling are instead being "gifted" to their recipients, or that the reptiles in their possession represent "gifts" from unnamed persons. In addition, certain native reptile species considered desirable in the commercial wildlife trade may be being collected on a scale that could threaten wild populations. The Department recently successfully prosecuted a reptile trafficker who unlawfully collected, propagated and sold hundreds of Rosy boas, a native snake. This trafficker was part of a multi-state network of reptile poachers who illegally collect, trade, and sell reptiles, usually across state lines to evade enforcement by their state of residence. The Department recommends amending the rule to require a person who is gifted wildlife to purchase a hunting and/or fishing license, as applicable in order to ensure the wildlife is, and remains, lawfully possessed.

9. <u>Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?</u>

The Commission indicates the following rules are not more stringent than corresponding federal law:

- **R12-4-401. Definitions, R12-4-406. Restricted Live Wildlife, and R12-4-422. Sport Falconry License**, federal regulation 50 C.F.R. 17.11 provides a list of migratory birds governed by the Migratory Bird Treaty Act.
- **R12-4-401. Definitions and R12-4-422. Sport Falconry License**, federal regulation 50 C.F.R. 10.13 provides a list of the wildlife species determined by USFWS or the National Marine Fisheries Service (NMFS) of the Department of Commerce's National Oceanic and Atmospheric Administration to be endangered species or threatened species.
- **R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife**, federal regulation 9 C.F.R. Subpart C 2.30 establishes the registration procedures for research facilities.
- **R12-4-413. Private Game Farm License and R12-4-414. Game Bird License**, federal regulation 50 C.F.R. 21.13 establishes exemptions from federal permitting requirements for captive-bred migratory waterfowl.
- **R12-4-420. Zoo License and R12-4-428. Captivity Standards**, federal regulation 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), regulates the treatment of animals in research and exhibition and establishes the minimally acceptable standard for animal treatment and care.
- **R12-4-422. Sport Falconry License**, federal regulation 50 C.F.R. 21.3 establishes permitting procedures for the taking, possession, transportation, sale, purchase, barter, importation, exportation, and banding or marking of migratory birds.
- **R12-4-430. Importation, Handling, and Possession of Cervids**, USDA APHIS publication 91-45-011 "Bovine Tuberculosis Eradication: Uniform Methods and Rules" establishes the minimum standards and requirements for the maintenance of

tuberculosis-free accredited herds of cattle and bison and the maintenance of State or zone status in the USDA's tuberculosis eradication program.

- **R12-4-430. Importation, Handling, and Possession of Cervids**, USDA APHIS publication 91-45-16 "Brucellosis in Cervidae: Uniform Methods and Rules" establishes the minimum program standards and procedures of the Cooperative State-Federal Cervid Brucellosis Program to eradicate and monitor brucellosis in farm or ranch-raised Cervidae.

10. <u>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?</u>

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines "general permit" to mean "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The Commission indicates the following rules require the issuance of a permit, license, or agency authorization:

- R12-4-410. Aquatic Wildlife Stocking License; Restocking License
- R12-4-411. Live Bait Dealer's License
- R12-4-413. Private Game Farm License
- R12-4-414. Game Bird License
- R12-4-417. Wildlife Holding License
- R12-4-418. Scientific Activity License
- R12-4-420. Zoo License
- R12-4-421. Wildlife Service License
- R12-4-422. Sport Falconry License
- R12-4-423. Wildlife Rehabilitation License
- R12-4-424. White Amur Stocking License; Restocking License

The Commission indicates these rules utilize a general permit as defined in A.R.S. § 41-1001(12). As such, Council staff believes the Commission is in compliance with A.R.S. § 41-1037.

11. Conclusion

This 5YRR from the Commission relates to twenty-six (26) rules in Tiele 12, Chapter 4, Article 4 regarding Live Wildlife. The rules cover a range of issues including, but not limited to: definitions, possession of wildlife, license requirements, and captivity standards. The Commission is proposing to amend thirteen (13) rules to improve their clarity, conciseness, understandability, consistency, effectiveness, and enforcement and anticipates submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by March 2025.

Council staff recommends approval of this report.

December 12, 2023

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

RE: Arizona Game and Fish Commission, 12 A.A.C. Chapter 4, Article 4, Five Year Review Report]

Dear Nicole Sornsin,

Please find enclosed the Five-year Review Report of the Arizona Game and Fish Commission for 12 A.A.C. Chapter 4, Article 4 which is due on December 31, 2023.

The Arizona Game and Fish Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Celeste Cook at (623) 224-0440 or ccook@azgfd.gov.

Sincerely,

Tom Finley, for

Ty E. Gray
Director

ARIZONA GAME AND FISH COMMISSION

ARTICLE 4. LIVE WILDLIFE

FIVE-YEAR REVIEW REPORT

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

For all rules within Article 4, the authorizing statute is A.R.S. § 17-231(A)(1).		
For each rule within Article 4, the implementing statutes are as follows:		
R12-4-401.	Live Wildlife Definitions	• A.R.S. §§ 17-102, 17-238, and 17-306
R12-4-402.	Live Wildlife; Unlawful Acts	• A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(8),17-240, 17-250(A), 17-250(B), and 17-306
R12-4-403.	Escaped or Released Live Wildlife	• A.R.S. §§ 17-102, 17-231(B)(8), 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, and 17-314
R12-4-404.	Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License	• A.R.S. §§ 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-306, and 17-331
R12-4-405.	Importing, Purchasing, and Transporting, Live Wildlife Without an Arizona License or Permit	• A.R.S. §§ 17-102, 17-238(B), and 17-306
R12-4-406.	Restricted Live Wildlife	• A.R.S. §§ 17-231(A)(2), 17-231(B)(8), 17-255, 17-255.02, and 17-306
R12-4-407.	Exemptions from Special License Requirements for Restricted Live Wildlife	• A.R.S. §§ 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), 17-306, and 17-371(D)
R12-4-408.	Holding Wildlife for the Department	• A.R.S. §§ 17-102, 17-231(A)(2), 17-231(B)(8), 17-238(A), 17-240(A), and 17-306
R12-4-409.	General Provisions and Penalties for Special Licenses	• A.R.S. §§ 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, and 41-1005
R12-4-410.	Aquatic Wildlife Stocking License; Restocking License	• A.R.S. §§ 17-102, 17-231(B)(8), 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, and 41-1005
R12-4-411.	Live Bait Dealer's License	• A.R.S. §§ 17-231(B)(8), 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, 17-333, and 41-1005
R12-4-412.	Special License Fees	• A.R.S. §§ 17-333 and 41-1005
R12-4-413.	Private Game Farm License	• A.R.S. §§ 3-1205, 17-231(B)(8), 17-238(A), 17-240(A), 17-306,17-307(C), 17-333, and 41-1005
R12-4-414.	Game Bird License	• A.R.S. §§ 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-240(A), 17-306, 17-307(C), 17-333, and 41-1005
R12-4-415.	Repealed	
R12-4-416.	Repealed	
R12-4-417.	Wildlife Holding License	• A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-240(A), 17-306, and 41-1005
R12-4-418.	Scientific Activity License	• A.R.S. §§ 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(B), 17-240(A), 17-306, and 41-1005
R12-4-419.	Repealed	
R12-4-420.	Zoo License	• A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, and 17-333
R12-4-421.	Wildlife Service License	• A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-239(D), 17-240(A), 17-306, and 41-1005
R12-4-422.	Sport Falconry License	• A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-235, 17-236(B), 17-238(A), 17-306, 17-307, 17-331, 17-333, 17-371(D), 25-320(P), and 41-1005

R12-4-423.	Wildlife Rehabilitation License	• A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-238(A), 17-240(A), 17-306, and 41-1005
R12-4-424.	White Amur Stocking License; Restocking License	• A.R.S. §§ 17-238(A), 17-240(A), 17-306, 17-317, 17-333, and 41-1005
R12-4-425.	Restricted Live Wildlife Lawfully Possessed Without License or Permit Before the Effective Date of Article Four and Any Subsequent Amendments	• A.R.S. §§ 17-102, 17-231(A)(2),17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), 17-240(A) , and 17-306
R12-4-426.	Possession of Nonhuman Primates	• A.R.S. §§ 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), and 17-306
R12-4-427.	Exemption from Requirements to Possess a Wildlife Rehabilitation Permit	• A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), and 17-306
R12-4-428.	Captivity Standards	• A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A) , and 17-306
R12-4-429.	Expired	
R12-4-430.	Importation, Handling, and Possession of Cervids	• A.R.S. §§ 17-102, 17-231(A)(2). 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, and 17-318

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

R12-4-401. Live Wildlife Definitions: The objective of the rule is to establish definitions that assist persons regulated by the rule and members of the public in understanding the unique terms that are used throughout Article 4. The rule was adopted to facilitate consistent interpretation of, and to prevent persons regulated by the rule from misinterpreting the intent of Commission rules.

R12-4-402. Live Wildlife: Unlawful Acts: The objective of the rule is to establish unlawful activities for persons taking and possessing live wildlife and the Department's authority to take possession of wildlife for a violation of the rule. The rule was adopted to protect native wildlife in many ways: preventing the spread of disease, reducing the risk of released animals competing with native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety.

R12-4-403. Escaped or Released Live Wildlife: The objective of the rule is to establish the Department's authority to take possession of any escaped or released wildlife that poses an actual or potential threat to native wildlife, wildlife habitat, or to the safety, health, and welfare of the public. The rule was adopted to enable the Department to more closely monitor the use of wildlife in Arizona and to ensure proper management and conservation of the State's resources, particularly in relation to potentially competitive or threatening species or wildlife disease.

R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License: The objective of the rule is to establish lawful activities for persons taking and possessing live wildlife under a valid hunting or fishing license and to regulate the take and disposition of live wildlife when live bag and possession limits are

specified in a Commission Order. The rule was adopted to provide a mechanism that allows a person to lawfully possess and dispose of live wildlife taken from the wild.

R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit: The objective of the rule is to establish lawful activities and limitations for a person importing, purchasing, or transporting wildlife or the offspring of wildlife taken without a Department-issued license or permit to prevent harm to native wildlife of this state or to endanger public safety. The rule was adopted to allow individuals to import wildlife not listed as restricted live wildlife and at the same time provide protection for public, wildlife, and livestock health.

R12-4-406. Restricted Live Wildlife: The objective of the rule is to establish a list of live wildlife for which a special license is required in order to possess the wildlife and/or to engage in activities that are otherwise prohibited under A.R.S. § 17-306 and R12-4-402 (live wildlife; unlawful acts). The rule was adopted to identify those live wildlife species that would pose a threat to Arizona's natural resources, public health as well as the health and safety if left unregulated. When adding or removing a species from the restricted wildlife list, the Department bases its decision on the following factors:

- Protection of public health and safety;
- Biological impact on species and ecosystems;
- Consistency with federal, state, and county regulatory agencies; and
- Potential economic impact.

R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife: The objective of the rule is to establish the types of scenarios when a person may lawfully possess restricted live wildlife without a special license. The rule was adopted to provide specific exemptions from special license requirements which are typically situations that are temporary.

R12-4-408. Holding Wildlife for the Department: The objective of the rule is to establish requirements that allow a person to possess and transport live wildlife needed as evidence in pending legal proceedings without a special license. The rule also allows a person authorized by the Department to possess and transport live wildlife for up to 72 hours; possess wildlife held as evidence during the pendency of the judicial proceeding; or possess a live cervid on the Department's behalf. The rule was adopted to allow a person to continue to possess and transport the wildlife while the resulting judicial process runs its course. The Department needed to establish a method that ensures wildlife is humanely held as evidence for a court proceeding without having to take on the burden of caring for wildlife that was seized because it was unlawfully possessed.

R12-4-409 General Provisions and Penalties for Special Licenses: The objective of the rule is to establish general provisions and administrative compliance applicable to all special licenses, as well as enforcement actions

that may be taken when a special license holder is convicted offense involving cruelty to animals, fails to remedy a noticed violation, or fails to comply with requirements of the rule governing the applicable special license. The rule was adopted to ensure Arizona's wildlife resources are placed into the care of persons who are capable of carrying out the permitted activities and knowledgeable in the care and handling of permitted wildlife.

R12-4-410. Aquatic Wildlife Stocking License; Restocking License: The objective of the rule is to establish requirements that allow a person to import, possess, purchase, stock, and transport any restricted aquatic species designated on the license at the location specified on the license, including authorized activities, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic wildlife and wildlife habitat. The rule was adopted to protect natural aquatic ecosystems from the introduction, establishment, and/or spread of undesired aquatic wildlife, while still allowing persons to stock aquatic wildlife for personal or commercial use.

- The Department issues approximately 150 live aquatic wildlife stocking licenses on an annual basis.
- The aquatic wildlife stocking license is valid for no more than 20 consecutive days, except that an aquatic wildlife stocking or restocking license issued to a political subdivision of the state for the purpose of vector control is valid for one calendar year.
- The fee for the initial aquatic wildlife stocking license is $100; the fee for an aquatic wildlife restocking license is $20.

R12-4-411. Live Bait Dealer's License: The objective of the rule is to establish the requirements necessary to allow a person to conduct a commercial live bait retail sales operation. The rule includes authorized activities, permitted species, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic wildlife and aquatic wildlife habitat. The rule was adopted to protect native aquatic wildlife from parasite/pathogen transmissions that may be carried by live baitfish while allowing a person to sell live baitfish commercially.

- The Department issues approximately 11 initial live bait dealer licenses on an annual basis.
- The live bait dealer license is valid until the last day of the third December from the date of issuance.
- The fee for the initial live bait dealer license is $135; the fee for a renewal of a live bait dealer license is $35.

R12-4-412. Special License Fees: The objective of the rule is to establish requirements for the issuance of an initial and renewal of special licenses issued under Article 4. The rule was adopted to establish fees for special licenses. The Department receives no appropriations from the general fund and operates primarily with the revenue generated from the sale of licenses, permits, stamps, tags, special licenses and matching funds from federal excise taxes hunters and anglers pay on guns, ammunition, fishing tackle, motorboat fuels, and related equipment. The Department conducted an internal audit and cost analysis of the Department's special license program and determined the Department incurs significant administrative costs during the review and inspection stage of the special license issuance process. The audit estimated the annual administrative burden of the special

license program was approximately $228,000 (i.e. application review, facility inspections, determination of eligibility, ongoing support, review of annual reports and forms, and corrective measures when required). As a result of the audit, a formal team was tasked with assessing each special license. The team evaluated the licensing process for each special license from start to finish and benchmarked fees for similar licenses issued by other states. Previously, only eight of the special licenses required a fee; the remaining nine special licenses were issued at no cost to the applicant. The formal special license team's report provided recommendations intended to help offset pre- and post-issuance administrative costs. The Department chose to implement the minimal fee increase suggested by the formal special license team.

R12-4-413. Private Game Farm License: The objective of the rule is to establish the requirements necessary to allow a person to conduct the commercial farming, use, and sale of game species. The rule includes authorized activities, permitted wildlife, administrative compliance, and the restrictions and prohibitions necessary to protect native wildlife and wildlife habitat. The rule was adopted to protect native wildlife from parasite and pathogen transmissions that may be carried by game species while allowing a person to farm, use, and sell game species and game species parts as a trade or business and for the conservation of the State's wildlife.

- The Department issues approximately 11 private game farm licenses on an annual basis.
- The private game farm license is valid until the last day of the third December from the date of issuance.
- The fee for the initial private game farm license is $395; the fee for a renewal of a private game farm license is $145.

R12-4-414. Game Bird License: The objective of the rule is to establish the requirements that allow a person to possess, release, and take pen-reared game birds. The rule includes authorized activities, permitted game bird species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources. The rule was adopted to allow a person to lawfully conduct activities using captive pen-reared game birds listed as restricted live wildlife, while providing protection for public health, and wildlife health and habitat.

- The Department issues approximately:
  - Sixty game bird field trial licenses on an annual basis.
  - Thirty-four game bird field trial training licenses on an annual basis.
  - Fifty game bird hobby licenses on an annual basis.
  - Six game bird shooting preserve licenses on an annual basis.
- Except for the game bird field trial license which is valid for a period of ten days (sufficient to cover one event), game bird licenses are valid until the last day of the third December from the date of issuance.
- The fee for the:
  - Game bird field training license is $95; the fee for a renewal of a game bird field training license is $45.
  - Game bird hobby license is $80; the fee for a renewal of a game bird hobby license is $40.
  - Game bird shooting preserve license is $425; the fee for a renewal of a game birds shooting preserve

license is $155.

- Game bird field trial license is $45.

R12-4-417. Wildlife Holding License: The objective of the rule is to establish the requirements that allow a person to possess and care for restricted live wildlife lawfully possessed under a valid hunting or fishing license, scientific collecting license, or wildlife rehabilitation license. The rule includes authorized activities, permitted wildlife species that may be held under the license, administrative compliance, and the restrictions necessary to protect wildlife and wildlife habitat. The rule was adopted to allow for holding wildlife only for identified activities, such as educational display, advancement of science, or for the humane treatment of wildlife unable to meet its needs in the wild.

- The Department issues approximately 100 wildlife holding licenses on an annual basis.
- The initial and renewal fee for the wildlife holding license is $20.

R12-4-418. Scientific Activity License: The objective of this rule is to establish the requirements that allow a person to use live wildlife for purposes related to the advancement of conservation, education, science, and wildlife management. The rule includes authorized activities, permitted wildlife species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and existing wildlife habitat and resources. The rule was adopted to permit a person to collect, capture, mark, or salvage wildlife for scientific purposes

- The Department issues approximately 255 scientific activity licenses on an annual basis.
- The initial and renewal fee for the wildlife holding license is $70.

R12-4-420. Zoo License: The objective of the rule is to establish the requirements that allow captive live wildlife in a commercial facility where the principal business is exhibiting wildlife to the public and for purposes related to the advancement of science, conservation, education, or wildlife management. The rule includes authorized activities, permitted wildlife species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and existing wildlife habitat and resources. The rule was adopted to promote the conservation of wildlife species through education, exhibition, and wildlife management.

The Department issues approximately 23 zoo licenses on an annual basis.

The zoo license is valid until the third December from the date of issuance.

The fee for an initial zoo license is $425; the fee for a renewal of a zoo license is $155.

R12-4-421. Wildlife Service License: The objective of the rule is to establish the requirements that allow a person to facilitate the removal of wildlife that causes property damage, poses a threat to public health or safety, or when the health or well-being of the wildlife is threatened by its immediate environment. The rule includes authorized activities, permitted wildlife species, administrative compliance, and the restrictions and prohibitions

necessary to protect public health and safety and existing wildlife habitat and resources. The rule was adopted to ensure a person working in the wildlife service industry handles wildlife in a practical, humane, and environmentally acceptable manner.

- The Department issues approximately 132 wildlife service licenses on an annual basis.
- The wildlife service license is valid until the third December from the date of issuance.
- The fee for an initial wildlife service license is $245; the fee for a renewal of a wildlife service license is $95.

R12-4-422. Sport Falconry License: The objective of the rule is to establish the requirements that allow a person to take and use raptors listed in the Migratory Bird Treaty Act (MBTA) for the sport of falconry. The rule includes authorized activities, permitted raptor species, administrative compliance, and the restrictions and prohibitions necessary to protect existing wildlife habitat and resources. In 2008, 50 C.F.R. 21.29 (falconry standards and falconry permitting) was amended to eliminate the dual permitting system and transfer falconry permitting administration to the individual states, provided the state's laws, rules, processes, and forms met the minimum standards under 50 C.F.R. 21.29. If a state failed to meet standards for certification, any persons possessing a Migratory Bird Treaty Act species (MBTA) raptor for falconry in that state would be required to permanently release into the wild, euthanize, or transfer their raptor to a licensed falconer in a certified state or jurisdiction, a captive propagation program, or the Department. In order to continue permitting sport falconry using MBTA raptors in Arizona, the rule must remain in place and continue to meet U.S. Fish and Wildlife Service (USFWS) standards for certification. The Department's rules, processes, and forms were certified as meeting the standards under 50 C.F.R. 21.29; see 77 FR 66406 - 66408, November 5, 2012.

- The Department issues approximately 80 sport falconry licenses on an annual basis.
- The sport falconry license is valid until the last day of the third December from the date of issuance.
- The fee for the initial and renewal sport falconry license is $145.

R12-4-423. Wildlife Rehabilitation License: The objective of the rule is to establish the requirements that allow a person to rehabilitate and release live wildlife. The rule includes authorized activities, permitted wildlife species, administrative compliance, and the restrictions and prohibitions necessary to protect existing wildlife habitat and resources. Wildlife Rehabilitation is defined as the treatment and temporary care of injured, diseased, and displaced native wildlife, and the subsequent release of healthy individuals to appropriate habitats in the wild. The rule was adopted to allow persons to provide treatment and care for injured, disabled, orphaned, or otherwise debilitated wildlife to assist the Department in protecting Arizona's wildlife resources.

- The Department issues approximately 8 wildlife rehabilitation licenses on an annual basis.
- The wildlife rehabilitation license is valid until the last day of the third December from the date of issuance.
- The fee for the initial and renewal wildlife rehabilitation license is $20.

R12-4-424. White Amur Stocking License; Restocking License: The objective of the rule is to establish the requirements that allow a person to possess and transport white amur. The rule includes authorized activities,

administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic habitat and resources. Triploid white amur are virtually sterile and are an effective biological control tool and can consume its body weight in plant material every day. The rule was adopted to allow for the use of triploid white amur in vegetation control in closed aquatic systems while protecting the natural aquatic ecosystem from the adverse effects of the unwanted expansion and establishment of white amur.

- The Department issues approximately 217 white amur stocking licenses and 168 white amur restocking licenses on an annual basis.
- The white amur stocking and restocking licenses are valid for no more than 20 consecutive days.
- The fee for the initial white amur stocking license is $270; the fee for a white amur restocking license is $120.

R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments: The objective of the rule is to establish administrative compliance requirements for the continued possession and use of wildlife lawfully possessed before becoming classified as restricted live wildlife under R12-4-406 (restricted live wildlife) without having to apply for and obtain a special license. The rule requires a person who lawfully possessed wildlife prior to being classified as restricted live wildlife to notify the Department of the possession and use of the wildlife. The Commission restricts certain wildlife species from possession because they pose a threat to human health and safety, have a negative biological impact on species and ecosystems, have a negative economic impact, and to be consistent with federal, state, and county regulatory agencies. Notification is required so the Department can track and monitor these species. The rule was adopted to provide a mechanism that allows a person to continue to possess and use wildlife that was lawfully possessed prior to becoming classified as restricted live wildlife without the person having to apply for and obtain a special license.

R12-4-426. Possession of Nonhuman Primates: The objective of the rule is to establish requirements for the possession of nonhuman primates. The rule includes containment, transportation, incident reporting and laboratory testing should a bite, scratch, or other incident occur, and the restrictions necessary to protect public health and safety. The rule was adopted as a result of a petition from the Arizona Department of Health Services (ADHS) which compiled data documenting primate exposures to humans (35 documented exposure incidents from 1994 to 1997). The risks posed by primates include zoonotic diseases, pathogenic organisms, and physical injury.

R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License: The objective of the rule is to establish criteria that allow a person to possess and care for specific live wildlife species without having to apply for and obtain a wildlife rehabilitation license. The rule includes authorized activities, wildlife species that may be held without a wildlife rehabilitation license, and the restrictions and prohibitions necessary to protect wildlife habitat and resources. The rule was adopted to provide a mechanism that allows a private

person to provide care for displaced, injured, or orphaned wildlife with minimal risk of causing injury to other wildlife or posing a threat to the public health and safety.

R12-4-428. Captivity Standards: The objective of the rule is to establish the minimum standards for living spaces, furnishings, equipment, dietary needs, veterinary care, and social groupings to ensure the humane treatment of wildlife possessed under a lawful exemption or special license issued by the Department. Wildlife requires specialized care to survive; without species appropriate feeding, facilities, handling, and veterinary care, wildlife may suffer or die. The rule was adopted to ensure humane handling, care, and treatment of wildlife in captivity.

R12-4-430 Importation, Handling, and Possession of Cervids: The objective of the rule is to establish the requirements for the importation, handling, and possession of captive cervids necessary to prevent disease transmission from captive cervids to wildlife and domestic animals, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources. The rule was adopted to impose regulations on cervids, including a ban on their importation into Arizona to prevent the introduction of Chronic Wasting Disease (CWD) to free-ranging or captive wildlife in the state. The intent behind the rule is to protect native wildlife and their habitats from the introduction of disease carried by captive cervids and prevent the introduction of nonnative cervids in Arizona ecosystems. The economic costs associated with wildlife disease outbreaks and control can be severe. Costs of disease outbreaks are generally recurring and additive due to annual costs of monitoring and eradicating diseased animals. Outbreaks can lead to significant decreases in license revenue sales due to decreased hunter participation. If wildlife diseases are introduced into Arizona and spread to native wildlife, the Department will have to divert resources to disease prevention and mitigation instead of wildlife management and habitat enhancement. Rural economies would also be adversely impacted. The U.S. Department of Agriculture (USDA) disperses $17 to $19 million annually to help states monitor CWD.

The detection of CWD in new areas is expanding. According to the most recent maps, CWD has been detected in 30 U.S. states and two Canadian provinces. Herds in Colorado, Utah, and New Mexico have tested positive for CWD in either captive or free-ranging cervid populations. Since beginning surveillance more than 20 years ago, the Department has collected and tested over 30,000 cervid samples (elk, mule deer, and white-tailed deer) and none have tested positive for CWD.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes. In addition, comments received since the last rule review was conducted are reviewed and considered. Comments indicate the rules are understandable and applicable. The Department believes this data indicates the rules are effective. The Department believes the following rules are effective in achieving the objectives identified

above:

- R12-4-401. Live Wildlife Definitions
- R12-4-402. Live Wildlife: Unlawful Acts
- R12-4-403. Escaped or Released Live Wildlife
- R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit
- R12-4-406. Restricted Live Wildlife
- R12-4-408. Holding Wildlife for the Department
- R12-4-410. Aquatic Wildlife Stocking License; Restocking License
- R12-4-411. Live Bait Dealer's License
- R12-4-413. Private Game Farm License
- R12-4-414. Game Bird License
- R12-4-417. Wildlife Holding License
- R12-4-418. Scientific Activity License
- R12-4-420. Zoo License
- R12-4-421. Wildlife Service License
- R12-4-422. Sport Falconry License
- R12-4-423. Wildlife Rehabilitation License
- R12-4-424. White Amur Stocking License; Restocking License
- R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments
- R12-4-426. Possession of Nonhuman Primates
- R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License
- R12-4-428. Captivity Standards

The Department proposes to increase the effectiveness of the following rules as described below:

- **R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License:** The rule allows for the giving of live wildlife as a gift and the rule as written has also unintentionally created a loophole for the commercialization and hybridization of reptiles. There have been numerous law enforcement cases where officers cannot successfully prove a potential reptile poaching because the person possessing the reptile under suspicious circumstances claims they received the reptile as a "gift." Department law enforcement officers have also investigated and prosecuted reptile collectors who are unlawfully breeding and selling the offspring. While both the personal propagation and gifting of wild Arizona native amphibians and reptiles is a popular hobby with ethical herpetological enthusiasts, the rule as written is being exploited by commercial wildlife traffickers, primarily by claiming the reptiles in their possession represent "gifts" from unidentified others, or that their unlawful sale of native reptiles within Arizona or across state lines

represent mere "gifts." The Department recommends amending the rule to require a person who receives live wildlife as a gift to purchase a hunting and/or fishing license, as appropriate, in order to ensure the wildlife is, and remains, lawfully possessed.

- **R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife:** Under Commission Order 43 (reptiles), a person may lawfully possess one desert tortoise per person and the progeny of any lawfully held desert tortoise, provided the person possessed the tortoise prior to April 28, 1989. However, the unlawful propagation of desert tortoises has resulted in the surrender of hundreds of tortoises to the Department, requiring the Department to expend excessive resources housing the tortoises and searching for suitable homes under the Desert Tortoise Adoption Program. The Department has established a team of subject matter experts who are meeting to evaluate approaches and techniques to address the issues resulting from the propagation and gifting of desert tortoises and then make recommendations for rule amendments at the time of rulemaking.
- **R12-4-409 General Provisions and Penalties for Special Licenses and R12-4-412. Special License Fees:** An internal audit and cost analysis of the Department's special license program determined the administrative costs incurred by the Department when processing a renewal of a special license are typically less than an initial license because the renewal license should take less time to review as there would be no need for the required inspection(s) and background or reference check(s). The Department determined that a first-time license application, failure to renew the special license before it expired, or a change to the licensed facility, species of wildlife held under the license, or staff conducting activities under the license would require an initial application and fee. However, the Department has learned that wildlife are transferred between license holders for valid reasons, such as rehabilitation, conditioning, preparation for release into the wild, and humane transfers. These transfers can take place at any time during the license period and having to apply for an initial license and pay another license fee when the license holder is halfway through the licensing period is burdensome and not in keeping with the intent of the rule. The Department recommends amending both rules to require an initial application and license fee only when there is a change to the licensed facility or license holder. The Department believes these criteria are reasonable and will make the rule less burdensome.
- **R12-4-430 Importation, Handling, and Possession of Cervids:** CWD is always fatal and will have serious negative impacts on the state's deer population if it becomes established in Arizona (Almberg et al. 2011). CWD infection decreases deer survival odds and lowers total life expectancy (Miller et al. 2008). If a large percentage of the population were to become infected there could be negative impacts for the population, including: A decline in doe survival, which results in an overall reduced population (Gross and Miller 2001); fewer older bucks, as male animals may be more likely to be infected due to specific male social and behavioral tendencies (Miller et al. 2008, Jennelle et al. 2014); and an overall decline in population (Gross and Miller 2001, Almberg et al. 2011), as shown in Colorado and Wyoming. In an area of Colorado with high CWD prevalence, mule deer numbers have plummeted by 45%, in spite of good habitat and protection from hunting. In Wyoming a monitored infected population experienced a 10.4% annual decline, with CWD-

positive animals having a higher mortality rate than non-infected deer (Edmunds et al 2016). Acting to prevent the spread of CWD to new areas slows the transmission of the disease between individuals. The Department recommends amending the rule to replace reference to the 2003 USDA's publication "Brucellosis in Cervidae: Uniform Methods and Rules" with reference to the USDA's updated publication "National Bovine Brucellosis Surveillance Plan" U.S.D.A. A.P.H.I.S.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The Department believes the following rules are consistent with regulations, statutes, and rules; regulations, statutes, and rules used to determine consistency include 9 C.F.R. 2.30, 50 C.F.R. 10.13, A.R.S. § Title 17 and 12 A.A.C. Chapter 4:

- R12-4-402. Live Wildlife: Unlawful Acts
- R12-4-403. Escaped or Released Live Wildlife
- R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit
- R12-4-408. Holding Wildlife for the Department
- R12-4-409 General Provisions and Penalties for Special Licenses
- R12-4-410. Aquatic Wildlife Stocking License; Restocking License
- R12-4-411. Live Bait Dealer's License
- R12-4-412. Special License Fees
- R12-4-414. Game Bird License
- R12-4-417. Wildlife Holding License
- R12-4-418. Scientific Activity License
- R12-4-420. Zoo License
- R12-4-421. Wildlife Service License
- R12-4-422. Sport Falconry License
- R12-4-424. White Amur Stocking License; Restocking License
- R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments
- R12-4-426. Possession of Nonhuman Primates
- R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License
- R12-4-428. Captivity Standards

Overall the following rules are not consistent with or are in conflict with statutes and rules; the Department proposes to increase their consistency with statutes and rules as described below:

- **R12-4-401. Live Wildlife Definitions:** Both R12-4-101 and R12-4-401 define the term, "live baitfish."

Because this term is referenced in Articles 3 and 4 rules, it is more appropriate for the term to be defined under R12-4-101. The Department recommends repealing the definition of "live baitfish."

- **R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License:** In 2019, R12-4-315 and R12-4-316 (Possession, Transportation, or Importation of Live Baitfish, Crayfish, or Waterdogs) were combined to increase consistency between Commission Orders, rules, and Department publications. As a result, R12-4-315 and R12-4-316 were repealed and a new rule was adopted, R12-4-314 (Possession, Transportation, or Importation of Aquatic Wildlife). The Department recommends amending the rule to replace the reference to R12-4-316 with R12-4-314.
- **R12-4-406. Restricted Live Wildlife:** The rule incorporates by reference the October 1, 2019 edition of 50 C.F.R. 10.13 (list of migratory birds). The Department proposes to amend the rule to incorporate the most recent edition of the federal regulation incorporated by reference.
- **R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife:** The rule incorporates by reference the January 1, 2019 edition of 9 C.F.R. 2.30 (registration), which involves the registration of facilities with the USDA. The Department proposes to amend the rule to incorporate the most recent edition of the federal regulation incorporated by reference.
- **R12-4-413. Private Game Farm License:** In the last rulemaking the Commission attempted to increase consistency between all special licenses and agency record retention requirements and extended the time frame for maintaining records to a period of five years. Subsection (K)(7) requires the Private Game Farm License holder to maintain records for a period of three years. The Department recommends amending the rule to require the license holder to maintain records for a period of five years to increase consistency and reflect agency record retention requirements.
- **R12-4-423. Wildlife Rehabilitation License:** The waiting period between the time an applicant fails the wildlife rehabilitation license exam and when the applicant is eligible to retake the exam also differs across the Department's Regions. The Department recommends amending the rule to establish a consistent waiting period (will be determined by the applicant and special license administrator).
- **R12-4-430 Importation, Handling, and Possession of Cervids:** Under R12-4-425 (restricted live wildlife lawfully possessed without license or permit before the effective date of Article 4 or any subsequent amendments) a person who lawfully possessed wildlife prior to it being classified as restricted live wildlife had to notify the Department of the possession and use of the wildlife. This notification was required so the Department is made aware of the location of the restricted wildlife for tracking and monitoring purposes. Cervids are listed as restricted live wildlife under R12-4-406 (restricted live wildlife), which means a person must have a lawful exemption or possess a special license in order to lawfully possess them in Arizona. Even though cervids have been listed as restricted live wildlife since 2002, the Department still encounters persons possessing cervids lawfully obtained prior to 2002 but who have not notified the Department pursuant to R12-4-425. The Department intends to address these instances on a case-by-case basis. The Department believes that over time, these instances will be reduced through agency interactions or natural attrition. In addition, special license holders are required to maintain records associated with the license and make them

available to the Department for inspection upon request, this includes veterinary care records. With the last rulemaking amending Article 4 rules, the Commission amended all special license rules to require a license holder to maintain and make available for inspection all records maintained by the special license holder for a period of five-years. This is also necessary for persons possessing cervids. The Department recommends amending the rule to also require persons possessing a cervid to maintain and make available for inspection all records pertaining to the origin and disposition of cervids for a period of five-years after the disposition or death of the animal.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The following rules are currently being enforced. Department employees can inspect documentation for rule compliance. Officers can check for rule compliance when routinely patrolling the lands and waterways of Arizona, and issue warning orders or citations. To the extent that the Department is aware, the Department believes there are no problems with the enforcement of the following rules:

- R12-4-401. Live Wildlife Definitions
- R12-4-402. Live Wildlife: Unlawful Acts
- R12-4-403. Escaped or Released Live Wildlife
- R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit
- R12-4-406. Restricted Live Wildlife
- R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife
- R12-4-408. Holding Wildlife for the Department
- R12-4-409 General Provisions and Penalties for Special Licenses
- R12-4-410. Aquatic Wildlife Stocking License; Restocking License
- R12-4-411. Live Bait Dealer's License
- R12-4-412. Special License Fees
- R12-4-413. Private Game Farm License
- R12-4-414. Game Bird License
- R12-4-417. Wildlife Holding License
- R12-4-418. Scientific Activity License
- R12-4-420. Zoo License
- R12-4-421. Wildlife Service License
- R12-4-422. Sport Falconry License
- R12-4-423. Wildlife Rehabilitation License
- R12-4-424. White Amur Stocking License; Restocking License
- R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date

of Article 4 or Any Subsequent Amendments

- R12-4-426. Possession of Nonhuman Primates
- R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License
- R12-4-428. Captivity Standards
- R12-4-430 Importation, Handling, and Possession of Cervids

The Department proposes to increase the ability to enforce the following rules as indicated:

- **R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License:** The rule is enforced as written; however, because the rule allows persons to both propagate and gift live native herpetofauna (typically, reptiles), the rule is being unlawfully utilized by commercial wildlife traffickers to collect and unlawfully sell Arizona reptiles, both in-state and out-of-state. While both the personal propagation and gifting of wild native amphibians and reptiles is a popular hobby with ethical herpetological enthusiasts, Department officers are increasingly encountering commercial reptile traffickers who claim the reptiles they are selling are instead being "gifted" to their recipients, or that the reptiles in their possession represent "gifts" from unnamed persons. In addition, certain native reptile species considered desirable in the commercial wildlife trade may be being collected on a scale that could threaten wild populations. The Department recently successfully prosecuted a reptile trafficker who unlawfully collected, propagated and sold hundreds of Rosy boas, a native snake. This trafficker was part of a multi-state network of reptile poachers who illegally collect, trade, and sell reptiles, usually across state lines to evade enforcement by their state of residence. The Department recommends amending the rule to require a person who is gifted wildlife to purchase a hunting and/or fishing license, as applicable in order to ensure the wildlife is, and remains, lawfully possessed.

6. Clarity, conciseness, and understandability of the rule.

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

- R12-4-401. Live Wildlife Definitions
- R12-4-402. Live Wildlife: Unlawful Acts
- R12-4-403. Escaped or Released Live Wildlife
- R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License
- R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit
- R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife
- R12-4-408. Holding Wildlife for the Department
- R12-4-410. Aquatic Wildlife Stocking License; Restocking License
- R12-4-411. Live Bait Dealer's License

- R12-4-412. Special License Fees
- R12-4-417. Wildlife Holding License
- R12-4-420. Zoo License
- R12-4-423. Wildlife Rehabilitation License
- R12-4-424. White Amur Stocking License; Restocking License
- R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments
- R12-4-426. Possession of Nonhuman Primates
- R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License
- R12-4-428. Captivity Standards

Overall, the following rules are clear, concise, understandable, are logically organized, and generally written in the active voice, however, the Department proposes to further clarify the following rules as indicated:

- **R12-4-406. Restricted Live Wildlife:** There is public confusion over aquatic species sold in the aquarium and pet trade; some are often misidentified or mislabeled and can evade wildlife restrictions. To add clarity, the Department recommends amending the rule as follows:
- Replace reference to the species "*Arapaima gigas*" with the family *"Osteoglossidae*." These typically large bodied apex predators have the potential to compete with, and prey upon, current sport and native fish assemblages where they are established and are known to have detrimental impacts to current fish populations; their ability to breath air makes them especially hardy. Arapaima gigas (giant arapaima) is currently restricted, so expanding this restriction to the family level would help capture other analagous species.all species of the family *Mysidae*; all species of the family *Pimelodidae*; all species of the family *Siluridae*; Common names include: wels catfish, "glass catfish", and wallago catfish; and all species of the family *Sisoridae*; Common name: goonch catfish. In addition, the following changes decrease the taxonomic rank in order to be more inclusive of species that are closely related to species already restricted under the rule. The Department the Department recommends amending the rule to: under subsection (J)(4), remove "The species *Arapaima gigas*. Common name: bony tongue" and replace with "All species of the family *Osteoglossidae*; Common names include: arapaima, arowana, and bony tongue"; under subsection (J)(19), change "The species *Hoplias malabaricus*. Common name: tiger fish" to "All species of the genera *Hoplias* and *Hydrocynus*; Common name: tiger fish and South American wolf fish"; under subsection (K)(1), add the families *Cambaroididae* and *Cricoidoscelosidae*; under subsection (L)(5), change "All species of the genus *Pomacea*. Common names include: apple snail or Chinese mystery snail" to "All species of the family *Ampullariidae*. Common name: apple snail"; add to subsection (L) "All species of the genus *Cipangopaludina*. Common name: Chinese mystery snail"; under subsection (J)(9), add the common names "whale" catfishes, and candiru to "All species of the family *Cetopsidae* and *Trichomycteridae*. Common name: South American catfish."
- **R12-4-409 General Provisions and Penalties for Special Licenses:** The following rules require the special

license holder to submit to the Department an annual report on the past year's activities and acquisitions: R12-4-413. Private Game Farm License, R12-4-414. Game Bird License, R12-4-417. Wildlife Holding License, R12-4-418. Scientific Activity License, R12-4-420. Zoo License, R12-4-421. Wildlife Service License, R12-4-423. Wildlife Rehabilitation License, and R12-4-430. Importation, Handling, and Possession of Cervids. The annual report is due to the Department on or before January 31st of each year for the previous calendar year. The report form is furnished by the Department and is required regardless of whether or not activities were performed during the previous year. If a special license holder fails to submit a timely report, the special license becomes invalid and the Department will not process the special license holder's renewal application until the annual report is received. With the last Article 4 rulemaking, special license fees were established and the period in which the license is valid for was expanded from one to three years. The rulemaking resulted in confusion and inconsistent processes regarding the due date for the annual report and the validity (status) of the special license when the special license holder fails to submit a timely report. The Department recommends amending the rule to clarify the completed annual report is due on or before January 31st but may be submitted as soon as January 1st. The rules identified above will require similar updates.

- **R12-4-413. Private Game Farm License:** Overall, the rule is clear, concise, and understandable. However, subsection (B) and (C) address similar scenarios and can be confusing to members of the public. The Department recommends combining the two subsections to make the rule more concise.
- **R12-4-414. Game Bird License:** There is public confusion as to when and what type of game bird license is required for specific activities and the species that may be held under the license. The Department recommends clarifying the type of activities authorized under each license type to make the rule more concise.
- **R12-4-418. Scientific Activity License:** There is public confusion regarding whether a person who holds a scientific activity license must also possess a wildlife holding license in order to photograph wildlife. This is considered an acceptable activity under the license. The Department recommends amending the rule to clarify that a scientific activity license allows a person to photograph and/or video wildlife for noncommercial purposes when specified on the license.
- **R12-4-421. Wildlife Service License:** There is public confusion as to what rodent species may be removed under the authority of a license issued by the Arizona Department of Agriculture, Pest Management Division, without having to possess a wildlife service license. The Department recommends amending the rule to clarify the license exemption.
- **R12-4-422. Sport Falconry License:** Subsection (EE) requires a sport falconry license holder importing raptors into Arizona to provide a health certificate issued no more than 30 consecutive days prior to importation. Subsection (J) also addresses scenarios where a health certificate is required. The Department recommends amending the rule to move the language under subsection (EE) to subsection (J) to clarify health certificate requirements. In the last rulemaking, the Commission amended the rule to exempt sport falconry license holders from the requirements of R12-4-428 (captivity standards). Subsection (M) references the

captivity requirements under R12-4-409(I), which is confusing. The Department recommends removing the reference to R12-4-409(I) to make the rule more concise.

- **R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments:** Subsection (A)(2)(d) incorrectly cites subsection (F) for permanent marking requirements when subsection (G) is the subsection that establishes permanent marking requirements. The Department recommends amending the rule to cite the correct subsection to make the rule more concise.
- **R12-4-430 Importation, Handling, and Possession of Cervids:** The Department recommends amending the rule to replace the outdated publication reference of brucellosis in cervids with a current publication reference to make the rule more concise.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

The Department did not receive any written comments for the following rules.

- R12-4-401. Live Wildlife Definitions
- R12-4-402. Live Wildlife: Unlawful Acts
- R12-4-403. Escaped or Released Live Wildlife
- R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License
- R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit
- R12-4-406. Restricted Live Wildlife
- R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife
- R12-4-408. Holding Wildlife for the Department
- R12-4-410. Aquatic Wildlife Stocking License; Restocking License
- R12-4-411. Live Bait Dealer’s License
- R12-4-412. Special License Fees
- R12-4-413. Private Game Farm License
- R12-4-414. Game Bird License
- R12-4-418. Scientific Activity License
- R12-4-420. Zoo License
- R12-4-423. Wildlife Rehabilitation License
- R12-4-424. White Amur Stocking License; Restocking License

- R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments
- R12-4-426. Possession of Nonhuman Primates
- R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License
- R12-4-428. Captivity Standards
- R12-4-430 Importation, Handling, and Possession of Cervids

The Department received the following comments relating to rules within Article 4. Live Wildlife:

R12-4-409 General Provisions and Penalties for Special Licenses

Comments suggest the Commission revise subsections (H)(3) and (H)(5) to prevent unfair stipulations from being applied to an applicant's special license.

Agency Response: This suggestion is not supported because R12-4-409 applies to all special license holders and the ability to place additional stipulations on a special license whenever it is determined necessary to conserve wildlife populations, prevent the introduction and proliferation of wildlife diseases, prevent wildlife from escaping, protect public health or safety, or ensure humane care and treatment of wildlife is beneficial to all special license holders. If this language were not here, the live wildlife special license rules would need to cover all aspects of possessing all species of wildlife, which would inevitably result in a negative impact to both the special license holder and the Department simply because "one size does not fit all."

R12-4-417. Wildlife Holding License:

Comments indicate the Commission should allow a wildlife holding license holder to collect funds to aid in recovering costs related to the facility maintenance and care of animals they possess under the license.

Agency Response: The Department believes the costs associated with lawfully held wildlife are the responsibility of the person possessing the wildlife. In December 2015, Article 4 rules were amended to clarify costs related to veterinary care, damage and/or injuries caused by the wildlife, capture, transport, release, etc. are the license holder's responsibility.

R12-4-421. Wildlife Service License:

Comments suggest the Commission should amend the rule to establish an organizational process where a single wildlife service license issued to an organization and allow the organization to be responsible for the enforcement of license rules and reporting.

Agency Response: Under A.R.S. § 17-102, wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or

held in captivity under permit or license from the commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the Commission. As trustee, the state has no power to delegate its trust duties and no freedom to transfer trust ownership or management of assets to private establishments. Without strict agency oversight and management, the fate of many of our native species would be in jeopardy.

Comments suggest the Commission should amend the rule to clarify what is meant by "six months full-time employment or volunteer experience handling wildlife of the species or groups designated on the application."

Agency Response: Further clarifying the six-month experience requirement specified in rule would be problematic as it has the potential to "box" the Department in. The current language provides greater flexibility to both the applicant and Department. The rule does not prohibit a person from mentoring individuals under their license; in these instances any wildlife removed by the "apprentice" would be included in the license holder's annual report. The Department believes that any costs associated with wildlife held legally or illegally (costs related to veterinary care, damage and/or injuries caused by the wildlife, capture, transport, release, etc.) are the responsibility of the person possessing the wildlife.

R12-4-422. Sport Falconry License:

Comments indicate the Commission should amend subsection (M) to remove references to R12-4-409(I) which references captivity standards.

Agency Response: Because sport falconry license holders are exempted from captivity standards, the Department agrees and recommends amending the rule to remove references to R12-4-409(I) from subsection (M).

Comments suggest the Commission amend the rule to allow any falconer who is qualified to sponsor an apprentice to conduct raptor facility inspections on behalf of the Department.

Agency Response: This suggestion has the potential to impact all facility inspections, not just raptor facilities. The State of Arizona owns and manages all wildlife in this state as a sovereign trust responsibility which by law cannot be delegated to private entities or persons.

Comments suggest the Department assign Department Wildlife Managers (WM) to perform facility inspections and equipment inspections.

Agency Response: This suggestion is not supported because it has the potential to impact all special license facility inspections, not just raptor facilities. The State of Arizona owns and manages all wildlife in this state as a sovereign trust responsibility which by law cannot be delegated to private entities or persons, including special license holders. In addition, the Department’s Wildlife Managers are assigned to Wildlife Manager districts where they are required to be the Department’s “on the ground” point of contact, as well as the local area expert in wildlife, fisheries, and habitat management. They are the most visible Department

representative and duties include: recommending and assisting with habitat improvement projects; conducting game surveys and making hunt recommendations; assisting with wildlife and fisheries surveys and management activities; performing information and education activities such as public outreach; conducting Hunter Education programs; conducting wildlife law enforcement patrol and investigations; making arrests and serving warrants; preparing comprehensive case reports; and testifying in court. The Department does not recommend taking the responsibility of inspections away from the sport falconry license administrators and adding them to the long list of responsibilities already assigned to Wildlife Managers.

Comments suggest the Department should consolidate the regional falconry coordinators into a single state-level position.

Agency Response: This suggestion is outside of the scope of Commission rules and has been forwarded to the Department's Wildlife Management Division for consideration.

Comments suggest the Commission should allow falconry as a method of take for coyote.

Agency Response: Falconry is currently an acceptable method of take for cottontail rabbits, Eurasian collared-doves, migratory game birds, tree squirrels, and upland game birds. Benchmarking with other Western states indicates they allow falconry for the take of predatory animals. Under A.R.S. 17-101(B)(10); the definition of "predatory animals" means foxes, skunks, coyotes, and bobcats. The Department agrees with this suggestion and recommends amending R12-4-304 to allow sport falconry as a lawful method of take for coyote.

Comments suggest the Commission amend the rule to establish a five-year sport falconry license.

Agency Response: The Department does not receive tax dollars and is supported solely through license sales, excise taxes, and watercraft registration fees. In 2014, the Commission directed the Department to develop fees with the intention of recovering the cost of providing a service now and into the future. Providing for future costs is important because the Department typically does not adopt or adjust fees on a frequent basis. The Department conducted an internal audit and cost analysis of the Department's special license program and determined the Department incurs significant administrative costs and burdens during the review and inspection stage of the special license issuance process (i.e. application review, facility inspections, determination of eligibility, ongoing support, review of annual report, and corrective measures when required). The team evaluated the licensing process for each special license from start to finish and benchmarked fees for similar licenses issued by other states. The formal special license team's report provided recommendations intended to help offset the administrative burden associated with pre- and post-issuance administrative costs. The Department chose to implement the minimal fee increase suggested by the formal special license team. The Department recently amended Article 4 rules to establish three-year licenses wherever feasible. In addition, the special license fees were based on three-year cycles. These amendments became effective on July 1, 2021. The Department recommends retaining the current three-year time-frame

and reevaluating all special license fees once it is determined the current fees are not sufficient to cover administrative costs.

Comments suggest the Department allow office staff, hunter education volunteers, and/or master falconers to certify as Sport Falconry License examination proctors.

Agency Response: This suggestion is not supported because of issues other wildlife agencies have experienced. For example, wildlife agencies in California and Washington implemented similar programs that allowed master falconers to proctor exams. Both states sport falconry examinations were compromised. As a result, each agency was forced to develop new examinations. The California Department of Fish and Game stopped offering examinations, which prevented persons from applying for an apprentice sport falconry license, and just began offering sport falconry examinations in certain regional offices and are doing so on a limited basis.

Comments suggest the Commission should allow master falconers to submit photographs and diagrams, in lieu of an in-person inspection.

Agency Response: This suggestion is not supported for the same reasons identified above. However, the Department recommends amending the rule to allow the Department to photograph an applicant's or license holder's facility during an inspection.

Comments suggest defining "within the nesting area" to further clarify the peregrine falcon regulations.

Agency Response: This suggestion is outside of the scope of rulemaking as it applies to Commission Order 25. This suggestion has been forwarded to the Terrestrial Wildlife Program for consideration.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The following rules were amended through final rulemaking and resulted in the anticipated economic, small business, and consumer impact statement prepared on the last making; the amended rules were approved by G.R.R.C. on February 2, 2021 and made effective on July 1, 2021:

- R12-4-401. Live Wildlife Definitions
- R12-4-403. Escaped or Released Live Wildlife
- R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit
- R12-4-406. Restricted Live Wildlife
- R12-4-410. Aquatic Wildlife Stocking License; Restocking License
- R12-4-411. Live Bait Dealer's License

- R12-4-413. Private Game Farm License
- R12-4-414. Game Bird License
- R12-4-417. Wildlife Holding License
- R12-4-418. Scientific Activity License
- R12-4-420. Zoo License
- R12-4-421. Wildlife Service License
- R12-4-422. Sport Falconry License
- R12-4-423. Wildlife Rehabilitation License
- R12-4-424. White Amur Stocking License; Restocking License
- R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments
- R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License
- R12-4-428. Captivity Standards
- R12-4-430. Importation, Handling, and Possession of Cervids

The Commission's intent in the last rulemaking amending the Article 4 rules was to protect native wildlife and their habitats in many ways, including preventing the spread of disease, reducing the risk of released animals competing with native wildlife, discouraging illegal trade of native wildlife, and avoiding conflict between humans and wildlife which may threaten public health or safety. The Commission anticipated the majority of the rulemaking would benefit persons regulated by the rule, members of the public, and the Department by clarifying rule language, creating consistency among existing Commission rules, reducing the burden on persons regulated by the rule where practical, and allowing the Department additional oversight where necessary. The Commission anticipated the rulemaking would result in little or no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions; or state revenues. The Commission determined there were no less intrusive or costly alternative methods of achieving the purpose of the rulemaking and that the benefits of the rulemaking outweigh any costs.

The following rule was last amended through exempt rulemaking made effective July 1, 2021 and the Department offers the following economic, small business, and consumer impact statement:

- R12-4-412. Special License Fees:

The Commission anticipated the rulemaking in general would benefit persons regulated by the rule by increasing the amount of time the license is valid from one to three years. The Commission anticipated a decline in special license applications due to requiring a fee, however, the objective of the rulemaking was to attain partial cost recovery for the administration of special licenses or to come as close to that goal as possible. It is important to note, except for the Sport Falconry and Zoo license fees which were increased in

2007, wildlife special license fees have not increased in over 25 years. The Commission anticipated the exempt rulemaking would result in an increase in revenue due to requiring a fee for all special licenses. Purchasing a special license is voluntary and a person who chooses to apply for and purchase a special license will incur those costs associated with that license. The Commission anticipated the rulemaking would not impose increased monetary or regulatory costs on other state agencies, political subdivisions of this State, or affect a person's ability to practice an activity; have a significant impact on a person's income, revenue, or employment in this state related to that activity.

The following rule was last amended through final rulemaking and resulted in the anticipated economic, small business, and consumer impact statement prepared on the last making of the rule; the amended rules were approved by G.R.R.C. on February 7, 2017 and made effective on April 8, 2017:

- R12-4-402. Live Wildlife: Unlawful Acts

The Commission anticipated the proposed amendments would have little or no impact on the Department or other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The Commission anticipated the implementation of the rulemaking would have no measurable impact on Department operations. The Commission anticipated the Department would benefit from maintaining jurisdiction over Arizona's wildlife and wildlife habitat and the enhanced ability to protect the public health, safety, and welfare and native wildlife and wildlife habitat.

The following rules were last amended through final rulemaking and resulted in the anticipated economic, small business, and consumer impact statement prepared on the last making of the rules; the amended rules were approved by G.R.R.C. on October 6, 2015 and made effective on December 5, 2015:

- R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License
- R12-4-408. Holding Wildlife for the Department
- R12-4-426. Possession of Nonhuman Primates

The Commission anticipated the rulemaking would benefit persons regulated by the rule, members of the public, and the Department by clarifying rule language, creating consistency among existing Commission rules, reducing the burden on persons regulated by the rule where practical, and allowing the Department additional oversight where necessary. The Commission anticipated persons possessing wildlife subject to the unique identifier and prohibition on propagation would have a minimal impact on persons regulated by the rule. However, the Commission believed it was a reasonable economic burden since the person possessing the wildlife chose to do so and determined the costs and burdens could be further reduced through captivity protocols. The Commission anticipated the rulemaking would result in little or no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions; or state revenues. The Commission determined there were no less intrusive or costly alternative methods of

achieving the purpose of the rulemaking and that the benefits of the rulemaking outweigh any costs.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses for Article 4 rules.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

The Department completed the course of action indicated in the previous five-year review report for Article 4 rules as follows:

- Permission to pursue rulemaking granted: September 23, 2019
- Notice of Rulemaking Docket Opening: 26 A.A.R. 1850, September 4, 2020
- Notice of Proposed Rulemaking: 26 A.A.R. 1791, September 4, 2020
- Public Comment Period: September 4, 2020 through October 4, 2020.
- G.R.R.C. approved the Notice of Final Rulemaking at the February 2, 2021 Council Meeting.
- Notice of Final Rulemaking: 27 A.A.R. 321, February 26, 2021.

The Department did not indicate a course of action in the previous five-year review report for the following rules:

- R12-4-402. Live Wildlife: Unlawful Acts
- R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License
- R12-4-408. Holding Wildlife for the Department
- R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments
- R12-4-426. Possession of Nonhuman Primates

R12-4-412. Special License Fees was adopted after the previous five-year review report was approved by the Governor's Regulatory Review Council on February 2, 2021.

11. A determination after analysis that the probable benefits of the rule within this state outweigh 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 purpose of the Arizona Game and Fish Commission (Commission), the Arizona Game and Fish Department (Department), and the Director of the Department is "to manage wildlife and wildlife habitat in this state as provided by law." Laws 2012, Ch. 283 § 3. "Control of the department is vested in the game and fish commission."

A.R.S. § 17-201(A). The Commission appoints the Director who is "the chief administrative officer of the game and fish department." A.R.S. § 17-211(A).

With regard to general rulemaking authority, the Commission is required to "[a]dopt rules and establish services it deems necessary to carry out the provisions and purposes of [A.R.S. Title 17, Game and Fish]."

The Department actively seeks to ensure its processes and programs align with current technology and circumstances, such as implementing three-year special licenses. The ability to submit one application every three years instead of annually benefits special license holders and the Department through reduced costs and burdens. Rules are also designed to update best business practices, such as requiring special license holders to retain license related documentation (includes veterinary reports and health certificates, in addition to licensure documents and evidence of legality (ownership) for an established period of time (five years).

The rules allow for the adoption of updated business practices and represent the most cost-effective and efficient method of fulfilling the Commission's and Department's responsibilities and impose only those requirements that are necessary to meet the Commission's objectives.

When amending Commission rules, the Department tasks a team of subject matter experts to review and make recommendations for rules. In its review, the team considers all comments from the public and agency staff that administer and enforce the rules, historical data, and the Department's overall mission. The team takes a customer-focused approach, considers each recommendation from a resource perspective and determines whether the recommendation would cause undue harm to the Department's mission to conserve and protect wildlife. The team then determines whether the request is authorized by statute, is consistent with guidance provided by the Governor and Commission and is with the Department's overall mission, is least burdensome to regulated persons, and can be effectively implemented.

A.A.C. Title 12, Chapter 4, Article 4 contains twenty-six rules denominated as live wildlife. The intent of the Article 4 rules is to provide greater clarity to the laws and rules governing many aspects of live wildlife possession, importation, transportation, possessing, and disposal of live wildlife.

Article 4 rules establish unlawful activities for persons taking and possessing live wildlife, the Department's authority to take possession of wildlife unlawfully held or that may pose a danger to public health and safety, or are unlawfully possessed. Article 4 definitions assist the public, Department personnel, and members of law enforcement in understanding the contents and meaning of Article 4 rules.

Article 4 rules protect native wildlife in many ways: preventing the spread of disease, reducing the risk of released animals competing with native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety.

The rules establish a listing of live wildlife for which a special license is required in order to possess the wildlife and/or engage in activities that may be prohibited under A.R.S. § 17-306 and R12-4-402 (live wildlife; unlawful acts). The rules establish the general provisions and administrative compliance applicable to special licenses, as well as regulatory actions that may be taken when a special license holder is convicted of an offense involving cruelty to animals, fails to remedy a noticed condition, or fails to comply with requirements of the rule governing the applicable special license or this rule.

The public benefits from rules that clearly outline the requirements in which a private entity may utilize live wildlife for public exhibition and education, while maintaining the standards necessary to ensure the health and safety of the public, wildlife, and wildlife habitat.

The public benefits from rules that protect the public safety, health, and welfare; and protect and conserve Arizona's wildlife resources. The Department benefits from rules that helps ensure the proper management and conservation of the State's resources, particularly in relation to potentially competitive or threatening species or wildlife disease.

The public benefits from rules that are clear and concise, along with continued protection from improper handling and use of wildlife. The Department benefits from rules that allows continued regulatory oversight of activities pertaining to wildlife. The public and Department benefit from rules that are understandable.

Except as identified below, the Department believes the rules impose the least burden and costs to persons regulated by the rules:

- **R12-4-409 General Provisions and Penalties for Special Licenses and R12-4-412. Special License Fees:** An internal audit and cost analysis of the Department's special license program determined the administrative costs incurred by the Department when processing a renewal of a special license are typically less than an initial license because the renewal license typically takes less time to review as there would be no need for the required inspection(s) and background or reference check(s). The Department determined that for a first-time license application, a failure to renew the special license before it expired, a change to the licensed facility or, species of wildlife held under the license, or a change of staff conducting activities under the license would require an initial application and fee. However, the Department has learned that wildlife are often transferred between license holders for valid reasons, such as rehabilitation, conditioning, preparation for release into the wild, and humane transfers. These transfers can take place at any time during the license period and having to apply for an initial license and pay another license fee partway through the licensing period is burdensome. The Department recommends amending the rules to require an initial application and license fee only when there is a change to the licensed facility or license holder. The Department believes these criteria are reasonable and will make the rule less burdensome.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

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

- R12-4-401. Live Wildlife Definitions
- R12-4-402. Live Wildlife: Unlawful Acts
- R12-4-403. Escaped or Released Live Wildlife
- R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License
- R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit
- R12-4-406. Restricted Live Wildlife
- R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife
- R12-4-408. Holding Wildlife for the Department
- R12-4-409 General Provisions and Penalties for Special Licenses
- R12-4-410. Aquatic Wildlife Stocking License; Restocking License
- R12-4-411. Live Bait Dealer's License
- R12-4-412. Special License Fees
- R12-4-413. Private Game Farm License
- R12-4-414. Game Bird License
- R12-4-417. Wildlife Holding License
- R12-4-418. Scientific Activity License
- R12-4-420. Zoo License
- R12-4-421. Wildlife Service License
- R12-4-422. Sport Falconry License
- R12-4-423. Wildlife Rehabilitation License
- R12-4-424. White Amur Stocking License; Restocking License
- R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments
- R12-4-426. Possession of Nonhuman Primates
- R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License
- R12-4-430 Importation, Handling, and Possession of Cervids

The Department has determined the following rules are not more stringent than their corresponding federal laws:

- **R12-4-401. Definitions, R12-4-406. Restricted Live Wildlife, and R12-4-422. Sport Falconry License**, federal regulation 50 C.F.R. 17.11 provides a list of migratory birds governed by the Migratory Bird Treaty Act.

- **R12-4-401. Definitions and R12-4-422. Sport Falconry License**, federal regulation 50 C.F.R. 10.13 provides a list of the wildlife species determined by USFWS or the National Marine Fisheries Service (NMFS) of the Department of Commerce's National Oceanic and Atmospheric Administration to be endangered species or threatened species.
- **R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife**, federal regulation 9 C.F.R. Subpart C 2.30 establishes the registration procedures for research facilities.
- **R12-4-413. Private Game Farm License and R12-4-414. Game Bird License**, federal regulation 50 C.F.R. 21.13 establishes exemptions from federal permitting requirements for captive-bred migratory waterfowl.
- **R12-4-420. Zoo License and R12-4-428. Captivity Standards**, federal regulation 9 C.F.R. Subchapter A, Animal Welfare Act (AWA), regulates the treatment of animals in research and exhibition and establishes the minimally acceptable standard for animal treatment and care.
- **R12-4-422. Sport Falconry License**, federal regulation 50 C.F.R. 21.3 establishes permitting procedures for the taking, possession, transportation, sale, purchase, barter, importation, exportation, and banding or marking of migratory birds.
- **R12-4-430. Importation, Handling, and Possession of Cervids**, USDA APHIS publication 91-45-011 “Bovine Tuberculosis Eradication: Uniform Methods and Rules” establishes the minimum standards and requirements for the maintenance of tuberculosis-free accredited herds of cattle and bison and the maintenance of State or zone status in the USDA’s tuberculosis eradication program.
- **R12-4-430. Importation, Handling, and Possession of Cervids**, USDA APHIS publication 91-45-16 “Brucellosis in Cervidae: Uniform Methods and Rules” establishes the minimum program standards and procedures of the Cooperative State-Federal Cervid Brucellosis Program to eradicate and monitor brucellosis in farm or ranch-raised Cervidae.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The following rules require the issuance of a "general permit" as defined under A.R.S. § 41-1001(11) and are in compliance with A.R.S. § 41-1037.

- R12-4-410. Aquatic Wildlife Stocking License; Restocking License
- R12-4-411. Live Bait Dealer’s License
- R12-4-413. Private Game Farm License
- R12-4-414. Game Bird License
- R12-4-417. Wildlife Holding License
- R12-4-418. Scientific Activity License
- R12-4-420. Zoo License
- R12-4-421. Wildlife Service License

- R12-4-422. Sport Falconry License
- R12-4-423. Wildlife Rehabilitation License
- R12-4-424. White Amur Stocking License; Restocking License

The following rules do not require the issuance of a regulatory permit, license, or agency authorization:

- R12-4-401. Live Wildlife Definitions
- R12-4-402. Live Wildlife: Unlawful Acts
- R12-4-403. Escaped or Released Live Wildlife
- R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License
- R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit
- R12-4-406. Restricted Live Wildlife
- R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife
- R12-4-408. Holding Wildlife for the Department
- R12-4-409 General Provisions and Penalties for Special Licenses
- R12-4-412. Special License Fees
- R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments
- R12-4-426. Possession of Nonhuman Primates
- R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License
- R12-4-428. Captivity Standards
- R12-4-430 Importation, Handling, and Possession of Cervids

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend the following rules as indicated in this report:

- R12-4-406. Restricted Live Wildlife
- R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife
- R12-4-409 General Provisions and Penalties for Special Licenses
- R12-4-412. Special License Fees
- R12-4-413. Private Game Farm License
- R12-4-414. Game Bird License
- R12-4-417. Wildlife Holding License

- R12-4-418. Scientific Activity License
- R12-4-420. Zoo License
- R12-4-421. Wildlife Service License
- R12-4-422. Sport Falconry License
- R12-4-423. Wildlife Rehabilitation License
- R12-4-430 Importation, Handling, and Possession of Cervids

The Department anticipates requesting an exception to the rulemaking moratorium proscribed under A.R.S. 41-1039(A) by December 2023 and submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by March 2025, provided the Commission is granted permission to pursue rulemaking.

The Department proposes no course of action for the following rules:

- R12-4-401. Live Wildlife Definitions
- R12-4-402. Live Wildlife: Unlawful Acts
- R12-4-403. Escaped or Released Live Wildlife
- R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit
- R12-4-408. Holding Wildlife for the Department
- R12-4-410. Aquatic Wildlife Stocking License; Restocking License
- R12-4-411. Live Bait Dealer’s License
- R12-4-424. White Amur Stocking License; Restocking License
- R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments
- R12-4-426. Possession of Nonhuman Primates
- R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License
- R12-4-428. Captivity Standards

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 4. LIVE WILDLIFE

R12-4-401, R12-4-403, R12-4-405, R12-4-406, R12-4-407, R12-4-409, R12-4-410, R12-4-411, R12-4-413, R12-4-414, R12-4-417, R12-4-418, R12-4-420, R12-4-421, R12-4-422, R12-4-423, R12-4-424, R12-4-425, R12-4-427, R12-4-428, and R12-4-430

Economic, Small Business and Consumer Impact Statement

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

1. Identification of the proposed rulemaking:

The Arizona Game and Fish Commission (Commission) proposes to amend its Article 4 rules, addressing live wildlife to enact amendments developed during the preceding Five-year Review Report. The amendments proposed in the five-year review report are designed to clarify current rule language; protect public health and safety; facilitate job growth and economic development; support the tenets of the North American Model of Wildlife Conservation; enable the Department to provide better customer service; and reduce regulatory and administrative burdens wherever possible. After evaluating the scope and effectiveness of the proposed amendments specified in the review, the Commission proposes additional amendments to further implement the original proposals.

Arizona's great abundance and diversity of native wildlife can be attributed to careful management and the important role of the conservation programs developed by the Arizona Game and Fish Department. The Department's management of both game and nongame species as a public resource depends on sound science and active management. As trustee, the state has no power to delegate its trust duties and no freedom to transfer trust ownership or management of assets to private establishments. Without strict agency oversight and management, the fate of many of our native species would be in jeopardy. Wildlife can be owned by no individual and is held by the state in trust for all the people.

An exemption from Executive Order 2019-01 was provided for this rulemaking by Hunter Moore, Natural Resource Policy Advisor, Governor's Office, in an email dated September 23, 2019.

In addition to the specific amendments described below, the Commission proposes to make the following amendments to all rules contained within Article 4 (live wildlife), where applicable:

Make minor grammatical and formatting changes to make the rules more concise.

Remove the Department website Uniform Resource Location (url) and simply reference "Department's website" to ensure the rule remains concise in the event the Department's url should change.

Replaces references to the url "www.gpoaccess.gov" with "www.gpo.gov" to make the rule more concise.

Reference the most recent edition of federal regulations incorporated by reference.

Allow a special license applicant to provide a physical address or general location and remove the requirement that an applicant provide the Universal Transverse Mercator coordinates to reduce the costs and

burdens on persons regulated by the rule. This change is proposed as a result of customer comments received by the Department.

Repeal the Federal Tax Identification Number (FTIN) requirement because the Department has determined the anticipated benefits of requiring an applicant to provide their FTIN and, when applicable, their wildlife supplier's FTIN has not been realized. This change is proposed as a result of customer comments received by the Department.

Replace all references to "White Amur Stocking and Holding License" with "White Amur Stocking License" to reflect amendments made to R12-4-424 (white amur stocking and holding license).

Replace all references to "Scientific Collecting License" with "Scientific Activity License" to reflect amendments made to R12-4-418 (scientific collecting license).

Extend the time in which a special license is valid from a period of up to one year to a period up to three years to reduce costs and burdens to the Department and persons regulated by the rule, excepting those licenses for which an authorized activity requires a shorter time-frame. The Department will continue to maintain oversight throughout the licensing period through the required inspections and reports.

Remove the requirement that an applicant submit a separate application for each location where the applicant proposes to use wildlife because the Department intends to implement an online special license application and reporting system. These changes are proposed to reduce the burdens and costs to persons regulated by the rule and the Department.

Each license holder is required to maintain records associated with the license and make them available to the Department for inspection upon request, this includes veterinary care records. The Commission proposes to amend the rules to require a license holder to maintain and make available for inspection all records maintained by the special license holder for a period of five-years.

In addition to the general amendments listed above, the Commission proposes the following amendments:

R12-4-401. Live Wildlife Definitions: The objective of the rule is to establish definitions that assist the regulated community and members of the public in understanding the unique terms that are used throughout Article 4.

The Commission proposes to amend the definition of "educational display" to remove rule language that prevents a person from recouping costs for the educational display. This change is consistent with the sport falconry license and allows wildlife holding and scientific activity license holders to educate the public about wildlife conservation and wildlife habitat by providing an opportunity for the public at little or no cost to the license holder.

The Department is aware confusion exists in regards to the definition of "game farm." The Commission proposes to amend the rule to remove references to "terrestrial wildlife or the parts of terrestrial wildlife" from the definition of "game farm" to reflect changes made to R12-4-413 (game farm license) to make the rule more concise and increase consistency between Commission rules.

The Department is aware confusion exists as to which medical professionals have the authority to complete a health certificate. The current definition of "health certificate" means a certificate of examination by a licensed veterinarian. The Commission proposes to amend the rule to clarify that a health certificate may also be completed by a federal or state certified inspector to reduce costs and burdens to persons regulated by the rule and to make the rule more concise.

The Commission also proposes to amend the rule to exclude the definition of "hybrid" as defined under the Migratory Bird Treaty Act (MBTA) under 50 C.F.R. 21.3 (definitions), revised October 1, 2019 to make the rule more concise.

R12-4-403. Escaped or Released Live Wildlife: The objective of the rule is to establish the Department's authority to take possession of any escaped or released wildlife that poses an actual or potential threat to native wildlife, wildlife habitat, or to the safety, health, and welfare of the public.

The current rule uses the term "possessing," which has resulted in some confusion. The Commission proposes to amend the rule to clarify it is the person who releases or allows wildlife to escape that is responsible for all costs incurred by the Department associated with seizing or quarantining that wildlife to make the rule more understandable.

R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit: The objective of the rule is to establish lawful activities and limitations for a person importing, purchasing, or transporting wildlife or the offspring of wildlife taken without a Department-issued license or permit to prevent harm to native wildlife of this state or to endanger public safety.

Subsection (E) of the rule references wildlife taken under an Arizona hunting or fishing license. This information was added in an effort to make the rule more concise, but has resulted in some confusion because the rule establishes lawful activities and limitations for wildlife possessed *without* a Department-issued license or permit. The Commission proposes to repeal subsection (E) to make the rule more concise.

R12-4-406. Restricted Live Wildlife: The objective of the rule is to establish a list of live wildlife for which a special license is required in order to possess the wildlife and/or to engage in activities that may be prohibited under A.R.S. § 17-306 and R12-4-402 (live wildlife; unlawful acts). When adding or removing a species from the restricted wildlife list, the Department bases its decision on the following factors: protection of public health and safety; biological impact on species and ecosystems; consistency with federal, state, and county regulatory agencies; and potential economic impact.

The Department is aware of some confusion as to whether the offspring of a restricted wildlife species and non-restricted wildlife species is also restricted wildlife. The Commission proposes to amend the rule to specify hybrid wildlife is considered restricted when one parent wildlife species is listed as restricted live wildlife.

In a recent rulemaking, Article 11 (aquatic invasive species) was renumbered to Article 9. Subsection (A) references R12-4-1102 (aquatic invasive species; prohibitions; inspections; decontamination protocols); The Commission proposes to amend the rule to replace the reference to R12-4-1102 with R12-4-902 to make the rule more concise.

The Department is aware of some confusion in regards to which hedgehogs are considered restricted live wildlife and which are legal to possess as a pet. The European hedgehog, *Erinaceus europaeus* species and other wild hedgehogs are still considered restricted. Hedgehog species that are not restricted include *Atelerix albiventris, A. algirus, Hemiechinus auritus, H. collaris*, and any hybrids resulting from these three species. The Commission proposes to amend the rule to clarify which hedgehogs are not restricted; and indicate those species that pose a risk to native wildlife and habitat are restricted.

The Department is aware of some confusion as to transgenic species that are created using scientific methods such as genetic engineering. The confusion results from the statement, "a transgenic animal is considered wildlife if the animal is the offspring of at least one wildlife species." This statement does not account for genetically engineered animals. The Commission proposes to amend the rule to specify a transgenic animal is considered wildlife if the animal's genetic material originated from a restricted wildlife species to proactively address the possession of genetically engineered wildlife.

Because the Department is no longer conducting Masked Bobwhite quail, *Colinus virginianus*, reintroduction efforts in game management unit 34A, the Commission proposes to amend the rule to allow Masked Bobwhite quail to be held under a private game farm license in game management unit 34A.

The Department is aware confusion exists because turkeys are listed as a restricted species, when many species of turkey are readily available for purchase at local pet and feed stores. The Commission proposes to amend the rule to specify which species of turkeys are restricted.

The Department is aware there are discrepancies between when the italicization of scientific names should occur. The Commission proposes to amend the rule to italicize all mentions of Genus and below, with no italics above Genus to be consistent with scientific naming standards. In addition, the Commission also proposes to amend the rule to place the listed wildlife in alphabetical order and provide additional common names for certain species to make the rule more concise.

R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife: The objective of the rule is to establish the types of scenarios when a person may lawfully possess restricted live wildlife without a special license.

In 1990, the Mojave population of desert tortoise was listed as threatened by the U.S. Fish and Wildlife Service (USFWS) and Arizona law has prohibited the removal of desert tortoises from the wild since 1988. Lawfully obtained desert tortoises may be privately adopted, but desert tortoise adoption in Arizona is subject to specific rules. The Department is aware that confusion exists in regards to under what circumstances a person may lawfully possess or export a desert tortoise out-of-state. The Commission proposes to amend the rule to clarify the circumstances that would allow a person to lawfully export a desert tortoise out-of-state. The proposed rule will prohibit a person from taking a live desert tortoise out-of-state unless authorized by the Department. In the alternative, the person may gift the tortoise to an Arizona resident or donate the tortoise to the Department's Tortoise Adoption Program. The Department's Desert Tortoise Application clearly states that custodians of adopted tortoises may not remove them from Arizona and must return the tortoise to an approved Arizona adoption facility if they plan to relocate to another state. These amendments are proposed

due to the amount of time and resources required of the Department and USFWS when a desert tortoise is found outside of its natural range. USFWS considers all desert tortoises found outside of the combined range of Sonoran and Mojave desert tortoises to be the federally-protected Mojave desert tortoise by similarity of appearance. USFWS and the state wildlife agency collaborate to try to determine the origin of the tortoise (Arizona, California, Nevada, or Utah). If it is determined the person possesses a Mojave desert tortoise, the person is cited for possessing a federally-listed species; USFWS and the state wildlife agency then return the tortoise back to the state from which it was exported. Because there is such a high probability the tortoise will be returned to Arizona, tortoises should not be removed from Arizona in the first place. For these reasons, the Commission proposes to amend the rule to clarify a person may only export a desert tortoise to an education or research institution or zoo located in another state; and require a person who possesses a desert tortoise and is moving out-of-state to gift the desert tortoise to another person who resides in Arizona or donate it to the Department's Tortoise Adoption Program.

The Department may allow a person to export a desert tortoise to an education or research facility or a zoo when authorized in writing by the Department. To effect a more efficient process, the Commission proposes to amend the rule to specify a person who wishes to export a desert tortoise to an education or research facility or a zoo in another state must contact their special license administrator in order to obtain that written authorization.

Under A.R.S. 17-306(A) and R12-4-402 (live wildlife; unlawful acts), a person is prohibited from releasing wildlife into the wild without written authorization from the Department. During the past several decades, a deadly bacterial infection, Upper Respiratory Tract Disease, is appearing more frequently among wild tortoises and is likely due to the release of infected captive tortoises into the wild. This bacterial infection attacks the tortoise's respiratory system and can be transmitted through sharing of burrows, or through the human handling of tortoises when a person handles a sick tortoise and then unwittingly transmits the disease to a healthy animal. The Commission proposes to amend the rule to specify a desert tortoise cannot be released into the wild to protect wildlife and wildlife habitat and to increase consistency between Commission laws and rules.

Under Commission Order 43 (reptiles), a person may lawfully possess one desert tortoise per person and the progeny of any lawfully held desert tortoise may be held in captivity for twenty-four months from date of hatching. Before or upon reaching twenty-four months of age, such progeny must be disposed of by gift to another person or as directed by the Department. The Department is aware of confusion regarding the number of desert tortoises a person may possess; some persons believe that they can lawfully possess as many as they like. The Commission proposes to amend the rule to reference the Commission Order in which the possession limit for desert tortoise is established to make the rule more concise.

In addition, the Commission proposes to clarify the exemptions listed under the rule do not authorize the take of wildlife from the wild. This change is proposed as a result of customer comments received by the Department.

R12-4-409. General Provisions and Penalties for Special Licenses: The objective of the rule is to establish general provisions and administrative compliance applicable to all special licenses, as well as regulatory actions that may be taken when a special license holder is convicted of an offense involving cruelty to animals, fails to remedy a noticed condition, or fails to comply with requirements of the rule governing the applicable special license or this rule.

Under A.R.S. § 17-102, wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the Commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the Commission. The purpose of the special license program is to enable wildlife management and provide information valuable to the maintenance of wild populations, education, the advancement of science, or the promotion of public health. A special license is required when a person, typically a business or educational entity, wants to possess, process, or handle a species listed on the Commission's Restricted Live Wildlife list.

The current rule only allows the Department to place additional stipulations on a special license at the time of issuance or renewal. With this rulemaking, the Commission proposes to increase the length of time in which special licenses are valid to three years. The Department has documented cases where special license holders either illegally conducted surgical operations on wildlife without a veterinary license or did not seek appropriate veterinary care as required by the humane treatment standards established under R12-4-428 (captivity standards). Because the Department is responsible for all wildlife held in this State, the Commission proposes to amend the rule to allow the Department to add or remove stipulations to a special license during the license period to ensure humane care and treatment of wildlife.

Upon determining a disease or other emergency condition exists that poses an immediate threat to the public or the welfare of any wildlife, the Department may immediately order a cessation of operations under the special license and require the special license holder to ensure any contaminated or affected wildlife is tested for the presence of diseases or pathogens. Currently, only those persons possessing nonhuman primates and cervids are required to submit the results of any required testing to the Department. Because this information is necessary and aids the Department in determining what future actions are necessary to prevent the introduction and proliferation of wildlife diseases and protect public health or safety, the Commission proposes to amend the rule to require all special license holders to submit the results of any required testing to the Department.

Each license holder is required to maintain all records associated with the license and make them available to the Department for inspection upon request. The Commission proposes to amend the rule to require a license holder to maintain and make available for inspection all records maintained by the special license holder for a period of five-years.

When a special license holder elects to terminate activities authorized by their special license, they are required to dispose of all wildlife held under the license in the manner directed by the Department, which may include export from this state, transfer to another eligible special license holder, or transfer to a medical

or scientific research facility. To ensure wildlife held under the license is properly disposed of and any required administrative processes are completed, the Department must be notified when a special license holder no longer wishes to conduct activities authorized under the special license prior to the cessation of those activities. The Commission proposes to amend the rule to establish a requirement that a special license holder notify the Department at least 30 days prior to ceasing wildlife activities authorized under the special license.

In all but six states and for most federal wildlife permits, an applicant must be at least 18 years of age in order to be eligible for a permit to possess live wildlife. The Commission proposes to amend the rule to require an applicant to be at least 18 years of age; however, this restriction will not apply to the Game Bird Dog Training and Sport Falconry licenses.

The rule requires a license holder to comply with the standards established under R12-4-428 (captivity standards), or as otherwise required under this Article. In other rules within Article 4, the Commission is proposing to exempt aquatic wildlife stocking, sport falconry, and white amur stocking license holders from the standards established under R12-4-428. The Commission also proposes to amend this rule to specifically exempt aquatic wildlife stocking, sport falconry, and white amur stocking license holders from the standards established under R12-4-428 to reflect changes made to R12-4-410, R12-4-411, R12-4-422, and R12-4-424 to increase consistency between rules within Article 4.This change is proposed as a result of customer comments received by the Department.

R12-4-410. Aquatic Wildlife Stocking License: The objective of the rule is to establish requirements that allow a person to import, possess, purchase, stock, and transport any restricted aquatic species designated on the license at the location specified on the license, including authorized activities, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic wildlife and wildlife habitat.

The Department is currently working with various government agencies to allow them to stock, hold, and use endangered Gila Topminnow (*Poeciliopsis occidentalis*) for vector control instead of nonnative mosquitofish. Currently, Pima and Pinal Counties are the only government agency stocking Gila Topminnow for vector control. Because these agencies need to hold and stock Gila Topminnow year-round and the aquatic stocking license is only valid for a period of 20 consecutive days, they have to apply for up to 18 licenses each year. The Commission proposes to amend the rule to allow the issuance of an annual Aquatic Wildlife Stocking to State government agencies for the purpose of stocking Gila Topminnow or other approved species for vector control to reduce burdens and costs to persons regulated by the rule.

The Commission proposes to replace the reference to the “On-Line Environmental Review Tool” with “Online Environmental Review Tool” to reflect current terminology used by the Department.

The standards established under R12-4-428 are designed to ensure the humane and ethical treatment of wildlife, but when applied specifically to fish facilities it becomes apparent that they are difficult to put into practice and unnecessarily restrictive for the humane and ethical treatment of aquatic wildlife. For these reasons, the Commission proposes to amend the rule to exempt aquatic wildlife stocking license holders from

the requirements of R12-4-428.This change is proposed as a result of customer comments received by the Department.

R12-4-411. Live Bait Dealer's License: The objective of the rule is to establish the requirements necessary to allow a person to conduct a commercial live bait retail sales operation; to include authorized activities, permitted species, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic wildlife and aquatic wildlife habitat.

The Department evaluated the potential to minimize the risk and threats to native aquatic species, while continuing to maintain live bait use opportunities that have social and economic importance to the angling community. The Western Mosquitofish (*Gambusia affinis*) is native throughout the Mississippi River and its tributary waters. In Arizona, Mosquitofish have been directly linked to the local extirpation of at least three historical Gila Topminnow populations within a few years of introduction. Threadfin Shad (*Dorosoma petenense*) are native to watersheds of the Gulf Coast, including the Ohio, Illinois, Indiana, and Mississippi River drainages. Threadfin Shad are very sensitive to changes in temperature and dissolved oxygen, and die-offs are frequent in late summer and fall. Therefore, bait dealers usually do not hold and sell this species and anglers are able to collect these species from wild populations to use as bait. The Commission proposes to amend the rule to remove mosquito fish and threadfin shad from the list of authorized aquatic live wildlife a bait dealer may lawfully sell. The Commission also proposes to amend the rule to allow the following native species to the list of authorized aquatic live wildlife a bait dealer may lawfully sell: Longfin Dace, Speckled Dace (*Rhinichthys osculus*), Sonora Sucker, and Desert Sucker (*Catostomas clarkii*).

The standards established under R12-4-428 are designed to ensure the humane and ethical treatment of wildlife, but when applied specifically to fish facilities it becomes apparent that they are difficult to put into practice and unnecessarily restrictive for the humane and ethical treatment of aquatic wildlife. For these reasons, the Commission proposes to amend the rule to exempt live bait dealer’s license holders from the requirements of R12-4-428.This change is proposed as a result of customer comments received by the Department.

R12-4-413. Private Game Farm License: The objective of the rule is to establish the requirements necessary to allow a person to conduct the commercial farming, use, and sale of game species; to include authorized activities, permitted wildlife, administrative compliance, and the restrictions and prohibitions necessary to protect native wildlife and wildlife habitat.

While the rule is intended to authorize the issuance of a game farm license for the purpose of raising and propagating game species (principally game birds and, formerly, deer) it also authorizes the possession, sale, and use of mammals listed as restricted live wildlife under R12-4-406 (restricted live wildlife), including anteaters, armadillos, moose, primates (apes, baboons, chimpanzees, gibbons, gorillas, lorises, macaques, orangutans, spider monkeys, and tamarins), shrews, sloths, weasels, wild cats (including jaguars, leopards, lions, lynx, ocelots, servals, and tigers), and woodchucks. Allowing a person to possess these mammals for game farm purposes was not the intent of this rule. As a result, the Department receives private game farm license applications for armadillos, lemurs, and servals. These are not native game species and pose a public

health and safety risk and a risk to native wildlife and wildlife habitat if illegally released or allowed to escape. In addition, many of these species require complex dietary, territorial, social, physical, and psychological needs that the general public is incapable of providing; often these animals are kept in deprived and inappropriate environments. It is not uncommon for the public to surrender unwanted restricted species to the Department. As a result, the Department must expend its resources to provide species appropriate feeding, facilities, handling, and veterinary care as well as find a willing wildlife sanctuary to accept the animal.

The Commission proposes to amend the rule to align it with Commission guidance, which indicates that private game farms for mammals is not the intent of the Game Farm rule. Commission Policy A1.12 calls for the restriction and prohibition of commercial uses of live wildlife that may adversely affect Arizona wildlife populations and habitats, or pose risks to public health and safety. This amendment will only affect new game farm applicants; the proposed change will not impact the three (3) currently licensed private game farms that authorized to possess other species of wildlife as they will be able to renew their license for the wildlife currently held under the license under subsection (E) of this rule.

Because the Department is no longer conducting Masked Bobwhite quail reintroduction efforts in game management unit 34A, the Commission proposes to amend the rule to allow Masked Bobwhite quail to be held under a private game farm license in game management unit 34A.

Under A.R.S. §17-250, a person who is in possession of wildlife or who maintains wildlife under a license issued by the Department is required to submit the wildlife or parts of the wildlife for disease testing. The Commission proposes to amend the rule to require a person to immediately report to the Department any mortality event that results in the loss of 10% or more of the adult wildlife held on the facility and allow the Department to collect samples from the affected wildlife for disease testing purposes. This standard is chosen because it is the common standard for the livestock and pet trade industries and it signifies an event outside of acceptable parameters and is indicative of a potential disease outbreak.

In 2002, as a result of concerns over the spread of Chronic Wasting Disease (CWD), the Commission amended the rule to prohibit the possession of cervids under a private game farm license. Subsection (E) was adopted to provide a mechanism to allow a person who was previously authorized to possess cervids under the rule to renew the license, provided certain criteria are met. The Commission proposes to amend the rule to allow a person who currently possesses mammals under this rule to continue to renew the private game farm license, provided the license holder is in compliance with all applicable requirements under R12-4-409 (general provisions and penalties for special licenses), R12-4-428 (captivity standards), R12-4-430 (importation, handling, and possession of cervids), and this rule.

The Commission proposes to amend the rule to clearly state that the location information required under subsection (I)(4) is the location physical address or general location where the applicant proposes to conduct activities. This change is proposed as a result of customer comments received by the Department.

The Commission proposes to amend the rule to authorize the possession of Mallard ducks and Mountain Quail to expand opportunities for private game farm license holders.

R12-4-414. Game Bird License: The objective of the rule is to establish the requirements that allow a person to possess, release, and take pen-reared game birds; to include authorized activities, permitted game bird species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources.

The Commission proposes to amend the rule to restrict a game bird hobby license holder to gift wildlife lawfully held under the license to a person who is authorized to possess the wildlife. The intent of the proposed amendment is to prevent persons from unknowingly violating the rule. Often, persons who are gifted wildlife do not possess an appropriate special license prior to accepting the wildlife.

Because the Department is no longer conducting Masked Bobwhite quail reintroduction efforts in game management unit 34A, there is no need to restrict Masked Bobwhite quail reintroduction efforts in game management unit 34A. The Commission proposes to amend the rule to allow Masked Bobwhite quail to be held under a game bird license in game management unit 34A.

Under A.R.S. §17-250, a person who is in possession of wildlife or who maintains wildlife under a license issued by the Department is required to submit the wildlife or parts of the wildlife for disease testing. The Commission proposes to amend the rule to require a person who possesses a game bird shooting preserve or hobby license to immediately report to the Department any mortality event that results in the loss of 10% or more of the adult wildlife held on the facility and allow the Department to collect samples from the affected wildlife for disease testing purposes. This standard is chosen because it is the common standard for the livestock and pet trade industries; an event resulting in a loss of 10% or more of the total number of adult animals is outside of normal parameters and is indicative of a potential disease outbreak. This requirement will not apply to persons who hold game bird field trial events or conduct game bird field training because these license holders typically possess captive pen-reared game birds on a temporary basis.

The current live game bird license is valid for a period of up to one year depending on the date of issue; The Commission proposes to amend the rule to extend the time in which the license is valid from a period of up to one year to a period up to three years, except for the field trial license. This change is proposed to reduce the burdens and costs to persons regulated by the rule and the Department. The Department will continue to maintain oversight throughout the licensing period through the required inspections and reports.

Field trials are connected to the sport of hunting; they support the maintaining of hunting breeds of dogs which add not only to the sport of hunting, but also the conservation of our wildlife resources by facilitating more efficient game harvest. Field trials specifically involve dogs, horses, and game birds in an organized and judged event. They are outdoor competitions designed to mimic an actual hunt in the wild, with a focus on honing hunting instincts in domestic dogs. These events judge dogs on their field performance during particular events, thus an annual license is not warranted. The Game Bird Field Trial license applicant will continue to be required to submit a separate application for each date and location where a competition will occur.

R12-4-417. Wildlife Holding License: The objective of the rule is to establish the requirements that allow a person to possess and care for restricted live wildlife lawfully taken under a valid hunting or fishing

license, scientific collecting license, or wildlife rehabilitation license; to include authorized activities, permitted wildlife species that may be held under the license, administrative compliance, and the restrictions necessary to protect wildlife and wildlife habitat.

Throughout the rule, the terms "restricted" and "non-restricted" are used somewhat indiscriminately. The Commission proposes to amend the rule to increase consistency between when and where these terms should apply.

Under subsection (C)(2)(a), a wildlife holding license holder may permanently hold wildlife that is unable to meet its own needs in the wild; but the rule does not establish who is qualified to make this determination. The Commission proposes to amend the rule to specify that only a licensed veterinarian may determine whether or not an animal is suitable for release.

The Department receives applications for a wildlife holding license from persons asking to possess wildlife that poses a danger to public health and safety if the wildlife they were to escape or be released or come into contact with members of the public, such as bears, nonhuman primates, tigers, etc. This is not in keeping with the intent of the rule. The Commission proposes to amend the rule to allow the Department to deny a wildlife holding license when it is in the best interest of public health and safety.

The Department allows an agent to assist, or act on behalf of, the license holder. Because an agent is allowed to conduct the same activities as the license holder, the Commission proposes to amend the rule to clarify the agent's role and responsibilities to make the rule more concise.

R12-4-418. Scientific Collecting License: The objective of the rule is to establish the requirements that allow a person to use live wildlife for purposes related to the advancement of conservation, education, science, and wildlife management; to include authorized activities, permitted wildlife species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and existing wildlife habitat and resources.

The Commission proposes to amend the name of the license to Scientific Activity License to more accurately reflect the purpose of the license and reduce confusion.

While the definition of “take” includes pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or placing or using any net or other device or trap in a manner that may result in capturing or killing wildlife; there is still some confusion about certain activities involving wildlife. The Commission proposes to amend the rule to include other types of activities to reflect activities already considered lawful in an effort to clarify the rule.

Because the license allows a person to collect dead wildlife, the Commission proposes to amend the rule to remove the reference to “live” to clarify the rule.

The Commission proposes to amend the rule to further refine the license types by removing the consultant type and adding academic institution, non-governmental organization, and nonprofit organization to the license types currently prescribed in rule for statistical purposes.

The Department allows an agent to assist, or act on behalf of, the license holder. Because an agent is allowed to conduct the same activities as the license holder, the Commission proposes to amend the rule to clarify the agent's role and responsibilities to make the rule more concise.

Currently, an applicant for a scientific collecting license is required to submit a separate written proposal providing information about the applicant's proposed activities and abilities. The Commission proposes to amend the rule to incorporate the information required in the proposal into the application to reduce burdens and costs to persons regulated by the rule.

The Commission proposes to amend the rule to allow the Department to deny a scientific activity license when the issuance of the license will adversely impact other wildlife or their habitat in this state or when it is in the best interest of public health and safety to better protect native wildlife and wildlife habitat.

R12-4-420. Zoo License: The objective of the rule is to establish the requirements that allow a person to use captive live wildlife in a commercial facility where the principal business is exhibiting wildlife to the public and for purposes related to the advancement of science, conservation, education, or wildlife management; to include authorized activities, permitted wildlife species that may be held under the license, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and existing wildlife habitat and resources.

Public comments received by the Department indicate there is some confusion regarding whether a private person is eligible to apply for a zoo license. In addition, the rule as currently written appears to be in conflict with the Legislature's definition of "zoo" as defined under A.R.S. § 17-101(A)(26) because the rule does not make it clear that a zoo license is issued only to a commercial facility for the purpose of public exhibition of wildlife. The Commission proposes to amend the rule to increase consistency between the rule and statute by specifying that a zoo license may only be issued to a facility that is open to the public and where the principal business is holding wildlife in captivity for exhibition purposes.

The current zoo license is valid for a period of up to one year depending on the date of issue; the Commission proposes to amend the rule to extend the time in which the zoo license is valid from a period of up to one year to a period up to three years. The Department will continue to maintain oversight throughout the licensing period through the required inspections and reports.

R12-4-421. Wildlife Service License: The objective of the rule is to establish the requirements that allow a person to facilitate the removal of wildlife that causes property damage, poses a threat to public health or safety, or when the health or well-being of the wildlife is threatened by its immediate environment; to include authorized activities, permitted wildlife species, administrative compliance, and the restrictions and prohibitions necessary to protect public health and safety and existing wildlife habitat and resources.

Under A.R.S. § 17-102, wildlife, both resident and migratory, native or introduced, found in this state, except fish and bullfrogs impounded in private ponds or tanks or wildlife and birds reared or held in captivity under permit or license from the commission, are property of the state and may be taken at such times, in such places, in such manner and with such devices as provided by law or rule of the Commission. Subsection (B) identifies which species of animal do not require a wildlife service license and may be removed under a

Pest Management license issued by the Arizona Department of Agriculture. Because most doves are considered to be migratory birds, there is some confusion as to whether Rock pigeons (*Columba livia*) are protected under the Migratory Bird Treaty Act (MBTA). The Commission proposes to amend the rule to add Rock pigeons, also known as Rock Doves, to subsection (B). This change is proposed as a result of customer comments received by the Department.

The rule references "peach-faced love birds." The Commission proposes to amend the rule to replace the term "peach-faced love birds" with "rosey-faced lovebirds" to reflect current scientific terminology.

The current wildlife service license is valid for a period of up to one year depending on the date of issue; The Commission proposes to amend the rule to extend the time in which the license is valid from a period of up to one year to a period up to three years. The Department will continue to maintain oversight throughout the licensing period through the required inspections and reports. This change is proposed to reduce the burdens and costs to persons regulated by the rule and the Department.

R12-4-422. Sport Falconry License: The objective of the rule is to establish the requirements that allow a person to take and use raptors listed in the Migratory Bird Treaty Act (MBTA) for the sport of falconry; to include authorized activities, permitted raptor species, administrative compliance, and the restrictions and prohibitions necessary to protect existing wildlife habitat and resources.

In 2008, 50 C.F.R. 21.29 (falconry standards and falconry permitting) was amended to eliminate the dual permitting system and transfer falconry permitting administration to the individual states, provided the state's laws, rules, processes, and forms met the minimum standards under 50 C.F.R. 21.29. If a state failed to meet standards for certification, any persons possessing a Migratory Bird Treaty Act species (MBTA) raptor for falconry in that state would be required to permanently release into the wild, euthanize, or transfer their raptor to a licensed falconer in a certified state or jurisdiction, a captive propagation program, or the Department. In order to continue permitting sport falconry using MBTA raptors in Arizona, the rule must remain in place and continue to meet USFWS standards for certification. The Department's rules, processes, and forms were certified as meeting the standards under 50 C.F.R. 21.29; see 77 FR 66406 - 66408, November 5, 2012.

In 2012, the Commission amended R12-4-422 to comply with amendments made to the federal regulations, which included amending facility requirements. At that time, a decision was made to apply the captivity standards established under R12-4-428 (captivity standards).to falconry housing facilities. The standards established under R12-4-428 are designed to ensure the humane and ethical treatment of wildlife, but when applied specifically to falconry housing facilities it becomes apparent that they are difficult to put into practice and unnecessarily restrictive for the humane and ethical treatment of raptors. For these reasons, the Commission proposes to amend the rule to exempt licensed falconers from the requirements of R12-4-428. This change is proposed as a result of customer comments received by the Department.

The Commission proposes to incorporate federal housing facility standards to ensure compliance with requirements and standards for raptors housing facilities as prescribed under 50 C.F.R. 21.29 (falconry standards and falconry permitting). The Commission also proposes to replace “facilities” with “housing facilities.” These changes are proposed as a result of customer comments received by the Department.

Under 50 C.F.R. 21.29 (falconry standards and falconry permitting), USFWS is required to maintain an electronic reporting system that allows persons conducting lawful activities with MBTA raptors to enter information regarding the acquisition and disposal (death, loss, purchase, sale, theft, transfer, etc.) of raptors they possess. Because states are supposed to have access to the online reporting system for administrative purposes, the rule was previously amended to no longer require the person to provide a copy of the Federal 3-186A form to the Department. Due to functionality issues with the electronic reporting system, the Department currently requires falconry license holders to provide a copy of the 3-186A form to the Department whenever a reportable activity occurs. Requiring a paper copy of the 3-186A form is authorized under 50 C.F.R. 21.29, regardless of whether the electronic reporting system is fully functional or not. Furthermore, under 50 C.F.R. 21.27 (special purpose permits) and 21.30 (raptor propagation permits) respectively, unless the state requires an abatement or propagation permit, a person need only possess a federal permit to conduct abatement activities with, or propagate, MBTA raptors. Both federal permits have liberal possession limits and raptors held under the federal permits do not count towards the falconers possession limit established in rule. Because the federal regulations allow a person to use any lawfully possessed falconry raptor for abatement activities or for propagation, a licensed falconer can transfer their falconry raptor to their federal permit for abatement or propagation purposes at any time, as applicable. Under 50 C.F.R. 21.17 and 21.30, a person is only required to notify the governing state agency of this transfer when that state requires notification. Again, because the Department believed it would be made aware of these transfers through the electronic reporting system the rule did not require persons to notify the Department when a raptor was transferred to the federal permit. For these reasons, the Commission proposes to amend the rule to require a person to submit a paper copy of the 3-186A form and the federal propagation report at the same time the person submits these forms (reports) to USFWS. In addition, the Commission proposes to amend the rule to replace the definition of "abatement services" with "abatement" to make the rule more concise.

A license wildlife rehabilitator is authorized to provide treatment and care to sick, injured, or orphaned wildlife with the goal of releasing the wildlife back to their natural habitats in the wild once they are capable of functioning in their natural habitats as normal members of their species. A licensed falconer may assist the wildlife rehabilitator in conditioning a raptor in preparation for releasing it back into the wild. Effective, appropriate conditioning is necessary to meet the unique physical and psychological needs of each raptor species. Because the rule does not restrict the falconer to the type of raptor they are authorized to possess, a falconer who has no experience with a particular raptor species may inadvertently harm the raptor or delay its release into the wild due to their inexperience. In addition, because effective, appropriate conditioning is required, the Department does not believe the average apprentice falconer possesses the necessary skills to provide effective and appropriate conditioning. For these reasons, the Commission proposes to amend the rule to limit the ability to assist a wildlife rehabilitator in conditioning a raptor to a general or master falconer and restrict the general and master falconer to only those raptor species they are authorized to possess under their sport falconry license to align the rule with the federal regulation, 50 C.F.R. 20.21.

The rule allows a licensed falconer to assist a licensed wildlife rehabilitator in conditioning a raptor in preparation for its release into the wild. Because only a federally licensed rehabilitator may possess migratory birds for the purpose of rehabilitation, the rule has resulted in some confusion. The Commission proposes to amend the rule to clarify that a licensed falconer may assist *any federally* licensed wildlife rehabilitator in conditioning a raptor in preparation for its release into the wild. This change is proposed as a result of customer comments received by the Department.

Under 50 C.F.R. 20.21(what hunting methods are illegal) and R12-4-422, a master falconer may conduct abatement activities with any raptor they possess for falconry, provided the falconer meets certain criteria. There is some concern about potential enforcement difficulties for State and federal law enforcement officers because the federal regulations do not allow falconry raptors held under a sport falconry license to be used for abatement and propagation activities and the potential exploitation of the liberal possession limits for master falconers under the falconry regulations. The Commission proposes to amend the rule to require a person to submit a properly completed 3-186A form to the Department when transferring a falconry raptor to the person's federal abatement or propagation permit. In addition, the Commission proposes to amend the rule to require a person to submit a paper copy of the federal propagation report at the same time the person submits the report to USFWS, as applicable.

Under subsection (M), a person is not required to tether an unflighted eyas. The Commission proposes to amend the rule to replace the term "unflighted eyas" with "nestling" as it is a common term and, thus, more easily understood.

Under subsection (H), an apprentice falconer is prohibited from possessing a raptor that has imprinted on a human. The Commission proposes to amend the rule to define "imprint" by incorporating the definition under 50 C.F.R. 21.3 (definitions) to make the rule more concise.

The rule defines "abatement services" to clarify subsection (W). The Commission proposes to amend the rule to repeal the definition of "abatement services" and define "abatement" to make the rule more concise.

In most cases where an examination is required, a person must submit an application before taking the examination. For the sport falconry license, the application is the last step in the process. The person must first pass the examination, then undergo a facilities inspection, and finally submit an application. Because this is not the typical process and there is some confusion, the Commission proposes to amend the rule to clarify the licensing process.

A person is required to report information regarding the capture of any raptor displaying a federal Bird Banding Laboratory (BBL) aluminum research band or tag to BBL by calling a telephone number. Since the rule was last amended, BBL has implemented an online reporting system. The Commission proposes to amend the rule to replace the reference to the telephone number with a reference to the BBL website to make the rule more concise.

The National Eagle Repository (Repository) is managed and operated the USFWS; its purpose is to provide a central location for the receipt, storage, and distribution of bald and golden eagle carcasses and parts of carcasses throughout the U.S. The eagle carcasses and their parts are shipped to Native Americans

and Alaskan Natives enrolled in federally recognized tribes for use in Indian religious ceremonies. The collection efforts of USFWS provides a legal means for Native Americans to acquire eagle feathers for religious purposes, which in turn, reduces the pressure to take birds from the wild and thereby protecting eagle populations. The distribution of bald and golden eagles and their parts to Native Americans is authorized by the Bald and Golden Eagle Protection Act and Regulations found in 50 CFR 22. The numbers of requests for eagle carcasses and parts of carcasses far exceeds the number of available eagle carcasses and parts of carcasses. For this reason, federal and state conservation agencies, zoological parks, federal rehabilitators, and others who may legally possess and transport carcasses and parts of carcasses are encouraged to send them to the Repository where they will be distributed to Native Americans. The Repository will not accept the carcass and parts of carcass of a raptor that is suspected or confirmed with West Nile Virus or poisoning, except for lead poisoning, and requires the person possessing such raptor to disposed of the carcass by incineration. The Commission proposes to clarify the actions required to dispose of a deceased eagle or other raptor.

R12-4-423. Wildlife Rehabilitation License: The objective of the rule is to establish the requirements that allow a person to rehabilitate and release live wildlife; to include authorized activities, permitted wildlife species, administrative compliance, and the restrictions and prohibitions necessary to protect existing wildlife habitat and resources. Wildlife Rehabilitation is defined as the treatment and temporary care of injured, diseased, and displaced native wildlife, and the subsequent release of healthy individuals to appropriate habitats in the wild.

Under subsection (L)(3), an applicant for a wildlife rehabilitation license must also submit an affidavit affirming either the applicant is a licensed veterinarian or that a licensed veterinarian is reasonably available to provide veterinary services as necessary to facilitate the rehabilitation of wildlife they may possess under the license. The intent behind this requirement is that any wildlife the applicant may possess will receive appropriate medical care from a licensed veterinarian whenever necessary. The Department recently became aware of a situation where a license holder who has no formal veterinary medical education performed medical procedures, including surgery, on wildlife held under that licensee. The Commission proposes to amend the rule to clarify the wildlife rehabilitation license does not authorize the license holder to conduct any activities defined as the practice of veterinary medicine under A.R.S. § 32-2231 whether or not a fee, compensation, or reward is offered, received, or accepted by the licensed rehabilitator.

Under subsection (L), an applicant for a wildlife rehabilitation license must provide proof of at least six months experience performing wildlife rehabilitative work with an average of at least eight hours each week. This requirement ensures the license holder has the minimum amount of experience required to satisfactorily provide rehabilitative care to wildlife in their possession. Under subsection (O), an agent may conduct rehabilitative activities on the wildlife license holder's behalf. Because an agent is authorized to conduct rehabilitative activities without direct supervision, the Department believes an agent should be held to the same standards under subsection (L)(1)(b). The Commission proposes to amend the rule to establish an agent

for a wildlife rehabilitation license holder shall provide proof of at least six months experience performing wildlife rehabilitative work to protect Arizona's wildlife resources.

Under R12-4-422 (sport falconry license), a licensed falconer is required to conduct specific activities when possessing the carcass or parts of a deceased MBTA raptor. Because a wildlife rehabilitation license holder may handle deceased MBTA raptors, the Commission proposes to amend the rule to specify the actions required to dispose of a deceased eagle or other raptor.

The Commission proposes to clarify a wildlife rehabilitation license holder may lawfully possess and care for wildlife received from the public.

Under subsection (J), an applicant must successfully complete an examination conducted by the Department before a wildlife rehabilitation license may be issued to the person. The Commission proposes to clarify the rule by establishing the applicant must correctly answer at least 80% of the questions on the Department administered examination to make the rule more concise.

A licensed wildlife rehabilitator may allow a licensed falconer to assist in conditioning a raptor in preparation for its release into the wild. Because only a federally licensed rehabilitator may possess migratory birds for the purpose of rehabilitation, the rule has resulted in some confusion. The Commission proposes to amend the rule to clarify that a licensed wildlife rehabilitator who also possesses a federal rehabilitator license may allow a licensed falconer to assist in conditioning a raptor in preparation for its release into the wild. This change is proposed as a result of customer comments received by the Department.

Under subsection (Y), a wildlife rehabilitation license holder may permanently hold wildlife determined to be unsuitable for release into the wild; however, the rule does not establish who is qualified to make this determination. The Commission proposes to amend the rule to specify that only a licensed veterinarian may determine whether or not an animal is suitable for release.

Under subsection (Z), a wildlife rehabilitation license holder is required to submit an annual report containing specific information to the Department by January 31 of each year. The license holder is required to provide the permit or license number of any federal permits or licenses that relate to any rehabilitative function performed by the license holder. A license holder may submit a copy of the rehabilitator's federal permit report of activities related to federally-protected wildlife in lieu of the federal permit or license numbers. The way the information is presented has contributed to some confusion because some license holders believe the copy of the federal permit report satisfies the Department's reporting requirement. The Commission proposes to amend the rule to clarify the Department considers the federal permit report to be proof of the applicant's federal permit or license number.

R12-4-424. White Amur Stocking and Holding License: The objective of the rule is to establish the requirements that allow a person to possess and transport white amur (*Ctenopharyngodon Idella*); to include authorized activities, administrative compliance, and the restrictions and prohibitions necessary to protect existing aquatic habitat and resources.

An overabundance of freshwater vegetation can result in dense mats of vegetation that interfere with navigation and recreational activities, clogged power generation and irrigation equipment, stagnant water

(which provides a good breeding ground for mosquitoes), and degraded water quality due to rising pH levels, decreased oxygen, and increased temperature. White amur are used as a natural alternative to remove unwanted freshwater vegetation. They are stocked in a private or public pond until the desired effect has been achieved and then they are transported to another location where they can be of service. White amur are capable of fast growth and can live for 10 to 15 years; when they reach maturity, their rate of weed consumption declines, and restocking of additional white amur is required every 5 to 6 years. Therefore, the Commission proposes to amend the rule to remove references to "holding."

The white amur stocking and holding license is valid for a period of 20 consecutive days. In most cases, due to the life expectancy of white amur, a person will not need another license for years, if at all. The Commission proposes to amend the rule to remove references pertaining to license renewal to make the rule more concise.

Scientific terminology is language used by scientists in the context of their professional activities. While studying nature, scientists often encounter or create new material or immaterial objects and concepts and are compelled to rename or redefine them. As a result, scientific terms and definitions continue to evolve over time. The Commission proposes to amend the definition of "triploid" to reflect scientific terminology used by modern fishery biologists.

The Department is aware of some confusion regarding the use of the terms "commercial" and "noncommercial" activity and how those terms apply to the white amur license. Under R12-4-401 (live wildlife definitions), “commercial purpose” means the bartering, buying, leasing, loaning, offering to sell, selling, trading, exporting or importing of wildlife or their parts for monetary gain. When viewed through this definition, the use of white amur by an applicant for vegetation control purposes cannot be viewed as a commercial purpose. In addition, an entity maintaining white amur for a commercial purpose as defined under R12-4-401 would be operating under an aquaculture (fish farm) license issued by the Department of Agriculture. Therefore, differentiating between "commercial" and "noncommercial" is not necessary. The Commission proposes to amend the rule to remove language pertaining to "commercial" and "noncommercial" purpose.

The Commission proposes to replace the reference to “On-Line Environmental Review Tool” with “Online Environmental Review Tool” to reflect current terminology.

In most cases, the costs incurred by the Department when processing a restocking license are anticipated to be less than an initial license because the Department believes the issuance of a white amur stocking license should take less time to review as there would be no need for the required inspection(s) and background or reference check(s). The Commission proposes to amend the rule to establish a restocking license.

The standards established under R12-4-428 are designed to ensure the humane and ethical treatment of wildlife, but when applied specifically to fish facilities it becomes apparent that they are difficult to put into practice and unnecessarily restrictive for the humane and ethical treatment of white amur.For these reasons, the Commission proposes to amend the rule to exempt white amur license holders from the requirements of R12-4-428.

R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of this Article: The objective of the rule is to establish administrative compliance requirements for the continued possession and use of wildlife lawfully possessed before becoming classified as restricted live wildlife list under R12-4-406 (restricted live wildlife) without having to apply for and obtain a special license. The rule requires a person who lawfully possessed wildlife prior to being classified as restricted live wildlife to notify the Department of the possession and use of the wildlife. The Commission restricts certain wildlife species from possession because they pose a threat to human health and safety, have a negative biological impact on species and ecosystems, have a negative economic impact, and to be consistent with federal, state, and county regulatory agencies. Notification is required so the Department can track and monitor these species.

Because the rule does not provide a time-frame for retaining this documentation and there is some confusion as to how long a person should retain documentation regarding the possession of restricted wildlife, the Department at times is unable to determine when the person obtained the restricted wildlife. The Commission proposes to amend the rule to establish a person shall retain documentation of compliance with the rule for as long as the person possesses said wildlife.

R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License: The objective of the rule is to establish criteria that allow a person to possess and care for specific live wildlife species without having to apply for and obtain a wildlife rehabilitation license, to include authorized activities, wildlife species that may be held without a wildlife rehabilitation license; to include the restrictions and prohibitions necessary to protect wildlife habitat and resources.

The Commission proposes to amend the rule to clarify the rule by referencing “non-Migratory Bird Treaty Act” when listing classifications that include both migratory and non-migratory species. This change is proposed as a result of customer comments received by the Department.

The Commission also proposes to amend the rule to reference the definition of migratory birds under R12-4-101 to make the rule more concise.

R12-4-428. Captivity Standards: The objective of the rule is to establish the minimum standards for living spaces, furnishings, equipment, dietary needs, veterinary care, and social groupings to ensure the humane treatment of wildlife possessed under a lawful exemption or special license issued by the Department. Wildlife requires specialized care to survive; without species appropriate feeding, facilities, handling, and veterinary care, wildlife may suffer or die.

The Commission proposes to amend the rule to make it more concise and easier to understand.

The rule requires a license holder to have each animal held for more than one year to be inspected by the attending veterinarian at least once every year. The Department is aware of some confusion as to what should be documented during the inspection. The Commission proposes to amend the rule to require the veterinary report to demonstrate the veterinarian inspected the health of the animal and the condition of its enclosure. This change is a result of customer comments received by the Department.

R12-4-430. Importation, Handling, and Possession of Cervids: The objective of the rule is to establish the requirements for the importation, handling, and possession of captive cervids necessary to prevent disease transmission from captive cervids to wildlife and domestic animals, and the restrictions and prohibitions necessary to protect existing habitat and wildlife resources.

The intent behind the rule is to protect native wildlife and their habitats from the introduction of disease carried by captive cervids and prevent the introduction of nonnative cervids in Arizona ecosystems. The economic costs associated with wildlife disease outbreaks and control can be severe. Costs of disease outbreaks are generally recurring and additive due to annual costs of monitoring and eradicating diseased animals. Outbreaks can lead to significant decreases in license revenue sales due to decreased hunter participation. If wildlife diseases are introduced into Arizona and spread to native wildlife, the Department will have to divert resources to disease prevention and mitigation instead of wildlife management and habitat enhancement. Rural economies would also be adversely impacted.

The detection of CWD in new areas is expanding; at the time of the last rulemaking, eight additional states and a Canadian province became CWD positive. According to the most recent maps, 26 states and four Canadian provinces are now CWD positive. Since beginning surveillance more than 20 years ago, the Department has collected and tested 23,300 cervid samples (elk, mule deer, and white-tailed deer) and none have tested positive for CWD.

CWD has the potential to negatively impact deer herds wherever the disease occurs; it is always fatal and could have serious negative impacts on the state's deer population if it becomes established in Arizona (Almberg et al. 2011). CWD infection decreases deer survival odds and lowers total life expectancy (Miller et al. 2008). If a large percentage of the population were to become infected there could be negative impacts for the population, including: A decline in doe survival, which results in an overall reduced population (Gross and Miller 2001); Fewer older bucks, as male animals may be more likely to be infected due to specific male social and behavioral tendencies (Miller et al. 2008, Jennelle et al. 2014); and An overall decline in population (Gross and Miller 2001, Almberg et al. 2011), as exhibited in Colorado and Wyoming. In an area of Colorado with high CWD prevalence, mule deer numbers have plummeted by 45%, in spite of good habitat and protection from human hunting. In Wyoming a monitored infected population experienced a 10.4% annual decline, with CWD-positive animals having a higher mortality rate than non-infected deer (Edmunds et al 2016). Taking action to prevent the spread of CWD to new areas helps to slow the transmission of the disease between individuals. The Commission proposes to amend the rule to implement the following requirements necessary to the Department's monitoring and detecting diseases in cervids: require the holder of a private game farm license to mark each cervid they possess with an ear tag that identifies the farm of origin in a manner clearly visible from 100 feet; require a person possessing a cervid to report the death of any cervid to the Department within seven calendar days; include the results of chronic wasting disease testing for all cervids one year of age and older that dies during the current reporting period in the annual report; notify the Department within 72 hours of receiving a suspect or positive disease testing result; and require a person who

possesses a cervid to maintain related records for a period of at least five years and make the records available for inspection to the Department upon request.

Under R12-4-425 (restricted live wildlife lawfully possessed without license or permit before the effective date of article 4 or any subsequent amendments) a person who lawfully possessed wildlife prior to being classified as restricted live wildlife to notify the Department of the possession and use of the wildlife. This notification is required so the Department is made aware of the location of the restricted wildlife for tracking and monitoring purposes. Cervids are listed as restricted live wildlife under R12-4-406 (restricted live wildlife), which means a person must have a lawful exemption or possess a special license in order to lawfully possess them in Arizona. Even though cervids have been listed as restricted live wildlife since 2002, the Department still encounters persons possessing cervids lawfully obtained prior to 2002 but who have not yet met the requirements of R12-4-425. The Commission proposes to amend the rule to reference R12-4-425 to increase consistency between rules.

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

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

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

Not applicable

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

The Commission's intent in proposing these amendments is to protect native wildlife and their habitats in many ways, including preventing the spread of disease, reducing the risk of released animals competing with native wildlife, discouraging illegal trade of native wildlife, and avoiding conflict between humans and wildlife which may threaten public health or safety. The Commission anticipates the majority of the rulemaking is intended to benefit persons regulated by the rule, members of the public, and the Department by clarifying rule language, creating consistency among existing Commission rules, reducing the burden on persons regulated by the rule where practical, and allowing the Department additional oversight where necessary. The Commission anticipates the rulemaking will result in an overall benefit to persons regulated by the rule, members of the public, and the Department. The Commission anticipates the rulemaking will result in little or no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions; or state revenues. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. Other than the regular cost of rulemaking, the Department will expend resources to implement the rules. The Commission has determined that the benefits of the rulemaking outweigh any costs.

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

Overall, the Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no significant impact on the regulated community.

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

Overall, the Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no significant impact on the regulated community.

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

Overall, the Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no significant impact on the regulated community.

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

The Commission's intent in proposing these amendments is to protect native wildlife and their habitats in many ways, including preventing the spread of disease, reducing the risk of released animals competing with native wildlife, discouraging illegal trade of native wildlife, and avoiding conflict between humans and wildlife which may threaten public health or safety. The Commission anticipates the majority of the rulemaking is intended to benefit persons regulated by the rule, members of the public, and the Department by clarifying rule language, creating consistency among existing Commission rules, reducing the burden on persons regulated by the rule where practical, and allowing the Department additional oversight where necessary. The Commission anticipates the rulemaking will result in an overall benefit to persons regulated by the rule, members of the public, and the Department. The Commission anticipates the rulemaking will result in little or no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions; or state revenues. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. Other than the regular cost of rulemaking, the Department will expend resources necessary to implement the rules. The Commission has determined that the benefits of the rulemaking outweigh any costs.

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

Name: Celeste Cook, Rules and Policy Manager

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

Telephone: (623) 236-7390

Fax: (623) 236-7677

E-mail: CCook@azgfd.gov

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

1. Identification of the proposed rulemaking:

See paragraph (A)(1) above.

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

Overall, the Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no significant impact on the regulated community. The Commission believes the general public and the Department benefit from the proposed rulemaking through clarification of rule language governing the lawful possession of live wildlife.

The Commission anticipates the amendments that make grammatical changes where necessary to make the rules more concise and easier to understand will benefit persons regulated by the rule, the Department, and the public by reducing confusion.

While definitions alone have no impact on the Department or regulated community and enforcement of the rule manifests itself through proper administration, the Commission anticipates the amendment that removes "without requiring or soliciting payment from an audience or an event sponsor" from the definition of "educational display" will benefit some special license holders by allowing them to recover costs associated with the educational display.

The Commission anticipates the amendments intended to clarify current rule language, such as prohibiting the export of a desert tortoise or allowing a health certificate to be completed by a federal or state certified inspector, will have no impact on persons regulated by the rule or the Department.

The Commission anticipates the amendments that remove the Federal Tax Identification Number (FTIN), remove the requirement that an applicant submit a separate application for each location where activities will take place, and allow a special license applicant to provide a physical address or general location instead of UTM coordinates for the facility or the place where activities will take place will benefit persons regulated by the rule by reducing burdens and costs associated with the application process.

The Commission anticipates the amendments that extend the period for which the special license is valid from one to three years will benefit persons regulated by the rule and the Department by reducing burdens and costs associated with the application process. The Department will continue to maintain oversight throughout the three-year period through inspections and required reports. The following licenses will remain short-term licenses due to the nature and purpose: the Aquatic Stocking, Game Bird Field Trial, Scientific Collecting, and White Amur Stocking.

The Commission anticipates the amendment that removes Northern Bobwhite quail from the list of restricted species will benefit persons regulated by the rule by allowing the use of additional game birds.

The Commission anticipates the amendment that allows the Department to add or remove stipulations to a special license during the license period will benefit persons regulated by the rule and the Department by reducing burdens and costs associated with the license renewal process. Stipulations reaffirm rule requirements, specify animal care and handling requirements, provide authorization to conduct certain activities, prohibit certain activities, etc. and are currently added or removed at the time a license is issued. In order to move to a three year license, it is necessary for the Department to be able to make changes to the stipulations noted on the license.

The Commission anticipates the amendment that establishes the circumstances under which an application for a special license is considered a renewal of the special license will benefit persons regulated by the rule. In most cases, the costs incurred by the Department to process the renewal of a license when there are no changes to the location, species held, or agent(s) are anticipated to be less intensive and time-consuming than an initial license, the Commission intends to establish a lower fee for the renewal of a license. Because the Commission intends to establish a lower fee for the renewal of a license, it is necessary to establish the criteria that differentiates a license renewal from an initial license.

The Commission anticipates the amendment that requires a special license holder to submit the results of any required testing to the Department will benefit persons regulated by the rule and the Department. When determined to be necessary, the Department will require a special license holder to have wildlife held in their care tested for suspected diseases. If a disease is documented, it is important that the Department is able to address it immediately by ordering cessation of activities performed under the license, quarantining of the diseased wildlife, and/or the humane disposition of the diseased wildlife. In the past, there has been some confusion as to who is responsible for providing copies of the test results to the Department. Establishing who is responsible for providing the results to the Department will ensure the Department receives the results of the disease testing in a timely manner.

The Commission anticipates the amendment that establishes a time period of five-years for all records maintained by the special license holder and that are subject to Department inspection will benefit persons regulated by the rule and the Department. Most all of the special license rules require the license holder to maintain records and provide them for inspection upon request, but do not provide a time-frame for maintaining those records or specify three or five years. Establishing a consistent time-frame will increase consistency between rules within Article 4.

The Commission anticipates the amendment that requires a special license holder notify the Department at least 30 days prior to ceasing wildlife activities authorized under the special license will benefit persons regulated by the rule and the Department by ensuring the wildlife held under the license is disposed of as required by the Department.

The Commission anticipates the amendment that requires an applicant to be at least 18 years of age will benefit persons regulated by the rule and the Department. At the age of 18, a minor assumes legal control over their persons, actions, and decisions, thus terminating their parent's responsibility for the minor's actions. The Department benchmarked with other fish and wildlife agencies and all but six states require an applicant to be at least 18 years of age. The Commission proposes to amend the rule to require an applicant to be at least 18 years of age. However, this restriction will not apply to the Game Bird Dog Training and Sport Falconry licenses.

The Commission anticipates the amendment that exempts aquatic wildlife stocking, sport falconry, and white amur stocking license holders from the standards established under R12-4-428 will benefit persons regulated by the rule and the Department by removing care and housing requirements that are not applicable to the species held under the license.

The Commission anticipates the amendment that enables the Department to consider the first time a special license holder fails to remedy a condition that poses a threat to the public or welfare of any wildlife as a failure to remedy to allow the Department to take action more quickly when a special license holder commits an egregious violation will benefit the Department and the public.

The Commission anticipates the amendment that allows the Department to issue an annual aquatic wildlife stocking license to government agencies that stock Gila Topminnow or other approved species for vector control will benefit persons regulated by the rule and the Department.

The Commission anticipates the amendment that allows the Department to issue an aquatic wildlife restocking license will benefit persons regulated by the rule and the Department by facilitating a more efficient application review process.

The Commission anticipates the amendment that removes mosquito fish and threadfin shad from the list of authorized aquatic live wildlife a bait dealer may lawfully sell will benefit the Department by reducing costs and burdens associated with wildlife habitat mitigation resulting from damage caused by these bait fish.

The Commission anticipates the amendment that adds Longfin Dace, Speckled Dace (Rhinichthys osculus), Sonora Sucker, and Desert Sucker (Catostomas clarkii) to the list of authorized aquatic live wildlife a bait dealer may lawfully sell will benefit persons regulated by the rule and the Department.

The Commission anticipates the amendment that removes mammals from the list of wildlife that may be lawfully held under the license will benefit the Department and the public. While the rule is intended to authorize the issuance of a game farm license for the purpose of raising and propagating game species it also authorizes the possession, sale, and use of mammals listed as restricted live wildlife, including but not limited to anteaters, armadillos, bears, beavers, crocodiles, moose, nutrias, porcupines, primates, shrews, sloths, weasels, wild cats, and woodchucks. These are not native game species and pose a public health and safety risk and a risk to native wildlife and wildlife habitat if illegally released or allowed to escape. The Commission proposes to amend the rule to align it with Commission guidance, which indicates that private game farms for mammals is not the intent of the Game Farm rule. This amendment will only affect new game farm applicants; as the current license holders will be able to renew their licenses for the wildlife currently held under the license under the rule.

The Commission anticipates the amendment that allows the possession of Mallard ducks and Mountain Quail will benefit persons regulated by the rule by expanding opportunities for private game farm license holders.

The Commission anticipates the amendment that allows a person to submit a health certificate or other similar form that indicates the wildlife identified on the form appears to be healthy and free of infectious, contagious, and communicable diseases will benefit persons regulated by the rule by reducing burdens.

The Commission anticipates the amendments that require a person to immediately report to the Department any mortality event that results in the loss of 10% or more within a seven-day period and allow the Department to collect samples from the affected wildlife for disease testing purposes will benefit the Department and public by better protecting wildlife and wildlife habitat.

The Commission anticipates the amendments that prohibit a game bird hobby license holder from gifting wildlife held under the license to another person will benefit persons regulated by the rule, the Department, and members of the public by preventing persons do not possess a special license from unknowingly violating the rule when they accept the gifted wildlife.

The Commission anticipates the amendments that allows the possession of Mallard ducks for all game bird licenses and the incorporation by reference of the federal regulation that establishes requirements that allows the possession of captive-reared, properly marked mallard ducks without a federal permit will benefit persons regulated by the rule and the Department by increasing consistency between federal regulations and Commission rules.

The Commission anticipates the amendment that establishes only a licensed veterinarian may determine whether or not an animal is suitable for release will benefit persons regulated by the rule and the Department by ensuring this decision is made by a qualified and objective person.

The Commission anticipates the amendments that remove the commercial, noncommercial, and consultant license types and add "Academic Institutions," "NGOs," "and "nonprofit organizations" to the list of Scientific Collecting License types will benefit persons regulated by the rule and the Department by reducing confusion caused by the three types being removed and by further refining the types for statistical purposes.

The Commission anticipates the amendments that includes other types of activities will benefit persons regulated by the rule and the Department by reflecting activities already considered lawful in an effort to clarify the rule.

The Commission anticipates the amendment that allows the Department to deny a wildlife holding license when the issuance of the license will adversely impact other wildlife or their habitat in this state or when it is in the best interest of public health and safety will benefit the Department and the public by better protecting native wildlife and wildlife habitat.

The Commission anticipates the amendment that adds Rock pigeons to the list of wildlife that may be removed without a Wildlife Service License will benefit persons regulated by the rule and the Department by expanding opportunities for Wildlife Service License holders

The Commission anticipates the amendments that increase consistency between the federal regulations and rules within Article 4 will benefit persons regulated by the rule and the Department by increasing consistency between the federal regulations and the rule.

The Commission anticipates the amendments that require a person to submit paper copies of the 3-186A forms and federally required reports at the same time the person submits them to USFWS will benefit persons regulated by the rule and the Department by ensuring the communication, regarding the disposition of MBTA raptors, required under the federal regulation is occurring.

The Commission anticipates the amendments that exempts a licensed falconer from the captivity standards established under R12-4-428 and requires a licensed falconer to comply with the federal standards

of care for falconry housing facilities will benefit persons regulated by the rule and the Department by increasing consistency between the federal regulations and the rule.

The Commission anticipates the amendments that limit the ability to assist a wildlife rehabilitator in conditioning a raptor to general and master falconers will benefit persons regulated by the rule and the Department by increasing consistency between the federal regulations and the rule.

The Commission anticipates the amendments that establish the wildlife rehabilitation license does not authorize the license holder to conduct any activities that could be construed as the practice of veterinary medicine will benefit persons regulated by the rule and the Department.

The Commission anticipates the amendments that establish an agent working on behalf of a wildlife rehabilitation license holder to provide proof of at least six months experience performing wildlife rehabilitative work will benefit persons regulated by the rule and the Department.

The Commission anticipates the amendments that establish the actions the license holder is required to take in order to safely dispose of a deceased eagle or other raptor will benefit persons regulated by the rule and the Department.

The Commission anticipates the amendment that updates the definition of "triploid" to reflect language used by modern fishery biologists will benefit persons regulated by the rule and the Department.

The Commission anticipates the amendment that removes references to "commercial" and "noncommercial" purpose will benefit persons regulated by the rule and the Department.

The Commission anticipates the amendment that allows the Department to issue a white amur restocking license will benefit persons regulated by the rule and the Department by facilitating a more efficient application review process.

The Commission anticipates the amendments that incorporate the following recommended chronic wasting disease best practices will benefit persons regulated by the rule and the Department: requiring a private game farm license holder to mark their cervids with an ear tag; report the death of any cervid within seven days; notify the Department within 72 hours of receiving a suspect or positive disease testing result; and include the results of chronic wasting disease testing for all cervids one year of age and older that dies during the current reporting period in the annual report.

3. Cost benefit analysis:

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

Overall, the Commission anticipates the proposed amendments will have little or no impact on the Department or other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The Commission anticipates the implementation of the rulemaking will have no measurable impact on Department operations, as the Department has been fully engaged in addressing live wildlife concerns. The Commission believes the proposed rulemaking will enhance the Department’s ability to protect the public health, safety, and welfare and native wildlife and wildlife habitat. Although additional opportunities are created, the Commission does not anticipate the Department will incur additional costs

associated with regulating these changes. The Commission has determined the rulemaking will not require any new full-time employees. The Commission believes the benefits of the rulemaking outweigh any costs.

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

The Commission anticipates the proposed amendments will have little or no impact on political subdivisions of this state directly affected by the implementation and enforcement of the proposed rulemaking.

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

The Commission's intent in the proposed rulemaking is to promote public health, safety, and welfare, and allow the Department the management authority necessary to protect and manage wildlife and wildlife habitat. Many of the amendments will not affect businesses, their revenues, or their payroll expenditures. Of those that do or may have an impact, the Commission does not anticipate the impact will be significant. The Commission believes the benefits of the rulemaking outweigh any costs.

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

The Commission anticipates the proposed amendments will have minimal or no substantive impact on private and public employment in businesses, agencies, and political subdivisions of this state directly affected by the proposed rulemaking.

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

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

The Commission's intent in proposing these amendments is to protect native wildlife and their habitats in many ways, including preventing the spread of disease, reducing the risk of released animals competing with native wildlife, discouraging illegal trade of native wildlife, and preventing interactions between humans and wildlife that may threaten public health or safety. The Commission anticipates the majority of the rulemaking is intended to benefit the regulated community, members of the public, and the Department by clarifying rule language to ease enforcement, creating consistency among existing Commission rules, reducing the burden on the regulated community where practical, and allowing the Department additional oversight where necessary. The Commission anticipates the rulemaking will result in an overall benefit to the regulated community, members of the public, and the Department. The Commission anticipates the rulemaking will result in little or no impact to political subdivisions of this state; private and public employment in businesses, agencies or political subdivisions; or state revenues. The Commission has determined that there are no less intrusive or costly alternative methods of achieving the purpose of the rulemaking. The Commission has determined that the benefits of the rulemaking outweigh any costs.

Because, in most instances, the rulemaking either reduces or makes no change to the current regulatory burden, the Commission anticipates persons regulated by the rule will not incur any additional costs as a result of the rulemaking. For most special license holders, any anticipated costs incurred are strictly administrative in nature and are believed to be insignificant.

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

Overall, the Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no significant impact on the regulated community.

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

The Commission believes establishing less stringent compliance requirements for small businesses is not necessary as the proposed rules do not place any compliance or reporting requirements on businesses.

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

The Commission anticipates the proposed rulemaking will benefit private persons and consumers by clarifying live wildlife and special license rules and establishing additional provisions for the protection of public welfare, and in doing so ensuring the continued integrity of and compliance with its rules. Overall, the Commission believes the amendments proposed in this rulemaking result in rules that are either less burdensome or have no significant impact on the regulated community. The Commission believes the general public and the Department benefit from the proposed rulemaking through clarification of rule language governing the lawful possession of live wildlife.

Because, in most instances, the rulemaking either reduces or makes no change to the current regulatory burden, the Commission anticipates the regulated community will not incur any additional costs as a result of the rulemaking.

It is important to note, applying for a special license is voluntary and only a person who chooses to apply for a special license will incur costs associated with the license.

6. Statement of the probable effect on state revenues.

The Commission anticipates the proposed amendments will have little or no impact on state revenues.

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

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

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

For this rulemaking, the Commission relied on empirical data based on agency experience and observations, which included comments from the public and agency staff that administer and enforce the

rules included in this rulemaking. Additionally, the Commission relied on historical data (i.e., meeting notes from previous rulemaking teams, Department reports (sportsman data, violation data, etc.), other state agency rules, current processes, benchmarking with other states, and the Department's overall mission. This rulemaking includes rules that govern lawful possession of live wildlife. The Commission approached this rulemaking and the use of the documentation, statistics, and research in a methodical way, testing various approaches and trying to replicate approaches that were successful in other states.

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

The Department tasked a team of subject matter experts to make recommendations for this proposed rule. In its review, the team considered all comments from the public and agency staff that administer and enforce Commission rules, available historical data, current processes and environment, and the Department's overall mission. The team considered each recommendation from a resource perspective and determined whether the recommendation would cause undue harm to the Department's goals and objectives. The team then determined whether the request was consistent with the Department's overall mission, if it was within the scope of the Commission's authority, and whether it was acceptable to the public. The Commission believes the process utilized in completing this economic, small business, and consumer statement is more than adequate.

ARTICLE 4. LIVE WILDLIFE

R12-4-401. Live Wildlife Definitions

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

"Adoption" means the transfer of custody of live wildlife to a member of the public, initiated by either the Department or its authorized agent, when no special license is required.

"Agent" means the person identified on a special license and who assists a special license holder in performing activities authorized by the special license to achieve the objectives for which the license was issued. "Agent" has the same meaning as "sublicensee" and "subpermittee" as these terms are used for the purpose of federal permits.

"Aquarium trade" means the commercial industry and its customers who lawfully trade in aquatic live wildlife.

"Aversion training" means behavioral training in which an aversive stimulus is paired with an undesirable behavior in order to reduce or eliminate that behavior.

"Captive live wildlife" means live wildlife held in captivity, physically restrained, confined, impaired, or deterred to prevent it from escaping to the wild or moving freely in the wild.

"Captive-reared" means wildlife born, bred, raised, or held in captivity.

"Circus" means a scheduled event where a variety of entertainment is the principal business, primary purpose, and attraction. "Circus" does not include animal displays or exhibits held as an attraction for a secondary commercial endeavor.

"Commercial purpose" means the bartering, buying, leasing, loaning, offering to sell, selling, trading, exporting or importing of wildlife or their parts for monetary gain.

"Domestic" means an animal species that does not exist in the wild, and includes animal species that have only become feral after they were released by humans who held them in captivity or individuals or populations that escaped from human captivity.

"Educational display" means a display of captive live wildlife to increase public understanding of wildlife biology, conservation, and management which may or may not include soliciting payment from an audience or an event sponsor with the intent to recover costs incurred in providing the educational display. For the purposes of this Article, "to display for educational purposes" refers to display as part of an educational display.

"Educational institution" means any entity that provides instructional services or education-related services to persons.

ARTICLE 4. LIVE WILDLIFE

"Endangered or threatened wildlife" means wildlife listed under 50 CFR 17.11, revised October 1, 2019, which is incorporated by reference. A copy of the list is available at any Department office, online at www.gpo.gov, or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000. This incorporation by reference does not include any later amendments or editions of the incorporated material.
"Evidence of lawful possession" means any license or permit authorizing possession of a specific live wildlife species or individual, or other documentation establishing lawful possession. Other forms of documentation may include, but are not limited to, a statement issued by the country or state of origin verifying a license or permit for that specific live wildlife species or individual is not required.
"Exhibit" means to display captive live wildlife in public or to allow photography of captive live wildlife for any commercial purpose.
"Exotic" means wildlife or offspring of wildlife not native to North America.
"Fish farm" means a commercial operation designed and operated for propagating, rearing, or selling aquatic wildlife for any purpose.
"Game farm" means a commercial operation designed and operated for the purpose of propagating, rearing, or selling wildlife for any purpose stated under R12-4-413.
"Health certificate" means a certificate of an inspection completed by a licensed veterinarian or federal- or state-certified inspector verifying the animal examined appears to be healthy and free of infectious, contagious, and communicable diseases.
"Hybrid wildlife" means an offspring from two different wildlife species or genera. Offspring from a wildlife species and a domestic animal species are not considered wildlife. This definition does not apply to bird hybrids as defined under the Migratory Bird Treaty Act, under 50 CFR 21.3, revised October 1, 2019.
"Live baitfish" means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-313 and R12-4-314.
"Live bait" means aquatic live wildlife used or intended for use in taking aquatic wildlife.
"Migratory birds" mean all species listed under 50 CFR 10.13 revised October 1, 2019, and no later amendments or editions. The incorporated material is available from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000, and is on file with the Department.
"Noncommercial purpose" means the use of products or services developed using wildlife for which no compensation or monetary value is received.
"Nonhuman primate" means any nonhuman member of the order Primate of mammals including prosimians, monkeys, and apes.
"Nonnative" means wildlife or its offspring that did not occur naturally within the present boundaries of Arizona before European settlement.
"Photography" means any process that creates durable images of wildlife or parts of wildlife by recording light or other electromagnetic radiation, either chemically by means of a light-sensitive material or electronically by means of an image sensor.
"Rehabilitated wildlife" means live wildlife that is injured, orphaned, sick, or otherwise debilitated and is provided care to restore it to a healthy condition suitable for release to the wild or for lawful captive use.
"Research facility" means any association, institution, organization, school, except an elementary or secondary school, or society that uses or intends to use live animals in research.
"Restricted live wildlife" means wildlife that cannot be imported, exported, or possessed without a special license or lawful exemption.
"Shooting preserve" means any operation where live wildlife is released for the purpose of hunting.
"Special license" means any license issued under this Article, including any additional stipulations placed on the license authorizing specific activities normally prohibited under A.R.S. § 17-306 and R12-4-402.
"Species of greatest conservation need" means any species listed in the Department's Arizona's State Wildlife Action Plan list Tier 1a and 1b published by the Arizona Game and Fish Department. The material is available for inspection at any Department office and on the Department's website.
"Stock" and "stocking" means to release live aquatic wildlife into public or private waters other than the waters where taken.
"Taxa" means groups of animals within specific classes of wildlife occurring in the state with common characteristics that establish relatively similar requirements for habitat, food, and other ecological, genetic, or behavioral factors.
"Unique identifier" means a permanent marking made of alphanumeric characters that identifies an individual animal, which may include, but is not limited to, a tattoo or microchip.
"USFWS" means the United States Fish and Wildlife Service.
"Volunteer" means a person who:
Assists a special license holder in conducting activities authorized under the special license,

Is under the direct supervision of the license holder at the premises described on the license,
Is not designated as an agent, and
Receives no compensation.

"Wildlife disease" means any disease that poses a health risk to wildlife in Arizona.

"Zoo" means any facility licensed by the Arizona Game and Fish Department under R12-4-420 or, for facilities located outside of Arizona, licensed or recognized by the applicable governing agency.

"Zoonotic" means a disease that can be transmitted from animals to humans or, more specifically, a disease that normally exists in animals but that can infect humans.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-102, 17-238, and 17-306

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 25 A.A.R. 1047, effective June 1, 2019 (Supp. 19-2). Amended by final rulemaking at 27 A.A.R. 321, effective July 1, 2021 (Supp. 21-1).

R12-4-402. Live Wildlife: Unlawful Acts

A. A person shall not perform any of the following activities with live wildlife unless authorized by a federal license or permit, this Chapter, or A.R.S. Title 3, Chapter 16:
1. Import any live wildlife into the state;
2. Export any live wildlife from the state;
3. Conduct any of the following activities with live wildlife within the state:
   a. Display,
   b. Exhibit,
   c. Give away,
   d. Lease,
   e. Offer for sale,
   f. Possess,
   g. Propagate,
   h. Purchase,
   i. Release,
   j. Rent,
   k. Sell,
   l. Sell as live bait,
   m. Stock,
   n. Trade,
   o. Transport; or
4. Kill any captive live wildlife.

B. The Department may seize, quarantine, hold, or euthanize any lawfully possessed wildlife held in a manner that poses an actual or potential threat to the wildlife, other wildlife, or the safety, health, or welfare of the public. The Department shall make reasonable efforts to find suitable placement for any animal prior to euthanizing it.

C. A person who does not lawfully possess wildlife in accordance with this Article shall be responsible for all costs associated with the care and keeping of the wildlife.

D. Performing activities authorized under a federal license or permit does not exempt a federal agency or its employees from complying with state permit requirements.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(8), 17-240, 17-250(A), 17-250(B), and 17-306

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 23 A.A.R. 492, effective April 8, 2017 (Supp. 20-3).

ARTICLE 4. LIVE WILDLIFE

R12-4-403. Escaped or Released Live Wildlife

A. The Department may seize, quarantine, or euthanize any live wildlife that has been released, has escaped, or is likely to escape if the wildlife poses an actual or potential threat to:
1. Native wildlife;
2. Wildlife habitat;
3. Public health, safety, or welfare; or
4. Property.

B. A person shall not release live wildlife, unless specifically directed to do so by the Department or authorized under this Article.

C. The person releasing or allowing the escape of wildlife shall be responsible for all costs incurred by the Department associated with seizing or quarantining the wildlife.

D. All special license holders shall be subject to the requirements of this Section.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(B)(8), 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, and 17-314

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 321, effective July 1, 2021 (Supp. 21-1).

R12-4-404. Possession of Live Wildlife Taken Under an Arizona Hunting or Fishing License

A. A person may take live wildlife from the wild under a valid Arizona hunting or fishing license provided the current Commission Order authorizes a live bag and possession limit for that wildlife and the individual possesses the appropriate hunting or fishing license and special license, when applicable.

B. Except for live baitfish which may only be possessed and transported as established under R12-4-316, a person may conduct any of the following activities with wildlife taken under an Arizona hunting or fishing license provided the activity is for a noncommercial purpose:
1. Export,
2. Kill,
3. Place on educational display,
4. Possess,
5. Propagate, and
6. Transport.

C. A person possessing wildlife or offspring of wildlife taken under this Section shall dispose of the wildlife or offspring of wildlife using any one or more of the following methods:
1. Giving the wildlife as a gift,
2. Exporting the wildlife to another state or jurisdiction, or
3. Disposing of the wildlife as directed by the Department.

D. A person shall not use wildlife or offspring of wildlife taken under this Section for commercial purposes.

E. A person exporting live wildlife for a noncommercial purpose shall verify exported live wildlife and offspring of wildlife shall not be:
1. Bartered,
2. Leased,
3. Offered for sale,
4. Purchased,
5. Rented,
6. Sold, or
7. Used for any commercial purpose.

F. A person may temporarily hold and release live wildlife possessed under this Section into the wild, provided the person did not remove the wildlife from the immediate area where it was taken.

G. A person shall not exceed the possession limit of live wildlife established by Commission Order for that species.
1. Offspring of wildlife possessed under this Section shall count towards the established possession limit.
2. A person may possess offspring of amphibians or reptiles in excess of the possession limit for no more than 12 months from the date of birth or hatching.
3. On or before the day the offspring reach 12 months of age, the person possessing them shall dispose of them as prescribed under subsection (C).
4. A person is prohibited from releasing offspring of propagated wildlife into the wild.

H. A person may use reptiles and amphibians taken under a valid Arizona hunting license for the purpose of providing aversion or avoidance training when the current Commission Order authorizes a live bag and possession limit for that reptile or amphibian.

I. A person may sell photographs of wildlife taken under a valid hunting or fishing license.

J. A person who possesses live wildlife or offspring of wildlife taken under this Section shall comply with the requirements prescribed under R12-4-425 if the wildlife becomes listed as restricted wildlife under R12-4-406.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-306, and 17-331

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit

A. A person may import mammals, birds, amphibians, and reptiles not listed as restricted wildlife under R12-4-406 without a special license required under this Article, provided the animals are:

1. Lawfully possessed under a:
   a. Lawful exemption; or
   b. Valid license, permit, or other form of authorization from another state, the United States, or another country; and
2. Accompanied by the health certificate required under 3 A.A.C. 2, Article 6, and this Article, when applicable.

B. A person may import live aquatic wildlife not listed as restricted wildlife under R12-4-406 without a special license under the following conditions:

1. The aquatic wildlife is lawfully possessed under a lawful exemption, valid license, permit, or other form of authorization from another state, the United States, or another country; and
2. The aquatic wildlife is used only for restaurants or markets that are licensed to sell food to the public and the wildlife is killed before it is transported from the restaurant or market, or, if transported alive from the market, is conveyed directly to its final destination for preparation as food; or
3. The aquatic wildlife is used only for the aquarium trade or a fish farm and is accompanied by a valid license or permit issued by another state or the United States that allows the wildlife to be transported into this state.
   a. A person in the aquarium trade shall:
      i. Only use aquatic wildlife used in the aquarium trade as a pet or in an educational display, and
      ii. Keep aquatic wildlife used in the aquarium trade in an aquarium or enclosed pond that does not allow the wildlife to leave the aquarium or pond and does not allow other live aquatic wildlife to enter the aquarium or pond.
   b. A person in the aquarium trade shall not use or possess aquatic wildlife listed as restricted live wildlife under R12-4-406.

C. A person shall obtain the appropriate special license listed under R12-4-409(A) before importing aquatic live wildlife for any purpose not stated under subsection (B), unless exempt under this Chapter.

D. A person may purchase, possess, exhibit, transport, propagate, trade, rent, lease, give away, sell, offer for sale, export, or kill wildlife or aquatic wildlife or its offspring without an Arizona license or permit if the wildlife is lawfully imported and possessed as prescribed under subsections (A) or (B).

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-238(B), and 17-306

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 321, effective July 1, 2021 (Supp. 21-1).

R12-4-406. Restricted Live Wildlife

A. In order to lawfully possess wildlife listed as restricted under this Section, for any activity prohibited under A.R.S. §§ 17-255.02, 17-306, R12-4-902, or this Article, a person shall possess:

1. All applicable federal licenses and permits; and
2. The appropriate special license listed under R12-4-409(A); or
3. Act under a lawful exemption authorized under A.R.S. § 17-255.04, R12-4-314, R12-4-404, R12-4-405, R12-4-407,

R12-4-425, R12-4-427, and R12-4-430.

B. The Commission recognizes the online taxonomic classification from the Integrated Taxonomic Information System as the authority in determining the designations of restricted live mammals, birds, reptiles, amphibians, fish, crustaceans, and mollusks referenced under this Article. The Integrated Taxonomic Information System is available at any Department office and at www.itis.gov.

C. All of the following are considered restricted live wildlife and are subject to the requirements of this Article, unless otherwise specified:

1. Hybrid wildlife, as defined under R12-4-401, resulting from the interbreeding of at least one parent species of wildlife that is listed as restricted under this Section. Hybrid wildlife that is the progeny of a restricted wildlife species and a nonrestricted wildlife species is considered restricted wildlife.
2. Transgenic species, unless otherwise specified under this Article. For the purposes of this Section, "transgenic species" means any organism that has had genes from another organism put into its genome through direct human manipulation of that genome. Transgenic species do not include natural hybrids or individuals that have had their chromosome number altered to induce sterility. A transgenic animal is considered wildlife if the genetic material originated from a restricted wildlife species.

D. Domestic animals, as defined under R12-4-401, are not subject to restrictions under A.R.S. Title 17, 12 A.A.C. 4, or Commission Orders.

E. For subsections (F) through (M), the common names are provided as examples only and are not all-inclusive of the order, family, or genus.

F. Unless otherwise specified, all mammals listed below are considered restricted live wildlife:

1. All species of the order *Afrosoricida*. Common names include: golden moles and tenrecs.
2. All species of the following families of the order *Artiodactyla*. Common name: even-toed ungulates:
   a. The family *Antilocapridae*. Common name: pronghorns.
   b. The family *Bovidae*. Common names include: antelopes, bison, buffalo, cattle, duikers, gazelles, goats, oxen, and sheep. Except the following genera which are not restricted:
      i. The genus *Bubalus*. Common name: water buffalo.
      ii. The genus *Bison*. Common name: American bison, bison, or buffalo.
   c. The family *Cervidae*. Common names include: cervid, deer, elk, moose, red deer, and wapiti.
   d. The family *Tayassuidae*. Common name: peccaries.
3. All species of the order *Carnivora*. Common names include: bears, foxes, ocelot, raccoons, servals, skunks, wolves, and weasels.
4. All species of the order *Chiroptera*. Common name: bats.
5. All species of the genus *Didelphis*. Common name: American opossums.
6. All species of the order *Erinaceomorpha*. Common names include: European hedgehogs, gymnures, and moonrats. Except members of the genus *Atelerix*, which are not restricted. Common name: longeared and pygmy hedgehogs.
7. All species of the order *Lagomorpha*. Common names include: hares, pikas, and rabbits. Except for members of the genus *Oryctolagus* containing domestic rabbits, which are not wildlife and are not restricted.
8. All nonhuman primates. Common names include: chimpanzees, gorillas, macaques, orangutans, and spider monkeys.
9. All species of the following families of the order *Rodentia*. Common name: rodents:
   a. The family *Capromyidae*. Common name: hutias.
   b. The family *Castoridae*. Common name: beavers.
   c. The family *Dipodidae*. Common name: jumping mouse.
   d. The family *Echimyidae*. Common names include: coypus and nutrias.
   e. The family *Erethizontidae*. Common name: new world porcupines.
   f. The family *Geomyidae*. Common name: pocket gophers.
   g. The family *Sciuridae*. Common names include: chipmunks, marmots, prairie dogs, squirrels, and woodchucks.
10. All species of the order *Soricomorpha*. Common names include: desmans, moles, shrews, and shrew-moles.
11. All species of the order *Xenarthra*. Common names include: anteaters, armadillos, and edentates, or sloths.

G. Birds listed below are considered restricted live wildlife:

1. The following species within the family *Phasianidae*. Common names: grouse, pheasants, partridges, quail, and turkeys:
   a. *Alectoris chukar*. Common name: chukar.
   b. *Callipepla gambelii*. Common name: Gambel's quail.
   c. *Callipepla squamata*. Common name: scaled quail.
   d. *Colinus virginianus*. Common name: northern bobwhite. Restricted only in game management units 36A, 36B, and 36C as prescribed under R12-4-108.
   e. *Cyrtonyx montezumae*. Common name: harlequin, Mearn's, or Montezuma quail.

f. *Dendragapus obscurus*. Common name: dusky grouse.
g. *Mealagris gallopavo gallopavo, M. g. intermedia, M. g. merriami, M. g. mexicana, M. g. osceola, B. g. silvestris, and M. ocellata*. Common name: wild turkey.

2. All species listed under the Migratory Bird Treaty Act listed under 50 CFR 10.13 revised October 1, 2019, and no later amendments or editions. The incorporated material is available from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000, and is on file with the Department.

H. Reptiles listed below are considered restricted live wildlife:

1. All species of the order *Crocodilia*. Common names include: alligators, caimans, crocodiles, and gavials.
2. All species of the following families or genera of the order *Squamata*:
   a. The family *Atractaspididae*. Common name: burrowing asps.
   b. The following species and genera of the family *Colubridae*:
      i. *Boiga irregularis*. Common name: brown tree snake.
      ii. *Dispholidus typus*. Common name: boomslang.
      iii. *Rhabdophis*. Common name: keelback.
      iv. *Thelotornis kirtlandii*. Common names include: bird snake or twig snake.
   c. The family *Elapidae*. Common names include: Australian elapids, cobras, coral snakes, kraits, mambas, and sea snakes.
   d. The family *Helodermatidae*. Common names include: Gila monster and Mexican beaded lizard.
   e. The family *Viperidae*. Common names include: pit and true vipers, including rattlesnakes.
3. The following species of the order *Testudines*:
   a. All species of the family *Chelydridae*. Common name: snapping turtles.
   b. All species of the genus *Gopherus*. Common names include: gopher tortoises, including the desert tortoise.

I. Amphibians listed below are considered restricted live wildlife. The following species within the order *Anura*, common names frogs and toads:

1. The species *Bufo horribilis, Bufo marinus, Bufo schneideri*. Common names include: giant or marine toads.
2. All species of the genus *Rana*. Common names include: bullfrogs and leopard frogs. Except bullfrogs possessed under A.R.S. § 17-102.
3. All species of the genus *Xenopus*. Common name: clawed frogs.

J. Fish listed below are considered restricted live wildlife:

1. All species of the family *Acipenseridae*. Common name: sturgeon.
2. The species *Amia calva*. Common name: bowfin.
3. The species *Aplodinotus grunniens*. Common name: freshwater drum.
4. The species *Arapaima gigas*. Common name: bony tongue.
5. All species of the genus *Astyanax*. Common name: tetra.
6. The species *Belonesox belizanus*. Common name: pike topminnow.
7. All species, both marine and freshwater, of the orders *Carcharhiniformes, Heterodontiformes, Hexanchiformes, Lamniformes, Orectolobiformes, Pristiophoriformes, Squaliformes, Squatiniformes,* and except for all species of the families *Brachaeluridae, Hemiscylliidae, Orectolobidae,* and *Triakidae*; genera of the family *Scyliorhinidae*, including *Aulohalaelusrus, Halaelurus, Haploblepharus, Poroderma,* and *Scyliorhinus*; and genera of the family *Parascylliidae*, including *Cirrhoscyllium* and *Parascyllium*. Common name: sharks.
8. All species of the family *Centrarchidae*. Common name: sunfish.
9. All species of the family Cetopsidae and *Trichomycteridae*. Common name: South American catfish.
10. All species of the family *Channidae*. Common name: snakehead.
11. All of the species *Cirrhinus mrigala, Gibelion catla,* and *Labeo rohita.* Common name: Indian carp.
12. All species of the family *Clariidae*. Common names include: airbreathing catfish or labyrinth.
13. All species of the family *Clupeidae* except threadfin shad, species *Dorosoma petenense*. Common names include: herring and shad.
14. The species *Ctenopharyngodon idella*. Common names include: white amur or grass carp.
15. The species *Cyprinella lutrensis*. Common name: red shiner.
16. The species *Electrophorus electricus*. Common name: electric eel.
17. All species of the family *Esocidae*. Common names include: pickerels and pike.
18. All species of the family *Hiodontidae*. Common names include: goldeye and mooneye.
19. The species *Hoplias malabaricus*. Common name: tiger fish.
20. The species *Hypophthalmichthys molitrix*. Common name: silver carp.
21. The species *Hypophthalmichthys nobilis*. Common name: bighead carp.
22. All species of the family *Ictaluridae*. Common name: catfish.
23. All species of the genus *Lates* and *Luciolates*. Common name: nile perch.

24. All species of the family *Lepisosteidae*. Common name: gar.
25. The species *Leuciscus idus*. Common names include: ide and whitefish.
26. The species *Malapterurus electricus*. Common name: electric catfish.
27. All species of the family *Moronidae*. Common name: temperate bass.
28. The species *Mylopharyngodon piceus*. Common name: black carp.
29. All species of the family *Percidae*. Common names include: pike and walleye perches.
30. All species of the family *Petromyzontidae*. Common name: lamprey.
31. The species *Polyodon spathula*. Common name: American Paddlefish.
32. All species of the family *Potamotrygonidae*. Common name: stingray.
33. All species of the genera *Pygocentrus*, *Pygopristis*, and *Serrasalmus*. Common name: piranha.
34. All species of the family *Salmonidae*. Common names include: salmon and trout.
35. The species *Scardinius erythrophthalmus*. Common name: rudd.
36. All species of the family *Serranidae*. Common name: bass.
37. The following species, and hybrid forms, of the Genus *Tilapia*: O. *aureus*, O. *mossambica*; O. *niloticus*, O. *urolepis hornorumand T. zilli*. Common name: tilapia.
38. The species *Thymallus arcticus*. Common name: Arctic grayling.

K. Crustaceans listed below are considered restricted live wildlife:
1. All freshwater species within the families *Astacidae*, *Cambaridae*, and *Parastacidae*. Common name: crayfish.
2. The species *Eriocheir* sinensis. Common name: Chinese mitten crab.

L. Mollusks listed below are considered restricted live wildlife:
1. The species *Corbicula fluminea*. Common name: Asian clam.
2. All species of the family *Dreissenidae*. Common names include: quagga and zebra mussel.
3. The species *Euglandina rosea*. Common name: rosy wolfsnail.
4. The species *Mytilopsis leucophaeata*. Common names include: Conrad's false dark mussel or false mussel.
5. All species of the genus *Pomacea*. Common names include: apple snail or Chinese mystery snail.
6. The species *Potamopyrgus antipodarum*. Common name: New Zealand mud snail.

M. All wildlife listed within Aquatic Invasive Species Director's Order #1.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(A)(2), 17-231(B)(8), 17-255, 17-255.02, and 17-306

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 2220, effective May 25, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 196, effective January 10, 2012 (Supp. 12-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 321, effective July 1, 2021 (Supp. 21-1).

R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife

A. All live cervids may only be imported, possessed, or transported as authorized under R12-4-430.

B. A person is not required to possess a special license to lawfully possess restricted live wildlife under the following circumstances:
1. A person may possess, transport, or give away a desert tortoise (*Gopherus morafkai*) or the progeny of a desert tortoise provided the person lawfully possessed the desert tortoise prior to April 28, 1989 or obtained the tortoise through a Department authorized adoption program. A person who receives a desert tortoise that is given away under this Section is also exempt from special license requirements.
    a. A person shall not:
        i. Export a live desert tortoise from this state unless authorized in writing by the Department's special license administrator. A person may only export a live desert tortoise to an education or research institution or zoo located in another state.
        ii. Possess desert tortoise in excess of the possession limit established under Commission Order 43.
        iii. Propagate lawfully possessed desert tortoises or their progeny unless authorized in writing by the Department's special license administrator.
        vi. Release a desert tortoise into the wild.
    b. A person who possesses a desert tortoise and is moving out-of-state shall gift the desert tortoise to an Arizona resident or to the Department's Tortoise Adoption Program.
2. A licensed veterinarian may possess restricted wildlife while providing medical care to the wildlife and may release

rehabilitated wildlife as directed in writing by the Department, provided:

a. The veterinarian keeps records of restricted live wildlife as required by the Veterinary Medical Examining Board, and makes the records available for inspection by the Department.
b. The Department assumes no financial responsibility for any care the veterinarian provides, except care that is specifically authorized by the Department.

3. A person may transport restricted live wildlife through this state provided the person:
   a. Transports the wildlife through the state within 72 continuous and consecutive hours;
   b. Ensures at least one person is continually present with, and accountable for, the wildlife while in this state;
   c. Ensures the wildlife is neither transferred nor sold to another person;
   d. Ensures the wildlife is accompanied by evidence of lawful possession, as defined under R12-4-401;
   e. Ensures a health certificate required under this Article accompanies the wildlife described on the health certificate, when applicable; and
   f. Ensures the carcasses of any wildlife that die while in transport through this state are disposed of only as directed by the Department.
4. A person may exhibit, export, import, possess, and transport restricted live wildlife for a circus, temporary animal exhibit, or government-authorized state or county fair, provided the person:
   a. Possesses evidence of lawful possession as defined under R12-4-401, for the wildlife;
   b. Ensures the evidence of lawful possession accompanies the wildlife described on that evidence;
   c. Ensures a health certificate required under this Article accompanies the wildlife described on the health certificate, when applicable;
   d. Ensures the wildlife does not come into physical contact with the public;
   e. Keeps the wildlife under complete control by safe and humane means; and
   f. Ensures the wildlife is not in this state for more than 60 consecutive days.
5. A person may export, import, possess, and transport restricted live wildlife for the purpose of commercial photography, provided the person:
   a. Possesses evidence of lawful possession as defined under R12-4-401 for the wildlife;
   b. Ensures the evidence of lawful possession accompanies the wildlife described on that evidence;
   c. Ensures a health certificate required under this Article accompanies the wildlife described on the health certificate, when applicable;
   d. Ensures the wildlife does not come into physical contact with the public;
   e. Keeps the wildlife under complete control by safe and humane means; and
   f. Ensures the wildlife is not in this state for more than 60 consecutive days.
6. A person may exhibit, import, possess, and transport restricted live wildlife for advertising purposes other than photography, provided the person:
   a. Ensures the wildlife is accompanied by evidence of lawful possession as defined under R12-4-401;
   b. Ensures the evidence of lawful possession accompanies the wildlife described on that evidence;
   c. Ensures a health certificate required under this Article accompanies the wildlife described on the health certificate, when applicable;
   d. Maintains the wildlife under complete control by safe and humane means;
   e. Prevents the wildlife from coming into contact with the public or being photographed with the public;
   f. Does not charge the public a fee to view the wildlife; and
   g. Exports the wildlife from the state within 10 days of importation.
7. A person may export restricted live wildlife, provided the person:
   a. Ensures the wildlife is accompanied by evidence of lawful possession as defined under R12-4-401;
   b. Ensures the evidence of lawful possession accompanies the wildlife described on that evidence;
   c. Maintains the wildlife under complete control by safe and humane means;
   d. Prevents the wildlife from coming into contact with the public or being photographed with the public;
   e. Does not charge the public a fee to view the wildlife; and
   f. Exports the wildlife from the state within 10 days of importation.
8. A person may possess restricted live wildlife taken alive under R12-4-404, R12-4-405, and R12-4-427, provided the person possesses the wildlife in compliance with those Sections.
9. A person who holds a falconry license issued by another state or country is exempt from obtaining an Arizona Sport Falconry License under R12-4-422, unless remaining in this state for more than 180 consecutive days.
   a. The falconer licensed in another state or country shall present a copy of the out-of-state or out-of-country falconry license, or its equivalent, to the Department upon request.
   b. A falconer licensed in another state or country and who remains in this state for more than the 180-day period shall apply for an Arizona Sport Falconry License in order to continue practicing sport falconry in this state.

10. A person may export, give away, import, kill, possess, propagate, purchase, trade, and transport restricted live wildlife provided the person is doing so for a medical or scientific research facility registered with the United States Department of Agriculture under 9 CFR Subpart C 2.30 revised January 1, 2019, which is incorporated by reference in this Section. The incorporated material is available at any Department office, online at www.gpo.gov, or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000. This incorporation by reference contains no future editions or amendments.
11. A person may import and transport restricted live game fish, crayfish, and the following species, and hybrid forms, of the Genus Tilapia, O. *aureus* O. *mossambica*; O. *niloticus,* O. *urolepis hornorum and T. zilli* directly to restaurants or markets licensed to sell food to the public, when accompanied by a current valid transporter license issued under A.A.C. R3-2-1007.
12. A person operating a restaurant or market licensed to sell food to the public may exhibit, offer for sale, possess, and sell restricted live game fish or crayfish, provided the live game fish and crayfish are killed before being transported from the restaurant or market.
13. A person may export, giveaway, import, kill, possess, propagate, purchase, and trade transgenic animals provided the person is doing so for a medical or scientific research facility.

C. An exemption granted under this Section is not valid for any wildlife protected by federal law nor does it allow the take of wildlife from the wild.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), 17-306, and 17-371(D)

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 2220, effective May 25, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 321, effective July 1, 2021 (Supp. 21-1). The Commission requested an error be corrected in subsection R12-4-407(B)(1)(a)(ii) which was amended by final rulemaking in Supp. 21-1. Under Commission Order 43 *possession limits,* of a desert tortoise are established, not *bag limits* as submitted and published. Documentation of the Commission's intent to use the term *possession limits* is published at 21 A.A.R. 324; see also Commission Order 43, Note #4 (Supp. 21-2).

R12-4-408. Holding Wildlife for the Department

A. A game ranger may authorize a person to possess or transport live wildlife on behalf of the Department if the wildlife is needed as evidence in a pending civil or criminal proceeding.

B. With the exception of live cervids, the Department has the authority to allow a person to possess and transport captive live wildlife for up to 72 hours or as otherwise directed by the Department.

C. The Director has the authority to allow a person to hold a live cervid on behalf of the Department.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(B)(8), 17-238(A), 17-240(A), and 17-306

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-409. General Provisions and Penalties for Special Licenses

A. A special license is required when a person intends to conduct any activity using restricted live wildlife. Special licenses are listed as follows:

1. Aquatic wildlife stocking license, established under R12-4-410;
2. Game bird license, established under R12-4-414;
3. Live bait dealer's license, established under R12-4-411;
4. Private game farm license, established under R12-4-413;
5. Scientific activity license, established under R12-4-418;
6. Sport falconry license, established under R12-4-422;
7. White amur stocking and restocking license, established under R12-4-424;
8. Wildlife holding license, established under R12-4-417;
9. Wildlife rehabilitation license, established under R12-4-423;

10. Wildlife service license, established under R12-4-421; and
11. Zoo license, established under R12-4-420.

B. An applicant for a special license listed under subsection (A) shall:
1. Submit an application to the Department meeting the specific application requirements established under the applicable governing Section.
   a. Applications for special licenses are furnished by the Department and are available at any Department office and on the Department's website.
   b. An application is required upon initial application for a special license and when renewing a special license. A renewal application is appropriate where there are no changes to the:
      i. Licensed facility location,
      ii. Species of wildlife held under the special license, or
      iii. Staff conducting the wildlife activities under the license.
2. Be at least 18 years of age, unless applying for a Game Bird Field Training or Sport Falconry license.
3. Pay all applicable fees required under R12-4-412.

C. At the time of application, the person shall certify:
1. The information provided on the application is true and correct to the applicant's knowledge;
2. The applicant shall comply with any municipal, county, state or federal code, ordinance, statute, regulation, or rule applicable to the license held; and
3. The applicant's live wildlife privileges are not currently suspended or revoked in this state, any other state or territory, or by the United States.

D. A special license obtained by fraud or misrepresentation is invalid from the date of issuance.

E. The Department shall either grant or deny a special license within the applicable overall time-frame established for that special license under R12-4-106.

F. In addition to the criteria prescribed under the applicable governing Section, the Department shall deny a special license when:
1. When it is in the best interest of public health or safety or the welfare of the wildlife;
2. The applicant's live wildlife privileges are revoked or suspended in this state, any other state, or by the United States;
3. The applicant was convicted of illegally holding or possessing live wildlife within five years preceding the date of application for the special license;
4. The applicant knowingly provides false information on an application;
5. The person fails to meet the requirements established under the applicable governing Section or this Section. The Department shall provide a written notice to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.

G. A special license holder may only engage in activities using federally-protected wildlife when the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license. A special license issued by the Department does not:
1. Exempt the license holder from any municipal, county, state or federal code, ordinance, statute, regulation, or rule; or
2. Authorize the license holder to engage in any activity using wildlife that is protected by federal regulation.

H. The Department may place additional stipulations on a special license whenever it is determined necessary to:
1. Conserve wildlife populations,
2. Prevent the introduction and proliferation of wildlife diseases,
3. Prevent wildlife from escaping,
4. Protect public health or safety, or
5. Ensure humane care and treatment of wildlife.

I. A special license holder shall keep live wildlife in a facility according to the captivity standards prescribed under R12-4-428 and as otherwise required under this Article. The captivity standards prescribed under R12-4-428 are not applicable to a special license holder licensed under R12-4-410, R12-4-411, R12-4-422, and R12-4-424.

J. A special license holder shall keep records in compliance with the requirements established under the governing Section for a period of at least five years and shall make the records available for inspection to the Department upon request.

K. The Department may conduct an inspection of an applicant's or license holder's facility at any time before or during the license period to determine compliance with the requirements of this Article. The Department shall comply with A.R.S. § 41-1009 when conducting inspections at a license holder's facility.

L. Upon determining a disease or other emergency condition exists that poses an immediate threat to the public or the welfare of any wildlife, the Department may immediately order a cessation of operations under the special license and, if necessary, order the humane disposition or quarantine of any exposed, contaminated or affected wildlife.
1. When directed by the Department, a special license holder shall:
   a. Perform disease testing,

b. Submit biological samples to the Department or its designee,
c. Surrender the wildlife to the Department,
d. Quarantine the wildlife, or
e. Humanely euthanize the wildlife.

2. The license holder shall:
a. Ensure any disease or other emergency condition under this subsection is diagnosed by a person professionally certified to make the diagnosis.
b. Be responsible for all costs associated with the testing and treatment of the contaminated and affected wildlife.

M. If a condition exists, including disease or any violation of this Article, that poses a threat to the public or the welfare of any wildlife, but the threat does not constitute an emergency, the Department may issue a written notice of the condition to the special license holder specifying a reasonable period of time for the license holder to remedy the noticed condition. The notice of condition shall be delivered to the special license holder by certified mail or personal service. Failure of the license holder to remedy the noticed condition within the time specified by the Department is a violation under subsection (N).

N. A special license holder shall not:
1. Violate any provision of the governing Section or this Section;
2. Violate any provision of the special license that the person possesses, including any stipulations specified on the special license;
3. Violate A.R.S. § 13-2908, relating to criminal nuisance;
4. Violate A.R.S. § 13-2910, relating to cruelty to animals; or
5. Refuse to allow the inspection of facilities, wildlife, or required records .

O. The Department may take one or more of the following actions when a special license holder is convicted of a criminal offense involving cruelty to animals, violates subsection (N), or fails to comply with any requirement established under the governing Section or this Section:
1. File criminal charges,
2. Suspend or revoke a special license,
3. Humanely dispose of the wildlife,
4. Seize or seize in place any wildlife held under a special license.
5. A person may appeal to the Commission any Department action listed under this subsection as prescribed under A.R.S. Title 41, Chapter 6, Article 10, except the filing of criminal charges.

P. A special license holder who wishes to continue conducting activities authorized under the special license shall submit a renewal application to the Department on or before the special license expiration date.
1. The current license will remain valid until the Department grants or denies the new special license.
2. If the Department denies the renewal application and the license holder appeals the denial to the Commission as prescribed under subsection (F)(4), the license holder may continue to hold the wildlife until:
a. The date on which the Commission makes its final decision on the appeal, or
b. The final date on which a person may request judicial review of the decision.
3. A special license holder who fails to submit a renewal application to the Department before the date the license expires, cannot lawfully possess any live wildlife currently possessed under the license.

Q. A special license holder who no longer wishes to continue conducting activities authorized under the special license shall notify the Department in writing of this decision no less than 30 days prior to ceasing wildlife related activities. This notice shall include the proposed disposition of all wildlife held under the special license.

R. If required by the governing Section, a special license holder shall submit an annual report to the Department before January 31 of each year for the previous calendar year. The report form is furnished by the Department.
1. A report is required regardless of whether or not activities were performed during the previous year.
2. The special license becomes invalid if the special license holder fails to submit the annual report by January 31 of each year.
3. The Department will not process the special license holder's renewal application until the annual report is received by the Department.
4. When the license holder is acting as a representative of an institution, organization, or agency for the purposes of the special license, the license holder shall submit the report required under subsection this Section:
a. By January 31 of each year the license holder is affiliated with the institution, organization, or agency; or
b. Within 30 days of the date of termination of the license holder's affiliation with the institution, organization, or agency.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-240(A), 17-250(A),

ARTICLE 4. LIVE WILDLIFE

17-250(B), 17-306, and 41-1005

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 321, effective July 1, 2021 (Supp. 21-1).

R12-4-410. Aquatic Wildlife Stocking License; Restocking License

A. An aquatic wildlife stocking or restocking license allows a person to import, possess, purchase, stock, and transport any restricted species designated on the license at the location specified on the license.

B. The aquatic wildlife stocking or restocking license is valid for no more than 20 consecutive days, except that an aquatic wildlife stocking or restocking license is valid for one calendar year when issued to a political subdivision of the state for the purpose of vector control.

C. In addition to the requirements established under this Section, an aquatic wildlife stocking or restocking license holder shall comply with the special license requirements established under R12-4-409.

D. The aquatic wildlife stocking and restocking license holder shall be responsible for compliance with all applicable regulatory requirements. The licenses do not:

1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.

E. The Department shall deny an aquatic wildlife stocking or restocking license to a person who fails to meet the requirements established under R12-4-409 or this Section. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10. In addition to the requirements and criteria established under R12-4-409(F)(1) through (4), the Department shall deny an aquatic wildlife stocking license when:

1. The Department determines that issuance of the license will result in a negative impact to native wildlife; or
2. The applicant proposes to use aquatic wildlife that is not compatible with, or poses a threat to, any wildlife within the river drainage or the area where the stocking is to occur.

F. An applicant for an aquatic wildlife stocking or restocking license shall submit an application to the Department. A separate application is required for each location where the applicant proposes to use wildlife. The application is furnished by the Department and is available at any Department office and on the Department's website. An applicant shall provide the following on the application:

1. The applicant's information:
   a. Name;
   b. Mailing address; and
   c. Department ID number, when applicable;
2. When the applicant proposes to use the aquatic wildlife for a commercial purpose the applicant's business:
   a. Name;
   b. Mailing address; and
   c. Telephone number;
3. Aquatic wildlife species information:
   a. Common name of the aquatic wildlife species;
   b. Number of animals for each species; and
   c. Approximate size of the aquatic wildlife that will be used under the license;
4. The purpose for introducing the aquatic wildlife species;
5. For each location where the aquatic wildlife will be stocked, the owner's:
   a. Name;
   b. Mailing address;
   c. Telephone number; and
   d. Physical address or general location of the stocking site, to include river drainage and the Global Positioning System location;
6. A detailed description or diagram of the facilities where the applicant will stock the aquatic wildlife, which includes:
   a. Size of waterbody proposed for stocking aquatic wildlife;

b. Nearest river, stream, or other freshwater system;
c. Points where water enters each waterbody, when applicable;
d. Points where water leaves each waterbody, when applicable; and
e. Location of fish containment barriers;
7. For each supplier from whom the applicant will obtain aquatic wildlife, the supplier's:
a. Name;
b. Mailing address; and
c. Telephone number;
8. The dates on which the person will stock aquatic wildlife;
9. Any other information required by the Department; and
10. The certification required under R12-4-409(C).

G. In addition to the requirements listed under subsection (F), when an applicant wishes to stock an aquatic species in an area where that species has not yet been introduced, is not currently established, or there is potential for conflict with Department efforts to conserve wildlife, the applicant shall also submit a written proposal to the Department at the time of application. The written proposal shall contain all of the following information:
1. Anticipated benefits resulting from the introduction of the aquatic live wildlife species;
2. Potential adverse economic impacts;
3. Potential dangers the introduced aquatic species may possibly create for native aquatic species and game fish, to include all of the following:
a. Determination of whether or not the introduced aquatic species is compatible with native aquatic species or game fish;
b. Potential ecological problems created by the introduced aquatic species;
c. Anticipated hybridization concerns with introducing the aquatic species; and,
d. Future plans designed to evaluate the status and impact of the species after it is introduced.
4. Assessment of probable impacts to sensitive species in the area using the list generated by the Department's Online Environmental Review Tool, which is available on the Department's website. The proposal must address each species listed.

H. An application for an aquatic restocking license is considered to be a renewal of the license when there are no changes to the:
1. Aquatic wildlife species,
2. The purpose for introducing the aquatic wildlife species, and
3. The facilities where the applicant stocked the aquatic wildlife.

I. An applicant for an aquatic wildlife stocking or restocking license shall pay all applicable fees required under R12-4-412.

J. An aquatic wildlife stocking or restocking license holder shall:
1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
2. Obtain all aquatic wildlife, live eggs, fertilized eggs, and milt from a licensed fish farm operator or a private noncommercial fish pond certified to be free of diseases and causative agents through the following actions:
a. An inspection shall be performed by a qualified fish health inspector or fish pathologist at the fish farm or pond where the aquatic wildlife or biological material is held before it is shipped to the license holder.
b. The inspection shall be conducted no more than 12 months prior to the date on which the aquatic wildlife or biological material is shipped to the license holder. The Department may require additional inspections at any time prior to stocking.
c. The applicant shall submit a copy of the certification to the Department prior to conducting any stocking activities.
3. Maintain records associated with the license for a period of five years following the date of disposition.
4. Allow the Department to conduct inspections of an applicant's or license holder's facility and records at any time before or during the license period to determine compliance with the requirements of this Article. The Department shall comply with A.R.S. § 41-1009 when conducting inspections at a license holder's facility.
5. Possess the license or legible copy of the license while conducting any activities authorized under the aquatic stocking license and presents it for inspection upon the request of any Department employee or agent.
6. Dispose of wildlife only as authorized under this Section or as directed in writing by the Department.

K. An aquatic wildlife stocking or restocking license holder shall comply with the requirements established under R12-4-409.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(B)(8), 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, and 41-1005

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp.

ARTICLE 4. LIVE WILDLIFE

06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 321, effective July 1, 2021 (Supp. 21-1).

R12-4-411. Live Bait Dealer's License

A. A live bait dealer's license allows a person to perform any of the following activities using the aquatic live wildlife listed under subsection (B): exhibit for sale, export, import, kill, offer for sale, possess, purchase, sell, trade, or transport.

B. A live bait dealer's license allows a person to perform any of the activities listed under subsection (A) with any or all of the following aquatic live wildlife:
1. Desert Sucker, *Catostomus clarkii*;
2. Fathead minnow, *Pimephales promelas*;
3. Golden shiner, *Notemigonus crysoleucas*;
4. Goldfish, *Carassius auratus*;
5. Longfin Dace, *Agosia chrysogaster*;
6. Speckled Dace, *Rhynichthys osculus*; and
7. Waterdogs, *Ambystoma tigrinum*, except in that portion of Santa Cruz County lying east and south of State Highway 82, or that portion of Cochise County lying west of the San Pedro River and south of State Highway 82.

C. A live bait dealer's license expires on the last day of the third December from the date of issuance.

D. In addition to the requirements established under this Section, a live bait dealer license holder shall comply with the special license requirements established under R12-4-409.

E. The live bait dealer's license holder shall be responsible for compliance with all applicable regulatory requirements. The license does not:
1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.

F. The Department shall deny a live bait dealer's license to a person who fails to meet the requirements established under R12-4-409 or this Section. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.

G. An applicant for a live bait dealer's license shall submit an application to the Department. The application is available from any Department office and on the Department's website. An applicant shall provide the following information on the application:
1. The applicant's information:
   a. Name;
   b. Mailing address;
   c. Telephone number; and
   d. Department ID number, when applicable;
2. The applicant's business:
   a. Name;
   b. Mailing address; and
   c. Telephone number of the applicant's business;
3. Wildlife species information:
   a. Common name of all wildlife species; and
   b. The number of animals for each species that will be sold under the license.
4. For each location where the wildlife will be used, the owner's:
   a. Name;
   b. Mailing address;
   c. Telephone number; and
5. A detailed description or diagram of the facilities where the applicant will hold the wildlife;
6. For each supplier from whom the applicant will obtain wildlife, the supplier's:
   a. Name;
   b. Mailing address;
   c. Telephone number;
7. Any other information required by the Department; and
8. The certification required under R12-4-409(C).

H. An applicant for a live bait dealer's license shall pay all applicable fees required under R12-4-412.

ARTICLE 4. LIVE WILDLIFE

I. A live bait dealer's license holder shall:
1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
2. Obtain live baitfish from a facility certified free of the diseases and causative agents through the following actions:
   a. An inspection shall be performed by a qualified fish health inspector or fish pathologist at the facility where the wildlife is held before it is shipped to the license holder.
   b. The inspection shall be conducted no more than 12 months prior to the date on which the aquatic wildlife or biological material is shipped to the license holder. The Department may require additional inspections at any time prior to shipping.
   c. The applicant shall submit a copy of the certification to the Department prior to conducting any activities authorized under the license.
   d. The live bait dealer's license holder shall include a copy of the certification in each shipment.
3. Maintain records associated with the license for a period of five years following the date of disposition.
4. Allow the Department to conduct inspections of an applicant's or license holder's facility and records at any time before or during the license period to determine compliance with the requirements of this Article. The Department shall comply with A.R.S. § 41-1009 when conducting inspections at a license holder's facility.
5. Possess the license or legible copy of the license while conducting activities authorized under the live bait dealers license and presents it for inspection upon the request of any Department employee or agent.
6. Dispose of aquatic wildlife only as authorized under this Section or as directed by the Department.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(B)(8), 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, 17-333, and 41-1005

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 7 A.A.R. 2220, effective May 25, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 321, effective July 1, 2021 (Supp. 21-1).

R12-4-412. Special License Fees

A. A person who applies for a special license authorized under this Article shall pay all applicable fees at the time of application. The fees listed below include a $20 application processing fee.

B. An initial license fee is required upon initial application or when an applicant fails to renew a special license before the license expires.

C. A renewal license fee is required when an applicant submits an application to renew the special license before the license expires and provided there are no changes to any of the following:
1. Licensed facility location,
2. Species of wildlife held under the special license, and
3. Staff conducting the wildlife activities under the license.

Short-term Special License Fees	**Initial License**	**Valid For**
Aquatic Wildlife Stocking License	$100	20-days
Aquatic Wildlife Restocking License	$20	20-days
Aquatic Wildlife Stocking License issued to a political subdivision of the state	no fee	365-days
Aquatic Wildlife Restocking License issued to a political subdivision of the state	no fee	365-days
Game Bird Field Trial License	$45	10-days
White Amur Stocking License	$270	20-days
White Amur Restocking License	$120	20-days

Three-year Special License Fees	**Initial License**	**Renewal License**
Game Bird Field Training License	$95	$45
Game Bird Hobby License	$80	$40
Game Bird Shooting Preserve License	$425	$155
Live Bait Dealer's License	$125	$35
Private Game Farm License	$395	$145

Scientific Activity License	$70	$70
Sport Falconry License validates an Arizona hunting or combination hunting and fishing license for hunting or taking quarry with a trained raptor.	$145	$145
Wildlife Holding License	$20	$20
Wildlife Rehabilitation License	$20	$20
Wildlife Service License	$245	$95
Zoo License	$425	$155

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-333 and 41-1005

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Repealed effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). New Section adopted effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 211, effective December 14, 1999 (Supp. 99-4). Section repealed by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). New Section made by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final exempt rulemaking at 27 A.A.R. 400, effective July 1, 2021 (Supp. 21-1).

R12-4-413. Private Game Farm License

A. A private game farm license authorizes a person to commercially farm and sell captive pen-reared game birds as specified on the license at the location designated on the license.
1. A private game farm license allows the license holder to display for sale, give away, import, offer for sale, possess, propagate and rear, purchase, rent or lease, sell, trade, or transport captive pen-reared game birds carcasses or parts.
2. The Private Game Farm License expires on the last day of the third December from the date of issuance.

B. Private game farm captive pen-reared game birds may be killed or slaughtered, but a person shall not kill or allow the captive pen-reared game birds to be killed by hunting or in a manner that could be perceived as hunting or recreational sport harvest while under the care and control of the private game farm license holder.

C. Private game farm captive pen-reared game birds shall not be killed by a person who pays a fee to the owner of the private game farm for killing the captive pen-reared game birds, nor shall the game farm owner accept a fee for killing the captive pen-reared game birds, except as authorized under R12-4-414.

D. A private game farm licenses authorizes the use of only the following captive-reared game birds:
1. *Alectoris chukar*, Chukar;
2. *Anas platyrhynchos*, Mallard duck, provided all mallard ducks and progeny are physically marked as required under 50 CFR 21.13, revised October 1, 2019, which is incorporated by reference;
3. *Callipepla californica*, California or valley quail;
4. *Callipepla gambelii*, Gambel's quail;
5. *Callipepla squamata*, Scaled quail;
6. *Colinus virginianus*, Northern bobwhite;
7. *Cyrtonyx montezumae*, Montezuma or Mearns' quail;
8. *Dendragapus obscurus*, Dusky grouse;
9. *Oreortyx pictus*, Mountain Quail; and
10. Phasianus colchicus, Ringneck and whitewing pheasant;
11. For subsection (D)(2), the incorporated by material is available at any Department office, online at www.gpo.gov, or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000. This incorporation by reference does not include any later amendments or editions of the incorporated material.

E. The Department shall deny an application for:
1. A new private game farm license for mammals. The Department may accept a renewal application for a private game farm license holder currently permitted to possess mammals, provided the license holder is in compliance with all applicable requirements under R12-4-409, R12-4-428, R12-4-430, and this Section.
2. A private game farm license for Northern bobwhite, *Colinus virginianus*, in game management units 36A, 36B, and 36C, as prescribed under R12-4-108.

F. In addition to the requirements established under this Section, a private game farm holder shall comply with the special license requirements established under R12-4-409.

G. The private game farm license holder shall be responsible for compliance with all applicable regulatory requirements. The

license does not:

1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.

H. The Department shall deny a private game farm license to a person who fails to meet the requirements established under R12-4-409 or this Section. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission. An applicant applying for a private game farm license shall submit an application to the Department. A separate application is required for each location where the applicant proposes to use captive pen-reared game birds. The application is furnished by the Department and is available at any Department office and on the Department's website. An applicant shall provide the following information on the application:

1. The applicant's information:
   a. Name;
   b. Mailing address;
   c. Telephone number; and
   d. Department ID number, when applicable;
2. The applicant's business:
   a. Name;
   b. Mailing address; and
   c. Telephone number;
3. For captive pen-reared game birds to be used under the license:
   a. Common name of the captive pen-reared game birds species;
   b. Number of birds for each species; and
   c. When the applicant is renewing the private game farm license, the species and number of captive pen-reared game birds for each species currently held in captivity under the license;
4. For each location where the applicant proposes to use the captive pen-reared game birds will be used, the land owner's:
   a. Name;
   b. Mailing address;
   d. Telephone number; and
   e. Physical address or general location description and Global Positioning System location;
5. A detailed description or diagram of the facilities where the applicant will hold the captive pen-reared game birds, and a description of how the facilities comply with the requirements established under R12-4-428 and any other captivity standards established under this Section;
6. For each wildlife supplier from whom the special license applicant will obtain wildlife, the supplier's;
   a. Name;
   b. Mailing address; and
   c. Telephone number;
7. Any other information required by the Department; and
8. The certification required under R12-4-409(C).

J. An applicant for a private game farm license shall pay all applicable fees required under R12-4-412.

K. A private game farm license holder shall:

1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
2. Ensure each shipment of live captive pen-reared game birds imported into the state is accompanied by a health certificate or other similar form that indicates the captive pen-reared game birds identified on the form appears to be healthy and free of infectious, contagious, and communicable diseases.
   a. The certificate or other similar form shall be issued no more than 30 days prior to the date on which the captive pen-reared game birds shipped.
   b. A copy of the certificate shall be submitted to the Department prior to importation.
3. Ensure the following documentation accompanies each shipment of captive pen-reared game birds made by the game farm:
   a. Name of the private game farm license holder,
   b. Private game farm license number,
   c. Date captive pen-reared game birds were shipped,
   d. Number of captive pen-reared game birds, by species, included in the shipment,
   e. Name of the person or common carrier transporting the shipment, and

f. Name of the person receiving the shipment.

4. Provide each person who transports a captive pen-reared game birds carcass from the site of the game farm with a receipt that includes all of the following:
   a. Date the captive pen-reared game birds were purchased, traded, or given as a gift;
   b. Name of the game farm; and
   c. Number of captive pen-reared game birds carcasses, by species, being transported.
5. Ensure each facility is inspected by the attending veterinarian at least once every year.
6. Allow the Department to conduct inspections of an applicant's or license holder's facility and records at any time before or during the license period to determine compliance with the requirements of this Article. The Department shall comply with A.R.S. § 41-1009 when conducting inspections at a license holder's facility.
7. Maintain records of all captive pen-reared game birds possessed under the license for a period of three years. In addition to the information required under subsections (M)(4)(a) through (M)(4)(e), the records shall also include:
   a. The private game farm license holder's:
      i. Name;
      ii. Mailing address;
      iii. Telephone number; and
      iv. Special license number;
   b. Copies of all federal, state, and local licenses, permits, and authorizations required for the lawful operation of the private game farm;
   c. Copies of the annual report required under subsection (M);
   d. Number of all captive pen-reared game birds, by species and the date it was obtained;
   e. Source of all captive pen-reared game birds and the date it was obtained;
   f. Number of offspring propagated by all captive pen-reared game birds; and
   g. For all captive pen-reared game birds disposed of by the license holder:
      i. Number, species, and date of disposition; and
      ii. Manner of disposition to include the names and addresses of persons to whom the captive pen-reared game birds were bartered, given, or sold, when authorized.
8. Immediately report to the Department any mortality event that results in the loss of 10% or more of the adult captive pen-reared game birds held on the facility within any seven day period and allow the Department to collect samples from the affected game birds for disease testing purposes as prescribed under A.R.S. § 17-250.

L. A private game farm license holder shall not:
1. Propagate hybrid wildlife or domestic birds with captive pen-reared game birds; or
2. Possess domestic species under the special license.

M. A private game farm license holder shall submit an annual report to the Department before January 31 of each year for activities performed under the license for the previous calendar year. The report form is furnished by the Department.
1. A report is required regardless of whether or not activities were performed during the previous year.
2. The private game farm license becomes invalid if the annual report is not submitted to the Department by January 31 of each year.
3. The Department will not process the special license holder's renewal application until the annual report is received by the Department.
4. The annual report shall include all of the following information, as applicable:
   a. Number of captive pen-reared game birds, by species;
   b. Source of all captive pen-reared game birds that the license holder obtained or propagated;
   c. Date on which the captive pen-reared game birds was obtained or propagated;
   d. Date on which the captive pen-reared game birds was disposed of and the manner of disposition; and
   e. Name of person who received captive pen-reared game birds disposed of by barter, given as a gift, or sale.

N. Except for cervids which shall be disposed of only as established under R12-4-430, a private game farm license holder who no longer uses the captive pen-reared game birds for a commercial purpose shall dispose of the captive pen-reared game birds as follows:
1. Export,
2. Transfer to another private game farm licensed under this Section,
3. Transfer to a zoo licensed under R12-4-420,
4. Transfer to a medical or scientific research facility exempt under R12-4-407,
5. As directed by the Department, or
6. As otherwise authorized under this Section.

O. A private game farm license holder shall comply with the requirements established under R12-4-428 and R12-4-430.

Authorizing Statute

ARTICLE 4. LIVE WILDLIFE

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 3-1205, 17-231(B)(8), 17-238(A), 17-240(A), 17-306,17-307(C), 17-333, and 41-1005

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 321, effective July 1, 2021 (Supp. 21-1).

R12-4-414. Game Bird License

A. A game bird license authorizes a person to conduct certain activities with the captive pen-reared game birds specified on the license and only at the location or locations specified on the license, as described below:

1. Game Bird Hobby:
   a. Authorizes a license holder to:
      i. Possess no more than 50 captive pen-reared game birds at any one time;
      ii. Export, import, kill, possess, propagate, purchase, and transport the captive pen-reared game birds specified on the license for personal, noncommercial purposes only; and
      iii. Gift a captive pen-reared game bird to another special license holder who is authorized to possess the game bird species.
   b. The following captive pen-reared game bird species may be possessed by a Game Bird Hobby license holder:
      i. *Alectoris chukar*, Chukar;
      ii. *Callipepla californica*, California or valley quail;
      iii. *Callipepla gambelii*, Gambel's quail;
      iv. *Callipepla squamata*, Scaled quail;
      v. *Colinus virginianus*, Northern bobwhite, subject to the restriction specified under subsection (D);
      vi. *Cyrtonyx montezumae*, Montezuma or Mearn's quail; and
      vii. *Dendragapus obscurus*, Dusky grouse.
   c. The license holder shall immediately report to the Department any mortality event that results in the loss of 10% or more of the adult game birds held on the facility and allow the Department to collect samples from the affected game birds for disease testing purposes as prescribed under A.R.S. § 17-250.
   d. The Game Bird Hobby license expires on the last day of the third December from the date of issuance.
2. Game Bird Shooting Preserve:
   a. Authorizes a license holder to:
      i. Release captive pen-reared game birds for the purpose of hunting or shooting.
      ii. Export, display, gift, import, kill, offer for sale, possess, propagate, purchase, trade, and transport the captive pen-reared game birds specified on the license.
   b. The following captive pen-reared game bird species may be possessed by a Game Bird Shooting Preserve license holder:
      i. *Alectoris chukar*, Chukar;
      ii. *Anas platyrhynchos*, Mallard duck, provided all mallard ducks and progeny are physically marked as required under 50 CFR 21.13, revised October 1, 2019, which is incorporated by reference;
      iii. *Colinus virginianus*, Northern bobwhite, subject to the restriction specified under subsection (D); and
      iv. *Phasianus colchicus*, Ringneck and Whitewing pheasant.
   c. The license holder shall:
      i. Restrict the release and take of the live captive pen-reared game birds on private lands to an area not more than 1,000 acres.
      ii. Immediately report to the Department any mortality event that results in the loss of 10% or more of the adult game birds held on the facility and allow the Department to collect samples from the affected game birds for disease testing purposes as prescribed under A.R.S. § 17-250.
   d. The license holder may charge a fee to allow persons to take captive pen-reared game birds on the shooting preserve.
   e. A person is not required to possess a hunting license when taking a captive pen-reared game bird released under the provisions of this Section.
   f. A captive pen-reared game bird released under a Game Bird Shooting Preserve license may be taken with any method designated under R12-4-304.
   g. The Game Bird Shooting Preserve license expires on the last day of the third December from the date of issuance.

3. Game Bird Field Trial:
   a. Authorizes a license holder to:
      i. Release and take captive pen-reared game birds for the purpose of conducting a competition to test the performance of hunting dogs in one field trial event;
      ii. Import, kill, possess, purchase within the state, and transport the captive pen-reared game birds specified on the license for one field trial event; and
      iii. Export, gift, kill, or transport any captive pen-reared game bird held after the field trial event.
   b. The following captive pen-reared game bird species may be possessed by a Game Bird Field Trial license holder:
      i. *Alectoris chukar*, Chukar;
      ii. *Anas platyrhynchos*, Mallard duck, provided all mallard ducks and progeny are physically marked as required under 50 CFR 21.13, revised October 1, 2019, which is incorporated by reference;
      iii. *Colinus virginianus*, Northern bobwhite, subject to the restriction specified under subsection (D);
      iv. *Phasianus colchicus*, Ringneck and Whitewing pheasant.
   c. A person is not required to possess a hunting license in order to participate in a field trial event held under the provisions of this Section.
   d. A captive pen-reared game bird released under a Game Bird Field Trial license may be taken with any method designated under R12-4-304.
   e. The Game Bird Field Trial license is valid for no more than ten consecutive days.
4. Game Bird Field Training:
   a. Authorizes a license holder to:
      i. Release and take released live captive pen-reared game birds specified on the license for the purpose of training a dog or raptor to hunt game birds; and
      ii. Import, possess, purchase within the state, and transport the captive pen-reared game birds specified on the license; and
      iii. Export, gift, kill, or transport any captive pen-reared game bird possessed under the license.
   b. The following captive pen-reared game bird species may be possessed by a Game Bird Field Training license holder:
      i. *Alectoris chukar*, Chukar;
      ii. *Anas platyrhynchos*, Mallard duck, provided all mallard ducks and progeny are physically marked as required under 50 CFR 21.13, revised October 1, 2019, which is incorporated by reference;
      iii. *Colinus virginianus*, Northern bobwhite, subject to the restriction specified under subsection (D)(2)(b);
      iv. *Phasianus colchicus*, Ringneck and Whitewing pheasant.
   c. A person is not required to possess a hunting license when taking a captive pen-reared game bird released under the provisions of this Section.
   d. A captive pen-reared game bird released under a Game Bird Field Training license may be taken with any method designated under R12-4-304.
   e. The Game Bird Field Training license expires on the last day of the third December from the date of issuance.
5. For subsections (A)(2)(b)(ii), (A)(3)(b)(ii), and (A)(4)(b)(ii), the incorporated material is available at any Department office, online at www.gpo.gov, or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000. This incorporation by reference does not include any later amendments or editions of the incorporated material.

B. In addition to the requirements established under this Section, a game bird license holder shall comply with the special license requirements established under R12-4-409.

C. The game bird license holder shall be responsible for compliance with all applicable regulatory requirements. The license does not:
1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.

D. The Department shall deny a game bird license to a person who fails to meet the requirements under R12-4-409 or this Section. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10. In addition to the requirements and criteria established under R12-4-409(F)(1) through (4), the Department may deny a game bird license when:
1. The applicant proposes to release captive pen-reared game birds:
   a. At a location where an established wild population of the same species exists.

b. During nesting periods of upland game birds or waterfowl that nest in the area.

2. The applicant requests a license:
   a. For the sole purpose described under subsection (A)(1) and proposes to possess more than 50 captive pen-reared game birds at any one time.
   b. To possess Northern bobwhites, *Colinus virginianus*, in any one of the following game management units, as described under R12-4-108; 36A, 36B, and 36C.
3. The Department determines the:
   a. Authorized activity listed under this Section may pose a threat to native wildlife, wildlife habitat, or public health or safety.
   b. Escape of any species listed on the application may pose a threat to native wildlife or public health or safety.
   c. Release of captive pen-reared game birds may interfere with a wildlife or habitat restoration program.

E. An applicant for a game bird license shall submit an application to the Department. A person applying for multiple Game Bird Field Trial licenses shall submit a separate application for each date and location where a competition will occur. The application is furnished by the Department and is available at any Department office and on the Department's website. An applicant shall provide the following information on the application:

1. The applicant's information:
   a. Name;
   b. Mailing address, when applicable;
   c. Physical address;
   d. Telephone number; and
   e. Department ID number, when applicable;
2. For captive pen-reared game birds to be used under the license:
   a. Common name of game bird species;
   b. Number of animals for each species; and
   c. When the applicant is renewing a Game Bird Hobby or Shooting Preserve license, the species and number of animals for each species currently held in captivity under the license;
3. The type of game bird license:
   a. Game Bird Hobby;
   b. Game Bird Shooting Preserve;
   c. Game Bird Field Trial; or
   d. Game Bird Field Training;
4. For each location where captive pen-reared game birds will be held, the owner's:
   a. Name;
   b. Mailing address, when applicable;
   c. Telephone number; and
   d. Physical address or general location description and Global Positioning System location, when available;
5. For each location where captive pen-reared game birds will be released, the land owner's or agency's:
   a. Name;
   b. Mailing address, when applicable;
   c. Telephone number; and
   d. Physical address or general location description and Global Positioning System location, when available; and
6. For each captive pen-reared game bird supplier from whom the applicant will obtain game birds, the supplier's:
   a. Name;
   b. Mailing address; and
   c. Telephone number;
7. An applicant who is applying for a Game Bird Shooting Preserve or Field Trial license and intends to use the captive pen-reared game birds for a commercial purpose shall also provide the applicant's business:
   a. Name;
   b. Mailing address; and
   c. Telephone number;
8. An applicant who intends to use the captive pen-reared game birds for an activity affiliated with a sponsoring organization shall also provide the organization's:
   a. Name;
   b. Mailing address; and
   c. Telephone number of the organization chair or local chapter;
9. An applicant who is applying for a Game Bird Field Trial license shall also specify the range of dates within which the field trial event will take place, not to exceed a 10-day period;

10. An applicant who is applying for a Game Bird Hobby or Game Bird Shooting Preserve license shall also provide a detailed description or diagram of the facilities where the applicant will hold captive pen-reared game birds and a description of how the facilities comply with the requirements established under R12-4-428 and any other captivity standards established under this Section;
11. Any other information required by the Department; and
12. The certification required under R12-4-409(B).

F. An applicant for a game bird license shall pay all applicable fees required under R12-4-412.

G. A game bird license holder shall:

1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
2. Allow the Department to conduct inspections of an applicant's or license holder's facility and records at any time before or during the license period to determine compliance with the requirements of this Article. The Department shall comply with A.R.S. § 41-1009 when conducting inspections at a license holder's facility.
3. Possess the license or legible copy of the license while conducting any activity authorized under the game bird license and present it for inspection upon the request of any Department employee or agent.
4. Ensure each shipment of captive pen-reared game birds imported into the state is accompanied by a health certificate.
   a. The certificate shall be issued no more than 30 days prior to the date on which the game birds are shipped.
   b. A copy of the certificate shall be submitted to the Department prior to importation.
5. Provide each person who transports captive pen-reared game birds taken under the game bird license with documentation that includes all of the following:
   a. Name of the game bird license holder;
   b. Game bird license number;
   c. Date the captive pen-reared game bird was obtained;
   d. Number of captive pen-reared game birds, by species; and
   e. When the captive pen-reared game birds are being shipped:
      i. Name of the person or common carrier transporting the shipment, and
      ii. Name of the person receiving the shipment.
6. Maintain records of all captive pen-reared game birds possessed under the license for a period of five years. In addition to the information required under subsections (G)(5)(a) through (G)(5)(b), the records shall also include:
   a. The game bird license holder's:
      i. Name;
      ii. Mailing address;
      iii. Telephone number; and
      iv. Special license number;
   b. Copies of the annual report required under subsection (H);
7. Dispose of captive pen-reared game birds only as authorized under this Section or as directed by the Department.
8. Conduct license activities solely at the locations and within the timeframes approved by the Department. A Game Bird License holder may request permission to amend the license to conduct activities authorized under the license at an additional location by submitting the application required under subsection (E) to the Department.

H. A game bird license holder shall submit an annual report to the Department before January 31 of each year for the previous calendar year. The report form is furnished by the Department.

1. A report is required regardless of whether or not activities were performed during the previous year.
2. The game bird license becomes invalid if the annual report is not submitted to the Department by January 31 of each year.
3. The Department shall not process the special license holder's renewal application until the annual report is received by the Department.
4. The annual report shall include all of the following information, as applicable:
   a. Number of all captive pen-reared game birds, by species and the date obtained;
   b. Source of all captive pen-reared game birds and the date obtained;
   c. Number of offspring propagated by all captive pen-reared game birds; and
   d. For all captive pen-reared game birds disposed of by the license holder:
      i. Number, species, and date of disposition; and
      ii. Manner of disposition to include the names and addresses of persons to whom the wildlife was bartered, given, or sold, when authorized.

I. A game bird license holder shall comply with the requirements established under R12-4-428.

J. A game bird released under a game bird license and found outside of the location specified on the license shall become property of the state and is subject to the requirements prescribed under A.R.S. Title 17 and 12 A.A.C. 4, Article 3.

Authorizing Statute

ARTICLE 4. LIVE WILDLIFE

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-240(A), 17-306, 17-307(C), 17-333, and 41-1005

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 23 A.A.R. 2557, effective September 6, 2017 (Supp. 17-3). Amended by final rulemaking at 27 A.A.R. 321, effective July 1, 2021 (Supp. 21-1).

R12-4-415. Repealed

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Repealed by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-416. Repealed

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Repealed by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-417. Wildlife Holding License

A. A wildlife holding license authorizes a person to display for educational purposes, euthanize, export, give away, import, photograph for commercial purposes, possess, propagate, purchase, or transport, restricted and nonrestricted live wildlife lawfully:
1. Held under a valid hunting or fishing license for a purpose listed under subsection (C),
2. Collected under a valid scientific activity license issued under R12-4-418,
3. Obtained under a valid wildlife rehabilitation license issued under R12-4-423,
4. Or as otherwise authorized by the Department.

B. A wildlife holding license expires on the last day of the third December from the date of issuance, or, if the license holder is a representative of an institution, organization, or agency described under subsection (C)(4), upon termination of the license holder's affiliation with that entity, whichever comes first.

C. A wildlife holding license is valid for the following purposes, only:
1. Advancement of science;
2. Lawfully possess restricted or nonrestricted live wildlife when it is:
   a. Necessary to give humane treatment to live wildlife that is declared unsuitable for release by a licensed veterinarian, and is therefore unable to meet its own needs in the wild; or
   b. Previously possessed under another special license and the primary purpose for that special license no longer exists;
3. Promotion of public health or welfare;
4. Provide education under the following conditions:
   a. The applicant is an educator affiliated or partnered with an educational institution; and
   b. The educational institution permits the use of live wildlife.
5. Photograph for a commercial purpose live wildlife provided:
   a. The wildlife will be photographed without posing a threat to other wildlife or the public, and
   b. The photography will not adversely impact other affected wildlife in this state, or
6. Wildlife management.

D. The Department shall deny an application for a wildlife holding license for the possession of cervids.

E. In addition to the requirements established under this Section, a wildlife holding license holder shall comply with the special license requirements established under R12-4-409.

F. The license holder shall be responsible for compliance with all applicable regulatory requirements. The wildlife holding license does not:
1. Exempt the license holder or their agent from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
2. Authorize the license holder or their agent to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.

G. The Department shall deny a wildlife holding license to a person who fails to meet the requirements established under R12-4-409 or this Section, or when the person's wildlife holding privileges are suspended or revoked in any state. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the

denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10. In addition to the requirements and criteria established under R12-4-409(F)(1) through (4), the Department shall deny a wildlife holding when:

1. It is in the best interest of public health or safety or the welfare of the wildlife; or
2. The issuance of the license will adversely impact other wildlife or their habitat in the state.

H. An applicant for a wildlife holding license shall submit an application to the Department. A separate application is required for each location where the applicant proposes to use wildlife. The application is furnished by the Department and is available at any Department office and on the Department's website. The applicant shall provide the following information:

1. The applicant's information:
   a. Name;
   b. Mailing address;
   c. Telephone number; and
   d. Department ID number, when applicable;
2. If the applicant will use the wildlife for a commercial purpose, the applicant's business:
   a. Name;
   b. Mailing address; and
   c. Telephone number;
3. If the applicant will use wildlife for activities authorized by a scientific institution that employs, contracts, or is similarly affiliated with the applicant, the institution's:
   a. Name;
   b. Mailing address; and
   c. Telephone number;
4. For wildlife to be used under the license:
   a. Common name of the wildlife species;
   b. Number of animals for each species;
   c. When the application is for the use of multiple species, the applicant shall list each species and the number of animals for each species; and
   d. When the applicant is renewing the wildlife holding license, the species and number of animals for each species currently held in captivity under the license;
5. For wildlife to be used for educational purposes:
   a. The affiliated educational institution's:
      i. Name;
      ii. Mailing address; and
      iii. Telephone number of the educational institution;
   b. A copy of the established curriculum utilizing sound educational objectives; and
   c. A plan for how the applicant will address any safety concerns associated with the use of live wildlife in a public setting.
6. For each location where the applicant proposes to hold the wildlife, the owner's:
   a. Name;
   b. Mailing address;
   c. Telephone number; and
   d. Physical address or general location description and Global Positioning System location;
7. A detailed description and diagram, or photographs, of the facilities where the applicant will hold the wildlife and a description of how the facilities comply with the requirements established under R12-4-428, and any other captivity standards that may be established under this Section;
8. The dates that the applicant will begin and end holding wildlife;
9. A clear description of how the applicant intends to dispose of the wildlife once the proposed activity for which the license was issued ends;
10. Any other information required by the Department; and
11. The certification required under R12-4-409(C).
12. For subsection (H)(7), the Department may, at its discretion, accept documented current certification or approval by the applicant's institutional animal care and use committee or similar committee in lieu of the description, diagram, and photographs of the facilities.

I. In addition to the requirements listed under subsection (H), at the time of application, an applicant for a wildlife holding license shall also submit:

1. Evidence of lawful possession, as defined under R12-4-401;
2. A statement of the applicant's experience in handling and providing care for the wildlife to be held or experience

relevant to handling or providing care for wildlife;

3. A written proposal that contains all of the following information:
   a. A detailed description of the activity the applicant intends to perform under the license;
   b. Purpose for the proposed activity;
   c. The contribution the proposed activity will make to one or more of the primary purposes listed under subsection (C).
   d. For an applicant who wishes to possess restricted or nonrestricted live wildlife for the purpose of providing humane treatment, a written explanation stating why the wildlife is unable to meet its own needs in the wild and the following information for the licensed veterinarian who will provide care for the wildlife:
      i. Name;
      ii. Mailing address; and
      iii. Telephone number;

J. An applicant for a wildlife holding license shall pay all applicable fees required under R12-4-412.

K. A wildlife holding license holder shall:

1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
2. Maintain records associated with the license for a period of five years following the date of disposition.
3. Allow the Department to conduct inspections of an applicant's or license holder's facility and records at any time before or during the license period to determine compliance with the requirements of this Article. The Department shall comply with A.R.S. § 41-1009 when conducting inspections at a license holder's facility.
4. Possess the license or legible copy of the license while conducting any activity authorized under the wildlife holding license and presents it for inspection upon the request of any Department employee or agent.
5. Permanently mark any restricted live wildlife used for lawful activities under the authority of the license, when required by the Department.
6. Ensure that a copy of the license accompanies any transportation or shipment of wildlife made under the authority of the license.
7. Surrender wildlife held under the license to the Department upon request.

L. A wildlife holding license holder shall submit an annual report to the Department before January 31 of each year for the previous calendar year or as indicated under subsection (O). The report form is furnished by the Department.

1. A report is required regardless of whether or not activities were performed during the previous year.
2. The wildlife holding license becomes invalid if the annual report is not submitted to the Department by January 31 of each year.
3. The Department will not process the special license holder's renewal application until the annual report is received by the Department.
4. The annual report shall include all of the following information, as applicable:
   a. A list of animals held during the year, the list shall be by species and include the source and date on which the wildlife was acquired.
   b. The permanent mark or identifier of the wildlife, such as name, number, or another identifier for each animal held during the year, when required by the Department. This designation or identifier shall be provided with other relevant reported details for the holding or disposition of the individual animal;
   c. Whether the wildlife is alive or dead.
   d. The current location of the wildlife.
   e. A list of all educational displays where the wildlife was utilized to include the date, location, institution or audience, approximate attendance, and wildlife used.

M. A wildlife holding license holder may authorize an agent to assist the license holder in conducting activities authorized under the wildlife holding license, provided the agent's wildlife privileges are not suspended or revoked in any state.

1. The license holder shall obtain written authorization from the Department before allowing a person to act as an agent.
2. The license holder shall notify the Department in writing within 10 calendar days of terminating any agent.
3. The Department may suspend or revoke the license holder's license if an agent violates any requirement of this Section or Article or any stipulations placed upon the license.
4. An agent may possess wildlife for the purposes outlined under subsection (C), under the following conditions;
   a. The agent shall possess evidence of lawful possession, as defined under R12-4-401, for all wildlife possessed by the agent;
   b. The agent shall return the wildlife to the primary license holder's facility within two days of receiving the wildlife.

N. A wildlife holding license holder or their agent shall not barter, give as a gift, loan for commercial activities, offer for sale, sell, trade, or dispose of any restricted or nonrestricted live wildlife, offspring of restricted or nonrestricted live wildlife, or their parts except as stipulated on the wildlife holding license or as directed in writing by the Department.

O. A wildlife holding license is no longer valid once the primary purpose for which the license was issued, as prescribed in

subsection (C), no longer exists. When this occurs, the wildlife holding license holder shall immediately submit the annual report required under (L) to the Department.

P. A wildlife license holder shall comply with the requirements established under R12-4-409, R12-4-428, and R12-4-430.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-240(A), 17-306, and 41-1005

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 211, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 321, effective July 1, 2021 (Supp. 21-1).

R12-4-418. Scientific Activity License

A. A scientific activity license allows a person to conduct any of the following activities with wildlife when specified on the license:
1. Capture, hold, and release wildlife as directed by the Department,
2. Collection of dead wildlife,
3. Display,
4. Photograph for noncommercial purposes,
5. Possess,
6. Propagate,
7. Take of live wildlife,
8. Transport, and
9. Use for educational purposes.

B. The Department issues five types of scientific collecting licenses:
1. Academic institution,
2. Government agency,
3. Non-governmental organization,
4. Nonprofit organization, and
5. Personal.

C. A person may apply for a scientific activity license only when the license is requested for:
1. The purpose of wildlife management, gathering information valuable to the maintenance of wild populations, education, the advancement of science, or promotion of the public health or welfare;
2. A purpose that is in the best interest of the wildlife or the species, will not adversely impact other affected wildlife in this state, and may be authorized without posing a threat to wildlife or public safety; and
3. A purpose that does not unnecessarily duplicate previously documented projects.

D. A scientific activity license expires on December 31 of each year.

E. For the protection of wildlife or public safety, the Department has the authority to take any one or more of the following actions:
1. Rescind or modify any method of take authorized by the license;
2. Restrict the number of animals for each species or other taxa the license holder may take under the license;
3. Restrict the age, condition, or location of wildlife the license holder may take under the license; or
4. Deny or substitute the number of specimens and taxa requested on an application.

F. The license holder shall be responsible for compliance with all applicable regulatory requirements. The scientific activity license does not:
1. Exempt the license holder or their agent from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
2. Authorize the license holder or their agent to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.

G. The Department may deny a scientific activity license to a person who fails to meet the requirements established under R12-4-409 or this Section, or when the person's scientific activity privileges are suspended or revoked in any state. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10. In addition to the requirements and criteria established under R12-4-409(F)(1) through (4), the Department shall deny a scientific activity license when:

1. It is in the best interest of the wildlife.
2. The issuance of the license will adversely impact other wildlife or their habitat in the state; or
3. It is in the best interest of public health or safety.

H. An applicant for a scientific activity license shall submit an application to the Department. The application is furnished by the Department and is available from any Department office, and on the Department's website. A person applying for a scientific activity license shall provide the following information on the application:

1. The applicant's information:
   a. Name;
   b. Mailing address;
   c. Telephone number; and
   d. Department ID number; when applicable;
2. If the applicant will use wildlife for activities supported by a scientific, educational, or government institution, non-profit organization, or agency that employs, contracts, or is similarly affiliated with the applicant, the applicant shall provide the institution's:
   a. Name;
   b. Mailing address;
   c. Telephone number of the institution; and
   d. The applicant's title or a description of the nature of affiliation with the institution or nonprofit organization;
3. When the applicant is renewing the scientific activity license, the species and number of animals for each species currently held in captivity;
4. For each location where the live wildlife will be held, the land owner's:
   a. Name;
   b. Mailing address;
   c. Telephone number; and
   d. Physical address or general location description and Global Positioning System location;
5. A detailed description and diagram, photographs, or documented current certification or approval by the applicant's institutional animal care and use committee or similar committee of the facilities of the facilities where the applicant will hold the wildlife and a description of how the facilities comply with the requirements established under R12-4-428, and any other captivity standards that may be established under this Section;
6. List of activities the applicant intends to perform under the license;
7. Purpose and justification for the use of wildlife as established under subsection (B);
8. When the applicant intends to use wildlife for educational purposes, the proposal shall also include the:
   a. Minimum number of presentations the applicant anticipates to provide under the license;
   b. Name, title, address, and telephone number of persons whom the applicant has contacted to offer educational presentations; and
   c. Number of specimens the applicant already possesses for any species requested on the application;
9. Applicant's relevant qualifications and experience in handling and, when applicable, providing care for the wildlife to be held under the license;
10. Methods of take that the applicant will use, to include:
    a. Justification for using the method, and
    b. Proposed method of disposing wildlife taken under the license and any subsequent offspring, when applicable;
11. Any other information required by the Department; and
12. The certification required under R12-4-409(C).

J. An applicant for a scientific activity license shall pay all applicable fees required under R12-4-412.

K. A scientific activity license holder shall:

1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
2. Possess the license or legible copy of the license while conducting any activity authorized under the scientific activity license and presents it for inspection upon the request of any Department employee or agent.
3. Notify the Department in writing within 10 calendar days of terminating any agent.
4. Use the most humane and practical method possible prescribed under R12-4-304, R12-4-313, or as directed by the Department in writing.
5. Conduct activities authorized under the scientific activity license only at the locations and time periods specified on the scientific activity license.
6. Dispose of wildlife, wildlife parts, or offspring, only as directed by the Department.
7. Maintain records associated with the license for a period of five years following the date of disposition.

L. A scientific activity license holder shall not:

1. Exhibit any wildlife held under the license, unless the person also possesses a zoo license authorized under R12-4-

420.

2. Administer any drug to any wildlife during the term of the scientific activity license without advance written authorization from the Department, unless the drug is administered in the course of treatment by a licensed veterinarian.

M. A scientific activity license holder may request authorization to allow an agent to assist the license holder in carrying out activities authorized under the scientific activity license by submitting a written request to the Department.

1. An applicant may request the ability to allow a person to act as an agent on the applicant's behalf, provided:
   a. An employment or supervisory relationship exists between the applicant and the agent, and
   b. The agent's privilege to take or possess live wildlife is not suspended or revoked in any state.
2. The license holder shall obtain approval from the Department prior to allowing the agent assist in any activities.
3. The license holder is liable for all acts the agent performs under the authority of this Section.
4. The Department, acting on behalf of the Commission, may suspend or revoke a license for violation of this Section by an agent.
5. The license holder shall ensure the agent possesses a legible copy of the license while conducting any activity authorized under the scientific activity license and presents it for inspection upon the request of any Department employee or agent.

N. A scientific activity license holder may submit to the Department a written request to amend the license to add or delete an agent, location, project, or other component documented on the license at any time during the license period.

O. A scientific activity license holder shall submit an annual report to the Department before January 31 of each year. The report form is furnished by the Department.

1. A report is required regardless of whether or not activities were performed during the previous year.
2. The scientific activity license becomes invalid if the annual report is not submitted to the Department by January 31 of each year.
3. The Department will not process the special license holder's renewal application until the annual report is received by the Department.
4. The Department may stipulate submission of additional interim reports upon license application or renewal.

P. A scientific activity license holder who wishes to permanently hold wildlife species collected under the license in Arizona that will no longer be used for activities authorized under the license shall apply for and obtain a wildlife holding license in compliance with R12-4-417 or another appropriate special license.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(B), 17-240(A), 17-306, and 41-1005

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 321, effective July 1, 2021 (Supp. 21-1).

R12-4-419. Repealed

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Repealed by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-420. Zoo License

A. A zoo license allows a person to exhibit, export, euthanize, display for educational purposes, give away, import, offer for sale, possess, propagate, purchase, sell, or transport any lawfully possessed restricted and nonrestricted live wildlife.

B. A person may apply for a zoo license only for a commercial facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes and for one or more of the following purposes:

1. Advancement of science or wildlife management;
2. Promotion of public health or welfare;
3. Public education; or
4. Wildlife conservation.

C. A zoo license expires on the last day of the third December from the date of issuance.

D. In addition to the requirements established under this Section, a zoo license holder shall comply with the special license requirements established under R12-4-409.

E. The zoo license holder shall be responsible for compliance with all applicable regulatory requirements; the license does not:

1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.

F. The Department shall deny a zoo license to a person who fails to meet the requirements established under R12-4-409 or this Section. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10. In addition to the requirements and criteria established under R12-4-409(F)(1) through (4), the Department shall deny a zoo license when:

1. It is in the best interest of the wildlife; or
2. The issuance of the license will adversely impact other wildlife or their habitat in the state;

G. An applicant for a zoo license shall submit an application to the Department. The application is furnished by the Department and is available from any Department office, and on the Department's website. An applicant shall provide the following information on the application:

1. The applicant's information:
   a. Name;
   b. Mailing address;
   c. Telephone number; and
   d. Department ID number, when applicable;
2. If the applicant is employed by, contracted with, or affiliated with an educational or scientific institution, the applicant shall provide the institution's:
   a. Name;
   b. Mailing address;
   c. Telephone number;
3. Wildlife species to be held under the license;
   a. Common and current scientific name of the wildlife species; and
   b. Number of individuals for each species;
4. If the applicant is renewing the zoo license, the number of animals of each species that are currently in captivity, and evidence of lawful possession as defined under R12-4-401;
5. For each location where the wildlife will be exhibited, the land owner's:
   a. Name;
   b. Mailing address;
   c. Telephone number; and
   d. Physical address or general location description and Global Positioning System location;
6. A detailed description and diagram of the facilities where the applicant will hold the wildlife and a description of how the facilities comply with the requirements established under R12-4-428;
7. A description of how the facility or operation meets the definition of a zoo, as defined under A.R.S. § 17-101(A)(26);
8. The purpose of the license, as described under subsection (B);
9. Any other information required by the Department; and
10. The certification required under R12-4-409(C).

H. In addition to the requirements listed under subsection (G), an applicant for a zoo license shall also submit at the time of application:

1. Proof of current licensing by the United States Department of Agriculture under 9 CFR Subpart A, Animal Welfare;
2. Photographs of the facility when the zoo is not accredited by the Association of Zoos and Aquariums or Zoological Association of America.
3. For subsection, (H)(1), 9 CFR Subpart A, Animal Welfare revised January 1, 2019, and no later amendments or editions, which is incorporated by reference. The incorporated material is available from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000, and is on file with the Department.

I. An applicant for a zoo license shall pay all applicable fees required under R12-4-412.

J. A zoo license holder shall:

1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
2. Allow the Department to conduct inspections of an applicant's or license holder's facility and records at any time before or during the license period to determine compliance with the requirements of this Article. The Department shall comply with A.R.S. § 41-1009 when conducting inspections at a license holder's facility.
3. Ensure each facility is inspected by the attending veterinarian at least once every year.

4. Hold all wildlife in such a manner designed to prevent wildlife from escaping from the facility specified on the license.
5. Hold all wildlife in a manner designed to prevent the entry of unauthorized persons or other wildlife.
6. Hold all wildlife lawfully possessed under the zoo license in the facility specified on the license, except when transporting the wildlife:
   a. To or from a temporary exhibit;
   b. For medical treatment; or
   c. Other activities approved by the Department in writing.
7. Ensure a temporary exhibit shall not exceed 60 consecutive days at any one location, unless approved by the Department in writing.
8. Clearly display a sign at the facility's main entrance that states the days of the week and hours when the facility is open for viewing by the general public.
9. Ensure all wildlife held under the license that has the potential to come into contact with the public is tested for zoonotic diseases appropriate to the species no more than 12 months prior to importation or display. Any wildlife that tests positive for a zoonotic disease shall not be imported into this state without review and approval by the Department in writing.
10. Dispose of the following wildlife only as directed by the Department:
    a. Wildlife obtained under a scientific activity license; or
    b. Wildlife loaned to the zoo by the Department.
11. Maintain records of all wildlife possessed under the license for a period of five years following the date of disposition. In addition to the information required under subsections (H)(1) through (H)(3), the records shall also include:
    a. Number of all restricted live wildlife, by species and the date it was obtained;
    b. Source of all restricted live wildlife and the date it was obtained;
    c. Number of offspring propagated by all restricted live wildlife; and
    d. For all restricted live wildlife disposed of by the license holder:
       i. Number, species, and date of disposition; and
       ii. Method of disposition.

K. A zoo license holder shall not:
1. Accept any wildlife that is donated, purchased, or otherwise obtained without accompanying evidence of lawful possession.
2. Import into this state any wildlife that may come into contact with the public and tests positive for zoonotic disease, as established under subsection (J)(9).

L. A zoo license holder shall dispose of restricted live wildlife in this state by:
1. Giving, selling, or trading the wildlife to:
   a. Another zoo licensed under this Section;
   b. An appropriate special license holder or appropriately licensed or permitted facility in another state or country authorized to possess the wildlife being disposed;
2. Giving selling, or donating the wildlife to a medical or scientific research facility exempt from special license requirements under R12-4-407;
3. Exporting the wildlife to a zoo certified by the Association of Zoos and Aquariums or Zoological Association of America; or
4. As otherwise directed by the Department.

M. A zoo license holder shall submit an annual report to the Department before January 31 of each year for the previous calendar year. The report form is furnished by the Department.
1. A report is required regardless of whether or not activities were performed during the previous year.
2. The zoo license becomes invalid if the annual report is not submitted to the Department by January 31 of each year.
3. The Department will not process the special license holder's renewal application until the annual report is received by the Department.
4. The report shall summarize the current species inventory, and acquisition and disposition of all wildlife held under the license.

N. A zoo license holder shall request the authority to possess a new species of restricted live wildlife by submitting a written request to the Department prior to acquisition, unless the wildlife was:
1. Held under the previous year's zoo license and included in the previous annual report, or
2. Authorized in advance by the Department in writing.

O. A zoo license holder shall comply with the requirements established under R12-4-409, R12-4-426, R12-4-428, and R12-4-430, as applicable.

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

ARTICLE 4. LIVE WILDLIFE

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), 17-240(A), 17-250(A), 17-250(B), 17-306, and 17-333

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Subsections (J) through (O) omitted in supplement 15-4; errors corrected at the request of the Commission at R18-91 (Supp. 18-1). Subsections (A) through (I) amendments omitted in supplement 15-4; full text has been included as submitted at 21 A.A.R. 2813, File No. R15-155, effective December 5, 2015 (Supp. 19-1). Amended by final rulemaking at 27 A.A.R. 321, effective July 1, 2021 (Supp. 21-1).

R12-4-421. Wildlife Service License

A. A wildlife service license authorizes a person to provide, advertise, or offer assistance in removing the live wildlife listed below to the general public. For the purposes of this Section, the following wildlife, as defined under A.R.S. § 17-101(B), are designated live wildlife:
1. Furbearing animals;
2. Javelina (*Pecari tajacu*);
3. Nongame animals;
4. Predatory animals; and
5. Small game.

B. A wildlife service license is not required when conducting pest control removal services authorized under A.R.S. § Title 3, Chapter 20 for the following wildlife not protected under federal regulation:
1. Rodents, except those in the family Sciuridae;
2. European starlings (*Sturnus vulgaris*);
3. Rosy-faced lovebirds (*Agapornis roseicollis*);
4. House sparrows (*Passer domesticus*);
5. Eurasian collared-doves (*Streptopelia decaocto*);
6. Rock pigeons (*Columba livia*); and
7. Any other non-native wildlife species.

C. A wildlife service license allows a person to conduct activities that facilitate the removal and relocation of live wildlife listed under subsection (A) when the wildlife causes property damage, poses a threat to public health or safety, or if the health or well-being of the wildlife is threatened by its immediate environment. Authorized activities include, but are not limited to, capture, removal, transportation, and relocation.

D. The wildlife service license expires on the last day of the third December from the date of issuance.

E. An employee of a governmental public safety agency is not required to possess a wildlife service license when the employee is acting within the scope of the employee's official duties.

F. In addition to the requirements established under this Section, a wildlife service license holder shall comply with the special license requirements established under R12-4-409.

G. The wildlife service license holder shall be responsible for compliance with all applicable regulatory requirements; the license does not:
1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.

H. The Department shall deny a wildlife service license to a person who fails to meet the requirements established under R12-4-409 or this Section or when the person's wildlife service privileges are suspended or revoked in any state. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.

I. An applicant for a wildlife service license shall submit an application to the Department. The application is furnished by the Department and is available from any Department office and on the Department's website. An applicant shall provide the following information on the application:
1. The applicant's information:
   a. Name;
   b. Mailing address;
   c. Telephone number;

d. Physical description, to include the applicant's eye color, hair color, height, and weight; and
e. Department ID number, when applicable;

2. If the applicant will perform license activities for a commercial purpose, the applicant's business:
   a. Name;
   b. Mailing address;
   c. Telephone number; and
   d. Hours and days of the week the applicant will be available for service;
3. The designated wildlife species or groups of species listed under subsection (A) that will be removed under the license;
4. The methods that the wildlife license holder will use to perform authorized activities;
5. The general geographic area where services will be performed;
6. Any other information required by the Department; and
7. The certification required under R12-4-409(C).

J. In addition to the requirements listed under subsection (I), at the time of application, an applicant for a wildlife service license shall also submit:
1. Proof the applicant has a minimum of six months full-time employment or volunteer experience handling wildlife of the species or groups designated on the application; and
2. A written proposal that contains all of the following information:
   a. Applicant's experience in the capture, handling, and removal of wildlife;
   b. Specific species the applicant has experience capturing, handling, or removing;
   c. General location and dates when the activities were performed;
   d. Methods used to carry out the activities;
   e. The methods used to dispose of the wildlife.

K. When renewing a license without change to the species or species groups authorized under the current license, the wildlife service license holder may reference supporting materials previously submitted in compliance with subsection (J).

L. An applicant for a wildlife service license shall pay all applicable fees required under R12-4-412.

M. A wildlife service license holder shall:
1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
2. Facilitate the removal and relocation of designated wildlife in a manner that:
   a. Is least likely to cause injury to the wildlife; and
   b. Will prevent the wildlife from coming into contact with the general public.
3. Obtain special authorization from the Department regional office that has jurisdiction over the area where the activities will be conducted when performing any activities involving javelina.
4. Release captured designated wildlife only as follows:
   a. Without immediate threat to the animal or potentially injurious contact with humans;
   b. During an ecologically appropriate time of year;
   c. Into a suitable habitat;
   d. In the same geographic area as the animal was originally captured, except that birds may be released at any location statewide within the normal range of that species in an ecological suitable habitat; and
   e. In an area designated by the Department regional office that has jurisdiction over the area where it was captured.
5. Euthanize the wildlife using the safest, quickest, and most humane method available.
6. Dispose of all wildlife that is euthanized or that otherwise dies while possessed under the license by burial or incineration within 30 days of death, unless otherwise directed by the Department.
7. Possess the license or legible copy of the license while conducting any wildlife service activity and presents it for inspection upon the request of any Department employee or agent.
8. Inform the Department in writing within five working days of any change in telephone number, area of service, or business hours or days.
9. Maintain records associated with the license for a period of five years following the date of disposition.

N. A wildlife service license holder may submit to the Department a written request to amend the license to add or delete authority to control and release designated species of wildlife, provided the request meets the requirements of this Section.

O. A wildlife service license holder shall not:
1. Exhibit wildlife or parts of wildlife possessed under the license.
2. Possess designated wildlife beyond the period necessary to transport and relocate or euthanize the wildlife.
3. Retain any parts of wildlife.

P. A wildlife service license holder may:
1. Euthanize designated wildlife only when authorized by the Department.
2. Give injured or orphaned wildlife to a wildlife rehabilitation license holder.

Q. A wildlife service license holder shall submit an annual report to the Department before January 31 of each year on activities performed under the license for the previous calendar year. The report form is furnished by the Department.
1. A report is required regardless of whether or not activities were performed during the previous year.
2. The wildlife service license becomes invalid if the annual report is not submitted to the Department by January 31 of each year.
3. The Department will not process the special license holder's renewal application until the annual report is received by the Department.
4. The annual report shall provide a list of all services performed under the license to include:
   a. The date and location of service;
   b. The number and species of wildlife removed, and
   c. The method of disposition for each animal removed, including the location and date of release.

R. A wildlife service license holder shall comply with the requirements established under R12-4-409 and R12-4-428.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-238(A), 17-239(D), 17-240(A), 17-306, and 41-1005

Historical Note

Adopted effective January 1, 1993; filed December 18, 1992 (Supp. 92-4). Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 321, effective July 1, 2021 (Supp. 21-1).

R12-4-422. Sport Falconry License

A. In addition to the definitions provided under A.R.S. § 17-101, R12-4-101, and R12-4-401, and for the purposes of this Section, the following definitions apply:
"Abatement" means the use of a trained raptor to scare, flush, or haze wildlife to manage depredation or other damage, including threats to human health and safety, caused by the wildlife.
"Captive-bred raptor" means a raptor hatched in captivity.
"Hack" means the temporary release of a raptor into the wild to condition the raptor for use in falconry.
"Hybrid" has the same meaning as prescribed under 50 CFR 21.3, revised October 1, 2019. This incorporation by reference contains no future editions or amendments. The incorporated material is available at any Department office, online at www.gpo.gov, or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000.
"Imping" means using a molted feather to replace or repair a damaged or broken feather.
"Imprint" has the same meaning as prescribed under 50 CFR 21.3, revised October 1, 2019. This incorporation by reference contains no future editions or amendments. The incorporated material is available at any Department office, online at www.gpo.gov, or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000.
"Retrices" means a raptor's tail feathers.
"Sponsor" means a licensed General or Master falconer with a valid Arizona Sport Falconry license who has committed to mentoring an Apprentice falconer.
"Suitable perch" means a perch that is of the appropriate size and texture for the species of raptor using the perch.
"Wild raptor" means a raptor taken from the wild, regardless of how long the raptor is held in captivity or whether the raptor is transferred to another licensed falconer or other permit type.

B. An Arizona Sport Falconry license permits a person to capture, possess, train, and transport a raptor for the purpose of sport falconry in compliance with the Migratory Bird Treaty Act and the Endangered Species Act of 1973.
1. The sport falconry license validates the appropriate license for hunting or taking quarry with a trained raptor. When taking quarry using a raptor, a person must possess a valid:
   a. Sport falconry license, and
   b. Appropriate hunting license.
2. The sport falconry license is valid until the third December from the date of issuance.
3. A licensed falconer may capture, possess, train, or transport wild, captive-bred, or hybrid raptors, subject to the limitations established under subsections (H)(1), (H)(2), and (H)(3), as applicable.

C. The Department shall comply with the licensing time-frame established under R12-4-106.

D. A resident who possesses or intends to possess a raptor for the purpose of sport falconry shall hold an Arizona Sport Falconry license, unless the person is exempt under A.R.S. § 17-236(C) or possesses only raptors not listed under 50 CFR Part 10.13, revised October 1, 2019, and no later amendments or editions. The incorporated material is available from the

U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000, and is on file with the Department.

E. In addition to the requirements established under this Section, a licensed falconer shall also comply with special license requirements established under R12-4-409.

F. The sport falconry license holder shall be responsible for compliance with all applicable regulatory requirements; the license does not:
1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations;
2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license; or
3. Authorize a licensed falconer to capture or release a raptor or practice falconry on public lands where prohibited or on private property without permission from the land owner or land management agency.

G. The Department shall deny a sport falconry license to a person who fails to meet the requirements established under R12-4-409, or this Section. The Department shall provide a written notice to an applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.

H. The Department may issue a Sport Falconry license for the following levels to an eligible person:
1. Apprentice level license:
   a. An Apprentice falconer shall:
      i. Be at least 12 years of age; and
      ii. Have a written statement from a sponsor who is a licensed Master Falconer or a General Falconer while practicing falconry as an apprentice. The written statement shall meet the requirements established under subsection (K)(3)(a)(vi). When a sponsorship is terminated, the apprentice is prohibited from practicing falconry until a new sponsor is acquired. After acquiring a new sponsor, an apprentice shall submit a written statement from the new sponsor to the Department within 30 days. The written statement shall meet the requirements established under subsection (K)(3)(a)(vi).
   b. An Apprentice falconer may possess only one raptor at a time for use in falconry.
   c. An Apprentice falconer is prohibited from possessing any:
      i. Species listed under 50 CFR 17.11, revised October 1, 2019, and subspecies,
      ii. Raptor taken from the wild as a nestling,
      iii. Raptor that has imprinted on humans,
      iv. Bald eagle (*Haliaeetus leucocephalus*),
      v. White-tailed eagle (*Haliaeetus albicilla*),
      vi. Steller's sea-eagle (*Haliaeetus pelagicus*), or
      vii. Golden eagle (*Aquila chrysaetos*).
      viii. For the purposes of subsection (H)(1)(c)(i), this incorporation by reference contains no future editions or amendments. The incorporated material is available at any Department office, online at www.gpo.gov, or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000.
2. General level license:
   a. A General falconer shall:
      i. Be at least 16 years of age; and
      ii. Have submit a written statement provided by the Apprentice Falconer's sponsor, stating that the General falconer practiced falconry as an apprentice falconer for at least two years, including maintaining, training, flying, and hunting with a raptor for at least four months in each year. An applicant cannot substitute any falconry school program or education to shorten the two-year Apprentice period.
   b. A General falconer may possess:
      i. Up to three raptors at a time for use in falconry; and
      ii. Up to the total number of federally permitted or sub-permitted raptors as indicated on the Master falconer's respective federal abatement or propagation permit.
   c. A General falconer is prohibited from possessing a:
      i. Bald eagle,
      ii. White-tailed eagle,
      iii. Steller's sea-eagle, or
      iv. Golden eagle.
3. Master level license:
   a. A Master falconer shall have practiced falconry as a General falconer for at least five years using raptors possessed

by that falconer.

b. A Master falconer may possess:
   i. Any species of wild, captive-bred, or hybrid raptor;
   ii. Any number of captive-bred raptors provided they are trained and used in the pursuit of wild game;
   iii. Up to three of the following species, provided the requirements established under subsection (H)(3)(d) are met: Golden eagle, White-tailed eagle, or Steller's Sea eagle; and
   iv. Up to the total number of federally permitted abatement or propagation raptors as indicated on the Master falconer's respective federal abatement or propagation permit.

c. A Master falconer is prohibited from possessing:
   i. More than three eagles,
   ii. A bald eagle, or
   iii. More than five wild caught raptors.

d. A Master falconer who wishes to possess an eagle shall apply for and receive approval from the Department before possessing an eagle for use in falconry. The licensed falconer shall submit the following documentation to the Department before a request may be considered:
   i. Proof the licensed falconer has experience in handling large raptors such as, but not limited to, ferruginous hawks (*Buteo regalis*) and goshawks (*Accipter gentilis*);
   ii. Information regarding the raptor species, to include the type and duration of the activity in which the experience was gained; and
   iii. Written statements of reference from two persons who have experience handling or flying large raptors such as, but not limited to, eagles, ferruginous hawks, and goshawks. Each written statement shall contain a concise history of the author's experience with large raptors, and an assessment of the applicant's ability to care for and fly an eagle in falconry.

I. A sponsor shall:
1. Be at least 18 years of age.
2. Have practiced falconry as a Master or General falconer for at least two years.
3. Sponsor no more than three apprentices at any one time.
4. Notify the Department within 30 consecutive days after a sponsorship is terminated.
5. Determine the appropriate species of raptor for possession by an apprentice.
6. Provide instruction to the Apprentice falconer pertaining to:
   a. Husbandry, training, and trapping of raptors held for falconry;
   b. Hunting with a raptor; and
   c. Relevant wildlife laws and regulations.

J. A falconer licensed in another state or country is exempt from obtaining an Arizona Sport Falconry license under R12-4-407(B)(9), unless the falconer remains in Arizona for more than 180 consecutive days. A falconer licensed in another state or country and who remains in this state for more than the 180-day period shall apply for an Arizona Sport Falconry license in order to continue practicing sport falconry in this state. The falconer licensed in another state or country shall present a copy of the out-of-state or out-of-country falconry license, or its equivalent, to the Department upon request.
1. A falconer licensed in another state shall:
   a. Comply with all applicable state and federal falconry regulations,
   b. Possess only those raptors authorized under the out-of-state sport falconry license, and
   c. Provide a health certificate for each raptor possessed under the out-of-state sport falconry license when the raptor is present in this state for more than 30 consecutive days. The health certificate may be issued after the date of the interstate importation, but shall have been issued no more than 30 consecutive days prior to the interstate importation.
2. A falconer licensed in another country may possess, train, and use for falconry only those raptors authorized under the out-of-country sport falconry license, provided the import of that species into the United States is not prohibited. This subsection does not prohibit the falconer from flying or training a raptor lawfully possessed by any other licensed falconer.
3. A falconer licensed in another country is prohibited from leaving an imported raptor in this state, unless authorized under federal permit. The falconer shall report the death or escape of a raptor possessed by that falconer to the Department as established under subsection (O)(1) or prior to leaving the state, whichever occurs first.
4. A falconer licensed in another country shall:
   a. Comply with all applicable state and federal falconry regulations;
   b. Comply with falconry licensing requirements prescribed by the country of licensure not in conflict with federal or state law;
   c. Notify the Department no less than 30 consecutive days prior to importing a raptor into this state;

d. Provide a health certificate, issued no earlier than 30 consecutive days prior to the date of importation, for each raptor imported into this state; and
e. Attach two functioning radio transmitters to any raptor imported into this country by the falconer while flown free in this state by any falconer.

K. An applicant for a Sport Falconry license shall pass the examination required under subsection (N), ensure their raptor housing facility is inspected and meets the requirements established under subsection (M), and submit an application to the Department. The application is furnished by the Department and is available at any Department office and on the Department's website.

1. An applicant shall provide the following information on the application:
   a. Falconry level desired;
   b. Name;
   c. Date of birth;
   d. Mailing address;
   e. Telephone number, when available;
   f. Department I.D. number;
   g. Applicant's physical description, to include the applicant's eye color, hair color, height, and weight;
   h. Arizona hunting license number, when available;
   i. Number of years of experience as a falconer;
   j. Current Falconry license level;
   k. Physical address of a housing facility when the raptor is kept at another location, when applicable;
   l. Information documenting all raptors possessed by the applicant at the time of application, to include:
      i. Species;
      ii. Subspecies, when applicable;
      iii. Age;
      iv. Sex;
      v. Band or microchip number, as applicable;
      vi. Date and source of acquisition; and
   m. The certification required under R12-4-409(C);
   n. Parent or legal guardian's signature, when the applicant is under the age of 18;
   o. Date of application; and
   p. Any other information required by the Department.
2. An applicant shall certify that the applicant has read and is familiar with applicable state laws, rules, and the regulations under 50 CFR Part 13 and the other applicable parts in 50 CFR Chapter I, Subchapter B and that the information submitted is complete and accurate to the best of their knowledge and belief.
3. In addition to the information required under subsection (K)(1), a person applying for:
   a. An Apprentice level license shall also provide the sponsor's:
      i. Name,
      ii. Date of birth,
      iii. Mailing address,
      iv. Department I.D. number,
      v. Telephone number, and
      vi. A written statement from the sponsor stating that the falconer agrees to sponsor the applicant.
   b. A General level license shall also provide:
      i. Information documenting the applicant's experience in maintaining falconry raptors, to include the species and period of time each raptor was possessed while licensed as an Apprentice falconer; and
      ii. A written statement from the sponsor certifying that the applicant has practiced falconry at the Apprentice falconer level for at least two years, and maintained, trained, flown, and hunted with a raptor for at least four months in each year.
   c. A Master level license shall certify that the falconer has practiced falconry as a General falconer with his or her own raptors for at least five years.

L. An applicant for any level Sport Falconry license shall pay all applicable fees required under R12-4-412.

M. The Department shall inspect the applicant's raptor housing facilities, materials, and equipment to verify compliance with the requirements established under R12-4-409(I), and this Section before issuing a Sport Falconry license. The applicant or licensed falconer shall ensure all raptors currently possessed by the falconer and kept in the housing facility are present at the time of inspection.

1. The Department may inspect a housing facility, equipment, raptors, or records:
   a. At any time before or during the license period to determine compliance with this Section,

b. After a change of location, when the Department cannot verify the housing facility is the same facility as the one approved by a previous inspection, or
c. Prior to the acquisition of a new species or addition of another raptor when the previous inspection does not indicate the housing facilities can accommodate a new species or additional raptor.
d. The Department shall comply with A.R.S. § 41-1009 when conducting inspections at a license holder's facility.

2. A licensed falconer shall notify the Department no more than five business days after changing the location of a housing facility.
3. When a housing facility is located on property not owned by the licensed falconer, the falconer shall provide a written statement signed and dated by the property owner at the time of inspection. The written statement shall specify that the licensed falconer has permission to keep a raptor on the property and the property owner permits the Department to inspect the falconry housing facility at any reasonable time of day and in the presence of the licensed falconer.
4. A licensed falconer shall ensure the housing facility:
   a. Provides a healthy and safe environment,
   b. Is designed to keep predators and domestic animals out,
   c. Is designed to avoid injury to the raptor,
   d. Is easy to access,
   e. Is easy to clean, and
   f. Provides access to fresh water and sunlight.
5. In addition to the requirements established under R12-4-409(I):
   a. A licensed falconer shall ensure housing facilities where raptors are held:
      i. Has a suitable perch that is protected from extreme temperatures, wind, and excessive disturbance for each raptor;
      ii. Has at least one opening for sunlight; and
      iii. Has walls that are solid, constructed of vertical bars spaced narrower than the width of the body of the smallest raptor housed therein, or any other suitable materials approved by the Department. A nestling may be kept in any suitable container or enclosure until it is capable of flight.
   b. A licensed falconer shall possess all of the following equipment:
      i. At least one flexible, weather-resistant leash;
      ii. One swivel appropriate to the raptor being flown;
      iii. At least one water container, available to each raptor kept in the housing facility, that is at least two inches deep and wider than the length of the largest raptor using the container;
      iv. A reliable scale or balance suitable for weighing raptors, graduated in increments of not more than 15 grams;
      v. Suitable equipment that protects the raptor from extreme temperatures, wind, and excessive disturbance while transporting or housing a raptor when away from the permanent housing facility where the raptor is kept; and
      vi. At least one pair of jesses constructed of suitable material or Alymeri jesses consisting of an anklet, grommet, and removable strap that attaches the anklet and grommet to a swivel. The falconer may use a one-piece jess only when the raptor is not being flown.
6. A licensed falconer may keep a falconry raptor inside the falconer's residence provided a suitable perch is supplied. The falconer shall ensure all flighted raptors kept inside a residence are tethered or otherwise restrained at all times, unless the falconer is moving the raptor into or out of the residence. This subsection does not apply to nestlings, which do not need to be tethered or otherwise restrained.
7. A licensed falconer may keep multiple raptors together in one enclosure untethered only when the raptors are compatible with each other.
8. A licensed falconer may keep a raptor temporarily outdoors in the open provided the raptor is continually under observation by the falconer or an individual designated by the falconer.
9. A licensed falconer may keep a raptor in a temporary housing facility that the Department has inspected and approved for no more than 120 consecutive days.
10. A licensed falconer may keep a raptor in a temporary housing facility that the Department has not inspected or approved for no more than 30 consecutive days. The falconer shall notify the Department of the temporary housing facility prior to the end of the 30-day period. The Department may inspect a temporary housing facility as established under R12-4-409(J).

N. Prior to the issuance of a Sport Falconry license, an applicant shall:
1. Present proof of a previously held state-issued sport falconry license, or
2. Correctly answer at least 80% of the questions on the Department administered written examination.
   a. A person whose Sport Falconry license is expired more than five years shall take the examination. The Department shall issue to an eligible applicant a license for the sport falconry license type previously held by the applicant after the applicant correctly answers at least 80% of the questions on the written examination and presents

proof of the previous Sport Falconry license.

b. A person who holds a falconry license issued in another country shall correctly answer at least 80% of the questions on the written examination. The Department shall determine the level of license issued based upon the applicant's documentation.

O. A licensed falconer shall:

1. Submit a paper copy of the 3-186A form to report any of the following raptor possession changes to the Department no more than 10 business days after the occurrence:
   a. Acquisition,
   b. Banding,
   c. Escape into the wild without recovery after 30 consecutive days have passed,
   d. Death,
   e. Microchipping,
   f. Rebanding,
   g. Release,
   h. Take, or
   i. Transfer.
2. Submit a copy of the falconer's federal propagation report, when applicable.
3. Submit a copy of the falconer's federal abatement report, when applicable.
4. Upon discovering the theft of a raptor, the falconer shall immediately report the theft of a raptor to the Department and USFWS by:
   a. Contacting the Department's regional office within 48 hours; and
   b. Submitting the electronic 3-186A form within 10 days.

P. A licensed falconer shall print and maintain copies of all required 3-186A form and associated documents for each abatement, falconry, and propagation raptor possessed by the falconer, as applicable. The falconer shall retain copies of all required documents for a period of five years from the date on which the raptor left the falconer's possession.

Q. A licensed falconer or a person with a valid falconry license, or its equivalent, issued by any state meeting federal falconry standards may capture a raptor for the purpose of falconry only when authorized by Commission Order.

1. A falconer attempting to capture a raptor shall possess:
   a. A valid Arizona Sport Falconry license or valid falconry license, or its equivalent, issued by another state, and
   b. Any required Arizona hunt permit-tag issued to the licensed falconer for take of the authorized raptor, and
   c. A valid Arizona hunting or combination license. A short-term combination hunting and fishing license is not valid for capturing a raptor under this subsection.
2. An Apprentice falconer may take from the wild:
   a. Any raptor not prohibited under subsection (H)(1)(c) that is less than one year of age, except nestlings, or
   b. An adult raptor.
3. A General or Master falconer may take from the wild:
   a. A raptor of any age, including nestlings, provided at least one nestling remains in the nest; or
   b. An adult raptor.
4. A licensed falconer shall take no more than two raptors from the wild for use in falconry each calendar year. For the purpose of take limits, a raptor is counted towards the licensed falconer's take limit by the falconer who originally captured the raptor.
5. A falconer attempting to capture a raptor shall:
   a. Not use stupefying substances;
   b. Use a trap or bird net that is not likely to cause injury to the raptor;
   c. Ensure that each trap or net the falconer is using is continually attended; and
   d. Ensure that each trap used for the purpose of capturing a raptor is marked with the falconer's name, address, and license number.
6. A licensed falconer shall report the injury of any raptor injured due to capture techniques to the Department. The falconer shall transport the injured raptor to a veterinarian or licensed rehabilitator and pay for the cost of the injured raptor's care and rehabilitation. After the initial medical treatment is completed, the licensed falconer shall either:
   a. Keep the raptor and the raptor shall count towards the falconer's take and possession limit, or
   b. Transfer the raptor to a permitted wildlife rehabilitator and the raptor shall not count against the falconer's take or possession limit.
7. When a licensed falconer takes a raptor from the wild and transfers the raptor to another falconer who is present at a capture site, the falconer receiving the raptor is responsible for reporting the take of the raptor.
8. A General or Master falconer may capture a raptor that will be transferred to another licensed falconer who is not present at the capture site. The falconer who captured the raptor shall report the take of the raptor and the capture shall

count towards the General or Master falconer's take limit. The General or Master falconer may then transfer the raptor to another falconer.

9. A General or Master falconer may capture a raptor for another licensed falconer who cannot attend the capture due to a long-term or permanent physical impairment. The licensed falconer with the physical impairment is responsible for reporting the take of the raptor and the raptor shall count against their take and possession limits.
10. A licensed falconer may capture any raptor displaying a seamless metal band, or any other item identifying it as a falconry raptor, regardless of whether the falconer is prohibited from possessing the raptor. The capturing falconer shall return the recaptured raptor to the falconer of record. The raptor shall not count towards the capturing falconer's take or possession limits, provided the capturing falconer reports the temporary possession of the raptor to the Department no more than five consecutive days after capturing the raptor.
    a. When the falconer of record cannot or does not wish to possess the raptor, the falconer who captured the raptor may keep the raptor, provided the falconer is eligible to possess the species and may do so without violating any requirement established under this Section.
    b. When the falconer of record cannot be located, the Department shall determine the disposition of the recaptured raptor.
11. A licensed falconer may capture and shall report the capture of any raptor wearing a transmitter to the Department no more than five business days after the capture. The falconer shall attempt to contact the researcher or licensed falconer who applied the transmitter and facilitate the replacement or retrieval of the transmitter and raptor. The falconer may possess the raptor for no more than 30 consecutive days while waiting for the researcher or falconer to retrieve the transmitter and raptor. The raptor shall not count towards the falconer's take or possession limits, provided the falconer reports the temporary possession of the raptor to the Department no more than five consecutive days after capturing the raptor. The Department shall determine the disposition of a raptor when the researcher or falconer does not replace the transmitter or retrieve the raptor within the initial 30-day period.
12. A licensed falconer may capture any raptor displaying a federal Bird Banding Laboratory (BBL) aluminum research band or tag, except a peregrine falcon (*Falco peregrinus*). A licensed falconer who captures a raptor wearing a research band or tag shall report the following information to BBL and the Department:
    a. Species,
    b. Band or tag number,
    c. Location of the capture, and
    d. Date of capture.
    e. A person can report the capture of a raptor wearing a research band or tag to BBL by submitting information regarding the capture online at the BBL website.
13. A licensed falconer may recapture a falconer's lost or any escaped falconry raptor at any time. The Department does not consider the recapture of a wild falconry raptor as taking a raptor from the wild.
14. When attempting to trap a raptor in Cochise, Graham, Pima, Pinal, or Santa Cruz counties, a licensed falconer shall:
    a. Not begin trapping while a northern aplomado falcon (*Falco femoralis septentrionalis*) is observed in the vicinity of the trapping location.
    b. Suspend trapping when a northern aplomado falcon arrives in the vicinity of the trapping location.
15. In addition to the requirements in subsection (Q)(14), an apprentice falconer shall be accompanied by a General or Master falconer when attempting to capture a raptor in Cochise, Graham, Pima, Pinal, or Santa Cruz counties.
16. A licensed Master falconer may take up to two golden eagles from the wild only as authorized under 50 CFR Parts 21 and 22. The Master falconer may:
    a. Capture a golden eagle or an immature or sub-adult golden eagle during the time a livestock depredation area and associated depredation permit or depredation control order are in effect as declared by USDA Wildlife Services and permitted under 50 CFR 22.23, or upon the request of the Arizona Governor pursuant to 50 CFR 22.31 and 22.32.
    b. Take a nestling from its nest or a nesting adult golden eagle in a livestock depredation area if a biologist representing the agency responsible for declaring the depredation area determines the adult eagle is preying on livestock or wildlife and that any nestling of the adult will be taken by a falconer authorized to possess it or by the biologist and transferred to a person authorized to possess it.
    c. The falconer shall inform the Department of the capture plans in person, in writing, or by telephone at least three business days before trapping is initiated. The falconer may send written notification to the Arizona Game and Fish Department's Law Enforcement Programs Coordinator at 5000 West Carefree Highway, Phoenix, Arizona 85086.
17. A licensed falconer shall ensure any falconry activities the falconer is conducting do not cause unlawful take under the Endangered Species Act of 1973, 16 U.S.C. § 1531 et seq., or the Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668 through 668d. The Department or USFWS may provide information regarding where take is likely to occur.

The falconer shall report the take of any federally listed threatened or endangered species or bald or golden eagle to the USFWS Arizona Ecological Services Field Office.

R. A licensed falconer shall comply with all of the following banding requirements:
1. A licensed falconer shall ensure the following raptors are banded after capture:
   a. Northern Goshawk,
   b. Harris's hawk (*Parabuteo unicinctus*), and
   c. Peregrine falcon.
2. The falconer shall request a band no more than five consecutive days after the capture of a raptor by contacting the Department. A Department representative or a General or Master licensed falconer may attach the USFWS leg band to the raptor.
3. A licensed falconer shall not use a counterfeit, altered, or defaced band.
4. A falconer holding a federal propagation permit shall ensure a raptor bred in captivity wears a seamless metal band furnished by USFWS, as prescribed under 50 CFR 21.30.
5. A licensed falconer may remove the rear tab on a band and smooth any imperfections on the surface, provided doing so does not affect the band's integrity or numbering.
6. A licensed falconer shall report the loss of a band to the Department no more than five business days after discovering the loss. The falconer shall reband the raptor with a new USFWS leg band furnished by the Department.

S. A licensed falconer may request Department authorization to implant an ISO-compliant [134.2 kHz] microchip in lieu of a band into a captive-bred raptor or raptor listed under subsection (R)(1).
1. The falconer shall submit a written request to the Department.
2. The falconer shall retain a copy of the Department's written authorization and any associated documentation for a period of five years from the date the raptor permanently leaves the falconer's possession.
3. The falconer is responsible for the cost of implanting the microchip and any associated veterinary fees.

T. A licensed falconer may allow a falconry raptor to feed on any species of wildlife incidentally killed by the raptor for which there is no open season or for which the season is closed, but shall not take such wildlife into possession.

U. A General or Master falconer may hack a falconry raptor. Any raptor the falconer is hacking shall count towards the falconer's possession limit during hacking.
1. A falconer is prohibited from hacking a raptor near the nesting area of a federally threatened or endangered species or in any other location where the raptor is likely to disturb or harm a federally listed threatened or endangered species. The Department may provide information regarding where this is likely to occur.
2. A licensed falconer shall ensure any hybrid raptor flown free or hacked by the falconer is equipped with at least two functioning radio transmitters.

V. A licensed falconer may release:
1. A wild-caught raptor permanently into the wild under the following circumstances:
   a. The raptor is native to Arizona,
   b. The falconer removes the raptor's falconry band and any other falconry equipment prior to release, and
   c. The falconer releases the raptor in a suitable habitat and under suitable seasonal conditions.
2. A captive-bred raptor permanently into the wild only when the raptor is native to Arizona and the Department approves the release of the raptor. The falconer shall request permission to release the captive-bred raptor by contacting the Department. When permitted by the Department and before releasing the captive-bred raptor, the General or Master falconer shall hack the captive-bred raptor in a suitable habitat and the appropriate season.
3. A licensed falconer is prohibited from intentionally releasing any hybrid or non-native raptor permanently into the wild.

W. A Master falconer may conduct and receive payment for abatement conducted with a falconry raptor or federally permitted abatement raptor. The falconer shall apply for and obtain all required federal permits prior to conducting any abatement activities. The falconer shall comply with the reporting requirement under subsection (O). A General falconer may conduct abatement activities only when authorized under the federal permit held by the Master falconer.

X. A person other than a licensed falconer may temporarily care for a falconry raptor for no more than 45 consecutive days, unless approved by the Department. The raptor under temporary care shall remain in the falconer's facility. The raptor shall continue to count towards the falconer's possession limit. An unlicensed caretaker shall not fly the raptor. The falconer may request an extension from the Department to the temporary possession period if extenuating circumstances occur. The Department shall evaluate extension requests on a case-by-case basis.

Y. A licensed falconer may serve as a caretaker for another licensed falconer's raptor for no more than 120 consecutive days, unless approved by the Department. The falconer shall provide the temporary caretaker with a signed and dated statement authorizing the temporary possession of each raptor and a copy of USFWS form 3-186A that shows that the licensed falconer is the possessor of each raptor. The statement shall also include the temporary possession period and activities the caretaker may conduct with the raptor. a The raptor under temporary care shall not count toward the caretakers possession

limit. The temporary caretaker may fly or train the raptor when permitted by the falconer in writing. The falconer may request an extension from the Department to the temporary possession period if extenuating circumstances occur. The Department shall evaluate extension requests on a case-by-case basis.

Z. A General or Master falconer may assist any federally licensed wildlife rehabilitator in conditioning a raptor the licensed falconer is authorized to possess in preparation for the raptor's release to the wild. The falconer may temporarily remove the raptor from the rehabilitation facilities while conditioning the raptor. The raptor shall remain under the rehabilitator's license and shall not count towards the falconer's possession limit. The rehabilitator shall provide the licensed falconer with a written statement authorizing the falconer to assist the rehabilitator. The written statement shall also identify the raptor by species, type of injury, and band number, when available. The licensed falconer shall return the raptor to the rehabilitator within the 180–day period established under R12-4-423(T), unless the raptor is:

1. Released into the wild in coordination with the rehabilitator and as authorized under this subsection,
2. Allowed to remain with the rehabilitator for a longer period of time as authorized under R12-4-423(U), or
3. Transferred permanently to the falconer, provided the falconer may legally possess the raptor and the Department approves the transfer. The raptor shall count towards the falconer's possession limit.

AA. A licensed falconer may use a raptor possessed for falconry in captive propagation, when permitted by USFWS. A licensed falconer is not required to transfer a raptor from a Sport Falconry license to another license when the raptor is used for captive propagation less than eight months in a year.

BB. A General or Master licensed falconer may use a lawfully possessed raptor in a conservation education program presented in a public venue. An Apprentice falconer, under the direct supervision of a General or Master falconer, may use a lawfully possessed raptor in a conservation education program presented in a public venue. The primary use for a raptor is falconry; a licensed falconer shall not possess a raptor solely for the purpose of providing a conservation education program. The falconer shall ensure the focus of the conservation education program is to provide information about the biology, ecological roles, and conservation needs of raptors and other migratory birds. The falconer may charge a fee for presenting a conservation education program; however, the fee shall not exceed the amount required to recoup the falconer's costs for providing the program. As a condition of the Sport Falconry License, the licensed falconer agrees to indemnify the Department, its officers, and employees. The falconer is liable for any damages associated with the conservation education activities.

CC. A licensed falconer may allow the photography, filming, or similar uses of a falconry raptor possessed by the licensed falconer, provided:

1. The falconer is not compensated for these activities; and
2. The final product from these activities:
   a. Promotes the practice of falconry;
   b. Provides information about the biology, ecological roles, and conservation needs of raptors and other migratory birds;
   c. Endorses a nonprofit falconry organization or association, products, or other endeavors related to falconry; or
   d. Is used in scientific research or science publications.

DD. A licensed falconer may use or dispose of lawfully possessed falconry raptor feathers. A falconer shall not buy, sell, or barter falconry raptor feathers. A falconer may possess feathers for imping from each species of raptor that the falconer currently possesses or has possessed.

1. The licensed falconer may transfer or receive feathers for imping from:
   a. Another licensed falconer,
   b. A licensed wildlife rehabilitator, or
   c. Any licensed propagator located in the United States.
2. A licensed falconer may donate falconry raptor feathers, except bald and golden eagle feathers, to:
   a. Any person or institution permitted to possess falconry raptor feathers,
   b. Any person or institution exempt from the permit requirement under 50 CFR 21.12, or
   c. A non-eagle feather repository. The Department may provide information regarding the submittal of falconry raptor feathers to a non-eagle feather repository.
3. A licensed falconer shall gather primary and secondary flight feathers or retrices that are molted or otherwise lost from a golden eagle and either retain the feathers for imping purposes or submit the feathers to the U.S. Fish and Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal, Building 128, Commerce City, Colorado 80022.
4. A falconer whose license is either revoked or expired shall dispose of all falconry raptor feathers in the falconer's possession.

EE. Arizona licensed falconers importing raptors into Arizona shall have a health certificate issued no more than 30 consecutive days:

1. Prior to the international importation, or
2. Prior to or after the inter-state importation.

FF. A licensed falconer may conduct any of the following activities with any captive-bred raptor provided the raptor is wearing a seamless band and the person receiving the raptor possesses an appropriate special license:
1. Barter,
2. Offer for barter,
3. Gift,
4. Purchase,
5. Sell,
6. Offer for sale, or
7. Transfer.

GG. A licensed falconer is prohibited from conducting any of the following activities with any wild-caught raptor protected under the Migratory Bird Treaty Act:
1. Barter,
2. Offer for barter,
3. Purchase,
4. Sell, or
5. Offer for sale.

HH. A licensed falconer may transfer:
1. Any wild-caught falconry raptor lawfully captured in Arizona with or without a permit tag to another Arizona Sport Falconry License holder at any time.
   a. The raptor shall count towards the take limit for that calendar year for the falconer taking the raptor from the wild.
   b. The raptor shall not count against the take limit of the falconer receiving the raptor.
2. Any wild-caught falconry raptor to another license or permit type under this Article or federal law, provided the raptor has been used in the sport of falconry for at least two years preceding the transfer.
3. A wild-caught falconry sharp-shinned hawk (*Accipiter striatus*), Cooper's hawk (*Accipiter cooperii)*, merlin (*Falco columbarius*), or American kestrel (*Falco sparverius*) to another license or permit type under this Article or federal law, provided the raptor has been used in the sport of falconry for at least one-year preceding the transfer.
4. Any hybrid or captive-bred raptor to another licensed falconer or permit type under this Article or federal law at any time.
5. Any falconry raptor that is no longer capable of being flown, as determined by a veterinarian, to another permit type at any time. The licensed falconer shall provide a copy of the documentation from the veterinarian stating that the raptor is not useable in falconry to the Federal Migratory Bird Permits office that administers the other permit type.

II. A licensed falconer shall not transfer a wild-caught raptor species to a licensed falconer in another state for at least one year from the date of capture if either resident or nonresident take is managed through Commission Order by way of a permit-tag, nonpermit-tag, or annual harvest quota system. However, a licensed falconer may transfer a wild-caught raptor that is not managed through Commission Order by way of a permit-tag, nonpermit-tag, or annual harvest quota system to a licensed falconer in another state at any time.

JJ. A surviving spouse, executor, administrator, or other legal representative of a deceased or incapacitated licensed falconer shall transfer any raptor held by the licensed falconer to another licensed falconer no more than 90 consecutive days after the death of the falconer. The Department shall determine the disposition of any raptor not transferred prior to the end of the 90-day period.

KK. A licensed falconer shall conduct the following activities, as applicable, no more than 10 business days after either the death of a falconry raptor or the final examination of a deceased raptor by a veterinarian:
1. Dispose of any raptor suspected or confirmed with West Nile Virus or poisoning, except for lead poisoning, by incineration.
2. For a bald or golden eagle, send the entire body, including all feathers, talons, and other parts, to the National Eagle Repository;
3. For any euthanized non-eagle raptor, to prevent secondary poisoning of other wildlife, the falconer shall either submit the carcass to a non-eagle repository or burn, bury, or otherwise destroy the carcass;
4. For all other species:
   a. Submit the carcass to a non-eagle repository;
   b. Submit the carcass to the Department for submission to a non-eagle repository;
   c. Donate the body or feathers to any person or institution exempt under 50 CFR 21.12 or authorized by USFWS to acquire and possess such parts or feathers;
   d. Retain the carcass or feathers for imping purposes as established under subsection (DD);
   e. Burn, bury, or otherwise destroy the carcass; or
   f. Mount the raptor carcass. The falconer shall ensure any microchip implanted in the raptor is not removed and any band attached to the raptor remains on the mount. The falconer may use the mount for a conservation education

program. The falconer shall ensure copies of the license and all relevant 3-186A forms are retained with the mount. The mount shall not count towards the falconer's possession limit.

5. A license holder submitting a carcass or parts of a carcass of any raptor that has been euthanized shall ensure a tag indicating the raptor was euthanized is attached to the carcass or parts of the carcass before submitting it to the National Eagle Repository or non-eagle repository, as applicable.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-235, 17-236(B), 17-238(A), 17-306, 17-307, 17-331, 17-333, 17-371(D), 25-320(P), and 41-1005

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended effective April 4, 1997 (Supp. 97-2). Amended by final rulemaking at 6 A.A.R. 211, effective December 14, 1999 (Supp. 99-4). Amended by final rulemaking at 18 A.A.R. 958, effective January 1, 2013 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 321, effective July 1, 2021 (Supp. 21-1).

R12-4-423. Wildlife Rehabilitation License

A. For the purposes of this Section, "volunteer" means a person who:
1. Is not designated as an agent, as defined under R12-4-401,
2. Assists a wildlife rehabilitation license holder without compensation, and
3. Is under the direct supervision of the license holder at the location specified on the wildlife rehabilitation license.

B. A wildlife rehabilitation license is issued for the sole purpose of restoring and returning wildlife to the wild through rehabilitative services. The license allows a person 18 years of age or older to conduct any of the following activities with live injured, disabled, orphaned or otherwise debilitated wildlife specified on the rehabilitation license:
1. Capture;
2. Euthanize;
3. Export to a licensed zoo, when authorized by the Department;
4. Receive from the public;
5. Rehabilitate;
6. Release;
7. Temporarily possess;
8. Transport; or
9. Transfer to one of the following:
   a. Licensed veterinarian for treatment or euthanasia;
   b. Another appropriately licensed special license holder;
   c. Licensed zoo, when authorized by the Department; or
10. As otherwise directed in writing by the Department.

C. A wildlife rehabilitation license authorizes the possession of the following taxa or species:
1. Amphibians;
2. Reptiles;
3. Birds:
   a. Non-passerines, birds in any order other than those named in subsections (b) through (e);
   b. Birds in the orders *Falconiformes* or *Strigiformes*, raptors;
   c. Birds in the order, *Galliformes* quails and turkeys;
   d. Birds in the order *Columbiformes*, doves;
   e. Birds in the order *Trochiliformes*, hummingbirds; and
   f. Birds in the order *Passeriformes*, passerines;
4. Mammals:
   a. Nongame mammals;
   b. Bats;
   c. Big game mammals other than cervids: bighorn sheep, bison, black bear, javelina, mountain lion, pronghorn;
   d. Carnivores: bobcat, coati, coyote, foxes, raccoons, ringtail, skunks, and weasels; and
   e. Small game mammals.

D. A wildlife rehabilitation license authorizes the possession of the following taxa or species only when specifically requested at the time of application:
1. Eagles;

2. Species listed under 50 CFR 17.11, revised October 1, 2019; and
3. The Department's Tier 1 Species of Greatest Conservation Need, as defined under R12-4-401.
4. For the purposes of subsection (D)(2), this incorporation by reference contains no future editions or amendments. The incorporated material is available at any Department office, online at www.gpo.gov, or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000.

E. All wildlife held under the license is the property of the state and shall be surrendered to the Department upon request.

F. The wildlife rehabilitation license expires on the last day of the third December from the date of issuance.

G. In addition to the requirements established under this Section, a wildlife rehabilitation license holder shall comply with the special license requirements established under R12-4-409.

H. The Department shall deny a wildlife rehabilitation license to a person who fails to meet the requirements and criteria established under R12-4-409, R12-4-428, or this Section or when the person's wildlife rehabilitation license is suspended or revoked in any state. The Department shall provide the written notice established under R12-4-409 to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10.

I. The wildlife rehabilitation license holder shall be responsible for compliance with all applicable regulatory requirements; the license does not:

1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations;
2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license; or
3. Authorize the license holder to conduct any activities that constitutes the practice of veterinary medicine as prescribed under A.R.S. § 32-2231 whether or not a fee, compensation, or reward is directly or indirectly promised, offered, expected, received or accepted, unless the license holder is currently licensed to practice veterinary medicine in the state of Arizona.

J. Before applying for a wildlife rehabilitation license, a person shall correctly answer at least 80% of the questions on the Department administered written examination. The Department shall consider only those parts of the examination that are applicable to the taxa of wildlife for which the license is sought in establishing the qualifications of the applicant.

1. Examinations are provided by appointment, only.
2. An applicant may request a verbal or written examination.
3. The examination shall include questions regarding:
   a. Wildlife rehabilitation;
   b. Safe handling of wildlife;
   c. Transporting wildlife;
   d. Humane treatment;
   e. Nutritional requirements;
   f. Behavioral requirements;
   g. Developmental requirements;
   h. Ecological requirements;
   i. Habitat requirements;
   j. Captivity standards established under R12-4-428;
   k. Human and wildlife safety considerations;
   l. State statutes, rules, and regulations regarding wildlife rehabilitation; and
   m. National Wildlife Rehabilitation Association minimum standards for wildlife rehabilitation.
4. The applicant must successfully complete the examination within three years prior to the date on which the initial application for the license is submitted to the Department.

K. An applicant for a wildlife rehabilitation license shall submit an application to the Department. The application is furnished by the Department and is available at any Department office and on the Department's website. The applicant shall provide the following information on the application:

1. The applicant's information:
   a. Name;
   b. Date of birth;
   c. Mailing address;
   d. Telephone number;
   e. Housing facility address, if different from mailing address;
   f. Physical address or general location description and Global Positioning System location; and
   g. Department ID number, when applicable;

2. The wildlife taxa or species listed under subsection (C) that will be possessed under the license;
3. For each location where the applicant proposes to use wildlife, the land owner's:
   a. Name;
   b. Mailing address;
   c. Telephone number; and
   d. Physical address or general location description and Global Positioning System location;
4. A detailed description, diagram, and photographs of the housing facility where the applicant will hold the wildlife, and a description of how the housing facility complies with the captivity standards established under this Section;
5. Any other information required by the Department; and
6. The certification required under R12-4-409(C).

L. In addition to the requirements listed under subsection (K), at the time of application, an applicant for a wildlife rehabilitation license shall also submit:
1. Any one or more of the following:
   a. A valid, current license issued by a state veterinary medical examination authority that authorizes the applicant to practice as a veterinarian;
   b. Proof of at least six months of experience performing wildlife rehabilitative work with an average of at least eight hours each week for the taxa or species of animal listed on the application; or
   c. A current and valid license, permit, or other form of authorization issued by another state or the federal government that allows the applicant to perform wildlife rehabilitation;
2. Proof the applicant successfully completed the examination required under subsection (J) no more than three years prior to submitting the initial application;
3. An affidavit signed by the applicant affirming either of the following:
   a. The applicant is a licensed veterinarian; or
   b. A licensed veterinarian is reasonably available to provide veterinary services as necessary to facilitate rehabilitation of wildlife.
4. A written statement describing:
   a. The applicant's preferred method of disposing of non-releasable live wildlife as listed under subsection (B); and
   b. The applicant's training and experience in handling, capturing, rehabilitating, and caring for the taxa or species when the applicant is applying for a license to perform authorized activities with taxa or species of wildlife listed under subsection (C).

M. A wildlife rehabilitation license holder who wishes to continue activities authorized under the license shall renew the license before it expires.
1. When renewing a license without change to the species, location, or design of the facility where wildlife is held as authorized under the current license, the license holder may reference supporting materials previously submitted in compliance with subsection (K).
2. A license holder applying for a renewal of the license shall successfully complete the examination at the time of renewal when the annual report submitted under subsection (Z) indicates the license holder did not perform any rehabilitative activities under the license.
3. A license holder applying for a renewal of the license shall submit proof the license holder has completed the continuing education requirement established under subsection (N).

N. During the license period a wildlife rehabilitation license holder shall complete eight or more hours of continuing education sessions on wildlife rehabilitation or veterinary medicine. Acceptable continuing education sessions may be obtained from:
1. An accredited university or college;
2. The National Wildlife Rehabilitators Association, 2625 Clearwater Rd. Suite 110, St. Cloud, MN 56301;
3. The International Wildlife Rehabilitation Council, PO Box 3197, Eugene, OR 97403; or
4. Other applicable training opportunities approved by the Department in writing. A license holder who wishes to use other applicable training to meet the eight hour continuing education requirement shall request approval of the other applicable training prior to participating in the education session.

O. At the time of application, a wildlife rehabilitation license holder may request authorization to allow an agent to assist the license holder in carrying out activities authorized under the wildlife rehabilitation license by submitting a written request to the Department.
1. An applicant may request the ability to allow a person to act as an agent on the applicant's behalf, provided:
   a. An employment or supervisory relationship exists between the applicant and the agent,
   b. The agent submits proof of at least six months of experience performing wildlife rehabilitative work with an average of at least eight hours each week, and
   c. The agent's privilege to take or possess live wildlife is not suspended or revoked in any state.

d. An agent shall allow the Department to conduct inspections of an agent's facility when the agent intends to possess wildlife for more than 48 hours. The Department shall comply with A.R.S. § 41-1009 when conducting inspections at a license holder's facility.

2. The license holder shall obtain approval from the Department prior to allowing the agent assist in any activities.
3. The license holder is liable for all acts the agent performs under the authority of this Section.
4. The Department, acting on behalf of the Commission, may suspend or revoke a license for violation of this Section by an agent.
5. The license holder shall ensure the agent possesses a legible copy of the license while conducting any activity authorized under the wildlife rehabilitation license and presents it for inspection upon the request of any Department employee or agent.

P. At any time during the license period, a wildlife rehabilitation license holder may request permission to amend the license to add or delete an agent or a location where wildlife is held; or to obtain authority to rehabilitate additional taxa of wildlife. To request an amendment, the license holder shall submit the following information to the Department, as applicable:

1. To add or delete an agent, the information stated in subsections (K)(1) through (K)(4) as applicable to the agent, and proof of at least six months of experience performing wildlife rehabilitative work with an average of at least eight hours each week;
2. To add or delete a location, the information stated in subsection (K)(1) through (K)(5); and
3. To obtain authority to rehabilitate additional taxa or wildlife, the information stated in subsection (K)(1) through (K)(5) and (L)(1) through (L)(4).

Q. A wildlife rehabilitation license holder authorized to rehabilitate wildlife species listed under subsection (C)(3)(c), (C)(4)(c) and (C)(4)(d) or (D) shall contact the Department within 24 hours of receiving the individual animal to obtain instructions in handling or transferring that animal. While awaiting instructions, the license holder shall ensure that emergency veterinary care is provided as necessary.

R. A wildlife rehabilitation license holder shall:

1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
2. Maintain records associated with the license for a period of five years following the date of disposition.
3. Allow the Department to conduct inspections of an applicant's or license holder's facility and records at any time before or during the license period to determine compliance with the requirements of this Article. The Department shall comply with A.R.S. § 41-1009 when conducting inspections at a license holder's facility.
4. Ensure each facility is inspected by the attending veterinarian at least once every year.
5. Capture, remove, transport, and release wildlife held under the requirements of this Section in a manner that is least likely to cause injury to the affected wildlife.
6. Conduct rehabilitation only at the location listed on the license.
7. Be responsible for all expenses incurred, including veterinary expenses, and all actions taken under the license, including all actions or omissions of all agents and volunteers when performing activities under the license.
8. Immediately surrender wildlife held under the license to the Department upon request.
9. Dispose of all wildlife that is euthanized or that otherwise dies within 30 days of death either by burial, incineration, or transfer to a scientific research institution, except that the license holder shall transfer all carcasses of endangered or threatened species, species listed under the Department's Tier 1 Species of Greatest Conservation Need, or eagles as directed by the Department.
10. Maintain a current log that records the information specified under subsection (Z).
11. Possess the license or legible copy of the license at each authorized location and while conducting any rehabilitation activities and presents it for inspection upon the request of any Department employee or agent.
12. Ensure a copy of the wildlife rehabilitation license accompanies each transfer or shipment of wildlife.
13. Dispose of any raptor suspected or confirmed with West Nile Virus or poisoning, except for lead poisoning, by incineration.
14. Except as specified under subsection (R)(12), transfer the carcass or parts of the carcass of a deceased raptor as follows:
    a. For a bald or golden eagle, send the entire body, including all feathers, talons, and other parts, to the National Eagle Repository, see https://www.fws.gov/eaglerepository/factsheets.php;
    b. For any euthanized non-eagle raptor, to prevent secondary poisoning of other wildlife, either submit the carcass to a non-eagle repository or burn, bury, or otherwise destroy the carcass;
    c. For all other species:
        i. Submit the carcass to a non-eagle repository;
        ii. Submit the carcass to the Department for submission to a non-eagle repository.

S. A wildlife rehabilitation license holder shall not:

1. Display for educational purposes any wildlife held under the license.

2. Exhibit any wildlife held under the license.
3. Permanently possess any wildlife held under the license.

T. A wildlife rehabilitation license holder may possess all wildlife for no more than 90 days. Except a bird may be possessed for no more than 180 days, unless the Department has authorized possession for a longer period of time.

U. *A license holder may request permission to possess wildlife for a longer period of time than specified in subsection (T) by submitting a written request to the Department.*

1. The Department shall approve or deny the request within ten days of receiving the request.
2. For requests made due to a medical necessity, the Department may require the license holder to provide a written statement listing the medical reasons for the extension, signed by a licensed veterinarian.
3. The license holder may continue to hold the specified wildlife while the Department considers the request.
4. If the request is denied, the Department shall send a written notice to the license holder which shall include specific, time-dated directions for the surrender or disposition of the animal.

V. A wildlife rehabilitation license holder who also possesses a federal rehabilitator license may allow a licensed falconer to assist in conditioning a raptor in preparation for the raptor's release to the wild.

1. The license holder may allow the licensed falconer to temporarily remove the raptor from the license holder's facility while conditioning the raptor.
2. The license holder shall provide the licensed falconer with a written statement authorizing the falconer to assist the license holder.
3. The written statement shall identify the raptor by species, type of injury, and band number, when available.
4. The license holder shall ensure the licensed falconer returns the raptor to the license holder within the 180-day period established under subsection (T).

W. A wildlife rehabilitation license holder may hold wildlife under the license after the wildlife reaches a state of restored health only for the amount of time reasonably necessary to prepare the wildlife for release. Rehabilitated wildlife shall be released:

1. In an area without immediate threat to the wildlife or contact with humans;
2. During an ecologically appropriate time of year and time of day; and
3. Into a suitable habitat in the same geographic area where the animal was originally obtained; or
4. In an area designated by the Department.

X. Wildlife that is not releasable after the time-frames specified in subsection (T) shall be transferred, disposed of, or euthanized as determined by the Department.

Y. To permanently hold rehabilitated wildlife declared unsuitable for release by a licensed veterinarian, a wildlife rehabilitation license holder shall apply for and obtain a wildlife holding license in compliance with under R12-4-417.

Z. A wildlife rehabilitation license holder shall submit an annual report to the Department before January 31 of each year for the previous calendar year. The report form is furnished by the Department.

1. A report is required regardless of whether or not activities were performed during the previous year.
2. The wildlife rehabilitation license becomes invalid if the annual report is not submitted to the Department by January 31 of each year.
3. The Department will not process the special license holder's renewal application until the annual report is received by the Department.
4. The annual report shall contain the following information:
    a. The license holder's:
        i. Name;
        ii. Mailing address; and
        iii. Telephone number;
    b. Each agent's:
        i. Name;
        ii. Mailing address; and
        iii. Telephone number;
    c. The permit or license number of any federal permits or licenses that relate to any rehabilitative function performed by the license holder;
    d. For activities related to federally-protected wildlife, a copy of the rehabilitator's federal permit report of activities related to federally-protected wildlife; and
    e. An itemized list of each animal held under the license during the calendar year for which activity is being reported. For each animal held by the license holder or agent, the itemization shall include:
        i. Species;
        ii. Condition that required rehabilitation;
        iii. Date of acquisition;

iv. Source of acquisition;
v. Location of acquisition;
vi. Age class at acquisition, when reasonably determinable;
vii. Status at disposition or end-of-year in relation to the condition requiring rehabilitation;
viii. Method of disposition;
ix. Location of disposition; and
x. Date of disposition.

AA. A wildlife rehabilitation license holder shall comply with the requirements established under R12-4-409, R12-4-428, and R12-4-430, as applicable.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-238(A), 17-240(A), 17-306, and 41-1005

Historical Note

Adopted effective January 4, 1990 (Supp. 90-1). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 321, effective July 1, 2021 (Supp. 21-1).

R12-4-424. White Amur Stocking License; Restocking License

A. For the purposes of this Section:
"Closed aquatic system" means any body of water, water system, canal system, or series of lakes, canals, or ponds where triploid white amur are prevented from entering or exiting the system by any natural or man-made barrier, as determined by the Department.
"Triploid" means a species having three homologous sets of chromosomes that renders the individuals sterile.

B. A white amur stocking or restocking license allows a person to import, possess, stock in a closed aquatic system, and transport triploid white amur (*Ctenopharyngodon idella*).

C. The white amur stocking or restocking license is valid for no more than 20 consecutive days.

D. In addition to the requirements established under this Section, a white amur stocking or restocking license holder shall comply with the special license requirements established under R12-4-409.

E. The white amur stocking or restocking license holder shall be responsible for compliance with all applicable regulatory requirements; the licenses do not:
1. Exempt the license holder from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
2. Authorize the license holder to engage in authorized activities using federally-protected wildlife, unless the license holder possesses a valid license, permit, or other form of documentation issued by the United States authorizing the license holder to use that wildlife in a manner consistent with the special license.

F. The Department shall deny a white amur stocking or restocking license to a person who fails to meet the requirements established under R12-4-409 or this Section. The Department shall provide the written notice established under R12-4-409(F)(4) to the applicant stating the reason for the denial. The person may appeal the denial to the Commission as prescribed under A.R.S. Title 41, Chapter 6, Article 10. In addition to the requirements and criteria established under R12-4-409(F)(1) through (4), the Department shall deny a white amur stocking or restocking license when it determines the issuance of the license may result in a negative impact on native wildlife.

G. An applicant for a white amur stocking or restocking license shall submit an application to the Department. A separate application is required for each location where the applicant proposes to stock white amur. The application is furnished by the Department and is available from any Department office and on the Department's website. The applicant shall provide the following information on the application:
1. The applicant's information:
   a. Name;
   b. Mailing address;
   c. Telephone number; and;
   d. Department ID number, when applicable;
2. For each location where the white amur will be held, stocked, or restocked, the land owner's:
   a. Name;
   b. Mailing address;
   c. Telephone number; and

d. Physical address or general location description and Global Positioning System location;
e. For the purposes of this subsection, the following systems may qualify as separate locations, as determined by the Department:
i. Each closed aquatic system;
ii. Each separately managed portion of a closed aquatic system; or
iii. Multiple separate closed aquatic systems owned, controlled, or legally held by the same applicant where stocking is to occur;

3. A detailed description and diagram of each enclosed aquatic system where the applicant will stock and hold the white amur, as prescribed under A.R.S. § 17-317, which shall include the following information, as applicable:
a. A description of how the system meets the definition of a "closed aquatic system" in subsection (A);
b. Size of waterbody proposed for stocking;
c. Nearest river, stream, or other freshwater system;
d. Points where water enters into each water body;
e. Points where water leaves each water body; and
f. Location of fish containment barriers;
4. For each wildlife supplier from whom the applicant will obtain white amur, the supplier's:
a. Name;
b. Mailing address; and
c. Telephone number;
5. The number and average length of white amur to be stocked;
6. The dates white amur will be stocked, or restocked;
7. Any other information required by the Department; and
8. The certification required under R12-4-409(C).

H. When the Department determines an applicant proposes to stock white amur in a watershed in a manner that conflicts with the Department's efforts to conserve wildlife, in addition to the requirements listed under subsection (G), the applicant shall also submit a written proposal to the Department at the time of application. The written proposal shall contain all of the following:
1. Anticipated benefits from introducing white amur;
2. Potential risks introducing white amur may create for wildlife, including:
a. Whether white amur are compatible with native aquatic species or game fish; and
b. Method for evaluating the potential impact introducing white amur will have on wildlife;
3. Assessment of probable impacts to sensitive species in the area using the list generated by the Department's Online Environmental Review Tool, which is available on the Department's website. The proposal must address each species listed.

I. A person may apply for a white amur restocking license provided there are no changes to the closed aquatic system. The restocking application license application must include the inspection certification from the supplier of white amur as required under subsection (K)(2).

J. A person applying for a white amur stocking or restocking license shall pay all applicable fees as prescribed under R12-4-412.

K. A white amur stocking and restocking license holder shall comply with the requirements established under R12-4-409.
1. Comply with all additional stipulations placed on the license by the Department, as authorized under R12-4-409(H).
2. Obtain all aquatic wildlife, live eggs, fertilized eggs, and milt from a licensed fish farm operator or a private noncommercial fish pond certified free of the diseases and causative agents through the following actions:
a. An inspection shall be performed by a qualified fish health inspector or fish pathologist at the fish farm or pond where the aquatic wildlife or biological material is held before it is shipped to the license holder.
b. The inspection shall be conducted no more than 12 months prior to the date on which the aquatic wildlife or biological material is shipped to the license holder. The Department may require additional inspections at any time prior to stocking.
c. The applicant shall submit a copy of the certification to the Department prior to conducting any stocking activities.
3. Maintain records associated with the license for a period of five years following the date of disposition.
4. Allow the Department to conduct inspections of an applicant's or license holder's facility, records, and any waters proposed for stocking at any time before or during the license period to determine compliance with the requirements of this Article and to determine the appropriate number of white amur to be stocked. The Department shall comply with A.R.S. § 41-1009 when conducting inspections at a license holder's facility.
5. Ensure all shipments of white amur are accompanied by a USFWS, or similar agent, certificate confirming the white amur are triploid.
6. Possess the license or legible copy of the license while conducting any activities authorized under the white amur

stocking or restocking license and presents it for inspection upon the request of any Department employee or agent.

L. A white amur stocking or restocking license holder shall comply with the requirements established under R12-4-409.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-238(A), 17-240(A), 17-306, and 41-1005

Historical Note

Adopted as an emergency effective July 5, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-3). Correction, Historical Note, Supp. 88-3, should read, "Adopted as an emergency effective July 15, 1988..."; readopted and amended as an emergency effective October 13, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-4). Emergency expired. Readopted as an emergency effective January 24, 1989, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 89-1). Emergency expired. Former Section R12-4-219 amended and adopted as a permanent rule and renumbered as Section R12-4-424 effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 7 A.A.R. 2732, effective July 1, 2001 (Supp. 01-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 19 A.A.R. 3225, effective January 1, 2014 (Supp. 13-3). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 321, effective July 1, 2021 (Supp. 21-1).

R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit Before the Effective Date of Article 4 or Any Subsequent Amendments

A. A person who lawfully possessed restricted live wildlife without a license or permit from the Department before the effective date of this Section or any subsequent amendments to R12-4-406, this Section, or this Article may continue to possess the wildlife and to use it for any purpose that was lawful, except propagation, before the effective date of R12-4-406, this Section, or this Article or any subsequent amendments, provided the person complies with the requirements established under subsections (A)(1) or (A)(2).

1. The person submits written notification to the Department's regional office in which the restricted live wildlife is held. The person shall submit the written notification to the regional office within 30 calendar days of the effective date of any subsequent amendments to this Section, R12-4-406, or this Article. The written notification shall include all of the following information:
   a. The number of individuals of each species,
   b. The purpose for which it is possessed, and
   c. The unique identifier for each individual wildlife possessed by the person, as established under subsection (F); or
2. The person maintains documentation of the restricted live wildlife held. The documentation shall include:
   a. The number of individuals of each species,
   b. Proof the individuals were legally acquired before the effective date of the amendment causing the wildlife to be restricted,
   c. The purpose for which it is used, and
   d. The unique identifier for each wildlife possessed by the person, as established under subsection (F).
3. The person shall report the birth or hatching of any progeny conceived before and born after the effective date of this Section, R12-4-406, or this Article to the Department and comply with the requirements established under subsection (F).

B. The person shall ensure the written notification described under subsection (A)(1) and (A)(2) includes the person's name, address, and the location where the wildlife is held. A person who maintains their own documentation under subsection (A)(2) shall make it available to the Department upon request.

C. The person shall retain the documentation required under subsections (A)(1) and (A)(2) until the person disposes of the wildlife as described under subsection (D).

D. A person who possesses wildlife under this Section shall dispose of it using any one of the following methods:

1. Exportation;
2. Euthanasia;
3. Transfer to an Arizona special license holder, provided the special license authorizes possession of the species involved; or
4. As otherwise directed by the Department in writing.

E. If a person transfers restricted live wildlife possessed under this Section to a special license holder:

1. The exemption for that wildlife under this Section expires, and
2. The special license holder shall use, possess, and report the wildlife in compliance with this Article and any stipulations applicable to that special license.

F. A person who exports wildlife held under this Section shall not import the wildlife back into this state unless the person

obtains a special license prior to importing the wildlife back into this state.

G. A person who possesses wildlife under this Section shall permanently and uniquely mark the wildlife with a unique identifier as follows:
1. Within 30 calendar days of the effective date of this Section, R12-4-406, or this Article if the person has notified the Department as provided under subsection (A)(1); or
2. Within 30 calendar days of receiving written notice from the Department directing the person to permanently mark the wildlife.

H. A person possessing a desert tortoise (*Gopherus agassizii*) is not subject to the requirements of this Section and shall comply with requirements established under R12-4-404 and R12-4-407.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2),17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), 17-240(A), and 17-306

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 321, effective July 1, 2021 (Supp. 21-1).

R12-4-426. Possession of Nonhuman Primates

A. A person is prohibited from possessing a nonhuman primate, unless authorized under a special license or lawful exemption.

B. A person shall not import a nonhuman primate into this state unless:
1. A person lawfully possessing a nonhuman primate shall ensure the primate is tested and reported to be free of any zoonotic disease that poses a serious health risk as determined by the Department. Zoonotic diseases that pose a serious health risk include, but are not limited to:
   a. Tuberculosis;
   b. Simian Herpes B virus;
   c. Simian Immunodeficiency Virus;
   d. Simian T Lymphotropic Virus; and
   e. Gastrointestinal pathogens such as, but not limited to, Shigella, Salmonella, E. coli, and Giardia.
2. A qualified person, as determined by the Department, performs the test and provides the test results; and
3. The tests required under subsection (B)(1) are:
   a. Conducted no more than 30 days before the person imports the nonhuman primate; and
   b. The person submits the results to the Department prior to importation.

C. A person lawfully possessing the nonhuman primate shall contain the primate within the confines of the person's private property or licensed facility.

D. A person possessing a nonhuman primate may only transport the primate by way of a secure cage, crate, or carrier. A person possessing a primate shall only transport the primate to the following locations:
1. To or from a licensed veterinarian;
2. Into or out of the state for lawful purposes.

E. A person lawfully possessing a nonhuman primate that bit, scratched, or otherwise exposed a human to pathogenic organisms, as determined by the Department, shall ensure the primate is examined and laboratory tested for the presence of pathogens as follows:
1. The Department shall prescribe examinations and laboratory testing for the presence of pathogens.
2. The person shall have the nonhuman primate examined by a state licensed veterinarian who shall perform any examinations or laboratory tests as directed by the Department.
   a. The licensed veterinarian shall provide the laboratory results to the Department within 24 hours of receiving the results.
   b. The Department shall notify the exposed person and the Department of Health Services, Vector Borne and Zoonotic Disease Section within 10 days of receiving notice of the test results.
3. The person possessing the nonhuman primate shall pay all costs associated with the examination, laboratory testing, and maintenance of the primate.

F. A person lawfully possessing a nonhuman primate shall ensure a primate that tests positive for a zoonotic disease that poses a serious health risk to humans, or is involved in more than one incident of biting, scratching, or otherwise exposing a human to pathogenic organisms, is maintained in captivity or disposed of as directed in writing by the Department.

G. A zoo license holder or a person using nonhuman primates at a research facility, as defined under R12-4-401, possessing a primate that bit, scratched, or otherwise exposed a human to pathogenic organisms shall quarantine and test the primate in accordance with procedures approved by the Department.

H. A person lawfully possessing a nonhuman primate is subject to the requirements established under R12-4-428.

ARTICLE 4. LIVE WILDLIFE

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), and 17-306

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Rule expired December 31, 1989; text rescinded (Supp. 93-2). New Section adopted by final rulemaking at 6 A.A.R. 211, effective December 14, 1999 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Section R12-4-426(C) corrected to include subsection (C)(1), under A.R.S. § 41-1011 and A.A.C. R1-1-108, Office File No. M11-77, filed March 4, 2011 (Supp. 10-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4).

R12-4-427. Exemptions from Requirements to Possess a Wildlife Rehabilitation License

A. A person may possess, provide rehabilitative care to, and release to the wild any live wildlife listed below that is injured, orphaned, or otherwise debilitated:
1. The order *Passeriformes*: non-Migratory Bird Treaty Act listed passerine birds;
2. The order *Columbiformes*: non-Migratory Bird Treaty Act listed doves;
3. The family *Phasianidae*: quail, pheasant, and chukars;
4. The order *Rodentia*: rodents; and
5. The order *Lagomorpha*: hares and rabbits.

B. This Section does not:
1. Exempt the person from any municipal, county, state, or federal codes, ordinances, statutes, rules, or regulations; or
2. Authorize the person to engage in authorized activities using federally-protected wildlife, unless the person possesses a valid license, permit, or other form of documentation issued by the United States that authorizes the license holder to use that wildlife in a manner consistent with the special license.

C. This Section does not authorize the possession of any of the following:
1. Eggs of wildlife;
2. Wildlife listed as Species of Greatest Conservation Need, as defined under R12-4-401;
3. Migratory birds, as defined under R12-4-101; or
4. More than 25 animals at the same time.

D. A person taking and caring for wildlife listed under this Section is not required to possess a hunting license.

E. A person shall only take wildlife listed under subsection (A) by hand or by a hand-held implement.

F. A person shall not possess wildlife lawfully held under this Section for more than 60 days.

G. The exemptions granted under this Section shall not apply to any person who, by their own action, has unlawfully injured, orphaned, or otherwise debilitated the wildlife.

H. If the wildlife is rehabilitated and suitable for release, the person who possesses the wildlife shall release it within the 60-day period established under subsection (C):
1. Into a habitat that is suitable to sustain the wildlife, or
2. As close as possible to the same geographic area from where it was taken.

I. If the wildlife is not rehabilitated within the 60-day period or the wildlife requires care normally provided by a veterinarian, the person who possesses it shall:
1. Transfer it to a wildlife rehabilitation license holder or veterinarian;
2. Euthanize it; or
3. Obtain a wildlife holding permit as established under R12-4-417.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), and 17-306

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective January 1, 1995; filed in the Office of the Secretary of State December 9, 1994 (Supp. 94-4). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 321, effective July 1, 2021 (Supp. 21-1).

R12-4-428. Captivity Standards

A. For the purposes of this Section, "animal" means any wildlife possessed under a special license, unless otherwise indicated.

B. A person possessing wildlife under a special license authorized under this Article shall comply with the minimum standards for the humane treatment of animals established under this Section.

C. A person possessing wildlife under an authority granted under this Article shall ensure all facilities meet the following minimum standards:

ARTICLE 4. LIVE WILDLIFE

1. The facility shall be:
   a. Constructed of material of sufficient strength to resist any force the animal may be capable of exerting against it.
   b. Constructed in a manner designed to reasonably prevent the animal's escape or the entry of unauthorized persons, wildlife, or domestic animals.
   c. Constructed and maintained in good condition to protect animals from injury, disease, or death and to enable the humane practices established under this Section.
2. If electricity is required to comply with related requirements established under this Section, each facility shall be equipped with safe, reliable and adequate electric power.
   a. All electric wiring shall be constructed and maintained in accordance with all applicable governmental building codes.
   b. Electrical construction and maintenance shall be sufficient to ensure that no animal has direct contact with any electrical wiring or electrical apparatus, and the animal is fully protected from any possibility of injury, shock, or electrocution.
3. Each animal shall be supplied with sufficient potable water to meet its needs.
   a. All water receptacles shall be kept in clean and sanitary condition.
   b. Water shall be readily available and monitored at least once daily or more often when the needs of the animal or environmental conditions dictate.
   c. If potable water is not accessible to the animal at all times, it shall be provided as often as necessary for the health and comfort of the animal.
4. Food shall be suitable, wholesome, palatable, free from contamination, and of sufficient appeal, quantity, and nutritive value to maintain the good health of each animal held in the facility.
   a. Each animal's diet shall be prepared based upon the nutritional needs and preferences of the animal with consideration for the animal's age, species, condition, size, and all veterinary directions or recommendations in regard to diet.
   b. Each animal shall be fed as often as its needs dictate, taking into consideration behavioral adaptations, veterinary treatment or recommendations, normal fasts, or other professionally accepted humane practices.
   c. The amount of available food for each animal shall be monitored at least once daily, except for those periods of time when species specific fasting protocols dictate that the animal should not consume any food during the entire day.
   d. Food and food receptacles, when used, shall be sufficient in quantity and accessible to all animals in the facility and shall be placed to minimize potential contamination and conflict between animals using the receptacles.
   e. Food receptacles shall be kept clean and sanitary at all times.
   f. Any self-feeding food receptacles shall function properly and the food they provide shall be monitored at least once daily and shall not be subject to deterioration, contamination, molding, caking, or any other process that would render the food unsafe or unpalatable for the animal.
   g. An appropriate means of refrigeration shall be provided for supplies of perishable animal foods.
5. The facility shall be kept sanitary and regularly cleaned as the nature of the animal requires:
   a. Adequate provision shall be made for the removal and disposal of animal waste, food waste, unusable bedding materials, trash, debris and dead animals not intended for food.
   b. The facility shall be maintained to minimize the potential of parasite, pest, and vermin infestation, disease, and unseemly odors.
   c. Excreta shall be removed from the primary enclosure facility as often as necessary to prevent contamination, minimize hazard of disease, and reduce unseemly odors.
   d. The sanitary condition of the facility shall be monitored at least once daily.
   e. When the facility is cleaned by hosing, flushing, or the introduction of any chemical substances, adequate measures shall be taken to ensure the animal has no direct contact with any chemical substance and is not directly sprayed with water, steam, or chemical substances or otherwise wetted involuntarily.
6. A sanitary and humane method shall be provided to rapidly eliminate excess water from the facility. If drains are utilized, they shall be:
   a. Properly constructed.
   b. Kept in good condition to avoid foul odors or parasite, pest, or vermin infestation.
   c. Installed in a manner that prevents the backup or accumulation of debris or sewage.
7. No animal shall be exposed to any human activity or environment that may have an inhumane or harmful effect upon the animal or that is inconsistent with the purpose of the special license.
8. Facilities shall not be constructed or maintained in proximity to any physical condition which may pose any health threat or unnecessary stress to the animal.
9. Persons caring for the animals shall conduct themselves in a manner that prevents the spread of disease, minimizes

stress, and does not threaten the health of the animal.

10. All animals housed in the same facility or within the same enclosed area shall be compatible and shall not pose a substantial threat to the health, life or well-being of any other animal in the same facility or enclosure, whether or not the other animals are held under a special license. This subsection shall not apply to live animals utilized as food items in the enclosures.
11. Facilities for the enclosure of animals shall be constructed and maintained to provide sufficient space to allow each animal adequate freedom of movement to make normal postural and social adjustments.
    a. The facility area shall be large enough and constructed in a manner to allow the animal proper and adequate exercise as is characteristic to each animal's natural behavior and physical needs.
    b. Facilities for digging or burrowing animals shall have secure safe floors below materials supplied for digging or burrowing activity.
    c. Animals that naturally climb or perch shall be provided with safe and adequate climbing or perching apparatus.
    d. Animals that naturally live in an aquatic environment shall be supplied with sufficient access to safe water so as to meet their aquatic behavioral needs.
    e. The facility and holding environment shall be structured to reasonably promote the physical and psychological well-being of any animal held in the facility.
12. A special license holder shall ensure that a sufficient number of properly trained personnel are utilized to meet all the humane husbandry practices established under this Section. The license holder shall be responsible for the actions of all animal care personnel and all other persons that come in contact with the animals.
13. The special license holder shall designate a veterinarian licensed to practice in this state as the primary treating veterinarian for each species of animal to be held.
    a. The license holder shall ensure that all animals in their care receive proper, adequate, and humane veterinary care as the needs of each animal dictate.
    b. Each animal held for more than one year shall be inspected by the attending veterinarian at least once every year. The inspection report shall demonstrate the veterinarian inspected the health of the animal and the condition of its enclosure.
    c. Every animal shall promptly receive licensed veterinary care whenever it appears that the animal is injured, sick, wounded, diseased, infected by parasites, or behaving in a substantially abnormal manner, including but not limited to exhibiting loss of appetite, abnormal weight loss or lethargy.
    d. All medications, treatments and other directions prescribed by the attending veterinarian shall be properly administered by the license holder, authorized agent, or volunteer. A license holder, authorized agent, or volunteer shall not administer prescription medicine, unless under the direction of a veterinarian.
14. Any animal that is suspected of or diagnosed as harboring any infectious or transmissible disease, whether or not the animal is held under a special license, shall be isolated immediately upon suspicion or diagnosis.
    a. The isolated animal shall continue to be kept in a humane manner as required under this Section.
    b. When there is an animal with an infectious or transmissible disease in any animal facility, whether or not the animal is held under a special license, the facility shall be sanitized so as to reasonably eliminate the chance of other animals being exposed to infection. Sanitation procedures may include, but are not limited to:
        i. Washing facilities or animal-related materials with appropriate disinfectants, soaps or detergents;
        ii. Appropriate application of hot water or steam under pressure; and
        iii. Replacement of gravel, dirt, sand, water, or food.
        vi. All residue of chemical agents utilized in the sanitation process shall be reasonably eliminated from the facility before any animal is returned to the facility.
    c. Parasites, pests, and vermin shall be controlled and eliminated so as to ensure the continued health and well-being of all animals.

D. In addition the standards established under subsection (C), a person shall ensure all indoor facilities meet the following minimum standards:

1. Heating and cooling equipment shall be sufficient to regulate the temperature of the facility to the optimal temperature zone of the species being held to provide a healthy, comfortable, and humane living environment.
2. Indoor facilities shall be adequately ventilated with fresh air to provide for the healthy, comfortable, and humane keeping of any animal and to minimize drafts, odors, and moisture condensation.
3. Indoor facilities shall have lighting of a quality, distribution, and duration as is appropriate for the biological needs of the animals held and to facilitate the inspection and maintenance of the facility.
    a. Artificial lighting, when used, shall be utilized in regular cycles as the animal's needs dictate.
    b. Lighting shall be designed to protect the animals from excessive or otherwise harmful aspects of illumination.

E. In addition the standards established under subsection (C), a person shall ensure that all outdoor facilities meet the following minimum standards:

1. Sufficient shade to prevent the overheating or discomfort of any animal shall be provided.
2. Sufficient shelter appropriate to protect animals from normal climatic conditions throughout the year.
3. Each animal shall be acclimated to outdoor climatic conditions before they are housed in any outdoor facility or otherwise exposed to the extremes of climate.

F. A person who handles an animal shall ensure the animal is handled in an expeditious and careful manner to ensure no unnecessary discomfort, behavioral stress, or physical harm to the animal.
1. An animal shall be transported in a secure, expeditious, careful, temperature appropriate, and humane manner. An animal shall not be transported in any manner that poses a substantial threat to the life, health, or behavioral well-being of the animal.
2. An animal placed on public exhibit or educational display shall be handled in a manner that minimizes the risk of harm to members of the public and to the animal, which includes but is not limited to providing and maintaining a sufficient distance or barrier between the animal and the viewing public.
3. Any restraint or equipment used on an animal shall not cause physical harm or unnecessary discomfort.

G. The Department may impose additional requirements on facilities that hold animals to meet the needs of the particular animal and ensure public health and safety.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)
Specific: A.R.S. §§ 17-102, 17-231(A)(2), 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), and 17-306

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 321, effective July 1, 2021 (Supp. 21-1).

R12-4-429. Expired

Historical Note

New Section made by emergency rulemaking under A.R.S. § 41-1026 at 8 A.A.R. 3127, effective July 1, 2002 for a period of 180 days (Supp. 02-3). Emergency rulemaking renewed under A.R.S. § 41-1026(D) for an additional 180-day period at 9 A.A.R. 132, effective December 27, 2002 (Supp. 02-4). Section expired effective June 24, 2003 (Supp. 03-2).

R12-4-430. Importation, Handling, and Possession of Cervids

A. The Department shall not issue a new special license authorizing the possession of a live cervid, except as provided under R12-4-418 and R12-4-420.

B. A person shall not import a live cervid into Arizona, except a zoo license holder may import any live nonnative cervid for exhibit, educational display, or propagation provided the nonnative cervid is quarantined for 30 days upon arrival and is procured from a facility that meets all of the following requirements:
1. The exporting facility has a disease surveillance program and no history of chronic wasting disease or other wildlife disease that pose a serious health risk to wildlife or humans and there is accompanying documentation from the facility certifying there is no history of disease at the facility or within 50 miles of the facility;
2. The nonnative cervid is accompanied by a health certificate, issued no more than 30 days prior to importation by a licensed veterinarian in the jurisdiction of origin; and
3. The nonnative cervid is accompanied by evidence of lawful possession, as defined under R12-4-401.

C. A person shall not transport a live cervid within Arizona, except to:
1. Export the live cervid from Arizona for a lawful purpose;
2. Transport the live cervid to a facility for the purpose of slaughter, when the slaughter will take place within five days of the date of transport;
3. Transport the live cervid to or from a licensed veterinarian for medical care;
4. Transport the live cervid to a new holding facility owned by, or under the control of, the cervid owner, when all of the following apply:
   a. The current holding facility has been sold or closed;
   b. Ownership, possession, custody, or control of the cervid will not be transferred to another person; and
   c. The owner of the cervid has prior written approval from the Department; or
5. Transport the live nonnative cervid within Arizona for the purpose of procurement or propagation when all of the following apply:
   a. The nonnative cervid is transported to or from a zoo licensed under R12-4-420;
   b. The nonnative cervid is quarantined for 30 days upon arrival at its destination;
   c. The nonnative cervid is procured from a facility that meets all of the requirements established under subsection (B)(1) though (B)(3).

D. A person who lawfully possesses a live cervid, except any cervid held under a private game farm or zoo license, shall comply with the requirements established under R12-4-425.

E. A person shall comply with the requirements established under R12-4-305 when transporting a cervid carcass, or its parts, from a licensed private game farm.

F. In addition to the recordkeeping requirements of R12-4-413 and R12-4-420, a person who possesses a live cervid under a private game farm or zoo license shall:

1. Permanently mark each live cervid with either an individually identifiable microchip or tattoo within 30 days of acquisition or birth of the cervid and ensure each cervid is marked with an ear tag that identifies the farm of origin in a manner that is clearly visible from a distance of 100 feet;
2. Report the death of any cervid to the Department within seven calendar days of finding the cervid;
3. Include in the annual report submitted to the Department before January 31 of each year, the following for each native cervid in the license holder's possession:
   a. Name of the license holder,
   b. License holder's mailing address,
   c. License holder's telephone number,
   d. Number and species of live cervids held,
   e. The microchip or tattoo number of each live native cervid held,
   f. The disposition of all cervids that were moved or died during the current reporting period,
   g. The results of chronic wasting disease testing for all cervids one year of age and older that die during the current reporting period,
   h. The license holder shall also submit copies of all veterinary care records that occurred during the previous year, and
   i. Any other information required by the Department to ensure compliance with this Section.

G. The holder of a private game farm, scientific activity, zoo license, or a person possessing a cervid under R12-4-425, shall ensure that the retropharyngeal lymph nodes or obex from the head of a cervid over one year of age that dies while held under the special licenses is collected by either a licensed veterinarian or the Department and submitted within 72 hours of the time of death to an Animal and Plant Health Inspection Service certified veterinary diagnostic laboratory for chronic wasting disease analysis. A list of approved laboratories is available at any Department office and on the Department's website or www.aphis.usda.gov. The license holder shall:

1. Ensure the shipment of the deceased animal's tissues is made by a common, private, or contract carrier that utilizes a tracking number system to track the shipment.
2. Include all of the following information with the shipment of the deceased animal's tissues, the license holder's:
   a. Name,
   b. Mailing address, and
   c. Telephone number.
3. Designate, on the sample submission form, test results shall be sent to the Department within 10 days of completing the analysis. The sample submission form is furnished by the diagnostic laboratory providing the test.
4. Be responsible for all costs associated with the laboratory analysis.
5. Notify the Department within 72 hours of receiving a suspect or positive result.

H. A person who possesses a cervid shall comply with all procedures for:

1. Tuberculosis control and eradication for cervids as prescribed under the United States Department of Agriculture publication "Bovine Tuberculosis Eradication: Uniform Methods and Rules" USDA APHIS 91-45-011, revised January 1, 2005, which is incorporated by reference in this Section.
2. Prevention, control, and eradication of Brucellosis in cervids as prescribed under the United States Department of Agriculture publication "Brucellosis in Cervidae: Uniform Methods and Rules" U.S.D.A. A.P.H.I.S. 91-45-16, effective September 30, 2003.
3. The incorporated material is available at any Department office, online at www.aphis.usda.gov, or may be ordered from the USDA APHIS Veterinary Services, Cattle Disease and Surveillance Staff, P.O. Box 96464, Washington D.C. 20090-6464.
4. The material incorporated by reference in this Section does not include any later amendments or editions.

I. A person who possesses a cervid shall maintain records required under this Section for a period of at least five years and shall make the records available for inspection to the Department upon request.

J. The Department has the authority to seize, euthanize, and dispose of any cervid possessed in violation of this Section, at the owner's expense.

Authorizing Statute

General: A.R.S. § 17-231(A)(1)

Specific: A.R.S. §§ 17-102, 17-231(A)(2). 17-231(A)(3), 17-231(B)(8), 17-234, 17-238(A), 17-240(A), 17-250(A), 17-

ARTICLE 4. LIVE WILDLIFE

250(B), 17-306, and 17-318

Historical Note

New Section made by final rulemaking at 9 A.A.R. 3186, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 12 A.A.R. 980, effective May 6, 2006 (Supp. 06-1). Amended by final rulemaking at 21 A.A.R. 2813, effective December 5, 2015 (Supp. 15-4). Amended by final rulemaking at 27 A.A.R. 321, effective July 1, 2021 (Supp. 21-1).

ARIZONA GAME AND FISH LAWS

17-102. Wildlife as state property; exceptions

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

17-231. General powers and duties of the commission

A. The commission shall:

1. Adopt rules and establish services it deems necessary to carry out the provisions and purposes of this title.
2. Establish broad policies and long-range programs for the management, preservation and harvest of wildlife.
3. Establish hunting, trapping and fishing rules and prescribe the manner and methods that may be used in taking wildlife, but the commission shall not limit or restrict the magazine capacity of any authorized firearm.
4. Be responsible for the enforcement of laws for the protection of wildlife.
5. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.
6. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.
7. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties that relate to adopting and carrying out policies of the department and control of its financial affairs.
8. Prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the director of the division of emergency management.
9. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The commission may:

1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.
2. Establish game management units or refuges for the preservation and management of wildlife.
3. Construct and operate game farms, fish hatcheries, fishing lakes or other facilities for or relating to the preservation or propagation of wildlife.
4. Expend funds to provide training in the safe handling and use of firearms and safe hunting practices.
5. Remove or permit to be removed from public or private waters fish which hinder or prevent propagation of game or food fish and dispose of such fish in such manner as it may designate.
6. Purchase, sell or barter wildlife for the purpose of stocking public or private lands and waters and take at any time in any manner wildlife for research, propagation and restocking purposes or for use at a game farm or fish hatchery and declare wildlife salable when in the public interest or the interest of conservation.
7. Enter into agreements with the federal government, with other states or political subdivisions of the state and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife and expend funds for carrying out such agreements.
8. Prescribe rules for the sale, trade, importation, exportation or possession of wildlife.
9. Expend monies for the purpose of producing publications relating to wildlife and activities of the department for sale to the public and establish the price to be paid for annual subscriptions and single copies of such publications. All monies received from the sale of such publications shall be deposited in the game and fish publications revolving fund.
10. Contract with any person or entity to design and produce artwork on terms that, in the commission's judgment, will produce an original and valuable work of art relating to wildlife or wildlife habitat.
11. Sell or distribute the artwork authorized under paragraph 10 of this subsection on such terms and for such price as it deems acceptable.
12. Consider the adverse and beneficial short-term and long-term economic impacts on resource dependent communities, small businesses and the state of Arizona, of policies and programs for the management, preservation and harvest of wildlife by holding a public hearing to receive and consider written comments and public testimony from interested persons.
13. Adopt rules relating to range operations at public shooting ranges operated by and under the jurisdiction of

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

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

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

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

17-234. Open or closed seasons; bag limits; possession limits

The commission shall by order open, close or alter seasons and establish bag and possession limits for wildlife, but a commission order to open a season shall be issued not less than ten days prior to such opening date. The order may apply statewide or to any portion of the state. Closed season shall be in effect unless opened by commission order.

17-235. Migratory birds

The commission shall prescribe seasons, bag limits, possession limits and other regulations pertaining to taking migratory birds in accordance with the migratory bird treaty act and regulations issued thereunder, but the commission may shorten or modify seasons, bag and possession limits and other regulations on migratory birds as it deems necessary.

17-236. Taking birds; possession of raptors

A. It is unlawful to take or injure any bird or harass any bird upon its nest, or remove the nests or eggs of any bird, except as may occur in normal horticultural and agricultural practices and except as authorized by commission order. Nothing in this title shall be construed to prohibit the taking of such birds for scientific purposes under permits issued by the commission.

B. The commission shall issue licenses to permit the possession and transportation of raptors for sport falconry consistent with the requirements of the migratory bird treaty act (40 Stat. 755; 16 United States Code sections 703 through 711) and the endangered species act of 1973 (P.L. 93-205; 87 Stat. 884; 16 United States Code sections 1531 through 1544).

C. A person who has qualified to become a class II, general, or class III, master, falconer, as provided by commission rule, may possess, transport and use for sport falconry purposes, raptors not listed in the migratory bird treaty act (40 Stat. 755; 16 United States Code sections 703 through 711) without possessing a sport falconry license.

17-238. Special licenses for field trials, for shooting preserves and for collecting or holding wildlife in captivity

A. The commission may adopt rules and regulations and issue licenses for the conduct of field trials, shooting preserves, private wildlife farms and zoos, or for the personal use and possession of wildlife so as to safeguard the interests of the wildlife and people of the state.

B. The commission, at its discretion and under such regulations as it deems necessary, may issue a permit to take wildlife for scientific purposes to any person or duly accredited representative of public educational or scientific institutions, or governmental departments of the United States engaged in the scientific study of wildlife.

C. A person holding a permit issued pursuant to this section may, upon advance approval by the commission, buy, sell and transport wildlife legally possessed. Each person receiving a permit under this section shall file with the department within fifteen days after requested by the department a report of his activities under the permit. The commission may revoke such licenses or permits for noncompliance with regulations.

17-239. Wildlife depredations; investigations; corrective measures; disposal; reports; judicial review

A. Any person suffering property damage from wildlife may exercise all reasonable measures to alleviate the damage, except that reasonable measures shall not include injuring or killing game mammals, game birds or wildlife protected by federal law or regulation unless authorized under subsection D of this section. A person may not retain or sell any portion of an animal taken pursuant to this subsection except as provided in section 3-2403.

B. Any person suffering such property damage, after resorting to the relief as is provided in subsection A of this section, may file a written report with the director, advising the director of the damage suffered, and the species of animals causing the damage, and the director shall immediately order an investigation and report by an employee trained in the handling of wild animal depredation.

C. The department shall provide technical advice and assist in the necessary anti-depredation measures recommended in the report, including trapping, capturing and relocating animals.

D. If harvest of animals is found to be necessary to relieve damage, the commission may establish special seasons or special bag limits, and either set reduced fees or waive any or all license fees required by this title, to crop that wildlife. If the commission determines that this cropping by hunters is impractical, it may issue a special permit for taking that wildlife to the landowner, lessee, livestock operator or municipality suffering damage, provided that the edible portions, or other portions as prescribed by the commission, of all the wildlife taken by the person suffering damage are turned over to an agent of the department for delivery to a public institution or charitable organization.

E. Except as provided in section 41-1092.08, subsection H, in the event any person suffering property damage from wildlife is dissatisfied with the final decision of the commission, the person may seek judicial review pursuant to title 12, chapter 7, article 6.

17-240. Disposition of wildlife; devices; unlawful devices; notice of intention to destroy; waiting period; destruction; jurisdiction of recovery actions; disposition of unclaimed property

A. Wildlife seized under this title may be disposed of in such manner as the commission or the court may prescribe, except that the edible portions shall be given to public institutions or charitable organizations. In consultation with the department of health services and the chief veterinary meat inspector, the commission shall adopt rules for the handling, transportation, processing and storing of game meat given to public institutions and charitable organizations.

B. Devices, excepting firearms, which cannot be used lawfully for the taking of wildlife and being so used at the time seized may be destroyed. Notice of intention to destroy such devices as prescribed in this section must be sent by registered mail to the last known address of the person from whom seized if known and posted in three conspicuous places within the county wherein seized, two of said notices being posted in the customary place for posting public notices about the county courthouse of said county. Such device shall be held by the department for thirty days after such posting and mailing, and if no action is commenced to recover possession of such device within such time, the same shall be summarily destroyed by the department, or if such device shall be held by the court in any such action to have been used for the taking of wildlife, then such device shall be summarily destroyed by the department immediately after the decision of the court has become final. The justice court shall have jurisdiction of any such actions or proceedings commenced to recover the possession of such devices.

C. Devices other than those referred to in subsection B, including firearms seized under this title shall, after final disposition of the case, be returned to the person from whom the device was seized. If the person from whom the device was seized cannot be located or ascertained, the device seized shall be retained by the department at least ninety days after final disposition of the case, and all devices so held by the department may be:

1. Sold annually.

2. Destroyed only if considered a prohibited or defaced weapon, as defined in section 13-3101, except that any seized firearm registered in the national firearms registry and transfer records of the United States treasury department or has been classified as a curio or relic by the United States treasury department shall not be destroyed.

D. If no complaint is filed pursuant to this title, the device shall be returned to the person from whom seized within thirty days from the date seized.

E. A complete report of all wildlife and devices seized by the department showing a description of the items, the person from whom it was seized, if known, and a record of the disposition shall be kept by the department. The money derived from the sale of any devices shall be deposited in the game and fish fund.

17-250. Wildlife diseases; order of director; violation; classification; rule making exemption

A. If a wildlife disease is suspected or documented in freeranging or captive wildlife, the director may issue orders that are necessary to minimize or eliminate the threat from the disease. The director may also order or direct an employee of the department to:

1. After notification of and in coordination with the state veterinarian, establish quarantines and the boundary of the quarantine.

2. Destroy wildlife as necessary to prevent the spread of any infectious, contagious or communicable disease.

3. Control the movement of wildlife, wildlife carcasses or wildlife parts that may be directly related to spreading or disseminating diseases that pose a health threat to animals or humans.

4. Require any individual who has taken wildlife, who is in possession of wildlife or who maintains wildlife under a license issued by the department to submit the wildlife or parts for disease testing.

B. On finding there is reason to believe an infectious, contagious or communicable disease is present, the director may require an employee of the department to enter any place where wildlife may be located and take custody of the wildlife for purposes of disease testing. If search warrants are required by law, the director shall apply for and obtain warrants for entry to carry out the requirements of this subsection.

C. A person who violates any lawful order issued under this section is guilty of a class 2 misdemeanor.

D. An order issued under this section is exempt from title 41, chapter 6, article 3, except that the director shall promptly file a copy of the order with the secretary of state for publication in the Arizona administrative register pursuant to section 41-1013.

17-255. Definition of aquatic invasive species

In this article, unless the context otherwise requires, "aquatic invasive species":

1. Means any aquatic species that is not native to the ecosystem under consideration and whose introduction or presence in this state may cause economic or environmental harm or harm to human health.

2. Does not include:

(a) Any nonindigenous species lawfully or historically introduced into this state for sport fishing recreation.

(b) Any species introduced into this state by the department, by other governmental entities or by any person pursuant to this title.

17-255.02. Prohibitions

Except as authorized by the commission, a person shall not:

1. Possess, import, ship or transport into or within this state, or cause to be imported, shipped or transported into or within this state, an aquatic invasive species.

2. Notwithstanding section 17-255.04, subsection A, paragraph 4, release, place or plant, or cause to be released, placed or planted, an aquatic invasive species into waters in this state or into any water treatment facility, water supply or water transportation facility, device or mechanism in this state.

3. Notwithstanding section 17-255.04, subsection A, paragraph 4, place in any waters of this state any equipment, watercraft, vessel, vehicle or conveyance that has been in any water or location where aquatic invasive species are present within the preceding thirty days without first decontaminating the equipment, watercraft, vessel, vehicle or conveyance.

4. Sell, purchase, barter or exchange in this state an aquatic invasive species.

17-306. Importation, transportation, release or possession of live wildlife; violations; classification

A. No person shall import or transport into this state or sell, trade or release within this state or have in the person's possession any live wildlife except as authorized by the commission or as defined in title 3, chapter 16.

B. It is unlawful for a person to knowingly and without lawful authority under state or federal law import and transport into this state and release within this state a species of wildlife that is listed as a threatened, endangered or candidate species under the endangered species act of 1973 (P.L. 93-205; 87 Stat. 884; 16 United States Code sections 1531 through 1544).

C. A person who violates subsection B of this section is guilty of a class 6 felony.

D. A person who violates subsection B of this section with the intent to disrupt or interfere with the development or use of public natural resources to establish the presence of the species in an area not currently known to be occupied by that species is guilty of a class 4 felony.

17-307. Possession, storage, sale and gift of the carcass or parts thereof of wildlife

A. The carcass or parts thereof of wildlife lawfully obtained in accordance with the provisions of this title and commission regulations may be possessed by the person taking such wildlife.

B. The carcass or parts thereof of wildlife lawfully obtained may be placed in storage in accordance with the provisions of this title.

C. The carcass or parts thereof of wildlife lawfully produced by or lawfully obtained from a commercial wildlife breeding or processing establishment may be sold in this state.

D. A person may make a gift of the carcass or parts thereof of his lawfully obtained wildlife, or he may have it

prepared in a public eating place and served to himself and his guests.

17-314. Illegally taking, wounding, killing or possessing wildlife; civil penalty; enforcement

A. The commission may impose a civil penalty against any person for unlawfully taking, wounding, killing or possessing any of the following wildlife, or part thereof, to recover the following minimum sums:

1. For each turkey or javelina $ 500.00
2. For each bear, mountain lion, pronghorn (antelope) or deer $1,500.00
3. For each elk or eagle, other than endangered species $2,500.00
4. For each predatory, fur-bearing or nongame animal $250.00
5. For each small game or aquatic wildlife animal $50.00
6. For each bighorn sheep, bison (buffalo) or endangered species animal $8,000.00

B. The commission may bring a civil action in the name of this state to enforce the civil penalty. The civil penalty, or a verdict or judgment to enforce the civil penalty, shall not be less than the sum fixed in this section. The minimum sum that the commission may recover from a person pursuant to this section may be doubled for a second violation, verdict or judgment and tripled for a third violation, verdict or judgment. The action to enforce the civil penalty may be joined with an action for possession and recovery had for the possession as well as the civil penalty.

C. The pendency or determination of an action to enforce the civil penalty or for payment of the civil penalty or a judgment, or the pendency or determination of a criminal prosecution for the same taking, wounding, killing or possession, is not a bar to the other, nor does either affect the right of seizure under any other provision of the laws relating to game and fish.

D. All monies recovered pursuant to this section shall be deposited in the wildlife theft prevention fund established by section 17-315.

17-315. Wildlife theft prevention fund; authorized expenditures

A. The wildlife theft prevention fund is established consisting of:

1. Monies received from civil penalties pursuant to section 17-314.
2. Money received from donations to the fund.
3. Monies appropriated by the legislature for the purposes provided in this article.
4. Monies received as fines, forfeitures and penalties collected for violations of this title.

B. Monies in the wildlife theft prevention fund shall be expended only for the following purposes:

1. The financing of reward payments to persons, other than peace officers, game and fish department personnel and members of their immediate families, responsible for information leading to the arrest of any person for unlawfully taking, wounding or killing, possessing, transporting or selling wildlife and attendant acts of vandalism. The commission shall establish the schedule of rewards to be paid for information received and payment shall be made from monies available for this purpose.
2. The financing of a statewide telephone reporting system under the name of "operation game thief", which shall be established by the director under the guidance of the commission.
3. The promotion of the public recognition and awareness of the wildlife theft prevention program.
4. Investigations of the unlawful taking, possession or use of wildlife.
5. Investigations of fraud related to licenses, permits, tags or stamps.

C. The wildlife theft prevention fund shall be expended in conformity with the laws governing state financial operations. Balances remaining at the end of the fiscal year are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

17-317. Possession and containment of white amur; determination of closed aquatic system

A. The commission shall establish a procedure by rule to permit the possession of certified triploid white amur (*ctenopharyngodon idellus*).

B. The department shall evaluate potential sites for the stocking of certified triploid white amur in this state. These sites shall be in closed aquatic systems as determined by the commission. The commission shall determine what constitutes a closed aquatic system after at least one public hearing and shall consider at least the following factors:

1. Hydrologic:
   (a) Flood potential of the aquatic system.
   (b) Proximity of the aquatic system to other aquatic systems.
   (c) Water movement into and out of the aquatic system.
2. The risk of severe damage to the aquatic habitat in other bodies of water due to the possession and use of white amur.

17-318. Disease assessment and treatment before importing wildlife and transporting big game

A. The department shall test all cloven-hoofed wildlife it introduces or imports into this state, and all cloven-hoofed big game transported and released in this state for the purpose of creating new or expanding existing populations, for presence of diseases that can be transmitted to livestock. The tests to be conducted shall be determined by consultation with the state veterinarian. The department shall treat and cure all wildlife infected with any known disease that can be transmitted to livestock before the wildlife are released in this state.

B. Before introducing or importing cloven-hoofed wildlife into this state, or transporting and releasing cloven-hoofed big game in this state for purposes of creating new or expanding existing populations, the department shall determine the potential for livestock and domestic animals infecting the wildlife and, if possible, immunize the wildlife before they are released in this state.

17-331. License or proof of purchase required; violation of child support order

A. Except as provided by this title, rules prescribed by the commission or commission order, a person shall not take any wildlife in this state without a valid license or a commission approved proof of purchase. The person shall carry the license or proof of purchase and produce it on request to any game ranger, wildlife manager or peace officer.

B. A certificate of noncompliance with a child support order issued pursuant to section 25-518 invalidates any license or proof of purchase issued to the support obligor for taking wildlife in this state and prohibits the support obligor from applying for any additional licenses issued by an automated drawing system under this title.

C. On receipt of a certificate of compliance with a child support order from the court pursuant to section 25-518 and without further action:

1. Any license or proof of purchase issued to the support obligor for taking wildlife that was previously invalidated by a certificate of noncompliance and that has not otherwise expired shall be reinstated.

2. Any ineligibility to apply for any license issued by an automated drawing system shall be removed.

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

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

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

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

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

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

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

4. A youth license for a reduced fee to a resident of this state who is a member of the boy scouts of America who has attained the rank of eagle scout or a member of the girl scouts of the USA who has received the gold award.

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

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

17-371. Transportation, possession and sale of wildlife and wildlife parts

A. A person may transport in his possession his legally taken wildlife, or may authorize the transportation of his legally taken big game, provided such big game or any part thereof has attached thereto a valid transportation permit issued by the department. Such wildlife shall be transported in such manner that it may be inspected by authorized persons upon demand until the wildlife is packaged or stored. Species of wildlife, other than game species, may be

transported in any manner unless otherwise specified by the commission. A person possessing a valid license may transport lawfully taken wildlife other than big game given to him but in no event shall any person possess more than one bag or possession limit.

B. A holder of a resident license shall not transport from a point within to a point without the state any big game species or parts thereof without first having obtained a special permit issued by the department or its authorized agent.

C. Migratory birds may be possessed and transported in accordance with the migratory bird treaty act (40 Stat. 755; 16 United States Code sections 703 through 711) and regulations under that act.

D. A holder of a sport falconry license may transport one or more raptors that the person lawfully possesses under terms and conditions prescribed by the commission. Regardless of whether a person holds a sport falconry license and as provided by section 17-236, subsection C, the person may transport for sport falconry purposes one or more raptors that are not listed pursuant to the migratory bird treaty act.

E. Heads, horns, antlers, hides, feet or skin of wildlife lawfully taken, or the treated or mounted specimens thereof, may be possessed, sold and transported at any time, except that migratory birds may be possessed and transported only in accordance with federal regulations.

41-1005. Exemptions

A. This chapter does not apply to any:

1. Rule that relates to the use of public works, including streets and highways, under the jurisdiction of an agency if the effect of the order is indicated to the public by means of signs or signals.

2. Order or rule of the Arizona game and fish commission that does the following:

(a) Opens, closes or alters seasons or establishes bag or possession limits for wildlife.

(b) Establishes a fee pursuant to section 5-321, 5-322 or 5-327.

(c) Establishes a license classification, fee or application fee pursuant to title 17, chapter 3, article 2.

3. Rule relating to section 28-641 or to any rule regulating motor vehicle operation that relates to speed, parking, standing, stopping or passing enacted pursuant to title 28, chapter 3.

4. Rule concerning only the internal management of an agency that does not directly and substantially affect the procedural or substantive rights or duties of any segment of the public.

5. Rule that only establishes specific prices to be charged for particular goods or services sold by an agency.

6. Rule concerning only the physical servicing, maintenance or care of agency owned or operated facilities or property.

7. Rule or substantive policy statement concerning inmates or committed youths of a correctional or detention facility in secure custody or patients admitted to a hospital, if made by the state department of corrections, the department of juvenile corrections, the board of executive clemency or the department of health services or a facility or hospital under the jurisdiction of the state department of corrections, the department of juvenile corrections or the department of health services.

8. Form whose contents or substantive requirements are prescribed by rule or statute, and instructions for the execution or use of the form.

9. Capped fee-for-service schedule adopted by the Arizona health care cost containment system administration pursuant to title 36, chapter 29.

10. Fees prescribed by section 6-125.

11. Order of the director of water resources adopting or modifying a management plan pursuant to title 45, chapter 2, article 9.

12. Fees established under section 3-1086.

13. Fees established under sections 41-4010 and 41-4042.

14. Rule or other matter relating to agency contracts.

15. Fees established under section 32-2067 or 32-2132.

16. Rules made pursuant to section 5-111, subsection A.

17. Rules made by the Arizona state parks board concerning the operation of the Tonto natural bridge state park, the facilities located in the Tonto natural bridge state park and the entrance fees to the Tonto natural bridge state park.

18. Fees or charges established under section 41-511.05.

19. Emergency medical services protocols except as provided in section 36-2205, subsection B.

20. Fee schedules established pursuant to section 36-3409.

21. Procedures of the state transportation board as prescribed in section 28-7048.

22. Rules made by the state department of corrections.

23. Fees prescribed pursuant to section 32-1527.

24. Rules made by the department of economic security pursuant to section 46-805.

25. Schedule of fees prescribed by section 23-908.

26. Procedure that is established pursuant to title 23, chapter 6, article 6.

27. Rules, administrative policies, procedures and guidelines adopted for any purpose by the Arizona commerce authority pursuant to chapter 10 of this title if the authority provides, as appropriate under the circumstances, for notice of an opportunity for comment on the proposed rules, administrative policies, procedures and guidelines.

28. Rules made by a marketing commission or marketing committee pursuant to section 3-414.

29. Administration of public assistance program monies authorized for liabilities that are incurred for disasters declared pursuant to sections 26-303 and 35-192.

30. User charges, tolls, fares, rents, advertising and sponsorship charges, services charges or similar charges established pursuant to section 28-7705.

31. Administration and implementation of the hospital assessment pursuant to section 36-2901.08, except that the Arizona health care cost containment system administration must provide notice and an opportunity for public comment at least thirty days before establishing or implementing the administration of the assessment.

32. Rules made by the Arizona department of agriculture to adopt and implement the provisions of the federal milk ordinance as prescribed by section 3-605.

33. Rules made by the Arizona department of agriculture to adopt, implement and administer the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252) as provided by title 3, chapter 3, article 4.1.

34. Calculations performed by the department of economic security associated with the adjustment of the sliding fee scale and formula for determining child care assistance pursuant to section 46-805.

B. Notwithstanding subsection A, paragraph 21 of this section, at such time as the federal highway administration authorizes the privatization of rest areas, the state transportation board shall make rules governing the lease or license by the department of transportation to a private entity for the purposes of privatization of a rest area.

C. Coincident with the making of a final rule pursuant to an exemption from the applicability of this chapter under this section, another statute or session law, the agency shall:

1. Prepare a notice and follow formatting guidelines prescribed by the secretary of state.

2. Prepare the rulemaking exemption notices pursuant to chapter 6.2 of this title.

3. File a copy of the rule with the secretary of state for publication pursuant to section 41-1012 and provide a copy to the council.

D. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona board of regents and the institutions under its jurisdiction, except that the Arizona board of regents shall make policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed.

E. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the Arizona state schools for the deaf and the blind, except that the board of directors of all the state schools for the deaf and the blind shall adopt policies for the board and the schools under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies proposed for adoption.

F. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board of education, except that the state board of education shall adopt policies or rules for the board and the institutions under its jurisdiction that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any rule, the state board of education shall provide at least two opportunities for public comment. The state board of education shall consider the fiscal impact of any proposed rule pursuant to this subsection.

G. Unless otherwise required by law, articles 2, 3, 4 and 5 of this chapter do not apply to the state board for charter schools, except that the board shall adopt policies or rules for the board and the charter schools sponsored by the board that provide, as appropriate under the circumstances, for notice of and opportunity for comment on the policies or rules proposed for adoption. In order to implement or change any policy or rule, the board shall provide at least two opportunities for public comment. The state board for charter schools shall consider the fiscal impact of any proposed rule pursuant to this subsection.

ART. 3. RULEMAKING

41-1037. General permits; issuance of traditional permit

A. If an agency proposes a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license or agency authorization, the agency shall use a general permit if the facilities, activities or practices in the class are substantially similar in nature unless any of the following applies:

1. A general permit is prohibited by federal law.

2. The issuance of an alternative type of permit, license or authorization is specifically authorized by state statute.

3. The issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements.

4. The issuance of a general permit would result in additional regulatory requirements or costs being placed on the permit applicant.

5. The permit, license or authorization is issued pursuant to section 8-126, 8-503, 8-505, 23-504, 36-592, 36-594.01, 36-595, 36-596, 36-596.54, 41-1967.01 or 46-807.

6. The permit, license or authorization is issued pursuant to title V of the clean air act.

B. The agency retains the authority to revoke an applicant's ability to operate under a general permit and to require the applicant to obtain a traditional permit if the applicant is in substantial noncompliance with the applicable requirements for the general permit.

ARTICLE 4. LIVE WILDLIFE
DEFINITIONS

TITLE 17. GAME AND FISH
CHAPTER 1. GENERAL PROVISIONS

Art. 1. Definitions and Authority of the State

17-101. Definitions

A. In this title, unless the context otherwise requires:

1. "Angling" means taking fish by one line and not more than two hooks, by one line and one artificial lure, which may have attached more than one hook, or by one line and not more than two artificial flies or lures.
2. "Bag limit" means the maximum limit, in number or amount, of wildlife that any one person may lawfully take during a specified period of time.
3. "Closed season" means the time during which wildlife may not be lawfully taken.
4. "Commission" means the Arizona game and fish commission.
5. "Department" means the Arizona game and fish department.
6. "Device" means any net, trap, snare, salt lick, scaffold, deadfall, pit, explosive, poison or stupefying substance, crossbow, firearm, bow and arrow, or other implement used for taking wildlife. Device does not include a raptor or any equipment used in the sport of falconry.
7. "Domicile" means a person's true, fixed and permanent home and principal residence. Proof of domicile in this state may be shown as prescribed by rule by the commission.
8. "Falconry" means the sport of hunting or taking quarry with a trained raptor.
9. "Fishing" means to lure, attract or pursue aquatic wildlife in such a manner that the wildlife may be captured or killed.
10. "Fur dealer" means any person engaged in the business of buying for resale the raw pelts or furs of wild mammals.
11. "Guide" means a person who meets any of the following:
    (a) Advertises for guiding services.
    (b) Holds himself out to the public for hire as a guide.
    (c) Is employed by a commercial enterprise as a guide.
    (d) Accepts compensation in any form commensurate with the market value in this state for guiding services in exchange for aiding, assisting, directing, leading or instructing a person in the field to locate and take wildlife.
    (e) Is not a landowner or lessee who, without full fair market compensation, allows access to the landowner's or lessee's property and directs and advises a person in taking wildlife.
12. "License classification" means a type of license, permit, tag or stamp authorized under this title and prescribed by the commission by rule to take, handle or possess wildlife.
13. "License year" means the twelve-month period between January 1 and December 31, inclusive, or a different twelve-month period as prescribed by the commission by rule.
14. "Nonresident", for the purposes of applying for a license, permit, tag or stamp, means a citizen of the United States or an alien who is not a resident.
15. "Open season" means the time during which wildlife may be lawfully taken.
16. "Possession limit" means the maximum limit, in number or amount of wildlife, that any one person may possess at one time.
17. "Resident", for the purposes of applying for a license, permit, tag or stamp, means a person

who is:

(a) A member of the armed forces of the United States on active duty and who is stationed in:

(i) This state for a period of thirty days immediately preceding the date of applying for a license, permit, tag or stamp.

(ii) Another state or country but who lists this state as the person's home of record at the time of applying for a license, permit, tag or stamp.

(b) Domiciled in this state for six months immediately preceding the date of applying for a license, permit, tag or stamp and who does not claim residency privileges for any purpose in any other state or jurisdiction.

(c) A youth who resides with and is under the guardianship of a person who is a resident.

18. "Road" means any maintained right-of-way for public conveyance.
19. "Statewide" means all lands except those areas lying within the boundaries of state and federal refuges, parks and monuments, unless specifically provided differently by commission order.
20. "Take" means pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or placing or using any net or other device or trap in a manner that may result in capturing or killing wildlife.
21. "Taxidermist" means any person who engages for hire in mounting, refurbishing, maintaining, restoring or preserving any display specimen.
22. "Traps" or "trapping" means taking wildlife in any manner except with a gun or other implement in hand.
23. "Wild" means, in reference to mammals and birds, those species that are normally found in a state of nature.
24. "Wildlife" means all wild mammals, wild birds and the nests or eggs thereof, reptiles, amphibians, mollusks, crustaceans and fish, including their eggs or spawn.
25. "Youth" means a person who is under eighteen years of age.
26. "Zoo" means a commercial facility open to the public where the principal business is holding wildlife in captivity for exhibition purposes.

B. The following definitions of wildlife shall apply:

1. "Aquatic wildlife" means fish, amphibians, mollusks, crustaceans and soft-shelled turtles.
2. "Big game" means wild turkey, deer, elk, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), bear and mountain lion.
3. "Fur-bearing animals" means muskrats, raccoons, otters, weasels, bobcats, beavers, badgers and ringtail cats.
4. "Game fish" means trout of all species, bass of all species, catfish of all species, sunfish of all species, northern pike, walleye and yellow perch.
5. "Game mammals" means deer, elk, bear, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), mountain lion, tree squirrel and cottontail rabbit.
6. "Migratory game birds" means wild waterfowl, including ducks, geese and swans, sandhill cranes, all coots, all gallinules, common snipe, wild doves and bandtail pigeons.
7. "Nongame animals" means all wildlife except game mammals, game birds, fur-bearing animals, predatory animals and aquatic wildlife.
8. "Nongame birds" means all birds except upland game birds and migratory game birds.
9. "Nongame fish" means all the species of fish except game fish.
10. "Predatory animals" means foxes, skunks, coyotes and bobcats.

11. "Raptors" means birds that are members of the order of falconiformes or strigiformes and includes falcons, hawks, owls, eagles and other birds that the commission may classify as raptors.
12. "Small game" means cottontail rabbits, tree squirrels, upland game birds and migratory game birds.
13. "Trout" means all species of the family salmonidae, including grayling.
14. "Upland game birds" means quail, partridge, grouse and pheasants.

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS

R12-4-101. Definitions

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

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

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

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

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

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

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

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

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

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

Open, close, or alter seasons,
Open areas for taking wildlife,
Set bag or possession limits for wildlife,
Set the number of permits available for limited hunts, or
Specify wildlife that may or may not be taken.

"Crossbow" means a device consisting of a bow affixed on a stock having a trigger mechanism

to release the bowstring.
“Day-long” means the 24-hour period from one midnight to the following midnight.
“Department property” means those buildings or real property and wildlife areas under the jurisdiction of the Arizona Game and Fish Commission.
“Electronic tag” means a tag that is provided by the Department through an electronic device that syncs with the Department's computer systems.
“Export” means to carry, send, or transport wildlife or wildlife parts out of Arizona to another state or country.
“Firearm” means any loaded or unloaded handgun, pistol, revolver, rifle, shotgun, or other weapon that will discharge, is designed to discharge, or may readily be converted to discharge a projectile by the action of an explosion caused by the burning of smokeless powder, black powder, or black powder substitute.
“Handgun” means a firearm designed and intended to be held, gripped, and fired by one or more hands, not intended to be fired from the shoulder, and that uses the energy from an explosive in a fixed cartridge to fire a single projectile through a barrel for each single pull of the trigger.
“Hunt area” means a management unit, portion of a management unit, or group of management units, or any portion of Arizona described in a Commission Order and not included in a management unit, opened to hunting.
“Hunt number” means the number assigned by Commission Order to any hunt area where a limited number of hunt permits are available.
“Hunt permits” means the number of hunt permit-tags made available to the public as a result of a Commission Order.
“Hunt permit-tag” means a tag for a hunt for which a Commission Order has assigned a hunt number.
“Identification number” means the number assigned to each applicant or license holder by the Department as established under R12-4-111.
“Import” means to bring, send, receive, or transport wildlife or wildlife parts into Arizona from another state or country.
“License dealer” means a business authorized to sell hunting, fishing, and other licenses as established under R12-4-105.
“Limited-entry permit-tag” means a permit made available for a limited-entry fishing or hunting season.
“Live baitfish” means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-317.
“Management unit” means an area established by the Commission for management purposes.
“Nonpermit-tag” means a tag for a hunt for which a Commission Order does not assign a hunt number and the number of tags is not limited.
“Nonprofit organization” means an organization that is recognized under Section 501© of the U.S. Internal Revenue Code.
“Person” has the meaning as provided under A.R.S. § 1-215.
“Proof of purchase,” for the purposes of A.R.S. § 17-331, means an original, or any authentic and verifiable form of the original, of any Department-issued license, permit, or stamp that establishes proof of actual purchase.
“Pursue” means to chase, tree, corner or hold wildlife at bay.
“Pursuit-only” means a person may pursue, but not kill, a bear, mountain lion, or raccoon on

any management unit that is open to pursuit-only season, as defined under R12-4-318, by Commission Order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Buck pronghorn" means a male pronghorn.

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

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

"Bull elk" means an antlered elk.

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

"Ram" means any male bighorn sheep.

"Rooster" means a male pheasant.

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

R12-4-401. Live Wildlife Definitions

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

"Adoption" means the transfer of custody of live wildlife to a member of the public, initiated by either the Department or its authorized agent, when no special license is required.

“Agent” means the person identified on a special license and who assists a special license holder in performing activities authorized by the special license to achieve the objectives for which the license was issued. “Agent” has the same meaning as “sublicensee” and “subpermittee” as these terms are used for the purpose of federal permits.
“Aquarium trade” means the commercial industry and its customers who lawfully trade in aquatic live wildlife.
“Aversion training” means behavioral training in which an aversive stimulus is paired with an undesirable behavior in order to reduce or eliminate that behavior.
“Captive live wildlife” means live wildlife held in captivity, physically restrained, confined, impaired, or deterred to prevent it from escaping to the wild or moving freely in the wild.
“Captive-reared” means wildlife born, bred, raised, or held in captivity.
“Circus” means a scheduled event where a variety of entertainment is the principal business, primary purpose, and attraction. “Circus” does not include animal displays or exhibits held as an attraction for a secondary commercial endeavor.
“Commercial purpose” means the bartering, buying, leasing, loaning, offering to sell, selling, trading, exporting or importing of wildlife or their parts for monetary gain.
“Domestic” means an animal species that does not exist in the wild, and includes animal species that have only become feral after they were released by humans who held them in captivity or individuals or populations that escaped from human captivity.
“Educational display” means a display of captive live wildlife to increase public understanding of wildlife biology, conservation, and management which may or may not include soliciting payment from an audience or an event sponsor with the intent to recover costs incurred in providing the educational display. For the purposes of this Article, “to display for educational purposes” refers to display as part of an educational display.
“Educational institution” means any entity that provides instructional services or education-related services to persons.
“Endangered or threatened wildlife” means wildlife listed under 50 CFR 17.11, revised October 1, 2019, which is incorporated by reference. A copy of the list is available at any Department office, online at www.gpo.gov, or may be ordered from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000. This incorporation by reference does not include any later amendments or editions of the incorporated material.
“Evidence of lawful possession” means any license or permit authorizing possession of a specific live wildlife species or individual, or other documentation establishing lawful possession. Other forms of documentation may include, but are not limited to, a statement issued by the country or state of origin verifying a license or permit for that specific live wildlife species or individual is not required.
“Exhibit” means to display captive live wildlife in public or to allow photography of captive live wildlife for any commercial purpose.
“Exotic” means wildlife or offspring of wildlife not native to North America.
“Fish farm” means a commercial operation designed and operated for propagating, rearing, or selling aquatic wildlife for any purpose.
“Game farm” means a commercial operation designed and operated for the purpose of propagating, rearing, or selling wildlife for any purpose stated under R12-4-413.
“Health certificate” means a certificate of an inspection completed by a licensed veterinarian or federal- or state-certified inspector verifying the animal examined appears to be healthy and free of infectious, contagious, and communicable diseases.

“Hybrid wildlife” means an offspring from two different wildlife species or genera. Offspring from a wildlife species and a domestic animal species are not considered wildlife. This definition does not apply to bird hybrids as defined under the Migratory Bird Treaty Act, under 50 CFR 21.3, revised October 1, 2019.
“Live baitfish” means any species of live freshwater fish designated by Commission Order as lawful for use in taking aquatic wildlife under R12-4-313 and R12-4-314.
“Live bait” means aquatic live wildlife used or intended for use in taking aquatic wildlife.
“Migratory birds” mean all species listed under 50 CFR 10.13 revised October 1, 2019, and no later amendments or editions. The incorporated material is available from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 979050, St. Louis, MO 63197-9000, and is on file with the Department.
“Noncommercial purpose” means the use of products or services developed using wildlife for which no compensation or monetary value is received.
“Nonhuman primate” means any nonhuman member of the order Primate of mammals including prosimians, monkeys, and apes.
“Nonnative” means wildlife or its offspring that did not occur naturally within the present boundaries of Arizona before European settlement.
“Photography” means any process that creates durable images of wildlife or parts of wildlife by recording light or other electromagnetic radiation, either chemically by means of a light-sensitive material or electronically by means of an image sensor.
“Rehabilitated wildlife” means live wildlife that is injured, orphaned, sick, or otherwise debilitated and is provided care to restore it to a healthy condition suitable for release to the wild or for lawful captive use.
“Research facility” means any association, institution, organization, school, except an elementary or secondary school, or society that uses or intends to use live animals in research.
“Restricted live wildlife” means wildlife that cannot be imported, exported, or possessed without a special license or lawful exemption.
“Shooting preserve” means any operation where live wildlife is released for the purpose of hunting.
“Special license” means any license issued under this Article, including any additional stipulations placed on the license authorizing specific activities normally prohibited under A.R.S. § 17-306 and R12-4-402.
“Species of greatest conservation need” means any species listed in the Department’s Arizona’s State Wildlife Action Plan list Tier 1a and 1b published by the Arizona Game and Fish Department. The material is available for inspection at any Department office and on the Department’s website.
“Stock” and “stocking” means to release live aquatic wildlife into public or private waters other than the waters where taken.
“Taxa” means groups of animals within specific classes of wildlife occurring in the state with common characteristics that establish relatively similar requirements for habitat, food, and other ecological, genetic, or behavioral factors.
“Unique identifier” means a permanent marking made of alphanumeric characters that identifies an individual animal, which may include, but is not limited to, a tattoo or microchip.
“USFWS” means the United States Fish and Wildlife Service.
“Volunteer” means a person who:
Assists a special license holder in conducting activities authorized under the special license,
Is under the direct supervision of the license holder at the premises described on the license,
Is not designated as an agent, and

Receives no compensation.
“Wildlife disease” means any disease that poses a health risk to wildlife in Arizona.
“Zoo” means any facility licensed by the Arizona Game and Fish Department under R12-4-420 or, for facilities located outside of Arizona, licensed or recognized by the applicable governing agency.
“Zoonotic” means a disease that can be transmitted from animals to humans or, more specifically, a disease that normally exists in animals but that can infect humans.

INDUSTRIAL COMMISSION
Title 20, Chapter 5, Article 4

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: May 7, 2024

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

FROM: Council Staff

DATE: April 18, 2024

SUBJECT: **INDUSTRIAL COMMISSION OF ARIZONA**
Title 20, Chapter 5, Article 4

Summary

This Five-Year Review Report (5YRR) from the Industrial Commission of Arizona (Commission) relates to all twenty-two (22) rules in Title 20, Chapter 5, Article 4 related to regulation of boilers and lined hot water storage heaters operated in Arizona. These rules do not apply to boilers and lined hot water storage heaters regulated by the U.S. Government, operated in private residences or apartment complexes of six units or less, and those operated on Indian reservations. The rules also do not apply to hot water heaters where (1) heat input does not exceed 200,000 BTU per hour; (2) water temperature does not exceed 210 degrees Fahrenheit; and (3) nominal water containing capacity is not more than 120 gallons, and electric boilers that do not exceed either tank volume of one-and-a-half cubic feet or MAWP of 100 pounds per square inch or less with a pressure relief system to prevent excess pressure. The rules also establish the requirements and certification parameters for individuals requesting certification as special inspectors of boilers or lined hot water storage heaters.

In the prior 5YRR for these rules, which was approved by the Council in March 2019, the Commission proposed to amend rules R20-5-411 to provide more clarity regarding the parameters of hydrostatic tests and R20-5-416 to define maximum allowable working pressure. Additionally, the Commission proposed to amend rules R20-5-402(11), R20-5-403, and R20-5-420(C)(1) to ensure consistency with statutory changes completed in 2016 and 2017.

Finally, the Commission indicated it would conduct a thorough review of updated National Consensus Standards to determine whether adoption is appropriate in the following rules: R20-5-404, R20-5-406, R20-5-407, R20-5-415, and R20-5-416. The Commission indicates it completed a rulemaking in December 2022 to address these issues.

Proposed Action

In the current report, given the Commission engaged in extensive review and rulemaking in 2022, the Commission does not propose to amend any additional rules at this time.

1. Has the agency analyzed whether the rules are authorized by statute?

The Commission cites both general and specific statutory authority for the rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Commission states that the rules have a limited economic impact on consumers, while protecting them from unsafe operation boilers, lined water heaters and pressure vessels. The Commission indicates that the 2022 final rulemaking was anticipated to have no adverse economic, small business, or consumer impact. The Commission further states that the rulemaking was intended to reduce regulatory burden by eliminating incorrect or confusing language in the prior rules to allow for the affected stakeholders to have a clearer understanding of what is required. Additionally, by adopting the most current standard and codes the amendments would facilitate stakeholders in using more modern technology which may provide a cost benefit. Stakeholders include Owners, Operators, users or inspectors of boilers, hot lined water heaters or pressure vessels, and the Commission.

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

The Commission believes that the probable costs of the rules do not exceed the probable benefits of the rules. The Commission believes that the rules impose the least burden on the regulated community.

4. Has the agency received any written criticisms of the rules over the last five years?

The Commission received no written criticism of the rules within the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Commission indicates that the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Commission indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Commission indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Commission indicates that the rules are enforced as written.

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

Not applicable. The Commission indicates there are no federal laws related to the installation, repair, and maintenance of boilers, lined hot water heaters, and pressure vessels.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(12), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

A.R.S. § 41-1001(12) defines "general permit" to mean "a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The Commission indicates that the rules require general permits issued by the National Board of Boilers and Pressure Vessel Inspectors. As such, Council staff believes the Commission is in compliance with A.R.S. § 41-1037.

11. Conclusion

This Five-Year Review Report (5YRR) from the Industrial Commission of Arizona (Commission) relates to all twenty-two (22) rules in Title 20, Chapter 5, Article 4 related to regulation of boilers and lined hot water storage heaters operated in Arizona. The Commission indicates the rules are clear, concise, understandable, consistent, effective, and enforced as written and does not intend to to take any action related to the rules.

Council staff recommends approval of this report.

THE INDUSTRIAL COMMISSION OF ARIZONA

LEGAL DIVISION

AFSHAN PEIMANI
CHIEF COUNSEL
P.O. BOX 19070
PHOENIX, AZ 85005-9070
602-542-5781

November 29, 2023

Sent via e-mail to grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Re: A.A.C. Title 20, Chapter 5, Article 4, Five-year Review Report

Dear Ms. Sornsin:

The Industrial Commission of Arizona ("Commission"), through its Director, submits for approval by the Governor's Regulatory Review Council ("Council") the attached Five-year Review Report on 20 A.A.C. 5, Article 4. The Commission has timely filed this report on or before Thursday, November 30, 2023.

An electronic copy of this cover letter, the report, the rules being reviewed, and the general and specific statutes authorizing the rules are concurrently submitted by email to Patricia Grant. The Commission believes that the report complies with the requirements of A.R.S. § 41-1056.

The Commission has reviewed all rules in Article 4 and has complied with A.R.S. § 41-1091, which requires the Commission to annually publish a directory summarizing the subject matter of all currently applicable rules and substantive policy statements, by posting directories of its current rules and substantive policy statements on the Commission's website, as required by A.R.S. § 41-1091.01(1) & (2). Should you have any questions concerning the report, please contact Chief Counsel Afshan Peimani at (602) 542-5293 or Attorney Jo-Ann Handy at (602) 542-5948.

Sincerely,

Gaetano Testini
Director

Enclosures

FIVE-YEAR-REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 4. ARIZONA BOILERS AND LINED HOT WATER HEATERS

FIVE-YEAR-REVIEW REPORT

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 4. ARIZONA BOILERS AND LINED HOT WATER HEATERS

FIVE-YEAR REVIEW SUMMARY

The Industrial Commission of Arizona (the "Commission") was created in 1925 as a result of legislation (Arizona Workman's Compensation Act) implementing the constitutional provisions establishing a workers' compensation system. The scope of the Commission includes other labor-related issues, such as occupational safety and health, youth employment, resolution of wage-related disputes, minimum wage, vocational rehabilitation, workers' compensation coverage for claimants of uninsured employers, and self-insured employers.

Certification Regarding Compliance with A.R.S. § 41-1091

In the cover letter for this report, the Commission's Director certifies that the Commission is in compliance with A.R.S. § 41-1091 with respect to the substantive policy statements relating to the rules in Article 4, as well as other substantive policy statements and all rules, which are available on the Commission's website.

About Article 4

These rules regulate all boilers and lined hot water storage heaters operated in Arizona, except for those boilers and lined hot water storage heaters regulated by the United States Government, those operated in private residences or apartment complexes of not more than six units, and those operated on Indian reservations. In addition, lined hot water heaters that meet the following criteria are not within the scope of the rules: (1) heat input does not exceed 200,000 BTU per hour; (2) water temperature does not exceed 210 degrees Fahrenheit; and (3) nominal water containing capacity of not more than 120 gallons, and electric boilers that do not exceed either tank volume of one-and-a-half cubic feet or MAWP of 100 pounds per square inch or less with a pressure relief system to prevent excess pressure. The rules also establish the requirements and certification parameters for individuals requesting certification as special inspectors of boilers or lined hot water storage heaters.

In 2009, the Commission completed a final rulemaking, which included significant changes to the rules, including the repeal of several rules.

2022 Rulemaking Summary

In December 2022, the Commission engaged in final rulemaking for Article 4 rules. A number of rules were amended to reflect updated information and inspection of boilers and lined hot water storage heaters. Specifically, the Commission amended A.A.C. R20-5-401 and -402; R20-5-404; R20-5-406 through -413; R20-5-415 through -420; R20-5-429 through -432. The Commission repealed rule R20-5-403 by final rulemaking in December 2022. The rulemaking was exempt from Executive Order 2022-01.

R20-5-401. Amendment adopted in 2022: Exempts Electric Boilers that do not exceed a.) tank volume of one-and-a-half cubic feet or b.) MAWP of 100 pounds per square inch unless it has a pressure relief system.

R20-5-402. Amendment adopted in 2022: Deleted: Lined Hot Water Heater definition. Added: "Out of Service" is defined as either a.) physically sever or discontinue all sources of energy (water, gas, fuel, electricity, etc.); cap all fuel lines; and disconnect or remove all electrical lines from the Boiler, Lined Hot Water Heater, or Pressure Vessel; or b.) to lock out and tag out the Boiler, Hot Water Heater, or Pressure Vessel per 29 C.F.R. § 1910.147, OSHA, General Industry Regulations.

Deleted: Unnecessary detail about references to incorporated materials is removed. Added: Special Inspector Certificate under R20-5-420 is added in definition of "Special Inspector."

Added: "Direct Fired Jacketed Steam Kettle" means a jacketed steam kettle having its own source of energy, such as gas or electricity for generating steam within the jacket's wall. Deleted: Definition of Owner or Operator.

Added: "Serves" means either mailing to the last known address of the receiving party, or transmitting by other means, including electronic transmission, with the written consent of the receiving party.

R20-5-403. Repealed 2022.

R20-5-404. Amendment adopted in 2022: Final rulemaking adopted section 7 and 8 pertaining to new Power Boilers installed after the effective date of Final Rulemaking, and "Owner, Operator, or User, of a Boiler installed, repaired, replaced, or reinstalled in Arizona having a capacity of equal to or greater than 12,500,000 BTU/hr input after the [effective date of Final Rulemaking] shall comply with ANSI NEPA 85, Boiler and Combustion Systems Hazards Code, 2019 edition."

R20-5-406. Amendment adopted in 2022: Information incorporated by reference is updated including references to the 2019 National Board Inspection Code, NASI/NB, the 2019 ASME Boiler and Pressure Vessel Code, and 2018 ASME Code for Pressure Piping.

R20-5-407. Amendment adopted in 2022: Information incorporated by reference is updated including 2019 Edition of the National Board Inspection Code. The Special Inspector is required to file an inspection report an inspection report within 30 days after an inspection under A.R.S. § 23-485(D). Items to include in an inspection report are renumbered.

R20-5-408. Amendment adopted in 2022: Added requirement that an authorized inspector inspect Power Boilers or High Temperature Water Boilers prior to operation. Adds requirement that an authorized inspector inspect Power Boilers or High Temperature Water Boilers every 12 months after the pre-operation inspection.

R20-5-409. Amendment adopted in 2022: Responsibility of Owner, Operator or User to disassemble all low-water fuel cutoff float chambers or bowls prior to inspection.

R20-5-413. Amendment adopted in 2022: Added: The resetting, repairing, and restamping of Safety Valves, Relief Valves, Safety Relief Valves shall be inspected by an inspector holding a valid "VR" Certificate of Authorization issued by the National Board of Boiler and Pressure Vessel Inspectors. Also included as inspectors are those who hold a valid "V", "HV," and "UV" Certificate provided that they also hold a valid "VR" Certificate of Authorization.

Added: Owner, Operators, and Users of Boilers, Lined Hot Water Heaters, and Pressure Vessels may authorize external adjustments to bring installed Safety Valves, Relief Valves, and Safety Relief Valves back to the stamped set pressure when performed by an Owner, Operator, or User trained and qualified employees.

R20-5-415. Amendment adopted in 2022: Information incorporated by reference is updated.

R20-5-417. Amendment adopted in 2022: Added: The Owner, Operator, or User shall annually complete required actions unless there is other information to assess accuracy or reliability, all pressure gages shall be removed, tested, and their readings compared to the readings of a calibrated standard test gage or a dead weight tester.

R20-5-420. Amendment adopted in 2022: Added: The Division shall administratively review an Applicant's application for a Special Inspector Certificate under A.R.S. § 23-485 within seven days of receipt to ensure the application is complete. If the application is not complete, the Division shall notify the Applicant in writing of the missing documentation or information. Added: The Division shall deem an application withdrawn if the Applicant fails to file a complete application within ten days of being notified by the Division that the application is incomplete.

Added: The Applicant may request an extension to file a completed application by filing a written request within with the Division no later than ten days after the Division serves notice that the application was incomplete. Deleted: Elements of the Administrative Completeness Review. Deleted: Application requirements involving a written examination under A.R.S. § 23-485(A).

Added: An application for a Special Inspector Certificate is deemed complete when the Applicant filed written documentation that demonstrates the Applicant holds a current commission issued by the National Board of Boiler and Pressure Vessel Inspectors.

Added: The Division will issue a Special Inspector Certificate within 15 days after the Applicant demonstrates compliance with the requirements for a Special Inspector Certificate.

Deleted: Written Examination under A.R.S. § 23-485(A) administered by the Division including written notice of Applicants' grades and the issuance of certificate of competency. Deleted: The requirement that the Division issue a Special Inspector Certificate within 15 days after the Division determines the Applicant meets the criteria of A.R.S. § 23-485 and subsection (C).

R20-5-430. Amendment adopted in 2022: Added: The flow sensing device shall be labeled and listed by a nationally recognized testing agency as a standard for limit controls complying with UL 353. The safety control shall be independent of any other operating controls.

R20-5-401 through -402; -404; -406 through -413; -415 through -420; -429 through -432. Amendment adopted in 2022: Capitalized all proper nouns.

FIVE-YEAR REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 4. ARIZONA BOILERS AND LINED HOT WATER HEATERS

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules

The rules in Article 4 have general and specific authorization under A.R.S. §§ 23-107; 23-108.01; Implementing statute under A.R.S. § 23-474, 23-475, and 23-476.

2. Objective of the rules, including the purposes for the existence of the rules

The Commission's overarching objectives regarding Article 4 are to ensure safety with respect to installation, repair, and maintenance of all boilers, lined hot water heaters, and pressure vessels operated in Arizona.

In addition, pursuant to A.R.S. §§ 23-474, 23-475, 23-476, the Industrial Commission of Arizona (the "Commission") is required to (1) adopt standards and regulations pursuant to section 23-475 and adopt other rules as are necessary, (2) recommend standards, regulations and amendments to the standards and regulations to the commission for approval or disapproval, and (3) propose adoption of national consensus standards or federal standards or draft such regulations as it considers necessary after conducting sufficient investigation through the division's employees and through consultation with other persons knowledgeable in the business for which the standards or regulations are being formulated.

R20-5-401. Applicability

R20-5-401. Defines the scope of Article 4. The rule is necessary in order to provide the scope and parameters of the rules contained in Article 4.

R20-5-402. Definitions

R20-5-402. Defines terms that are utilized in R20-5-404 through R20-5-432. The rule is necessary in order to provide definitions of the terms contained in the other rules of Article 4.

R20-5-403. Boiler Advisory Board **(Repealed)**

R20-5-404. Standards for Boilers, Lined Hot Water Storage Heaters and Pressure Vessels

R20-5-404. Establishes the standards with which an owner, user, or operator of a boiler installed, repaired, replaced, or reinstalled, must comply. The rule clarifies that Arizona follows the standards developed by the American Society of Mechanical Engineers ("ASME"), and incorporates the provisions of the ASME's Boiler and Pressure Vessel Code manual. The rule also sets forth compliance standards pertaining to oil-fired lined hot water storage heaters, and gas-fired lined hot water storage heaters. These storage heaters are required to comply with the standards of the American National Standards Institute ("ANSI"), and incorporates the provisions of the ANSI's American National Standard for Gas Water Heaters manual; the National Standard for Controls and Safety Devices for Automatically Fired Boilers manual; and the National Fuel Gas Code manual. The rule further clarifies the installation, maintenance and repair requirements for boilers and lined hot water storage heaters. The rule is necessary in order to provide specific standards to be followed in the installation, repair, or replacement of boilers and lined hot water heaters. The standards incorporated into the rule benefit the public and consumers in that they prevent accidents from the incorrect installation, repair or replacement of these types of equipment.

R20-5-406. Repairs and Alterations

R20-5-406. Establishes that when a boiler is in need of repair or alteration, the owner, user, or operator of the boiler, shall consult with an authorized inspector before having the repairs or alternations made. The intent of the rule is to have such repairs and alterations made under the supervision and with the approval of an authorized inspector so that all repairs and alterations comply with the provisions of the ANSI's National Board Inspection Code. The rule also sets forth that no one is permitted to remove or repair a safety appliance of a boiler or lined hot water storage heater in operation, and can only remove or repair a safety appliance not in operation as provided under the

ASME Code. The rule further specifies that repairs of fittings or appliances shall comply with the requirements of the National Board Inspection Code and that the replacement of fittings or appliances shall comply with the requirements of the ASME Boiler and Pressure Vessel Code manual. The rule is necessary in order to provide the relevant standards for safety compliance in the removal, repair, replacement, and alteration of a boiler or lined hot water storage heater.

R20-5-407. Inspection of Boilers, Lined Hot Water Storage Heaters, Direct Fired Jacketed Steam Kettles and Issuance of Inspection Certificates

R20-5-407. Establishes standards for compliance by authorized inspectors. The rule also sets forth that failure to comply with the required inspection or testing under this Article will result in the withholding of the inspection certificate until compliance is demonstrated. The rule further specifies that authorized inspectors shall not engage in the sale of any object or device relating to boilers, lined hot water storage heaters, or equipment associated with boilers and lined hot water storage heaters. In addition, special inspectors shall submit inspection reports to the Division on forms meeting the requisites of the National Board Inspection Code.

The rule specifies the time frames and procedures for the Division to issue an inspection certificate, the format for identification tags on steam boilers, the condemnation of an unfit boiler or lined hot water storage heater, and clarifies that for any condition not covered by this Article, the ASME Code applies. The rule is necessary in order to provide the relevant time frames and procedures for safety inspections of a boiler or lined hot water storage heater. The rule is also necessary to give the procedures for "tagging" an inspected boiler or lined hot water storage heater, and for the condemnation of an unfit unit. The rule is also necessary to clarify that in the event there is an issue regarding boilers or lined hot water storage heaters that is not addressed in this Article, the provisions of the ASME Code control.

R20-5-408. Frequency of Inspection

R20-5-408. Sets requirements and procedures for inspections of boilers and lined hot water storage heaters. The rule specifies that authorized inspectors shall perform the inspections and that the Division issues the inspection certificates. The rule establishes very specific factors for safety measurements to be performed by authorized inspectors and the time frames for such inspections. The rule is necessary in order to provide the relevant time frames and procedures for safety inspections of a boiler or lined hot water storage heater.

R20-5-409. Notification and Preparation for Inspection

R20-5-409. Sets the requirements and procedures for inspections of boilers and lined hot water storage heaters to actually occur. The rule specifies the exact requirements that must be completed by the owner, user or operator prior to an inspection. The procedures are necessary for the safety of the inspector and to permit a more effective inspection.

R20-5-410. Report of Accident

R20-5-410. Sets the requirements and procedures for notification of the Division in the event of an explosion, severe over-heating, or personal injury involving a boiler or lined hot water storage heater. The rule specifies the exact things that must be done by the owner, user or operator in the event of an accident involving a boiler or lined hot water storage heater. The procedures are necessary for the safety of the personnel involved in the incident and the general public.

R20-5-411. Hydrostatic Tests

R20-5-411. Establishes the technical requirements and procedures for a hydrostatic test. The rule specifies the exact things that must be done by the owner, user or operator in the performance of a hydrostatic test.

R20-5-412. Automatic Low-water Fuel Cutoff Devices or Combined Water Feeding and Fuel Cutoff Devices

R20-5-412. Establishes the technical requirements and procedures for the use of automatic low-water fuel cutoff devices or combined water feeding and fuel cutoff devices in boilers and lined hot water storage heaters. The rule

specifies the procedures to be followed and the standards for installation and operation of low-water fuel cutoff devices or combined water feeding and fuel cutoff devices. The rule is very technical and aimed toward establishing standards for safety to protect the users and operators of such units as well as the inspectors who must inspect such units.

R20-5-413. Safety and Safety Relief Valves

R20-5-413. Establishes the technical requirements and procedures for the use of safety relief valve devices in boilers and lined hot water storage heaters. The rule incorporates standards for safety valves from the ASME Boiler and Pressure Vessel Code of 2019. The rule specifies the technical procedures to be followed and the standards for implementation regarding installation and operation of safety relief valve devices. The rule is very technical and aimed toward establishing standards for safety to protect the users and operators of such units as well as the inspectors who must inspect such units.

R20-5-415. Boiler Blowdown, Blowoff Equipment and Drains

R20-5-415. Establishes that blowdown from a boiler is a hazard to life and property and that such blowdown must be handled in a safe manner by using appropriate equipment to safely discharge the blowdown. The rule provides technical guidelines and procedures for the use of piping and valve size in boilers and lined hot water storage heaters to effectively handle the blowdown and blowoff. The rule incorporates equipment standards from the National Board of Boiler and Pressure Vessel Inspectors, A Guide for Blowoff Vessels, NB-27, Revision 1 (01-2013), 2012 Edition. The rule specifies the technical procedures to be followed and the standards for implementation regarding installation and operation of blowdown and blowoff piping and valve sizes. The rule is very technical and aimed toward establishing standards for safety to protect the users and operators of such units as well as the inspectors who must inspect such units.

R20-5-416. Maximum Allowable Working Pressure

R20-5-416. Establishes that the ASME Code under which a boiler was constructed and stamped determines the maximum allowable working pressure for that

boiler. The rule is necessary to determine the maximum allowable working pressure for a boiler.

R20-5-417. Maintenance and Operation of Boilers, Hot Water Heaters and Direct Fired Jacketed Steam Kettles

R20-5-417. Establishes that an owner, user or operator of a boiler constructed under the ASME Code, is required to comply with the manufacturer's maintenance and operation instructions for the boiler. The rule also sets forth additional preventive maintenance schedules and basic knowledge requirements for the operators of a power boiler. The rule is necessary to maintain safety standards in compliance with the ASME Code, to establish preventive maintenance schedules, and to set minimum job qualifications for boiler operators. The rules corresponding by reference to the ASME is used for the purpose of the International Boiler and Pressure Vessel Code to establish rules of safety — relating only to pressure integrity — governing the design, fabrication, and inspection of boilers and pressure vessels, and nuclear power plant components during construction. The objective of the rules is to provide a margin for deterioration in service. Advancements in design and material and the evidence of experience are constantly being added.

R20-5-418. Non-standard Boilers

R20-5-418. Establishes that an owner, user or operator of a boiler not constructed under the ASME Code, it must be removed from service unless the owner has been granted a variance pursuant to R20-5-429. The rule is necessary to establish that if a boiler is not a stamped ASME boiler, that it must be approved and subject to the requirements set forth in the variance rule.

R20-5-419. Request to Reinstall Boiler or Lined Hot Water Heater

R20-5-419. Establishes the parameters under which an owner or user may submit a request to the Division, for permission to reinstall a boiler or lined hot water heater. The rule sets forth the time frames applicable to the grant or denial of a request, and the time within which an owner or user must contest an order of the Division. The rule is necessary to set forth the procedure and time frames for an owner or user to request permission to reinstall a boiler

or lined hot water heater, for the Division to issue its order, and for the owner or user to contest an order of the Division.

R20-5-420. Special Inspector Certificate under A.R.S. § 23-485

R20-5-420. Establishes the procedure and time frames for a person to apply for, and receive, a Special Inspector Certificate under A.R.S. § 23-485. The rule specifies the documentation necessary for an applicant to submit to the Division, the notices issued by the Division, the dates of the written examination, the issuance of the Special Inspector Certificate, and the procedure available for a hearing on the denial of a Special Inspector Certificate. The rule specifies the process and the Division's procedures in compliance with A.R.S. § 23-485.

R20-5-429. Variance

R20-5-429. Authorizes a variance if the boiler, water heater or pressure vessel does not bear an ASME stamp.

R20-5-430. Forced Circulation Hot Water Heaters

R20-5-430. Specifies safety controls for hot water heaters that require forced circulation to prevent overheating.

R20-5-431. Code Cases

R20-5-431. Permits code cases used by ASME Code Committee for design, fabrication and testing of boilers and pressure vessels.

R20-5-432. Historical Boilers

R20-5-432. Requires that certificate inspection occurs at the time of the initial inspection and every three years thereafter.

3. Effectiveness of the rules in achieving their objectives, including a summary of any available data supporting the conclusion reached

All of the rules in Article 4 are effective in achieving their respective objectives.

4. Consistency of the rules with state and federal statutes and other rules made

by the agency, and a listing of the statutes or rules used in determining the consistency

There are no federal statutory requirements related to the installation, repair, and maintenance of boilers, lined hot water heaters, and pressure vessels. For additional information regarding rule consistency with Arizona statutes, please see #10.

5. Agency enforcement policy, including whether the rules are currently being enforced and, if so, whether there are any problems with enforcement

The Commission enforces the rules in Article 4 as written.

6. Clarity, conciseness, and understandability of the rules

The rules are clear, concise, and understandable.

7. Written criticisms of the rules received by the agency within the five years immediately preceding the five-year review report

The Commission has not received any written criticisms of the Article 4 rules.

8. A comparison of the estimated economic, small business, and consumer impact of the rules with the economic, small business, and consumer impact statement prepared on the last making of the rules or, if no economic, small business, and consumer impact statement was prepared on the last making of the rules, an assessment of the actual economic, small business, and consumer impact of the rules

The rules have a limited economic impact on consumers, while protecting them from unsafe operation boilers, lined water heater, and pressure vessels. The 2022 final rulemaking is anticipated to have no adverse economic, small business, or consumer impact. The rulemaking was intended to reduce regulatory burden by eliminating incorrect or confusing language in the prior rules to allow for the affected stakeholders to have a clearer understanding of what is required.

Additionally, by adopting the most current standards and codes the amendments would facilitate stakeholders in using more modern technology which may provide a cost benefit.

9. Any analysis submitted to the agency completed by another person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states

No person has submitted an analysis to the Commission regarding the reviewed rules' impact on this state's business competitiveness.

10. If applicable, whether the agency completed the course of action indicated in the agency's previous five-year review report

The previous five-year-review report stated that as a result of the statutory changes in 2016 and 2017, R20-5-402(11) is inconsistent with the definition of Boiler in A.R.S. § 23-471(2); R20-5-403 is inconsistent with A.R.S. § 23-486 with respect to the composition of the Boiler Advisory Board; and R20-5-420(C)(1) is inconsistent with A.R.S. § 23-485 with respect to comity of out-of-state inspector qualifications. The prior report also indicated that the Commission would engage in a thorough review of updated national consensus standards and will initiate rulemaking.

In the 2018-2023 Five Year Review, the Commission demonstrates that it completed its course of action to resolve inconsistencies between the rules and state statutes by repealing the definition of Boiler as found in R20-5-402(11) so that the definition of Boiler found in A.R.S. § 23-471(2) remains the sole definition. Similarly, the final rules adopted in 2022 deletes R20-5-403 (Boiler Advisory Board) in its entirety and thus leaves A.R.S. § 23-486 as the sole law regarding the Boiler Advisory Board. Additionally, R20-5-420(C)(1) was amended to be consistent with A.R.S. § 23-485 with respect to comity of out-of-state inspector qualifications by permitting out-of-state persons to apply for a Special Inspector Certificate under A.R.S. § 23-485 by providing written documentation demonstrating the Applicant holds a current commission issued by the National

Board of Boiler and Pressure Vessel Inspectors (rather than state issued certificates of competency).

The Commission's 2022 final rulemaking made updates to the rules s to be consistent with updated national compliance standards.

11. A determination after analysis that probable benefits outweigh probable costs and that the rules impose the least burden and costs on persons regulated

The probable costs of the rules reviewed do not exceed the probable benefits of the rules. The Commission believes that the rules impose the least burden on the regulated community.

12. A determination that the rules are not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

There are no federal statutory requirements related to the installation, repair, and maintenance of boilers, lined hot water heaters, and pressure vessels.

13. For rules adopted or amended after July 29, 2010 that require issuance of a regulatory permit, license or agency authorization, whether the rules comply with A.R.S. § 41-1037.

A.R.S. § 41-1037 provides, "[i]f an agency proposes a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license or agency authorization, the agency shall use a general permit if the facilities, activities or practices in the class are substantially similar in nature." The final rules adopted in 2022 comply with 41-1037 by requiring general permits issued by the National Board of Boilers and Pressure Vessel Inspectors.

14. Proposed course of action

Given that the Commission engaged in extensive review and rulemaking in 2022, there is no proposed course of action at this time.

2022 AMENDMENT ECONOMIC IMPACT STATEMENT

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 4. ARIZONA BOILERS AND LINED HOT WATER HEATERS

1. Identification of the proposed rulemaking:

The Commission is proposing to amend A.A.C. R20-5-401 (Applicability), A.A.C. R20-5-402 (Definitions), A.A.C. R20-5-404 Standards for Boilers, Lined Hot Water Heaters and Pressure Vessels), A.A.C. R20-5-406 (Repairs and Alterations), A.A.C. R20-5-407 (Inspection of Boilers, Lined Hot Water Heaters, Direct Fired Jacketed Steam Kettles and Issuance of Inspection Certificates), A.A.C. R20-5-408 (Frequency of Inspection), A.A.C. R20-5-409 (Notification and Preparation for Inspection), A.A.C. R20-5-410 (Report of Accident), A.A.C. R20-5-411 (Hydrostatic Tests), A.A.C. R20-5-412 (Automatic Low-water Fuel Cutoff Devices or Combined Water Feeding and Fuel Cutoff Devices), A.A.C. R20-5-413 (Safety and Safety Relief Valves), A.A.C. R20-5-415 (Boiler Blowdown, Blowoff Equipment and Drains), A.A.C. R20-5-416 (Maximum Allowable Working Pressure), A.A.C. R20-5-417 (Maintenance and Operations of Boilers, Hot Water Heaters and Direct Fired Jacketed Steam Kettles), A.A.C. R20-5-418 (Non-standard Boilers), A.A.C. R20-5-419 (Request to Reinstall Boiler or Lined Hot Water Heater, A.A.C. R20-5-420 (Special Inspector Certificates under A.R.S. § 23-485), A.A.C. R20-5-429 (Variance), A.A.C. R20-5-430 (Forced Circulation Hot Water Heaters), A.A.C. R20-5-431 (Code Cases) and A.A.C. R20-5-432 (Historical Boilers). Additionally, the Commission is proposing to repeal A.A.C. R20-5-403 (Boiler Advisory Board).

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

Owners, operators, users or inspectors of boilers, hot lined water heaters or pressure vessels will be directly affected by the proposed rulemaking.

3. A cost benefit analysis of the following:

a. Costs and benefits to state agencies directly affected by the rulemaking, including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

The Commission does not anticipate an increase in costs from the new rulemaking. The Commission will not need to hire additional staff to enforce the new rules.

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

Political subdivisions who own, operate or use boilers, hot lined water heaters or pressure heaters would enjoy the same benefits as outlined below to businesses affected by the proposed amendments.

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

The Industrial Commission anticipates that the proposed rulemaking will have no adverse economic, small business, or consumer impact. The proposed rulemaking is intended to reduce regulatory burden by eliminating incorrect or confusing language in the current rules to allow for the affected stakeholders to have a clearer understanding of what is required. Additionally, by adopting the most current standards and codes the amendments would facilitate stakeholders in using more modern technology which may provide a cost benefit.

4. Impact on private and public employment in businesses, agencies and political subdivisions:

Adoption of the new rules may increase the use of inspectors from qualifying businesses, stimulating economic growth.

5. Impact on small businesses:

a. Identification of the small businesses subject to the rulemaking:

Arizona small businesses who are owners, operators, users or inspectors of boilers, hot lined water heaters or pressure vessels will be directly affected by the proposed rulemaking.

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

The proposed rules do not place new obligations, costs, or time constraints on employers, adoption of the final rules is not expected to impose administrative or other costs required for compliance in Arizona.

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

The Commission did not consider methods of reducing the impact on small businesses.

d. Cost and benefit to private persons and consumers who are directly affected by proposed rulemaking:

Private persons and consumers are not directly affected by this rulemaking.

6. Probable effect on state revenues:

The Commission anticipates state revenues remaining neutral.

7. Less intrusive or less costly alternative methods considered:

The Commission did not consider alternative methods.

8. Data on which the rule is based:

The Commission did not perform any studies as a basis for the rulemaking.

RULES REVIEWED

ARTICLE 4. ARIZONA BOILERS AND LINED HOT WATER HEATERS

A.A.C. R20-5-401:
Applicability

This Article applies to all Boilers, Lined Hot Water Heaters, and Pressure Vessels operated in Arizona, except the following:
1. Boilers, Lined Hot Water Heaters, and Pressure Vessels regulated by the United States Government;
2. Boilers, Lined Hot Water Heaters, and Pressure Vessels operated in private residences or Apartment Complexes of not more than six units; and
3. Boilers, Lined Hot Water Heaters, and Pressure Vessels operated on Indian reservations.
4. A Lined Hot Water Heater that does not exceed any of the following: a. Heat input of 200,000 BTU/hr; b. Water temperature of 210° F; or c. Nominal water containing capacity of 120 gallons.
5. An electric Boiler that does not exceed either of the following: a. Tank volume of one-and-a-half cubic feet; or b. MAWP of 100 pounds per square inch or less, with a pressure relief system to prevent excess pressure.

R20-5-402. Definitions
In addition to the definitions provided in A.R.S. § 23-471, the following definitions apply to this Article:
"Act" means A.R.S. Title 23, Chapter 2, Article 11.
"Alteration" means any change in the item described on the original manufacturer's data report which affects the pressure-containing capability of the Boiler or Pressure Vessel, including but not limited to:
Non physical changes such as an increase in the MAWP either internal or external, or
A reduction in minimum design temperature of a Boiler or Pressure Vessel requiring additional mechanical tests.
"ANSI" means American National Standards Institute, Inc.
"Apartment Complex" means a building with multiple family dwelling units, not used for commercial purposes, including condominiums and townhouses, where Boilers are located in a common area outside of the individual dwelling units, such as a Boiler room.
"Applicant" means an individual requesting permission to act as a Special Inspector under A.R.S. § 23-485.
"ASME" means the American Society of Mechanical Engineers,.
"Authorized Inspector" means an Authorized Representative under A.R.S. § 23-471(1) or a Special Inspector under A.R.S. § 23-485.
"Blowdown Tank" or "Blowdown Separator" means an ASME-stamped vessel designed to receive discharged steam or hot water from a Boiler blowoff or blowdown piping system.
"BTU" means British thermal units.
"Condemned" means a Boiler or Lined Hot Water Heater that has been inspected and found to be unsafe by an Authorized Inspector and has been stamped or tagged with the code XXX AZ8 XXX.
"CSD-1" means Controls and Safety Devices for Automatically Fired Boilers, published by ASME, incorporated by reference in R20-5-404(A)(4).

“Direct Fired Jacketed Steam Kettle” means a jacketed steam kettle having its own source of energy, such as gas or electricity for generating steam within the jacket's walls.
“External Inspection” means an examination of a Boiler or Lined Hot Water Heater performed by an Authorized Inspector when the Boiler or Lined Hot Water Heater is in operation.
“Forced Circulation Lined Hot Water Heater” means a Lined Hot Water Heater used for potable water, a Lined Hot Water Heater requiring movement of water to prevent overheating and failure of the tubes or coils, and has no definitive waterline.
“Fully Attended Power Boiler” means a Power Boiler that is operated by an individual who meets the requirements of R20-5-408(D), and whose primary function is the care, maintenance, and operation of the Boiler and the equipment associated with the Boiler system.
“Historical Boilers” means steam Boilers preserved, restored, or maintained for hobby or demonstration use.
“HS” means heating surface.
“Inspection Certificate” means a document issued by the Division for the operation of a Boiler, Lined Hot Water Heater, or Direct Fired Jacketed Steam Kettle when a Certificate Inspection has been successfully completed.
“Internal Inspection” means a complete examination of the internal and external surfaces of a Boiler or Lined Hot Water Heater by an Authorized Inspector after the Boiler or Lined Hot Water Heater is shut down.
“Kw” means kilowatt.
“MAWP” means maximum allowable working pressure.
“National Board Commissioned Inspector” means an individual who holds a valid and current National Board Commission issued by the National Board of Boiler and Pressure Vessel Inspectors.
“National Board Registration Number” means a unique number issued to a Boiler, Lined Hot Water Heater, or Pressure Vessel by the manufacturer and recorded with the National Board of Boiler and Pressure Vessel Inspectors.
“NFPA” means National Fire Protection Association.
“Non-Standard Boiler” means any Boiler, Lined Hot Water Heater, or Pressure Vessel that is not constructed or maintained to the standards incorporated by reference of this Article.
“Out of Service” means to either: (1) physically sever or disconnect all sources of energy (water, gas, fuel, electricity, etc.); cap all fuel lines; and disconnect or remove all electrical lines from the Boiler, Lined Hot Water Heater, or Pressure Vessel; or (2) to lock out and tag out the Boiler, Hot Water Heater, or Pressure Vessel per 29 C.F.R. § 1910.147, OSHA, General Industry Regulations.
“Portable Boiler” means a Boiler permanently affixed to a trailer with wheels, that is totally self-contained while operating, and not attached to any other object either by pipe, hose, or wire.
“PVHO” means Pressure Vessels for Human Occupancy.
“Relief Valve” means an ASME-stamped automatic pressure relieving device designed for liquid service which is actuated by the pressure upstream of the valve and opens further with an increase in pressure above the stamped pressure.
“Repairs” means work necessary to restore a Boiler, Lined Hot Water Heater, or Pressure Vessel to operating condition that complies with this Article.
“Safety Relief Valve” means an ASME-stamped automatically pressure-actuated relieving device designed for use either as a Safety Valve or as a Relief Valve.

“Safety Valve” means an ASME-stamped automatic pressure relieving device designed for steam or vapor service which is actuated by the pressure upstream of the valve and characterized by full opening pop-action.
“Secondhand” means a Boiler, Lined Hot Water Heater, or Pressure Vessel that has changed both location and ownership since original installation.
“Serves” means either mailing to the last known address of the receiving party, or transmitting by other means, including electronic transmission, with the written consent of the receiving party.
“Shelter” means a permanent structure that provides protection from the weather.
“Special Inspector” means an inspector who is issued a Special Inspector Certificate under R20-5-420.
“State Identification Number” means a unique number assigned by the Division to a Boiler, Lined Lined Hot Water Heater, or Pressure Vessel installed in Arizona.
“User” means a person or entity that does not have legal title to a Boiler, Lined Hot Water Heater, or Pressure Vessel, but has control and responsibility for the operation of a Boiler, Lined Hot Water Heater, or Pressure Vessel.

R20-5-403. Boiler Advisory Board (Repealed)

R20-5-404. Standards for Boilers, Lined Hot Water Heaters and Pressure Vessels
A. The following apply to this Article:
1. An Owner, Operator, or User, of a Boiler, Lined Hot Water Heater or Pressure Vessel installed, repaired, replaced, or reinstalled in Arizona, six months after the effective date of this Article shall comply with the 2019 ASME Boiler and Pressure Vessel Code, Sections I, II, IV, V, VI, VII, VIII Division 1, 2, 3, IX, X,, ASME 2020 Code for Pressure Piping B31.1, and 2019 ASME PVHO-1 Safety Standard for Pressure Vessels for Human Occupancy incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from the ASME at Three Park Avenue, New York, NY 10016-5990 or at http://www.asme.org/.
2. An Owner, Operator, or User, of a Boiler, Lined Hot Water Heater, or Pressure Vessel installed, repaired, replaced, or reinstalled in Arizona, before the effective date of this Article shall comply with subsection (A)(1), or the ASME Boiler and Pressure Vessel Code in effect at the time of the last installation, repair, replacement, or reinstallation of the boiler Boiler, Lined Hot Water Heater, or Pressure Vessel in Arizona.
3. An Owner, Operator, or User of a gas-fired Lined Hot Water Heater installed, operated, repaired, replaced, or reinstalled in Arizona shall comply with the American National Standard for Gas Water Heaters, ANSI Z21.10.3 2017, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from ANSI, Customer Service Department, 25 W. 43rd Street, 4th Floor, New York, NY 10036 or at http://www.ansi.org/.
4. An Owner, Operator, or User, of a Boiler installed, repaired, replaced, or reinstalled in Arizona after the effective date of this Article shall comply with the American National Standard for Controls and Safety Devices for Automatically Fired Boilers, ANSI/ASME CSD-1- 2018, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be

obtained from the ASME, Three Park Avenue, New York, NY 10016-5990 or at http://www.asme.org/.
5. An Owner, Operator, or User, of a Boiler installed, repaired, replaced, or reinstalled in Arizona before the effective date of this Article shall comply with the American National Standard for Controls and Safety Devices for Automatically Fired Boilers in effect at the time of the last installation, repair, replacement or reinstallation of a Boiler in Arizona. As an alternative, an Owner, Operator, or User, of a Boiler described in this subsection may comply with subsection (A)(4).
6. A permanent source of outside air shall be provided for each Boiler and Lined Hot Water Heater room to assure complete combustion of the fuel as required by ANSI Z223.1-2018, NFPA 54, National Fuel Gas Code incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from ANSI, at Customer Service Department, 25 W. 43rd Street, 4th Floor, New York, NY 10036 or at http://www.ansi.org/.
7. All new Power Boilers installed after the effective date of this subsection, having power piping, welded or mechanically assembled, (pipe, valves, and fittings) falling within the scope of ASME Code, Section I, shall be designed, constructed and listed on the appropriate ASME Code, Section I, manufacturer's data report, P-2A, P-4A, P-4B, P-6 as applicable, incorporated by reference in R20-5-404(A)(1).
8. An Owner, Operator, or User, of a Boiler installed, repaired, replaced, or reinstalled in Arizona having a capacity equal to or greater than 12,500,000 BTU/hr input after the effective date of this subsection shall comply with ANSI NFPA 85, Boiler and Combustion Systems Hazards Code, 2019 edition, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from ANSI, at Customer Service Department, 25 W. 43rd Street, 4th Floor, New York, NY 10036 or at http://www.ansi.org/.
B. The following registration requirements apply to this Article;
1. All Boilers, Lined Hot Water Heaters, and Pressure Vessels, including reinstalled and Secondhand Boilers, shall be registered with the National Board of Boiler and Pressure Vessel Inspectors except for:
a. Non-Standard Boilers installed up to six months after the effective date of this Section,
b. Cast iron Boilers, and
c. Cast aluminum Boilers.
2. All fired and unfired Pressure Vessels installed or reinstalled on or after July 1, 2009, shall be registered with the National Board of Boiler and Pressure Vessel Inspectors.
C. The following installation, maintenance, and repair requirements apply to this Article.
1. An Owner, Operator, or User shall maintain a signed copy of the Manufacturer's Data Report, and Manufacturer's/Installing Contractors Report for ASME CSD-1, if applicable for a Boiler, Lined Hot Water Heater, or Pressure Vessel at the location of the Boiler Lined Hot Water Heater, or Pressure Vessel and make the reports available for review upon request from an Authorized Inspector.
2. A Boiler shall have masonry or structural supports of sufficient strength and rigidity to safely support the Boiler and its contents without any vibration in the Boiler or its connecting piping.

3. There shall be at least 36 in. (915 mm) of clearance on each side of the Boiler or Lined Hot Water Heater. Alternative clearances according to the manufacturer's recommendations are subject to approval by an Authorized Inspector prior to installation of a Boiler, Lined Hot Water Heater or Pressure Vessel.
4. A Boiler with a manhole shall have at least five feet clearance between the Boiler manhole and any wall, ceiling, or piping.
5. A newly constructed Boiler room in excess of 500 square feet of floor area and containing one or more Boilers with a fuel capacity of 1,000,000 BTU /hr or a heating capacity greater than 285 Kw (electric), shall have at least two exits on each level of the Boiler or Boilers. The Owner, Operator, or User shall ensure each exit is remotely located from other exits.
6. An Owner, Operator, or User shall keep a Boiler, Lined Hot Water Heater, or Pressure Vessel room clean and with no obstructions to the Boiler, Lined Hot Water Heater, or Pressure Vessel.
7. An Owner, Operator, or User shall not store flammable or explosive materials in a Boiler or Lined Hot Water Heater room.
8. An Owner, Operator, or User shall not store combustibles any less than three feet from any part of a Boiler, Lined Hot Water Heater, or Pressure Vessel.
9. If a Boiler, Lined Hot Water Heater, or Pressure Vessel is moved outside Arizona for temporary use or Repairs, the Owner, Operator, or User shall not reinstall the Boiler, Lined Hot Water Heater, or Pressure Vessel in Arizona until receiving verbal or written approval from the Division under R20-5-419. If the Division grants approval the Owner, Operator, or User shall not operate the reinstalled Boiler, Lined Hot Water Heater, or Pressure Vessel until receiving an Inspection Certificate under this Article.
10. Before a new Power Boiler or Secondhand Boiler or Pressure Vessel is installed, an inspection in accordance with R20-5-408 shall be made by an Authorized Inspector or by a National Board Commissioned Inspector. This inspection is to assess the integrity of the vessel and evaluate the original design specification. Prior to installation, an application shall be filed by the Owner, Operator, or User of the Boiler or Pressure Vessel with the Division for approval. This application shall contain the following information:
a. Name of the Owner, Operator, or User;
b. Mailing address of Owner, Operator, or User;
c. Business telephone number of Owner, Operator, or User;
d. Installation name and address;
e. Installation date;
f. Start up date;
g. Name and address of Boiler or Pressure Vessel insurance company;
h. Arizona serial number of the Boiler or Pressure Vessel being replaced, if applicable;
i. Description of the new, or Secondhand Power Boiler or Pressure Vessel to include:
i. Manufacture's name,
ii. Date manufactured,
iii. MAWP or temperature of Boiler or Pressure Vessel, and
iv. National Board registration number;
j. Name, address, business phone number, cell phone number, fax number and state contractor's license number of company or individual that will be installing the Boiler or Pressure Vessel;
k. Name, title, and phone number of the contact person on the site of installation; and
l. Signature, title, and date of the person submitting the application.

11. Before the Owner, Operator, or User installing a Secondhand Boiler or Pressure Vessel, the Boiler or Pressure Vessel shall pass a hydrostatic test that is witnessed by an Authorized Inspector or by any National Board Commissioned inspector in accordance with R20-5-411.
12. An Owner, Operator, or User of a Portable Boiler shall notify an Authorized Inspector before installing the Portable Boiler and shall not operate the Portable Boiler until the Owner, Operator, or User receives an Inspection Certificate from the Division.

R20-5-405. Repealed

R20-5-406. Repairs and Alterations
A. If Repairs or Alterations may affect the working pressure or safety of a Boiler, Lined Hot Water Heater, or Pressure Vessel, an Owner, Operator, or User shall consult with an Authorized Inspector before having the Repairs or Alterations made. The Authorized Inspector shall provide the Owner, Operator, or User information regarding the best method to repair or alter the Boiler, Lined Hot Water Heater, or Pressure Vessel. The Owner, Operator, or User shall ensure that an Authorized Inspector inspects and approves the Repairs and Alterations after the Repairs or Alterations are made.
B. Repairs and Alterations to Boilers, Lined Hot Water Heaters, or Pressure Vessels shall conform to the applicable provisions of the National Board Inspection Code, ANSI/NB-23-2019, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007, and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, at 1055 Crupper Avenue, Columbus, OH 43229-1183 or at http://www.national-board.org/.
C. An Owner, Operator, or User shall not permit an individual to remove or repair a safety appliance of a Boiler, Lined Hot Water Heater, or Pressure Vessel in operation. An Owner, Operator, or User shall not permit a person to remove or repair a safety appliance of a Boiler, Lined Hot Water Heater, or Pressure Vessel not in operation except as provided under the ASME Code. If an Owner, Operator, or User permits a person to remove a safety appliance from a Boiler, Lined Hot Water Heater, or Pressure Vessel as provided under the ASME Code, then the Owner, Operator, or User shall ensure that the safety appliance is reinstalled in proper working order before the Boiler, Hot Water Heater, or Pressure Vessel is placed back into operation.
D. No person shall alter in any manner a Safety Valve, Relief Valve, or Safety Relief Valve, except by an organization qualified in accordance with The National Board Inspection Code, ANSI/NB-23-2019 Edition, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007, and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors at 1055 Crupper Avenue, Columbus, OH 43229-1183 or at http://www.nationalboard.org/.
E. Repairs of fittings or appliances shall comply with the requirements of the National Board Inspection Code, ANSI/NB-23 2019 Edition, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, at 1055 Crupper Avenue, Columbus, OH 43229-1183 or at http://www.nationalboard.org/.

F. On or after the effective date of this subsection, replacement of fittings or appliances shall comply with the requirements of the 2019 ASME Boiler and Pressure Vessel Code, Sections I, II, IV, V, VI, VII, VIII, Division 1, 2, 3, IX, X and 2018 ASME Code for Pressure Piping B31.1,, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007. A copy of the incorporated material may also be obtained from ASME, Three Park Avenue, New York, NY 10016-5990 or at http://www.asme.org.

R20-5-407. Inspection of Boilers, Lined Hot Water Storage Heaters, Direct Fired Jacketed Steam Kettles and Issuance of Inspection Certificates

A. An Authorized Inspector shall comply with the guidelines set forth in The National Board Inspection Code, ANSI/NB-23- 2019 Edition, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183 or at http://www.nationalboard.org/.

B. If an Owner, Operator, or User fails to comply with the requirements for an inspection or pressure test under this Article, the Division shall withhold the Inspection Certificate until the Owner, Operator, or User complies with the requirements.

C. An Authorized Inspector shall not engage in the sale of any object or device relating to, or equipment associated with, Boilers, Lined Hot Water Heaters, or Direct Fired Jacketed Steam Kettles.

D. Under A.R.S. § 23-485(D), the Special Inspector shall file an inspection report within 30 days of an inspection by entering data into the Division's Web-based inspection entry form, by submitting a paper inspection report issued by the Division, or by electronic transfer of data. Whatever form of data transfer a Special Inspector chooses, there shall be no cost to the Division. The inspection report shall contain the following:

1. Whether it is a Certificate or non-Certificate Inspection;
2. Whether it is an Internal Inspection, External Inspection, or both;
3. Name of location, address and phone number of the object;
4. Name, address and phone number of owner or responsible party;
5. Contact person's name and phone number at the inspection location;
6. State Identification Number;
7. Inspection Certificate due date;
8. Inspection Certificate duration;
9. Install/reinstall date, if known;
10. Whether the object is active, inactive, Out-of-Service, standby, or scrapped;
11. MAWP permitted or allowed;
12. National Board registration number;
13. Name of the manufacturer and the year the object was built;
14. Special location in plant, if applicable;
15. Boiler type;
16. Purpose of the Boiler;
17. Specify type of fuel used;

18. Whether the firing method is automatic, manual, or unknown;
19. Whether the fuel train is in compliance with CSD-1, NFPA 85, Z21.10.3 or other;
20. Whether the Boiler is fully attended as per R20-5-408(C);
21. Size/ input rate, as applicable;
22. Size classification (HS/BTU/Kw);
23. Whether the heating surface type is stamped, computed, or unknown;
24. Minimum Safety Valve relief capacity required;
25. Whether the minimum Safety Valve relief capacity type is BTU/Hr, lbs/Hr or unknown;
26. Number of temperature/pressure controls, as applicable;
27. Owner number assigned by the Owner to specifically identify object's location;
28. Inspection date;
29. Whether the Inspection Certificate is posted;
30. Safety Valve total capacity;
31. Safety Valve total capacity type (PPH/Hr or BTU/Hr);
32. Safety Valve #1 set pressure;
33. Safety Valve #2 set pressure;
34. Safety Valve #3 set pressure;
35. Safety Valve code stamping (Example: V,HV,UV,UV3.TV,TD, OR NV);
36. Whether the object has been hydro tested;
37. Hydro Test (psi), if applicable;
38. Whether Pressure/Altitude Gage was tested;
39. Whether the condition of the object is okay to issue an Inspection Certificate;
40. Inspection comments, condition of Boiler;
41. Violations noted;
42. Inspector name and Special Inspector number; and
43. National Board Commission number.

E. The Division shall issue to an Owner, Operator, or User an Inspection Certificate within 30 calendar days of receipt of an inspection report that documents a Boiler, Lined Hot Water Heater, or Direct Fired Jacketed Steam Kettle that complies with the Act and this Article. An Owner, Operator, or User of a Boiler, Lined Hot Water Heater, or Direct Fired Jacketed Steam Kettle shall post the Inspection Certificate in the establishment where the Boiler, Lined Hot Water Heater, or Direct Fired Jacketed Steam Kettle is located.

F. An Owner, Operator, or User shall ensure that an Authorized Inspector tags or stamps a steam Boiler with an identification number immediately after installing, but before operating, a new steam Boiler, or when an Authorized Inspector performs an initial Certificate Inspection of an existing steam Boiler. The identification number shall be at least 5/16″ in height and in the following format: AZ-# # # #.

G. The Division shall mark with a metal dye stamp a Boiler or Lined Hot Water Heater identified by the Division as not safe for further service, with the code “XXX AZ8 XXX” which shall designate that the Boiler or Lined Hot Water Heater is Condemned.

H. For any conditions not covered by this Article, the applicable provisions of the ASME Code that was in effect in Arizona at the time of the installation of the Boiler or Lined Hot Water Heater shall apply.

R20-5-408. Frequency of Inspection

A. An Owner, Operator, or User, of an existing Power Boiler or High Temperature Water Boiler shall ensure that an Authorized Inspector performs a Certificate Inspection and/or an External Inspection prior to operating the Power Boiler or High Temperature Water Boiler. A Certificate Inspection shall also be performed every 12 months thereafter and an External Inspection of the Power Boiler or High Temperature Water Boiler shall be performed every 12 months thereafter. An Authorized Inspector shall perform the External Inspection while the Power Boiler or High Temperature Water Boiler is in operation to ensure that safety devices are operating properly.
B. An Authorized Inspector shall perform an Internal Inspection and pressure test on a Boiler, Lined Hot Water Heater, or Pressure Vessel if the Authorized Inspector determines from an External Inspection of the Boiler, Lined Hot Water Heater, or Pressure Vessel that continued operation is a danger to the public or worker safety.
C. The Division shall issue a 12-month Inspection Certificate to an Owner, Operator, or User to operate a Fully Attended Power Boiler if:
1. An Owner, Operator, or User ensures that an Authorized Inspector performs an External Inspection and audit of the operational methods and logs of the Fully Attended Power Boiler at least every 12 months and performs an Internal Inspection of the Fully Attended Power Boiler at least every 36 months; and
2. Continuous boiler water treatment is under the direct supervision of persons trained and experienced in water treatment for the purpose of controlling and limiting corrosion and deposits; and
3. Records are available for review, that indicate:
a. The date, time, and reason the Boiler is Out of Service; and
b. Daily analysis of water samples that adequately show the conditions of the water and elements or characteristics that are capable of producing corrosion or other deterioration to the Boiler or its parts; and
4. Controls, safety devices, instrumentation, and other equipment necessary for safe operation are current, in service, calibrated, and meet the requirements of an appropriate safety code for the size Boilers, such as NFPA 85, ASME CSD-1 Controls and Safety Devices for Automatically Fired Boilers, National Board Inspection Code ANSI/NB-23, and state requirements; and
5. Inspection reports of an Authorized Inspector document that the Fully Attended Power Boiler complies with the Act and this Article.
D. An Owner, Operator, or User of a Direct-Fired Jacketed Steam Kettle shall ensure that an Authorized Inspector performs a Certificate Inspection at the time of installation, and every 24 months thereafter.
E. An Owner, Operator, or User of a steam heating or process Boiler, not exceeding 15 p.s.i. MAWP, steam or vapor, shall ensure that an Authorized Inspector performs a Certificate Inspection and an External Inspection of the heating or process boiler every 24 months.
F. An Owner, Operator, or User of a hot water heating, hot water supply Boiler, or Lined Hot Water Heater shall ensure that an Authorized Inspector performs a Certificate Inspection and External Inspection of the hot water heating or hot water supply Boiler or Lined Hot Water Heater at installation. An inspection certificate issued by the Division following an inspection under this subsection shall not state an expiration date.

R20-5-409. Notification and Preparation for Inspection
A. An Authorized Inspector shall perform a Certificate Inspection at a time mutually agreeable to the Authorized Inspector and the Owner, Operator, or User.

B. Before an Authorized Inspector performs an Internal Inspection of a Boiler, an Owner, Operator, or User shall:
1. Cool the furnace and combustion chambers;
2. Drain the water from the Boiler;
3. Remove the manhole and handhole plates, wash-out plugs, inspection plugs in water column connections, and disassemble all low-water fuel cutoff float chambers or bowls;
4. Remove insulation or brickwork if necessary to determine the condition of the Boiler, headers, furnace, supports, and other parts;
5. Remove the pressure gauge for testing;
6. Prevent any leakage of steam or hot water into the boiler by disconnecting the involved pipe or valve;
7. Close, tag, and padlock the non-return and steam stop valves before opening the manhole or handhole covers and entering any part of the steam generating unit that is connected to a common header with other Boilers. Open the free blow drain or cock between the non-return and steam stop valves;
8. Close, tag, and padlock the blowoff valves after draining the Boiler: and
9. Open all drains and vent lines.

R20-5-410. Report of Accident
An Owner, Operator, or User shall notify the Division within 24 hours of an explosion, severe overheating, or personal injury involving a Boiler, Lined Hot Water Heater, or Direct Fired Jacketed Steam Kettle. A person shall not remove or disturb the involved Boiler, Lined Hot Water Heater, or Direct Fired Jacketed Steam Kettle or parts of the Boiler, Lined Hot Water Heater, or Direct Fired Jacketed Steam Kettle before an investigation by an Authorized Inspector, except for the purpose of preventing personal injury or limiting consequential damage.

R20-5-411. Hydrostatic Tests
The Owner, Operator, or User of a Boiler shall perform a hydrostatic or pneumatic pressure test in accordance with the code incorporated by reference in R20-5-404(A) and R20-5-406(B).

R20-5-412. Automatic Low-water Fuel Cutoff Devices or Combined Water Feeding and Fuel Cutoff Devices
A. An Owner, Operator, or User shall ensure that low-water fuel cutoff devices or combined water feeding and fuel cutoff devices do not interfere with an Operator's or Authorized Inspector's ability to safely clean, repair, or inspect a Boiler, Lined Hot Water Heater, or Pressure Vessel.
B. A low-water fuel cutoff device shall have a pressure rating not less than the set pressure of the Safety Valve or Safety Relief Valve.
C. In addition to the requirements of subsections (A) and (B), all low-water fuel cutoffs and flow sensing devices shall be constructed and installed in accordance with applicable ASME Code and standards for Boilers and Direct Fired Jacketed Steam Kettle in R20-5-404(A).

R20-5-413. Safety and Safety Relief Valves
A. A valve shall not be placed between a Safety Valve, Relief Valve, or a Safety Relief Valve and the Boiler, Lined Hot Water Heater, or Pressure Vessel, or between a Safety Valve, Relief Valve, or a Safety Relief Valve and the discharge pipe attached to the Boiler, Lined Hot Water Heater, or Pressure Vessel.

B. When a Power Boiler is supplied with feed-water directly from a water main without the use of a feeding apparatus, Safety Valves shall not be set at a pressure greater than 94% of the lowest pressure obtained in the water main feeding the Boiler;
C. Safety Valves, Safety Relief Valves, and Relief Valves shall conform to the requirements of the 2019 ASME Boiler and Pressure Vessel Code, Section I, IV or VIII, July, incorporated by reference as applicable. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ and may be obtained from ASME, Three Park Avenue, New York, NY 10016-5990 or at http://www.asme.org/.
D. The resetting, repairing, and restamping of Safety Valves, Relief Valves, and Safety Relief Valves shall be done by a qualified valve repair organization holding a valid "VR" Certificate of Authorization issued by the National Board of Boiler and Pressure Vessel Inspectors. ASME valve manufacturers holding a valid "V," "HV," and "UV" Certificate or Certificates of Authorization may also do this work provided they also have a valid "VR" Certificate of Authorization issued by the National Board of Boiler and Pressure Vessel Inspectors.
E. With jurisdictional approval, Owner, Operators, and Users of Boilers, Lined Hot Water Heaters, and Pressure Vessels may authorize external adjustments to bring installed Safety Valves, Relief Valves, and Safety Relief Valves back to the stamped set pressure when performed by the Owner's, Operator's, or User's trained, qualified, regular, and full-time employees. Refer to Supplement 7.10 of the National Board Inspection Code for guidelines regarding training, documentation, and the implementation of a quality system for the Owner, Operator, or User employees. All such external adjustments shall be resealed with a metal tag showing the identification of the organization making the adjustments and the date. If any valve repairs are required, they shall be done by a qualified "VR" certificate holder.

R20-5-414. Repealed

R20-5-415. Boiler Blowdown, Blowoff Equipment and Drains
A. Except as provided in this Section, an Owner, Operator, or User of blowdown and blowoff equipment shall comply with the National Board of Boiler and Pressure Vessel Inspectors, A Guide for Blowoff Vessels, NB-27, Revision 1 (1/13), 2012 Edition, incorporated by reference. This incorporation does not include any later amendments or editions of the incorporated material. A copy of this referenced material is available for review at the Industrial Commission of Arizona, 800 W. Washington Street, Phoenix, AZ 85007 and may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183 or at http://www.nationalboard.org/.
B. Blowdown from a Boiler is a hazard to life and property.
C. Blowdown from a Boiler shall pass through blowdown equipment that reduces pressure and temperature to levels not exceeding 5 p.s.i.g. and 140° F.
D. The thickness of a blowdown vessel shall be at least 3/16″.
E. All blowdown equipment shall be fitted with openings that allow cleaning and inspection of the equipment.
F. Blowdown Separators may be used with Boilers instead of Boiler Blowdown Tanks, provided that Blowdown Separators are operated with a temperature gauge and water cooler to prevent drain water temperature from exceeding 140° F.
G. In addition to the requirements of subsections (A) through (F), the following requirements apply to blowdown piping, valves and drains for Power Boilers: Each Power Boiler and High

Temperature Water Boiler shall be installed and maintained according to ASME Code, Section 1 and B31.1, incorporated by reference in R20-5-404, at the time of installation.
H. In addition to the requirements of subsections (A) through (F), the following requirements apply to bottom blowdown or drain valves for heating Boilers and Lined Hot Water Heaters:
1. A hot water heating Boiler or Lined Hot Water Heater shall have a bottom blowdown or drain pipe connection fitted with a valve or cock connected with the lowest available water space with the minimum size of blowdown piping and valves as required by ASME Code, Section IV, incorporated by reference, in R20-5-404(A).
2. Discharge outlets of blowdown pipes, Safety Valves, Relief Valves, or Safety Relief Valves, and other piping shall be located and structurally supported to prevent injury to individuals.

R20-5-416. Maximum Allowable Working Pressure
A. The ASME Code under which a Boiler, Lined Hot Water Heater, or Pressure Vessel was constructed and stamped shall determine the MAWP.
B. If components in the Boiler, or hot water system such as valves, pumps, expansion tanks, storage tanks or piping have a lesser working pressure rating than the Boiler or Lined Hot Water Heater, the pressure setting for the Safety Valve Relief Valve, or Safety Relief Valve on the Boiler or Lined Hot Water Heater shall be based upon the component with the lowest MAWP rating.

R20-5-417. Maintenance and Operation of Boilers, Lined Hot Water Heaters and Direct Fired Jacketed Steam Kettles
A. An Owner, Operator, or User of a lined Boiler, Lined Hot Water Heater, or Direct Fired Jacketed Steam Kettle constructed under the ASME Code, Sections I, IV or VIII Division 1, incorporated by reference in R20-5-404(A) shall comply with the manufacturer's maintenance and operation instructions lined.
B. In addition to the requirements of subsection (A), an Owner, Operator, or User of a Boiler constructed under the ASME Code, Sections I, or IV shall comply with the following preventive maintenance schedule if the boiler contains the component or system listed.
1. On a daily basis, the Owner, Operator, or User shall:
a. Test the low-water fuel cutoff and alarm, and
b. Check the burner flame for proper combustion.
2. On a weekly basis, the Owner, Operator, or User shall:
a. Check for proper ignition, and
b. Check the flame failure detection system.
3. On a monthly basis, the Owner, Operator, or User shall:
a. Test all fan and air pressure interlocks,
b. Check the main burner safety shutoff valve,
c. Check the low fire start switch,
d. Test fuel pressure and temperature interlocks of oil-fired units, and
e. Test the high and low fuel pressure switch of gas-fired units.
4. Every six months, the Owner, Operator, or User shall:
a. Inspect burner components;
b. Check flame failure system components, such as vacuum tubes, amplifier and relays;
c. Check wiring of all interlocks and shutoff valves; and
d. Check steam and blowdown piping and valves.
5. Annually, the Owner, Operator, or User shall:

a. Replace vacuum tubes, scanners, or flame rods in the flame failure system according to the manufacturer's instructions;
b. Check all coils and diaphragms; and
c. Test operating parts of all safety shutoff and control valves.
d. Unless there is other information to assess their accuracy or reliability, all pressure gages shall be removed, tested, and their readings compared to the readings of a calibrated standard test gage or a dead weight tester.
C. An Owner, Operator, or User of a Power Boiler or High Temperature Water Boiler shall designate an individual who meets the requirements of subsection (D) to operate the Boiler. An Owner, Operator, or User may operate the Boiler if the Owner, Operator, or User meets the requirements of subsection (D).
D. An Operator or User of a Power Boiler or High Temperature Water Boiler shall meet the following minimum requirements:
1. Knowledge of and an ability to explain the function and operation of all safety controls of the Boiler,
2. Ability to start the Boiler in a safe manner,
3. Knowledge of all safe methods of feeding water to the Boiler,
4. Knowledge of and the ability to blow down the Boiler in a safe manner,
5. Knowledge of safety procedures to follow if water exceeds or drops below permissible safety levels, and
6. Knowledge of and the ability to safely shut down the Boiler.

R20-5-418. Non-standard Boilers
An Owner, Operator, or User shall remove from service a Boiler, Lined Hot Water Heater, or Pressure Vessel that does not bear an ASME stamp unless a variance is requested under R20-5-429.

R20-5-419. Request to Reinstall Boiler or Lined Hot Water Heater
A. The Division shall grant or deny approval to reinstall a Boiler or Lined Hot Water Heater within three business days after an Owner, Operator, or User requests approval. The order of the Division granting or denying approval shall be in writing.
B. The Division shall grant approval if the Boiler or Lined Hot Water Heater complies with the Act and this Article. The Division shall deny approval if the Boiler or Lined Hot Water Heater does not comply with A the Act and this Article.
C. An order of the Division denying approval shall be final unless an Owner, Operator, or User requests a hearing under A.R.S. § 23-479 within 15 days after the Division Serves the order. The Owner, Operator, or User requesting a hearing shall have the burden to prove that a Boiler or Lined Hot Water Heater meets the requirements of A the Act and this Article.

R20-5-420. Special Inspector Certificate under A.R.S. § 23-485
A. The Division shall administratively review an Applicant's application for a Special Inspector Certificate under A.R.S. § 23-485 within seven days of receipt of the application to determine if the application is complete. If the application is incomplete, the Division shall notify the Applicant in writing of the missing documentation or information necessary to comply with this Article.
B. The Division shall deem an application withdrawn if the Applicant fails to file a complete application within ten days of being notified by the Division that the application is incomplete

pursuant to subsection A, unless the Applicant obtains an extension to provide the missing information. An Applicant may obtain an extension to submit the missing information by filing a written request with the Division no later than ten days after the Division Serves notice that the application is incomplete, stating the reasons why the Applicant is unable to meet the ten-day deadline.

C. An application for a Special Inspector Certificate under A.R.S. § 23-485 is deemed complete under subsection (A) when the following is filed with the Division:

1. Written documentation demonstrating that the Applicant holds a current commission issued by the National Board of Boiler and Pressure Vessel Inspectors and
2. Proof of employment as a full-time inspector for a company conducting business in Arizona with a certificate of accreditation as outlined in A.R.S. § 23-485 and whose duties as an inspector include making inspections of Boilers or Lined Hot Water Heaters to be used or insured by such company and not for resale.

D. If an Applicant meets the criteria of A.R.S. § 23-485 and subsection (C) of this Section, the Division shall issue a Special Inspector Certificate to the Applicant within 15 calendar days. If an Applicant fails to meet the criteria of A.R.S. § 23-485 and subsection (C) of this Section, the Division shall issue a written notice denying eligibility to the Applicant. The Commission shall deem the notice denying eligibility final if an Applicant does not request a hearing within 15 calendar days after the Division Serves the notice.

E. A Hearing on the denial of eligibility for a Special Inspector Certificate shall be governed by the following provisions:

1. A request for hearing protesting a denial of eligibility shall be in writing and signed by the Applicant or the Applicant's legal representative and filed with the Division.
2. The Commission shall hold a hearing under A.R.S. § 41-1065. The hearing shall be recorded.
3. The chair of the Commission or designee shall preside over hearings held under this Section. The chair shall apply the provisions of A.R.S. § 41-1062 et seq. to hearings held under this Section and shall have the authority and power of a presiding officer as described in A.R.S § 41-1062.
4. A decision of the Commission to deny or grant eligibility for a Special Inspector Certificate shall be based upon the criteria set forth in A.R.S. § 23-485 and this Section and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting. After a decision is rendered at a public meeting, the Commission shall issue a written decision upon hearing which shall include findings of fact and conclusions of law, separately stated. An order of the Commission denying a Special Inspector Certificate is final unless an applicant files a request for review within 15 days after the Commission Serves its order.
5. A request for review shall be based upon one or more of the following grounds which have materially affected the rights of an Applicant:

a. Irregularities in the hearing proceedings or any order or abuse of discretion whereby the Applicant seeking review was deprived of a fair hearing;
b. Misconduct by the Division;
c. Accident or surprise which could not have been prevented by ordinary prudence;
d. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
e. Excessive or insufficient sanctions or penalties imposed at hearing;
f. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of, the hearing;
g. Bias or prejudice of the Division; and

h. The order, decision, or findings of fact are not justified by the evidence or are contrary to law.
6. The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.
7. The Commission's decision upon review is final unless an Applicant seeks judicial review as provided in A.R.S. § 23-483.

R20-5-421. Repealed
R20-5-422. Repealed
R20-5-423. Repealed
R20-5-424. Repealed
R20-5-425. Repealed
R20-5-426. Repealed
R20-5-427. Repealed
R20-5-428. Repealed

R20-5-429. Variance
A. Any Owner, Operator, or User may apply to the Director for a variance from the requirements of this Article, upon demonstrating the construction, installation, and operation of the Boiler, Lined Hot Water Heater, or Pressure Vessel will maintain the same level of safety as prescribed by this Article. The Director shall issue a variance if the Director determines that the proponent of the variance has demonstrated the construction, installation, and operation of the Boiler, Lined Hot Water Heater, or Pressure Vessel will maintain the same level of safety as prescribed by this Article. The variance issued shall prescribe the construction, installation, operation, maintenance, and repair conditions that the Owner, Operator, or User shall maintain.
B. A variance may be modified or revoked upon application by an Owner, Operator, or User or the Director, on the Director's own motion at any time after six months from issuance if the owner or user Owner, Operator, or User has not complied with the variance or if the variance does not protect the health and safety of employees or general public.
C. The application for a variance shall be made on the form issued by the Division and contains the following information:
1. Owner, Operator, or User name and company name;
2. Mailing address;
3. Telephone number;
4. Fax number;
5. Contact person;
6. Contact person's telephone number;
7. Address or location of proposed variance;
8. Type of facility to include;
a. Variance description,
b. Justification for variance,
c. Component or system involved,
d. Supporting documentation for variance,
e. Identify the statute, rule, code or standard to justify the variance; and
9. Printed name and title of Owner, Operator, or User, signature of Owner, Operator, or User, and date.

D. If an Owner, Operator, or User does not agree with the variance issued or revoked by the Director, a request for a hearing under A.R.S. § 23-479 can be made with the Commission.

GENERAL AND SPECIFIC STATUTES

A.R.S. § 23-107. General powers

A. The commission has full power, jurisdiction and authority to:

1. Formulate and adopt rules and regulations for effecting the purposes of this article.
2. Administer and enforce all laws for the protection of life, health, safety and welfare of employees in every case and under every law when such duty is not specifically delegated to any other board or officer, and, when such duty is specifically delegated, to counsel, advise and assist in the administration and enforcement of such laws and for such purposes may conduct investigations.
3. Promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees.
4. License and supervise the work of private employment offices, bring together employers seeking employees and working people seeking employment, and make known the opportunities for employment in the state.
5. Collect, collate and publish all statistical and other information relating to employees, employers, employments and places of employment with other appropriate statistics.
6. Act as the regulatory agency insuring that workers' compensation carriers are processing claims in accordance with chapter 6 of this title.1
7. Provide nonpublic, confidential or privileged documents, materials or other information to another state, local or federal regulatory agency for the purpose of the legitimate administrative needs of the programs administered by that agency if the recipient agency agrees and warrants that it has the authority to maintain and will maintain the confidentiality and privileged status of the documents, materials or other information.
8. Receive nonpublic documents, materials and other information from another state, local or federal regulatory agency to properly administer programs of the commission. The commission shall maintain as confidential or privileged any document, material or other information that is identified by the exchange agency as confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.
9. Enter into agreements that govern the exchange of nonpublic documents, materials and other information that are consistent with paragraphs 7 and 8. The commission may request nondisclosure of information that is identified as privileged or confidential. Any disclosure pursuant to paragraph 7 or 8 or this paragraph is not a waiver of any applicable privilege or claim of confidentiality in the documents, materials or other information.

B. Upon petition by any person that any employment or place of employment is not safe or is injurious to the welfare of any employee, the commission has power and authority, with or without notice, to make investigations necessary to determine the matter complained of.

C. The members of the commission may confer and meet with officers of other states and officers of the United States on matters pertaining to their official duties.

D. Notwithstanding any other law, the commission may protect from public inspection the financial information that is received from a private entity that applies to self-insure or that renews its self-insurance plan pursuant to § 23-961, subsection A if the information is kept confidential by the private entity in its ordinary and regular course of business.

A.R.S. § 23-108.03. Performance of certain powers and duties

A. The industrial commission shall be responsible for determining the policy of the commission.

B. Any powers and duties prescribed by law to the commission in this chapter and chapters 2 and 6 of this title, whether ministerial or discretionary, may by resolution be delegated by the

commission to the director or any of its department heads or assistants, provided, that the commission shall not delegate its power or duty to:
1. Make rules and regulations.
2. Commute awards to a lump sum.
3. License self-insurers.
C. The commission shall be responsible for the official acts of its employees acting in the name of the commission and by its delegated authority.

A.R.S. § 23-405. Duties and powers of the industrial commission relative to occupational safety and health

The commission shall:
1. Administer the provisions of this article through the division of occupational safety and health.
2. Appoint the director of the division of occupational safety and health.
3. Cooperate with the federal government to establish and maintain an occupational safety and health program as effective as the federal occupational safety and health program.
4. Promulgate standards and regulations as required, pursuant to § 23-410, and promulgate such other rules and regulations as are necessary for the efficient functioning of the division.
5. Have the authority to issue reasonable temporary, experimental and permanent variances pursuant to §§ 23-411 and 23-412.
6. Exercise such other powers as are necessary to carry out the duties and requirements of this article.

A.R.S. § 23-407. Duties and powers of the division

The division on behalf of the commission shall:
1. Recommend all standards, rules or changes thereto, pursuant to § 23-410, to the commission for the commission's approval or disapproval.
2. Have the authority to enforce all such standards or rules, after adoption by the commission, pursuant to the procedures and requirements of this article.
3. Implement an occupational safety and health program that includes the following duties and responsibilities:
(a) Development of a statewide occupational safety and health education and training program to acquaint employers, supervisors, employees and employee representatives with the most modern and effective techniques of accident prevention and occupational health control.
(b) Development of training programs for employees of the division, and where necessary develop certification programs for recognition of competent, trained personnel.
(c) Planning, organizing, conducting or attending occupational safety and health seminars, conferences and meetings designed for management, supervisory personnel, employees and employer representatives and establishing liaison with other safety and health groups as may be necessary.
(d) Definition and establishment of necessary research projects.
(e) Arrangement and procurement of necessary contractual services and training aids.
(f) Development of specific occupational safety and health programs for employer and employee representative groups.
4. Develop and maintain an effective program of collection, compilation and analysis of occupational safety and health statistics. The division shall compile statistics on work injuries and illnesses that shall include all disabling, serious or significant injuries and illnesses whether or not

involving loss of time from work, other than minor injuries requiring only first aid treatment and that do not involve medical treatment, loss of consciousness, restriction of work or motion or transfer to another job.
5. Coordinate the responsibilities and functions of other state agencies and political subdivisions of the state with regard to occupational safety and health in order to develop a comprehensive statewide program.
6. Contract with the office of administrative hearings to conduct hearings and adjudicate contested cases on an employer filing a notice of contest of a citation, proposed penalty or abatement period pursuant to this article. The decisions of the office of administrative hearings shall be subject to appeal to the review board established pursuant to this article.

A.R.S. § 23-410. Development of standards and rules
A. Safety and health standards and rules shall be formulated in the following manner:
1. The division shall either propose adoption of national consensus standards or federal standards or draft such rules as it considers necessary after conducting sufficient investigations through the division's employees and through consultation with the occupational safety and health advisory committee and other persons knowledgeable in the business for which the standards or rules are being formulated.
2. Proposed standards or rules, or both, shall be submitted to the commission for its approval. If the commission approves the proposed standards or rules, or both, it shall promulgate them in accordance with the procedures established in title 41, chapter 6.
B. The division shall not propose standards or rules for products distributed or used in interstate commerce which are different from federal standards for such products unless such standards are required by compelling local conditions and do not unduly burden interstate commerce.
C. Any standards or rules promulgated under this section shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all recognized hazards to which they are exposed, relevant symptoms and appropriate emergency treatment and proper conditions and precautions of safe use or exposure. Where appropriate such standards or rules shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such standards or rules shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. Any standards or rules promulgated pursuant to this section shall assure, as far as possible, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.
D. In case of conflict between standards and rules, the rules shall take precedence.
E. Any person who may be adversely affected by a standard or rule issued under this article may at any time prior to the sixtieth day after such standard or rule is promulgated file a complaint challenging the validity of such standard or rule with the superior court in the county in which the person resides or has his principal place of business, for a judicial review of such standard or rule. The filing of such a complaint shall not, unless otherwise ordered by the court, operate as a stay

of the standard or rule. The determinations of the commission shall be conclusive if supported by substantial evidence in the record considered as a whole.

A.R.S. § 23-474. Duties of commission
The commission shall:
1. Administer this article through the division of occupational safety and health.
2. Adopt standards and regulations pursuant to § 23-475 and adopt other rules as are necessary.
3. Exercise other powers as are necessary to carry out the duties and requirements of this article.

A.R.S. § 23-475. Duties of division
The division shall:
1. Certify special inspectors as provided in § 23-485.
2. Inspect boilers, pressure vessels and lined hot water heaters under this article, except that beginning on July 1, 2017 the division may not inspect boilers, pressure vessels and lined hot water heaters.
3. Establish a schedule to require regular boiler, pressure vessel and lined hot water heater inspections.
4. Recommend standards, regulations and amendments to the standards and regulations to the commission for approval or disapproval.
5. Enforce, under § 23-478, all standards and regulations adopted by the commission.

A.R.S. § 23-476. Safety standards and regulations
A. Safety standards and regulations shall be formulated in the following manner:
1. The division shall either propose adoption of national consensus standards or federal standards or draft such regulations as it considers necessary after conducting sufficient investigation through the division's employees and through consultation with the boiler advisory board and other persons knowledgeable in the business for which the standards or regulations are being formulated.
2. Proposed standards or regulations, or both, shall be submitted to the commission for its approval.
B. Any person who may be adversely affected by a standard or regulation issued pursuant to this article may at any time prior to the sixtieth day after such standard or regulation is promulgated file a complaint challenging the validity of such standard or regulation with the superior court of the county in which the person resides or has his or her principal place of business, for a judicial review of such standard or regulation. The filing of such a complaint shall not, unless otherwise ordered by the court, operate as a stay of the standard or regulation. The determinations of the commission shall be conclusive if supported by substantial evidence in the record considered as a whole.
C. In case of conflict between standards and regulations, the regulations shall take precedence.

A.R.S. § 23-484. Nonimpairment of other agencies
Nothing contained in this article shall in any way impair the authority or responsibility of political subdivisions of this state with regard to the local enforcement of licensing, safety or police regulation authorized by local ordinance or state law if, upon determination by the commission, the enforcement program employed by such political subdivision is found to be at least equal to the state enforcement program.

A.R.S. § 23-472. Administration

The division shall administer the provisions of this article.

A.R.S. § 23-488. Division inspection service

A. The division may enter into agreements to provide inspection services during the manufacture, assembly, erection, or repair of boilers, pressure vessels, lined hot water heaters or any appurtenant components to such boilers, pressure vessels or heaters whenever such inspections are requested by holders of authorized symbols of American society of mechanical engineers or the national board of boiler and pressure vessel inspectors.

B. The commission, through the division, may fix and collect inspection fees that shall be determined on the basis of an hourly rate for inspection plus reimbursement for actual expenses incurred, provided that no hourly rate for inspection shall exceed thirty dollars per hour.

C. The commission shall deposit, pursuant to §§ 35-146 and 35-147, all fees received in the state general fund.

A.R.S. § 23-486. Boiler advisory board; members; terms; meetings

A. The boiler advisory board is established to assist the commission in drafting standards and regulations for boilers, pressure vessels and lined hot water heaters. The boiler advisory board consists of the following members who are appointed by the commission:

1. One member who represents the boiler, pressure vessel or lined hot water heater manufacturer industry.
2. One member who represents a public utility.
3. One member who represents the insurance industry.
4. One member who is an owner or operator of a boiler, pressure vessel or lined hot water heater.
5. One member who is a licensed contractor.

B. The initial members of the boiler advisory board shall assign themselves by lot to terms of one or two years in office. All subsequent members serve three-year terms of office. The chairperson shall notify the commission of these appointments.

C. The boiler advisory board shall annually elect a chairperson from its members.

D. The boiler advisory board shall meet at least annually and on the call of the commission. The commission shall determine the time and place of boiler advisory board meetings.

A.R.S. § 23-473. Owner's and operator's duty

Every owner or operator of any boiler, pressure vessel or lined hot water heater shall:

1. Furnish, maintain and provide safe and adequate boilers, pressure vessels or lined hot water heaters.
2. Comply with all standards and regulations issued pursuant to this article.

A.R.S. § 23-487. Political subdivision jurisdiction

This article shall apply to any political subdivisions of this state except those political subdivisions having boiler inspection regulations equal to those of this state at the time this article becomes effective.

A.R.S. § 23-485. Special inspectors; civil liability

A. The division, on the request of any company that has received a certificate of accreditation from either the national board of boiler and pressure vessel inspectors or the American society of mechanical engineers as an authorized inspection agency or an owner-user inspection

organization, may issue to any inspector of that company a certificate as a special inspector. Before receiving a certificate, the inspector must demonstrate that the inspector holds a current commission issued by the national board of boiler and pressure vessel inspectors.
B. A certificate as a special inspector for a company operating boilers, pressure vessels or lined hot water heaters in this state shall be issued only if, in addition to meeting the requirements of this section, the inspector is employed full time by such company and the inspector's duties include making inspections of boilers, pressure vessels or lined hot water heaters to be used by such company and not for resale.
C. Each company employing such special inspectors, within sixty days after each boiler, pressure vessel or lined hot water heater inspection made by the inspectors, shall file a report of the inspection with the division on appropriate forms or make entry into the division's computer database.
D. All insurance companies shall notify the division of all boilers, pressure vessels or lined hot water heaters on which insurance is written. All insurance companies shall also notify the division of all boilers, pressure vessels or hot water heaters on which insurance is cancelled, not renewed or suspended because of unsafe conditions.
E. The furnishing of a certificate inspection, as authorized by the commission pursuant to § 23-475, that is conducted incidental to the issuance or renewal of boiler and machinery insurance or a contractual certificate inspection when performed in accordance with the standards and regulations adopted by the commission shall not subject an insurer, a noninsurer, whether domestic or foreign, or a contracted inspection organization, its agents or its employees to liability for damages for any act or omission in the course of performing inspections as provided by this section. This subsection does not apply if the gross negligence of the insurer, noninsurer or contracted inspection organization, its agent or its employee created the condition that was the proximate cause of the injury, death or loss.

A.R.S. § 23-477. Notice requesting investigation
A. Any person may make a request for an investigation by the division into alleged violations of § 23-473 by giving notice to the director or the director's authorized representative of such violation or danger. Such notice shall be reduced to writing, set forth with reasonable particularity the grounds for the notice and be signed.
B. If upon receipt of such notification the director determines that there are reasonable grounds to believe that such violation or danger exists, the director shall make an investigation pursuant to this article as soon as practicable to determine if such violation or danger exists. If the director determines there are no reasonable grounds to believe that a violation or danger exists, the director shall notify the requesting party in writing of such determination.

A.R.S. § 23-478. Enforcement
A. If the division, following an inspection or investigation determines that there is reasonable cause to believe that there exists a violation of a standard or regulation the division shall issue a notice of violation directing any repairs, improvements, changes or additions necessary to eliminate the hazard. Each notice of violation shall be in writing, delivered either by mail or in person and shall contain the following:
1. A particular description of the nature of the violation, including a reference to the provision of this article or of any standard or regulation alleged to have been violated.
2. A reasonable time for the abatement of the violation.

B. Each notice of violation issued pursuant to this section or a copy or copies of such notice of violation shall be prominently posted at or near each place a violation referred to in the notice of violation existed.
C. If in the opinion of the director or the director's authorized representative the continued operation of the defective boiler, pressure vessel or lined hot water heater constitutes an immediate danger to the safety of the occupants of the establishment or the persons operating such boiler, pressure vessel or lined hot water heater the director or director's authorized representative may condemn such device and require the boiler, pressure vessel or lined hot water heater to be returned to a condition allowing safe operation before use of the boiler, pressure vessel or lined hot water heater is resumed.
D. On failure of an owner or operator to comply with either the requirements of a notice of violation issued pursuant to subsection A of this section or condemnation pursuant to this subsection, the commission may file an action in the superior court in the county where the violation occurred to enjoin the owner or operator from engaging in further acts in violation of the requirements of the notice of violation or the condemnation. Any person found to be in contempt of an injunctive order of the court shall be fined not less than fifty nor more than three hundred dollars with each day of violation constituting a separate contempt.

A.R.S. § 23-479. Hearing rights and procedures
A. Any interested party may request a hearing before the commission to contest the notice of violation issued pursuant to this article.
B. A request for hearing shall be made in writing, signed by or on behalf of the interested party and include such party's address. The request shall also state with particularity the violation or abatement period which is being protested. The request for hearing shall be filed within fifteen days from the issuance of the notice of violation or the notice of violation will be deemed final and admitted. For the purposes of this section “filed” means actually received at an office of the commission.
C. The commission shall refer the request for the hearing to the administrative law judge division for determination as expeditiously as possible. The presiding administrative law judge may dismiss a request for hearing if it appears that the disputed issues have been resolved by the parties. Any interested party who objects to such dismissal may request a review pursuant to § 23-481.
D. At least twenty days' prior notice of the time and place of the hearing shall be given to all parties in interest by mail at their last known address. Hearings shall be held in the county where the alleged violation occurred or such other place selected by the administrative law judge.
E. A record of all proceedings at the hearing shall be made but need not be transcribed unless a party applies to the court of appeals for1 a petition for special action pursuant to § 23-483. The record of the proceedings if not transcribed shall be kept for at least two years.
F. Except as otherwise provided in this section and rules or procedure2 established by the commission, the administrative law judge is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure and may conduct the hearing in any manner that will achieve substantial justice.
G. Any party shall be entitled to issuance and service of subpoenas under the general subpoena powers of the commission. Any party or a representative may serve such subpoenas.
H. Any interested party or an authorized agent shall be entitled to inspect the file of the commission if such authorization is filed in writing with the commission.

I. Within thirty days after the date of notice of hearing, any interested party to a hearing before the commission may file an affidavit for change of administrative law judge against any administrative law judge of the commission hearing such matters or commencing to hear such matter, setting forth any of the grounds as provided in subsection J of this section. The administrative law judge shall immediately transfer the matter to another administrative law judge of the commission who shall preside. Not more than one change of administrative law judge shall be granted to any one party.
J. Grounds which may be alleged for change of administrative law judge are that:
1. The administrative law judge has been engaged as counsel in the hearing prior to appointment as administrative law judge.
2. The administrative law judge is otherwise interested in the hearing.
3. The administrative law judge is related to a party to the hearing.
4. The administrative law judge is a material witness in the hearing.
5. The party filing the affidavit has cause to believe and does believe that on account of the bias, prejudice or interest of the administrative law judge he cannot obtain a fair and impartial hearing.

A.R.S. § 23-480. Decisions of administrative law judge; contents; disposition and effect
A. Upon the conclusion of any hearing, or prior to the conclusion with concurrence of the parties, the administrative law judge shall, not later than thirty days after the matter is submitted for decision, determine the matter and make a decision in accordance with his determination.
B. In the event of the demise, resignation, retirement, termination of employment or other incapacitation of the presiding administrative law judge, the decision shall be determined by the chief administrative law judge or an appointee.
C. The decision shall become a part of the commission file. A copy of the decision shall be sent immediately by mail to all parties in interest.
D. The decision is final when entered unless within fifteen days after the date on which a copy of the decision is mailed to the parties, one of the parties files a request for review pursuant to § 23-481. The decision shall contain a statement explaining the rights of the parties pursuant to § 23-481.

A.R.S. § 23-481. Decision upon review
A. The request for review of an administrative law judge decision need only state that the party requests a review of the decision. The request may be accompanied by a memorandum of points and authorities, in which event any other interested party shall have fifteen days from the date of filing in which to respond. Failure to respond will not be deemed an admission against interest.
B. The request for review shall be filed with the division and copies of the request shall be mailed to all other parties to the proceeding.
C. When review has been requested, the record of such oral proceedings at the hearings before the administrative law judge for purposes of the review shall be transcribed at the expense of the party requesting review.
D. Notice of the review shall be given to the parties by mail.
E. The review shall be made by the presiding administrative law judge and shall be based upon the record and the memoranda submitted pursuant to the provisions of subsection A of this section.
F. The presiding administrative law judge may affirm, reverse, rescind, modify or supplement the decision and make such disposition of the case as is determined to be appropriate. A decision upon review shall be made within sixty days after the review has been requested.

G. The decision upon review shall become a part of the commission file and a copy sent by mail to the parties.
H. The decision upon review shall be final unless within fifteen days after the date of mailing of copies of such decision to the parties, one of the parties applies to the court of appeals by a petition for special action pursuant to § 23-483. The decision shall contain a statement explaining the rights of the parties pursuant to this section and § 23-483.

§ 23-482. Time for compliance with order; extension of time; effect of orders

A. The commission shall, upon application of any employer, grant such time as reasonably necessary for compliance with an order. A person may petition the commission for an extension of time to comply with an order, which the commission shall grant if it finds the extension necessary.
B. All orders of the commission in conformity with law shall be valid and in force and prima facie reasonable and lawful until found otherwise in an action brought for such purpose pursuant to the provisions of this article or until altered or revoked by the commission.
C. A substantial compliance with the requirements of this article shall be sufficient to give effect to the orders of the commission, and they shall not be declared inoperative, illegal or void for an omission of a technical nature.

A.R.S. § 23-483. Petition for special action to review lawfulness of decision, order or decision upon review; procedure

A. Any party affected by a decision of the commission or by a decision upon review pursuant to § 23-481 may apply to the court of appeals by a petition for special action to review the lawfulness of the decision, order or decision upon review.
B. The petition for special action provided by subsection A of this section and by § 23-481 shall be made returnable within ten days and shall direct the commission to certify its record, proceedings and evidence to the court of appeals. The court of appeals may quash or dismiss the petition for special action upon the grounds of dismissal applicable to civil appeals. The review shall be limited to determining whether or not the commission acted without or in excess of its power and, if findings of fact were made, whether or not such findings of fact support the order or decision. If necessary, the court may review the evidence.
C. Each party to the proceedings before the commission may appear in the court of appeals.
D. The court of appeals shall enter judgment either affirming or setting aside the order or decision.
E. The rules of civil procedure relating to special actions shall apply so far as applicable and not in conflict with this article.

A.R.S. § 23-471. Definitions

In this article, unless the context otherwise requires:
1. “Authorized representative” means the boiler chief and boiler inspector employed by the division.
2. “Boiler” means a closed vessel in which water or other liquid is heated, steam or vapor is generated or steam or vapor is superheated, or any combination thereof, under pressure or vacuum for a use that is external to itself, by the direct application of heat from the combustion of fuels or from electricity.
3. “Certificate” means a certificate of competency.
4. “Certificate inspection” means an internal inspection, when construction permits, otherwise it means as complete an inspection as possible.

5. “Commission” means the industrial commission of Arizona.
6. “Director” means the director of the division of occupational safety and health.
7. “Division” means the division of occupational safety and health of the commission.
8. “Heating boilers” means a steam or vapor boiler operating at a pressure not exceeding fifteen pounds per square inch or a hot water boiler operating at a pressure not exceeding one hundred sixty pounds per square inch or a temperature not exceeding two hundred fifty degrees Fahrenheit.
9. “High temperature water boiler” means a water boiler intended for operation at pressures in excess of one hundred sixty pounds per square inch or temperatures in excess of two hundred fifty degrees Fahrenheit.
10. “Interested party” means the commission, agents of the commission and any owner or operator who has been issued a notice of violation.
11. “Lined hot water heater” means a fired lined water heater with linings providing corrosion resistance for supplying potable hot water for commercial purposes. Lined hot water heaters are exempted when none of the following limitations are exceeded:
(a) Heat input of two hundred thousand British thermal units per hour.
(b) Water temperature of two hundred ten degrees Fahrenheit.
(c) Nominal water-containing capacity of one hundred twenty gallons.
12. “Owner” or “operator” means any individual or type of organization, including this state and all political subdivisions of this state, that has title to or controls, or has the duty to control, the operation of one or more boilers, pressure vessels or lined hot water heaters.
13. “Power boiler” means a boiler in which steam or other vapor is generated at a pressure more than fifteen pounds per square inch.
14. “Pressure vessel” means a container for the containment of pressure, either internal or external. The pressure may be obtained from an external source, or by the application of heat from a direct or indirect source, or any combination thereof.
15. “Process boiler” means a heating boiler or a power boiler used for processing purposes where the make-up water exceeds ten percent.

STATE BOARD OF ACCOUNTANCY
Title 4, Chapter 1

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: May 7, 2024

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

FROM: Council Staff

DATE: **April 8, 2024**

SUBJECT: **STATE BOARD OF ACCOUNTANCY**
Title 4, Chapter 1

Summary

This Five Year Review Report (5YRR) for the State Board of Accountancy (Board) covers twenty seven (27) rules in Title 4, Chapter 1. Specifically, Article 1 relates to General Provision, Article 2 relates to CPA examinations, Article 3 relates to Certification and Registration, and Article 4 relates to Regulation. The primary duty of the Board is to protect the public from unlawful, incompetent, unqualified or unprofessional certified public accountants through certification, regulation and rehabilitation.

In its previous 5YRR, approved by Council on December 3, 2019, the Board indicated it would amend the following rules R4-1-101, R4-1-104, R4-1-115.03, R4-1-226.01, R4-1-228, R4-1-229, R4-1-341, R4-1-344, R4-1-345, R4-1-346, R4-1-453, R4-1-454, R4-1-455, R4-1-455.01, and R4-1-456. The Board completed this course of action in a rulemaking approved by Council April 5, 2020.

Proposed Action

The Board intends to amend R4-1-229, R4-1-341, R4-1-345, R4-1-454, and R4-1-455 in a rulemaking submitted to Council by May 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:**

According to statute the primary duty of the board is to protect the public from unlawful, incompetent, unqualified or unprofessional certified public accountants (CPAs) through certification, regulation, and rehabilitation. The rules in this article apply to that process. The Board has reviewed their prior rulemaking requests and has determined the rules to be as determined by statute or consistent with prior economic small business and consumer impact statements submitted by the Board.

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

The Board believes the rules are consistent with what is required by statute. In addition, the Board states that the rules impose the least burden and costs to regulated persons, especially when paired with the Board's obligation to ensure that only competent, qualified, and professional individuals become certified as CPAs.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Board 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 Board states the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Board states the rules are generally consistent with other rules and statutes with the following exceptions:

- R4-1-341: the citations in the rule should be updated

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Board states the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Board enforces the rules as written with the following exceptions:

- R4-1-346: the Board does not enforce the requirement of registrants to notify the Board of a new email, business, mailing, or residential change of address within 30 days.

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

The Board states the rules are not more stringent than corresponding federal law.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Board states none of the rules require the issuance of a regulatory permit, license, or agency authorization as these rules apply to those who are issued a CPA certificate or CPA firm registration by the Board.

11. **Conclusion**

This Five Year Review Report for the State Board of Accountancy covers twenty seven rules in Title 4, Chapter 1. As stated above, the Board states the rules are clear, concise, and understandable and effective in achieving its objectives.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

ARIZONA STATE BOARD OF ACCOUNTANCY

100 North 15th Avenue, Suite 165
Phoenix, Arizona 85007
Phone (602) 364-0804
Fax (602) 364-0903
www.azaccountancy.gov

December 5, 2023

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Ave, #305
Phoenix, AZ 85007
VIA EMAIL: grrc@azdoa.gov

Dear Ms. Sornsin,

As required by A.R.S. § 41-1056, the Arizona State Board of Accountancy (Board) submits for the Council's approval its five-year review report, which is due on December 29, 2023.

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

If you have any questions regarding this report, please contact me at 602-364-0870 or mpetersen@azaccountancy.gov. Thank you for your consideration.

Sincerely,

Monica L. Petersen
Executive Director

Arizona State Board of Accountancy

Five Year Review Report

Title 4 – Professions and Occupations, Chapter 1 – Board of Accountancy

December 5, 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 32-703(B)(7) and (13)

Specific Statutory Authority: A.R.S. § 32-703(B)(8)

2. The objective of each rule:

Rule	Objective
R4-1-101	The objective of this rule is to incorporate the definitions in A.R.S. § 32-701 and define additional terms that are used in rule.
R4-1-102	The objective of this rule is to outline the applicability of the Board's rules, its ability to excuse failures to comply, and ability to grant extensions of time to comply with its rules.
R4-1-104	This rule describes Board records and procedures for public access.
R4-1-113	This rule outlines how the Board and its Committees conduct their meetings.
R4-1-114	This rule outlines hearing and rehearing/review processes.
R4-1-115	This rule establishes the Accounting and Auditing Advisory Committee and Tax Advisory Committee.
R4-1-115.01	This rule establishes the Law Review Advisory Committee.
R4-1-115.02	This rule establishes the Continuing Professional Education (CPE) Advisory Committee.
R4-1-115.03	This rule establishes the Peer Review Oversight Advisory Committee (PROAC).
R4-1-115.04	This rule establishes the Certification Advisory Committee.
R4-1-117	This rule supplements the hearing procedures provided in R4-1-114.
R4-1-226.01	This rule outlines the uniform CPA examination (Exam) process and requirements.
R4-1-228	This rule outlines the appeal rights of applicants who are denied the ability to take the Exam.
R4-1-229	This rule clarifies how conditioned credit is earned by an applicant and how it may be transferred to Arizona from another jurisdiction.
R4-1-341	This rule outlines the certification process for individuals, the registration process for firms, and the reinstatement and reactivation processes and requirements.
R4-1-343	This rule outlines education and accounting experience requirements.
R4-1-344	This rule outlines the appeal process for the denial of certification, registration, or reinstatement.
R4-1-345	This rule outlines initial and renewal registration due dates and registration fees.

R4-1-346	This rule outlines change of address notice requirements.
R4-1-453	This rule outlines CPE requirements.
R4-1-454	This rule incorporates by reference the American Institute of Certified Public Accountants' (AICPA's) Standards for Performing and Reporting on Peer Reviews.
R4-1-455	This rule incorporates the AICPA's Code of Professional Conduct.
R4-1-455.01	This rule explains how definitions will be interpreted within the AICPA's Code of Professional Conduct.
R4-1-455.02	This rule outlines conduct in performing an attest service that would constitute a violation of A.R.S. § 32-741(A)(4).
R4-1-455.03	This rule outlines specific responsibilities and practices with which registrants must comply.
R4-1-455.04	This rule explains that a registrant may retain and dispose of documents prescribed in A.R.S. § 32-744(C) in compliance with a reasonable document retention policy.
R4-1-456	This rule outlines when and how a registrant must report final judgments, convictions, and violations to the Board.

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.

4. **Are the rules consistent with other rules and statutes?** **Yes** ___ **No** _X_

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R4-1-341	1. Citations for R4-1-453(C)(8), which can be found in R4-1-341(A)(6)(a) and (7)(a) are no longer accurate. The citation should be modified to read R4-1-453(C)(7). 2. Language contained in the beginning of R4-1-341(A)(7)(c) and (d) is inconsistent with similar language found in A.R.S. § 32-732(C)(2). Statutorily, the phrase "If prescribed…" is used by the Board, and furthermore, it is reserved for relinquishment or revocation orders only. R4-1-341(A)(7)(c) and (d) should be amended to conform with the language used in A.R.S. § 32-732(C)(2). 3. Upon further review, it is felt that the citation of R4-1-454(A) contained in R4-1-341(B)(1)(b), (2)(b), and (3)(b) should be modified to R4-1-454(B).

5. Are the rules enforced as written? **Yes ___ No _X_**

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation
R4-1-346	R4-1-346(A) – This provision requires registrants to notify the Board of a new email, business, mailing, or residential change of address within 30 days. Historically, this provision has not been enforced because the effort and cost to do so is not a good use of board resources and registrants who fail to update their addresses may receive discipline in other manners such as through failure to respond to Board communications, or failure to timely respond.

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.

7. Has the agency received written criticisms of the rules within the last five years? **Yes ___ No _X_**

If yes, please fill out the table below:

Commenter	Comment	Agency's Response
N/A	N/A	N/A

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

2014 Economic, Small Business and Consumer Impact Statement:

The Board performed a major overall of its rules to reflect changes required due to the passage of Laws 2013, Ch. 136 (HB 2260), to ensure that they accurately reflect operating practice, and to provide technical, clarifying, and conforming changes to improve the organization and readability of the rules for the regulated community. The rules became effective February 14, 2014.

The Economic, Small Business and Consumer Impact Statement (EIS) covered various topics, which are addressed and compared below:

Reinstatement Application Fee

Laws 2013, Ch. 136 (HB 2260) allowed the Board to establish a uniform application fee to reinstate a certificate. The Board decided on an amount of $100 which is the same application fee charged to exam applicants and certification applicants. At the time, the EIS outlined that there were 15, 22, and 24 reinstatements for fiscal years 2010, 2011, and 2012 respectively, equating to a three-year average of 20 reinstatement applications annually. By a way of comparison, at the time, the Board only regulated

approximately 10,500 CPAs. As such, it was anticipated that there would only be a minimal number of individuals would be impacted. In comparison with more recent data, there were 45, 35, and 33 reinstatements for fiscal years 2021, 2022, and 2023 respectively, equating to a three-year average of 38 reinstatement applications annually. The Board regulates approximately 11,300 CPAs now, and despite the marginal increase in number of reinstatements, Staff would concur that this reinstatement application fee continues to have a minimal impact on the regulated community.

Reinstatement CPE and Education Requirements

Laws 2013, Ch. 136 (HB 2260) established reinstatement requirements from cancelled, expired, relinquished, and revoked statuses[1]. R4-1-341(A)(6) and (7) requires that an applicant for reinstatement have CPE that meets the requirements of R4-1-453(C)(8)[2] and (E) which require that an applicant complete up to 160 hours of CPE during the four-year period immediately before application to reinstatement. The amount of CPE required is based on the number of months prorated by quarter between the last registration due date the applicant completed CPE to the time of the applicant applied for reinstatement[3]. The Board felt that no more than 160 hours would be necessary to ensure that it could achieve its primary duty to protect the public.

In the EIS, it was difficult to quantify the costs to a reinstatement applicant to complete requisite CPE because there are many different CPE providers that offer a wide and disparate range of costs, ranging from a one-time fee of $149 to take all the self-study courses available for one year at no additional charge to $115 for a one-time eight-hour course. Costs of CPE for reinstatement applicants can vary from almost nothing if the applicant for reinstatement holds a valid CPA certificate in another jurisdiction where they have taken CPE to maintain that certificate, which could be used, to a couple hundred dollars to a couple thousand dollars depending on how an applicant pursues completing their CPE credits and the number of prorated hours that would be required for reinstatement. It remains difficult to quantify these costs, but CPE remains invaluable to the Board's mission to ensure that those CPAs who reinstate their certificate maintain a level of education and competency that is required by the Board and expected by consumers.

Additionally, and pursuant to R4-1-341(A)(6), if not waived[4] by the Board as part of a disciplinary order, a reinstatement applicant from relinquished or revoked status must have 150 hours of education including

[1] These reinstatement requirements were further modified and consolidated into a single statute (A.R.S. § 32-732) vis-à-vis Laws 2018, Ch. 268 (SB 1443).
[2] The Board knows that this legal citation is currently incorrect and plans to fix it with upcoming rulemaking.
[3] How CPE is prorated can be found on the Board's website regarding reinstatement: https://www.azaccountancy.gov/Certification/Reinstatement.aspx#Q4.
[4] The Board plans on modifying this rule language so it states, "If prescribed" in lieu of "If not waived". This would make it more consistent with statute.

36 semester hours of accounting of which 30 must be upper level and at least 30 hours of related courses, which is consistent with the existing educational requirements of A.R.S. § 32-721(B). The education requirement for certification was changed by Laws 1999, Ch. 145 (SB 1273) when it was increased from a bachelor's degree (approximately 120 hours, though an hour requirement was not part of law) to a bachelor's degree and 150-hour requirement.

The Board has the discretion to waive, and has waived in the past, this requirement as part of a disciplinary order if it feels that the reason for revocation or relinquishment does not warrant a more challenging reinstatement requirement for education if an individual was certified before 2004 when the educational requirements were less rigorous. However, if the Board feels that it is important to make reinstatement more of a challenge for someone who relinquished or revoked for serious misconduct, they can require that an applicant for reinstatement meet the higher educational standards. At the time of writing the EIS, it was anticipated that the fiscal impact would be negligible since it was not common practice to see former certificate holders from relinquished or revoked statuses apply and be approved for reinstatement[5]. The fiscal impact continues to be negligible as there have only been three instances from 2021 to 2023 wherein an individual applied and was approved for reinstatement from relinquished or revoked status.

Late Fee

This rulemaking also raised the late fee from $25 to $50[6]. It was anticipated that the impact would be minimal for CPAs and CPA firms as only an estimated 5% of CPAs on average and 2% of CPA firms on average would be suspended for non-registration. Staff continues to believe that the impact for CPAs and CPA firms remain minimal. This impact can be totally negated by CPAs and CPA firms registering in a timely fashion. The Board created a new business procedure in April 2017 to send email reminders to CPAs and in April 2018 to CPA firms when their renewal due dates approach to further reduce the already minimal impact.

CPE Credit Hours

The rulemaking allowed for the counting of CPE credits in ½ hour increments, which was anticipated to provide a benefit and savings. Staff concurs with this analysis and believes that allowing for ½ hour credit increments provides a benefit through savings and flexibility of taking and reporting CPE courses. The amount of savings though is variable depending on the type of CPE taken (online vs. live) as well as from which CPE provider as costs vary considerably.

[5] In the EIS, it was reported that the Board staff could only remember one instance from 1999 – 2009 when someone applied for reinstatement and was approved from a certificate that was previously revoked or relinquished.
[6] Authorized per A.R.S. § 32-729(3) and (4).

General Changes

There is also a benefit to the public for other technical, clarifying, and conforming changes that improve the overall organization and readability of the rules. The rules are clearer and easier to understand and interpret and as a result there has been a benefit to the regulated community and the Board's operations.

2017 Economic, Small Business and Consumer Impact Statement:

Effective June 15, 2017, the Board repealed a rule provision that was determined to be overbroad by the Board's Assistant Attorney General. The rule stated that a CPA may practice public accounting whether as an owner or an employee, only in a firm as defined in statute.

The EIS provided that amending the rule would not have a fiscal impact, as under the Board's long-time statutory and regulatory framework, CPAs who have registered firms as sole practitioners are not required to pay a firm registration fee. It was anticipated that amending the rule would result in a positive impact to small business. CPAs who are sole practitioners of accounting firms who do not perform attest services would not be required to register their firms with the Board and would no longer be required to file biennial firm renewal paperwork. The EIS also addressed that the Board did not foresee a consumer impact, as amending the rule was unlikely to change the rates CPAs charge for their services. Lastly, it was noted that while the Board would continue to be able to regulate sole practitioner CPAs through their individual certificates, it was likely that it would lose some regulatory oversight with respect to peer review requirements for non-attest services like compilation services. Effective January 1, 2018, the Board amended its peer review rule to conform with the AICPA's requirements by requiring that non-disclosure compilations be subject to peer review, and effective August 3, 2018, Laws 2018, Chapter 268 (SB 1443) amended A.R.S. § 32-731 to require that business organizations, sole proprietorships, or individuals that perform attest or compilation services be registered as a firm with the Board. Accordingly, and due to these supplemental statutory and regulatory changes, we do not believe there was a long-term loss of regulatory oversight.

2018 Economic, Small Business and Consumer Impact Statement:

Effective January 1, 2018, the Board amended its rules to eliminate educational enhancement reviews (EERs), make the Board's peer review requirements more consistent with the AICPA's peer review program, and incorporate the AICPA's Code of Conduct and Professional Standards by reference, amongst other technical and conforming changes.

As it relates to peer review requirements, the EIS outlined that firms that are already members of the AICPA must follow its peer review program requirements, which include peer reviews for non-disclosure compilations. However, firms that are not members of the AICPA and which perform non-disclosure compilations are currently

not subject to peer review, but rather the Board's EER requirement. By conforming the Board's rules to be consistent with the AICPA's peer review program, non-AICPA member firms who perform non-disclosure compilations would now by subject to peer review. The pros of requiring peer reviews for firms issuing non-disclosure compilations were expected to significantly outweigh the con of increased costs for non-AICPA member firms, since greater scrutiny and examination of deficient work in this type of service would benefit consumers by identifying issues that the reviewed firms need to address in order to provide quality services, thereby protecting the public. Staff would contend that this estimate remains accurate as the Board has received no evidence or information that would argue that the increased costs for non-AICPA member firms outweigh the public safety benefit. Aside from the educational benefit highlighted above, Staff would also argue that an additional consumer benefit is obtained by discouraging firms that "dabble" into non-disclosure compilation engagements, which is often a compliance issue involved in consumer complaints that the Board receives.

The EIS also stated that no economic, small business or consumer impact was expected from the incorporation of the AICPA's Code of Conduct and Professional Standards. Staff believes this estimate remains accurate.

Other technical and conforming changes were not anticipated to have a fiscal impact, which Staff agrees has not happened.

2019 Economic, Small Business and Consumer Impact Statement:

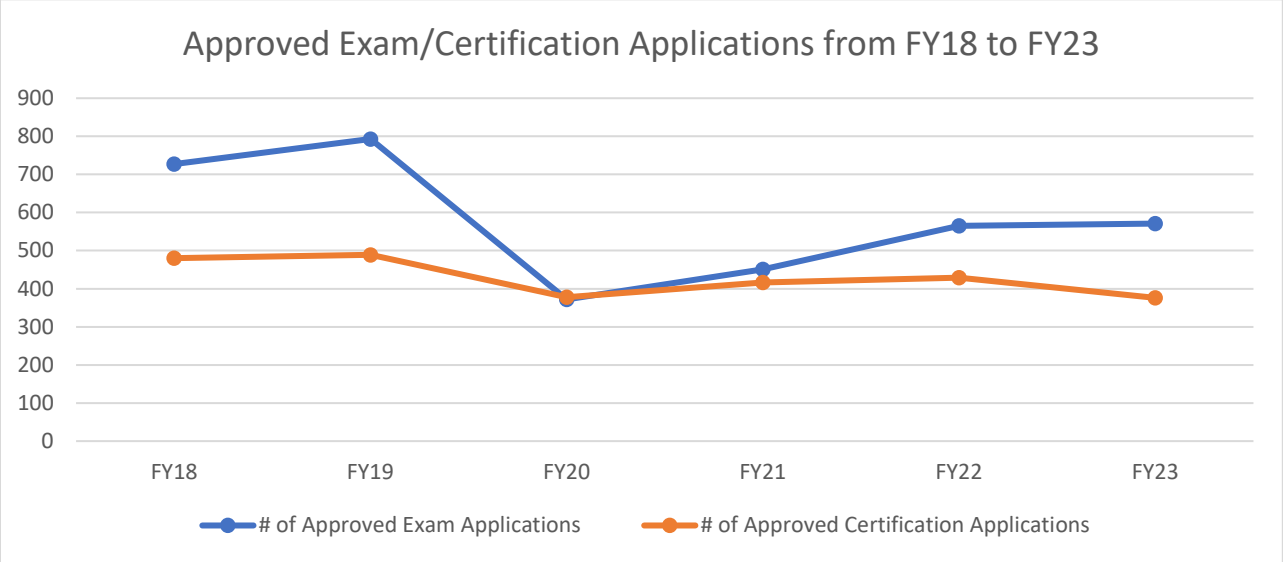
Effective February 4, 2019, the Board amended its rules to address two primary areas: foreign transcript evaluation and CPE requirements. As it relates to foreign transcript evaluations, the Board modified its rules by requiring that course-by-course evaluations be done by the National Association of State Boards of Accountancy International Evaluation Services (NIES) rather than from a service that is a member of either the National Association of Credential Evaluation Services (NACES) or the Association of International Credential Evaluators (AICE). Furthermore, the Board amended its CPE rules to reduce regulatory burdens by:

1. Allowing CPE to be credited in smaller increments (one-fifth vs. one-half hour);
2. Only requiring 80 hours of CPE to be reported rather than all CPE hours completed during the CPE reporting period;
3. Allowing a registrant who is certified as a CPA in another jurisdiction from having to meet the individual CPE requirements of Arizona, so long as the registrant is a non-resident and complies with the CPE requirements applicable in the state where their principal place of business is located (CPE Reciprocity); and
4. Allowing for a new delivery method of CPE instruction called "nano-learning," which is a tutorial program designed to permit a participant to conveniently learn a given subject in a 10-minute time frame.

Other technical and conforming changes were also made to the rules.

The EIS noted that requiring course-by-course evaluations to be done by NIES was not expected to have any significant consumer impact in financial terms, as applicants are already required to pay for such evaluations for education taken outside the United States from NACES or AICE member evaluators. Transcript evaluation pricing varies and is determined by any foreign language documents, including transcripts, that must be translated into English, and potentially by the length and complexity of the documents. As a result, it is believed that most transcript evaluation companies would prefer to offer quotes to customers on a case-by-case basis. A rough comparison of charges to applicants was provided in the EIS, showing an average cost of $217 for basic transcript evaluation services.

Apart from the financial implications for applicants, it was also expected that fewer foreign applicants would qualify to be approved in Arizona to sit for the Exam or to be approved to become a CPA. It is strongly believed that NIES evaluation services are the premier transcript evaluation service, in terms of effectiveness, thoroughness, and reliability in identifying and reducing fraud – not only in Arizona, but nationally. As a result, some applicants would have to find another jurisdiction to accept a foreign transcript evaluation service other than NIES. Accordingly, it was estimated that the amendment would have a fiscal impact on the Board, in terms of a reduction in the number of applications and accompanying application fees that are submitted to the Board. In hindsight, the reductions of applications were far more significant with Exam applications in contrast to certification applications. Regardless, NIES remains a valuable tool to ensure that foreign applicants meet the Board's education standards of the Board, even if that education was taken outside of the United States.



The EIS did not anticipate any economic, small business or consumer impact as it related to the amendment of its CPE rule, aside from the fact that registrants who qualify for CPE reciprocity would save time and money by no longer having to take and report a one-hour ethics course specific to Arizona statutes and administrative rules, nor be required to report all CPE completed during the CPE reporting period, as long as they meet the CPE reciprocity requirements. Further, it was estimated that all registrants would benefit by having CPE credited one-

fifth vs. one-half hour increments, thereby maximizing the total crediting of CPE to the advantage of the registrant, likely reducing the number of courses that need to be taken in order to reach the total 80-hour CPE requirement. Staff would concur with this estimation as the Board has not received evidence or information to the contrary.

Other technical and conforming were not anticipated to have a fiscal impact, to which Staff continues to believe is accurate.

2020 Economic, Small Business and Consumer Impact Statement:

Effective April 5, 2020, the Board amended its rules to:

1. Reduce from $300.00 to $275.00 and from $150.00 to $137.50 the biennial registration renewal fee for active and inactive CPA registrations respectively due during the period from July 1, 2020 to June 30, 2022;
2. Allow an applicant to retake a test section of the Exam once their grade for any previous attempt of the same test section during that window has been released once "continuous testing" is implemented by the AICPA and National Association of State Boards of Accountancy (NASBA);
3. Streamline certification by exam, grade transfer, and substantial equivalency requirements;
4. Simplify the peer review rule to ensure a single peer review administration process that follows the Standards for Performing and Reporting on Peer Reviews; and
5. Enumerate what evidence is required during the application for a new or reinstated firm and provide licensing timeframes.

The EIS anticipated the following effects:

1. Amendments to R4-1-229 would provide applicants additional testing opportunity which in turn would provide them a better chance to complete all four sections of the Exam within the required 18-month period. Staff believes this estimate was accurate.
2. Amendments to R4-1-341 would:
    a. Broaden the criteria of who can submit a letter of recommendation on behalf of a certification applicant from a CPA to include an individual who has accounting education and experience similar to that of a CPA, which in turn would benefit those who may not know or who have not gained their work experience under the supervision of a CPA. Staff believes this benefited such applicants at the time, but it is no longer applicable as recent state law has made the requirement of a letter of recommendation moot. This requirement has already been removed from the rule.
    b. Eliminate the requirement for a certification applicant applying by substantial equivalency to provide verification that they have passed the Exam, as all jurisdictions require the passage of the Exam as a requirement to be certified as a CPA. Staff believed then and now that such a change would be beneficial and easier for applicants.

c. Codify the Board's existing procedures regarding CPA firm registration or reinstatement requirements in rule which are required to implement A.R.S. § 32-731. Staff continues to believe that it is beneficial for this process to be enumerated in rule.

d. Improve compliance with administrative timeframes enumerated in Title 41, Chapter 6, Article 7.1. The updating of time frames for certification and the establishment of time frames for firm registration would benefit the Board and its applicants. Certification applicants would receive improved customer service through reduced administrative timeframes. The establishment of administrative timeframes for CPA firms would establish expectations for both the Board and its applicants and ensure compliance with Title 41. Staff contend that these benefits remain accurate and relevant.

3. Amendments to R4-1-345 to implement a temporary registration fee reduction of $25.00 would benefit CPAs submitted biennial renewals and reduce Board revenues and its fund balance. Staff would argue that these estimates remain accurate.
4. Amendments to R4-1-454 would benefit both the Board and CPA firms subject to peer review as it would follow a single peer review administration process, which assists firms with staying in compliance with peer reviews. The Board would benefit from more streamlined administrative procedures. These benefits still exist.

2021 Economic, Small Business and Consumer Impact Statement:

Effective August 1, 2021, the Board amended its rules to:

1. Require that CPAs and CPA firms registered with the Board notify the Board of an email chain of address in addition to a business, mailing, or residential change of address within 30-days.
2. Permit the Board to accomplish service of most documents by attaching the document to an email and sending it to the email address last provided to the Board in addition to personal service or service by mail.
3. Allow CPE credit to be earned for the writing or development of online course curriculum for undergraduate, graduate, or doctoral education that contribute to the accounting profession.
4. Update the timeframe that the Board may grant a Notice to Schedule (NTS) extension based on good cause to a Uniform CPA Exam applicant from one testing window to 90-days in response to testing windows being replaced by continuous testing.
5. Provide authority for the Board to grant a 90-day extension to a conditioned credit for Uniform CPA Exam Applicants based on good cause.
6. Delineate the required attachments for an applicant applying for certification under A.R.S. § 32-4302 regarding universal licensing.
7. Update incorporations by reference for peer review and the AICPA Code of Professional Conduct.

The EIS anticipated the following effects:

1. Amendments to R4-1-104 were expected to produce a clearer and more concise rule, which would benefit the Board, registrants, and the public. Staff believes that assessment remains accurate.
2. Amendments to R4-1-117 and R4-1-346 were expected to positively affect the Board, registrants, and applicants by streamlining certain communication, which would allow processes to be completed more efficiently and allow for cost-savings for postage, office supplies, and labor. Staff believes such a benefit remains relevant as it continues to modernize and improve its operations.
3. Amendments to R4-1-226.01 were expected to ensure all exam applicants are treated equitably by granting an equal amount of time for the NTS extension. The process of granting extensions by one testing window created inequities because it was based on when an applicant's NTS expired. For example, if an applicant's NTS expired earlier in the testing window they would benefit more than an applicant whose NTS expired later in the testing window. Staff believes that exam applicants continue to enjoy this more-equitable benefit.
4. Amendments to R4-1-229 were expected to positively affect both the Board and applicants by codifying the practice of conditioned credits extensions. Staff would contend that this benefit continues.
5. Amendments to R4-1-341 were expected to positively affect applicants by providing greater clarity on the materials required to apply for Universal Licensing. Staff believes that assessment remains accurate.
6. Amendments to R4-1-453 were expected to positively impact registrant who currently or will in the future participate in the writing or development of online course curriculum for undergraduate, graduate, or doctoral education that contributes to the accounting profession. Staff believes that assessment remains accurate.
7. Amendments to R4-1-454 and R4-1-455, which updated incorporations by reference. were expected to positively affect the regulated community, the Board, and the public it should protect. This benefit continues to be relevant to the Board's mission.

<u>2022 Economic, Small Business and Consumer Impact Statement:</u>

Effective July 3, 2022, the Board amended its rules to:

1. Include a definition of "principal place of business" to provide clarity to CPAs requesting CPE reciprocity.
2. Clarify responsibilities of PROAC.
3. Extend the Board's temporary biennial registration fee for an additional two years.
4. Clarify that CPE taken to comply with a granted CPE extension cannot be used again for a subsequent registration period.
5. Update incorporations by reference for peer review and the AICPA Code of Professional Conduct.

The EIS anticipated the following effects:

1. Amendments to R4-1-101 were expected to positively affect the Board and the regulated community by having a definition of "principal place of business" enumerated in its rule, which would provide clarity to

the regulated community if they requested CPE reciprocity. Staff continues to believe that this definition can provide clarification as to what "principal place of business" means within the confines of CPE reciprocity.

2. Amendments to R4-1-115.03 were expected to positively affect registrants, the Board, and its PROAC by clarifying the Committee's authority to make advisory recommendations to the Board concerning peer review and monitoring the peer review program and report to the Board on its effectiveness. Staff believes this amendment has been effective in achieving that.
3. Amendments to R4-1-345 to continue the Board's temporary registration fee reduction of $25.00 were expected to benefit CPAs who submitted biennial renewals and reduce Board revenues and its fund balance. Staff would argue that these estimates remain accurate.
4. Amendments to R4-1-454 and R4-1-455, which updated incorporations by reference. were expected to positively affect the regulated community, the Board, and the public it should protect. This benefit continues to be relevant to the Board's mission.

2023 Economic, Small Business and Consumer Impact Statement:

Effective July 3, 2022, the Board amended its rules to:

1. Provide candidates for the Exam more flexibility by allowing their conditioned credit to be valid for 18-months from the score release date rather than the examination date.
2. Provide that any Exam candidate with CPA exam credit(s) on January 1, 2024, will have such credit(s) extended to June 30, 2025, to ensure that upon the launch of the new Exam in January 2024 that no candidates are negatively impacted by limited opportunities to test and delays in score reporting due to the new Exam.
3. Remove a certification requirement applicants submitted a signed and dated letter of recommendation due to the removal of "good moral character" from A.R.S. § 32-721 regarding CPA qualifications due to Laws 2022, Chapter 59, HB 2612.
4. Conform A.A.C. R4-1-453 to use a more intuitive term "self-study" program in lieu of "correspondence" program.
5. Update incorporations by reference.

The EIS anticipated the following effects:

1. Amendments to R4-1-229 were expected to positively affect the Board and Exam candidates. The Board would benefit from being able to implement an effective transition policy that is easy to understand, communicate, and implement. Exam candidates would benefit from a transition policy that minimizes candidate disruption and impact to the candidate pipeline. It was also anticipated that the credit extension may financially benefit some Exam candidates by removing the need to re-apply for the Exam should their credit have normally expired. The Exam will soon transition, and it is anticipated that the aforementioned benefits will still occur.

2. Amendments to R4-1-341 conformed the Board's rule to recent statutory changes by removing the requirement to submit a letter of recommendation. This change was anticipated to be a benefit to the Board as its rule would not conflict with statute, and Staff concurs that such a benefit remains.
3. Amendments to R4-1-453 were expected to positively affect the Board and its regulated community by using the more modern term "self-study" program in its CPE rule, in contrast to "correspondence" program, which was more archaic. Staff presumes that registrants who review the Board's forms, FAQs, or CPE rule are able to more easily understand its contents with the use a more modern and industry-standard term.
4. Amendments to R4-1-454 and R4-1-455, which updated incorporations by reference. were expected to positively affect the regulated community, the Board, and the public it should protect. This benefit continues to be relevant to the Board's mission.

9. Has the agency received any business competitiveness analyses of the rules? Yes ___ No _X_

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

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

The previous course of action was to amend the following rules:

- R4-1-101,
- R4-1-104,
- R4-1-115.03,
- R4-1-226.01,
- R4-1-228,
- R4-1-229,
- R4-1-341,
- R4-1-344,
- R4-1-345,
- R4-1-346,
- R4-1-453,
- R4-1-454,
- R4-1-455,
- R4-1-455.01, and
- R4-1-456.

These changes became effective on April 5, 2020.

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

Rule	Do the probable benefits of the rule outweigh within this State the probable costs of the rule?	Does the rule impose the least burden and costs to regulated persons?
R4-1-101	Yes. The application of statutory and regulatory definitions into the Board's rules provide readers clarity in understanding how those terms are defined when used in the rules.	Yes. There is no other option that would reduce the burden and costs of regulated persons even further.
R4-1-102	Yes. The rule's objective is to outline the applicability of the Board's rules, its ability to excuse failures to comply, and ability to grant extensions of time to comply with its rules. It does not impose a cost on regulated persons.	Yes. The rule imposes a burden on regulated persons by determining that all parties, including the regulated persons, are deemed to have knowledge of this chapter. This is necessary though to ensure appropriate regulation and fulfill the Board's mission to protect the public[7]. As stated before, this rule does not impose a cost on regulated persons.
R4-1-104	Yes. The probable benefits of this rule outweigh the costs as the rule describes Board records and procedures for public access. Costs are limited to what would be normally required to obtain public records pursuant to A.R.S. Title 39, Chapter 1, related to public records.	Yes. This rule is consistent with A.R.S. Title 39, Chapter 1, and costs and burdens are limited to what is required in statute.
R4-1-113	Yes. This rule simply outlines how the Board and its Committees conduct their meetings. No costs are imposed on regulated persons.	Yes. This rule simply outlines how the Board and its Committees conduct their meetings. There are no burdens or costs imposed on regulated persons.
R4-1-114	Yes. The rule clearly defines hearing and rehearing/review processes which are beneficial to the Board and regulated persons.	Yes. The rule is consistent with A.R.S. Title 41, Chapter 6, related to administrative procedure.

[7] A.R.S. § 32-703(A), "The primary duty of the board is to protect the public from unlawful, incompetent, unqualified or unprofessional certified public accountants through certification, regulated and rehabilitation."

R4-1-115	Yes. This rule establishes the Accounting and Auditing Advisory Committee and Tax Advisory Committee, which assist the Board in the investigation of complaints and is essential to fulfilling the Board's mission to protect the public.	Yes. This rule simply establishes the two advisory committees and outlines their responsibilities.
R4-1-115.01	Yes. This rule establishes the Law Review Advisory Committee, which assists the Board in the evaluation of statutory and regulatory provisions.	Yes. This rule simply establishes the committee and outlines its responsibilities.
R4-1-115.02	Yes. This rule establishes the CPE Advisory Committee, which assists the Board in the evaluation of CPE.	Yes. This rule simply establishes the committee and outlines its responsibilities.
R4-1-115.03	Yes. This rule establishes PROAC, which assists the Board in monitoring the peer review program.	Yes. This rule simply establishes the committee and outlines its responsibilities.
R4-1-115.04	Yes. This rule establishes the Certification Advisory Committee, which assists the Board in the evaluation of applicants for the Exam and for CPA certification.	Yes. This rule simply establishes the committee and outlines its responsibilities.
R4-1-117	Yes. This rule supplements the hearing procedures provided in R4-1-114, and establishes processes for pleadings, witness' depositions, witness' interrogatories, subpoenas, and service of specific documents.	Yes. The rule is consistent with A.R.S. Title 41, Chapter 6, related to administrative procedure.
R4-1-226.01	Yes. This rule assists applicants in understanding the requirements and process for application for examination.	Yes. The rule only requires what information is necessary to establish whether applicants meet statutory requirements.
R4-1-228	Yes. This rule outlines the appeal rights of applicants who are denied the ability to take the Exam.	Yes. The rule reiterates and codifies many of the requirements of A.R.S. Title 41, Chapter 6, Article 10 into rule.
R4-1-229	Yes. This rule clarifies how conditioned credit is earned by an applicant and how it may be transferred to Arizona from another jurisdiction.	No. The national standard has been moving toward: (1) expanding the conditioned credit period from 18-months to 30-months, and (2) introducing a credit relief initiative (CRI) to provide relief to those applicable applicants

		affected by the COVID-19 pandemic. The Board plans on amending the rule to incorporate these concepts in its upcoming rulemaking.
R4-1-341	Yes. This rule outlines the certificate process for individuals, the registration process for firms, and the reinstatement and reactivation processes and requirements. This rule also enumerates timeframes for certification and registration pursuant to A.R.S. Title 41, Chapter 6, Article 7.1.	Yes. The rule does the impose the least burden and costs to regulated persons, especially when paired with the Board's obligation to ensure that only competent, qualified, and professional individuals become certified as CPAs.
R4-1-343	Yes. This rule outlines how applicants should demonstrate compliance with education and accounting experience requirements required in statute, and accordingly, provides clarity.	Yes. The rule does not ask for any more information than what is required to comprehensively determine that applicants have met education and experience requirements.
R4-1-344	Yes. This rule outlines the appeal process for the denial of a certificate or registration, consistent with A.R.S. Title 41, Chapter 6, Article 10.	Yes. The rule reiterates and codifies many of the requirements of A.R.S. Title 41, Chapter 6, Article 10 into rule.
R4-1-345	Yes. This rule outlines when initial and renewal registrations should be submitted for registrants and their associated fees. The information of when initial and renewal registrations should be submitted provide clarity to regulated persons. As it relates to fees, the Board is a self-supporting 90/10 agency[8]. Its fees are necessary for the operation of the agency and for the fulfillment of its mandate to protect the public.	Yes. The fees are consistent with A.R.S. § 32-729 and apply to individual CPAs and CPA firms (with the exception of a sole proprietorship or an individual required to register a firm, which per A.R.S. § 32-729, are not charged a fee for their registration.)
R4-1-346	Yes. The benefits of this rule outweigh the costs. Communication is pertinent for an effective regulatory agency. Just as the agency owes a responsibility to effectively	Yes. The Board merely requires that regulated persons inform the Board within 30 days of a change in address or email address. A form is available on the Board's website that

[8] 90% of the Board's revenue goes to the Board's fund and 10% goes into the general fund.

	communicate to its regulated community, regulated persons have a responsibility to respond to inquiries and letters from the agency. This helps ensure that the Board can fulfill its mission in protecting the public.	regulated persons can fill out and either mail, email, or fax to the Board.
R4-1-453	Yes. CPE is a foundational pillar of the CPA profession and helps differentiate CPAs from regular accountants. CPE allows regulated persons to stay on top of the ever-evolving fields of taxation, consulting, auditing, compilations, and much more, and helps ensure that clients, and the public-at-large, receive quality and competent service.	Yes. The Board's CPE rule is flexible yet comprehensive to ensure that CPAs maintain the knowledge to provide excellent services to their clients. For example, the CPE rule: 1. Allows CPE to be credited in smaller increments (one-fifth vs. one-half hour); 2. Only requires 80 hours of CPE to be reported rather than all CPE hours completed during the CPE reporting period; 3. Allows a registrant who is certified as a CPA in another jurisdiction from having to meet the individual CPE requirements of Arizona, so long as the registrant is a non-resident and complies with the CPE requirements applicable in the state where their principal place of business is located (CPE Reciprocity); and 4. Allows for a delivery method of CPE instruction called "nano-learning," which is a tutorial program designed to permit a participant to conveniently learn a given subject in a 10-minute time frame.
R4-1-454	Yes. Whereas CPE is essential for individual CPAs, peer reviews are essential for CPA firms who provide attest or compilation services. Peer review is proactive and helps identify system or quality control issues before it has the potential to affect the public.	Yes. This rule imposes the least burden and costs to CPA firms as it incorporates by reference the Standards for Performing and Reporting on Peer Reviews and is in lockstep with the peer review program.

	The peer review program is managed by the AICPA.	
R4-1-455	Yes. This rule incorporates the AICPA's Code of Professional Conduct, which is a collection of codified standards that outline a CPA's ethical and professional responsibilities. Compliance with the AICPA's Code of Professional Conduct correlates with the Board's responsibility to protect the public.	Yes. Incorporation of the AICPA's Code of Professional Conduct reduces confusion over regulatory requirements by ensuring that the accounting community only has one set of standards by which it is regulated.
R4-1-455.01	Yes. This rule simply explains how definitions will be interpreted within the AICPA's Code of Professional Conduct.	Yes. This rule simply explains how definitions will be interpreted within the AICPA's Code of Professional Conduct.
R4-1-455.02	Yes. This rule outlines conduct in performing an attest service that would constitute a violation of A.R.S. § 32-741(A)(4) ("Dishonesty, fraud or gross or continuing negligence in the practice of accounting."). Attest services are pertinent to the public and may be relied upon by financial institutions in order to offer loans to businesses or various other financial services. The public's reliance on these services therefore underscores its importance in relation to the Board's mission to protect the public.	Yes. This rule outlines unacceptable conduct in performing attest services and correlates with the Board's mission to protect the public from incompetent or unqualified CPAs.
R4-1-455.03	Yes. This rule outlines specific responsibilities and practices that registrants must comply with, including advertising and solicitation practices, misleading firm names, and a requirement to respond to Board communications.	Yes. This rule outlines specific responsibilities and practices that registrants must comply with and correlates with the Board's mission to protect the public.
R4-1-455.04	Yes. This rule explains that a registrant may retain and dispose of documents prescribed in A.R.S. § 32-744(C) in compliance with a reasonable document retention policy.	Yes. This rule does not impose any additional costs or burden to regulated persons.

R4-1-456	Yes. This rule outlines when and how a registrant must report final judgments, convictions, and violations to the Board. The reporting of such information is pertinent to the Board's mission of protecting the public.	Yes. This rule only requires registrants to report information that may constitute a violation of A.R.S. § 32-741(A).

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)?

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:

None of the rules require the issuance of a regulatory permit, license, or agency authorization. These rules only apply to those who are issued a CPA certificate or CPA firm registration by the Board, pursuant to A.R.S. § 32-701, *et seq.*

14. Proposed course of action

If possible, please identify a month and year by which the agency plans to complete the course of action.

The Board requested authorization from the Governor's Office to proceed with expedited rulemaking on October 30, 2023. On February 29, 2024, we received approval to amend R4-1-229, R4-1-341, R4-1-454, and R4-1-455. We anticipate submitting the rulemaking to the Council for approval in May 2024.

01. BOARD OF ACCOUNTANCY [Details]

Note:

Authority: A.R.S. §32-701 et seq.

§ R4-1-101. Definitions

A. The definitions in A.R.S. §32-701 apply to this chapter.

B. In this chapter, unless the context otherwise requires:

1. "Contested case" means any proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by any agency after an opportunity for hearing.

2. "CPE" or "continuing professional education" means attending classes, writing articles, conducting or teaching courses, and taking self-study courses if the activities contribute to maintaining and improving of professional competence in accounting.

3. "Facilitated State Board Access (FSBA)" means the sponsoring organization's process for providing the Board access to peer review results via a secured website.

4. "Party" means each person or agency named or admitted as a party, or properly seeking and entitled, as of right, to be admitted as a party.

5. "Peer review" means an assessment, conducted according to R4-1-454(A), of one or more aspects of the professional work of a firm.

6. "Peer review program" means the sponsoring organization's entire peer review process, including but not limited to the standards for administering, performing and reporting on peer reviews, oversight procedures, training, and related guidance materials.

7. "Person" may include any individual, and any form of corporation, partnership, or professional limited liability company.

8. "Principal place of business" means the office designated by the individual as the principal location for the individual's practice of accounting.

9. "Sponsoring organization" means a Board-approved professional society, or other organization approved by the Board responsible for the facilitation and administration of peer reviews through use of its peer review program and peer review standards.

10. "Upper level course" means a course taken beyond the basic level, after any required prerequisite or introductory accounting course and does not include principles of accounting or similar introductory accounting courses.

History:

Former Rule 1A; Amended effective February 22, 1978 (Supp. 78-1). Former Section R4-1-01 renumbered as Section R4-1-101without change effective July 1, 1983 (Supp. 83-4). Amended effective August 21, 1986 (Supp. 86-4). Amended effective December 6, 1995 (Supp. 95-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 4352, effective December 4, 2004 (Supp. 04-4). Amended by final rulemaking at 19 A.A.R. 341, effective April 6, 2013. Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014. Amended by final rulemaking at 23 A.A.R. 3246, effective 1/1/2018. Amended by final rulemaking at 26 A.A.R. 339, effective 4/5/2020. Amended by final rulemaking at 28 A.A.R. 1106, effective 7/3/2022.

§ R4-1-102. Powers of the Board: Applicability; Excuse; Extension

A. This chapter applies to all actions and proceedings of the Board and is deemed part of the record in every action or proceeding without formal introduction or reference. All parties are deemed to have knowledge of this chapter, which the Board shall make available on the Board's website.

B. The Board, when within the Board's jurisdiction, may, in the interest of justice, excuse the failure of any person to comply with any part of this chapter.

C. The Board, or in case of an emergency, the President or Executive Director, when within the Board's jurisdiction, may grant an extension of time to comply with this chapter .

History:

Former Rules 1B, 1C, 1D, 1E; Former Section R4-1-02 renumbered as Section R4-1-102 without change effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014.

§ R4-1-103. Repealed

History:

Former Rule 2E; Former Section R4-1-03 renumbered as Section R4-1-103 without change effective July 1, 1983 (Supp. 83-4). Repealed effective August 21, 1986 (Supp. 86-4).

§ R4-1-104. Board Records; Public Access; Copying Fees

A. The Board shall maintain all records, subject to A.R.S. Title 39, Chapter 1, reasonably necessary or appropriate to maintain an accurate knowledge of the Board's official activities including, but not limited to:

1. Applications for CPA certificates and supporting documentation and correspondence;

2. Applications to take the Uniform Certified Public Accountant Examination;

3. Registration for registrants;

4. Documents, transcripts, and pleadings relating to disciplinary proceedings and to hearings on the denial of a certificate; and;

5. Investigative reports; staff memoranda; and general correspondence between any person and the Board, members of the Board, or staff members.

B. Any person desiring to inspect or obtain copies of records of the Board available to the public under this section shall make a request to the Board's Executive Director or the Director's designee. The Executive Director or the director's designee shall, as soon as possible within a reasonable time, advise the person making the request whether the records sought can be made available, or, if the Executive Director or the director's designee is unsure whether a record may be made available for public inspection and copying, the Executive Director or the director's designee shall refer the matter to the Board for final determination.

C. A person shall not remove original records of the Board from the office of the Board unless the records are in the custody and control of a board member, a member of the Board's committees or staff, or the Board's attorney. The Executive Director or the director's designee may designate a staff member to observe and monitor any examination of Board records.

D. The Board shall provide copies of all records available for public inspection and copying shall be provided according to the procedures described in A.R.S. Title 39, Chapter 1, Article 2.

E. Any person aggrieved by a decision of the Executive Director or the director's designee denying access to records of the Board may request a hearing before the Board to review the action of the Executive Director or the director's designee by filing a written request for hearing. Within 60 days of receipt of the request, the Board shall conduct a hearing on the

matter. If the person requires immediate access to Board records, the person may request and may be granted an earlier hearing, if the person sets forth sufficient grounds for immediate access.

History:

Adopted effective January 3, 1977 (Supp. 77-1). Amended effective February 22, 1978 (Supp. 78-1). Amended effective July 17, 1978 (Supp. 78-4). Former Section R4-1-04 renumbered as Section R4-1-104without change effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014. Amended by final rulemaking at 26 A.A.R. 339, effective 4/5/2020. Amended by final rulemaking at 27 A.A.R. 921, effective 8/1/2021. Amended by final rulemaking at 27 A.A.R. 2907, effective 7/3/2022.

§ R4-1-105. Expired

History:

Adopted effective January 3, 1977 (Supp. 77-1). Former Section R4-1-05 renumbered as Section R4-1-105 and amended in subsections (C) and (D) effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014. Section expired under A.R.S. § 41-1056(J) at 25 A.A.R. 3719, effective December 4, 2019 (Supp. 19-4).

§ R4-1-113. Meetings

The Board and Board committees shall conduct meetings in accordance with the current edition of Robert's Rules of Order if the rules are compatible with the laws of the state of Arizona or the Board's own resolutions regarding meetings.

1. Regular and special meetings of the Board for the purpose of conducting business shall be called by the President or a majority of the board members.

2. Regular and special meetings of the committees shall be called by the chairperson or a majority of the committee members.

History:

Former Rules 2A, 2B, 2C, 2D; Former Section R4-1-13 renumbered as Section R4-1-113 without change effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014.

§ R4-1-114. Hearing; Rehearing or Review

A. Hearing: The Board or an Administrative Law Judge (ALJ) employed by the Office of Administrative Hearings (OAH) shall hear all contested cases and appealable agency actions. The Board shall conduct hearings according to the provisions of A.R.S. Title 41, Chapter 6, Article 10 as supplemented by R4-1-117. The OAH shall conduct hearings according to A.R.S. Title 41, Chapter 6, Article 10 and the rules and procedures established by the OAH. To the extent that there is no conflict with A.R.S. Title 41, Chapter 6, Article 10, the provisions of A.R.S. §32-743 apply to hearings conducted by the Board and the OAH. The following subsections apply to hearings conducted by the Board and hearings conducted by the OAH where applicable.

1. Power to join any interested party: Any board member or the ALJ may join as a party applicant or as a party defendant, any person, firm or corporation, that appears to have an interest in the matter before the Board.

2. Stipulation at hearing: The parties may stipulate to facts that are not in dispute. The stipulation may be in writing or may be made orally by reading the stipulation into the record at the hearing. The stipulation is binding upon the parties unless the Board or the ALJ grants permission to withdraw from the stipulation. The Board or the ALJ may set aside any stipulation.

3. Settlements and consent orders: At any time before or after formal disciplinary proceedings have been instituted against a registrant, the registrant may submit to the Board an offer of conditional settlement to avoid formal disciplinary proceedings by the Board. In the offer of conditional settlement, the registrant shall agree to take specific remedial steps such as enrolling in CPE courses, limiting the scope of the registrant's practice, accepting limitation on the filing of public reports, and submitting the registrant's work product for peer review . If the Board determines that the proposed conditional settlement will protect the public safety and welfare and is more likely to rehabilitate or educate the registrant than formal disciplinary action under A.R.S. §32-741, the Board may accept the offer and enter an order that incorporates the registrant's proposed conditional settlement and to which the registrant consents. A consent order issued under this subsection shall provide that, upon successful compliance by the registrant with all provisions of the order, the disciplinary proceedings shall be terminated and any notice of hearing previously issued shall be vacated. The consent order shall further provide that, upon failure of the registrant to comply with all provisions of the order, or upon the discovery of material facts unknown to the Board at the time the Board issued the order, formal disciplinary proceedings against the registrant may be instituted or resumed. The consent order additionally may provide that, upon failure of the registrant to comply with all provisions of the order, the

Board may immediately and summarily suspend the registrant's certificate for not more than one year. Within 30 days after the summary suspension, the registrant may request a hearing solely concerning the issue of compliance with the consent order.

4. Decisions and orders: The Board shall make all decisions and orders by a majority vote of the members considering the case. The Board shall issue a final written decision in a contested case or state the decision on the record. The decision shall state separately the findings of fact and conclusions of law on which the decision is based, and the Board's order to implement the decision. All written decisions and orders of the Board shall be signed by the President or Secretary of the Board. When the Board suspends or revokes the certificate of a registrant, the Board may order the registrant to return the registrant's certificate within 30 days after receipt of the order. The Board shall serve each party, each attorney of record, and the Attorney General with a copy of each decision or order of the Board, as provided in R4-1-117.

B. ALJ: In hearings conducted by the OAH, the ALJ shall provide the Board with written findings of fact, conclusions of law, and a recommended order within 20 days after the conclusion of the hearing or as otherwise provided by A.R.S. Title 41, Chapter 6, Article 10. The Board's decision approving or modifying the ALJ's recommendations is the final decision of the Board, subject to the filing of a motion for rehearing or review as provided in subsection (C).

C. Rehearing or Review: Any party aggrieved by a decision of the Board may file with the Board a written motion for rehearing or review within 30 days after service of the decision specifying the particular grounds for the motion. The Attorney General may file a response to the motion for rehearing within 15 days after service of the motion. The Board may require the filing of written briefs upon issues raised in the motion for rehearing or review and provide for oral argument. Upon review of the documents submitted, the Board may modify the decision or vacate it and grant a rehearing for any of the following causes materially affecting a party's rights:

1. Irregularity in the administrative proceedings or any order or abuse of discretion, that deprived a party of a fair hearing;

2. Misconduct of the Board or the ALJ;

3. Accident or surprise that could not have been prevented by ordinary prudence;

4. Newly discovered material evidence, that could not with reasonable diligence have been discovered and produced at the original hearing;

5. Excessive or insufficient penalties;

6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing, or during the progress of the proceeding; or

7. That the findings of fact or decision is not justified by the evidence or is contrary to law.

History:

Former Rules 5A, 5B, 5C; Amended effective January 3, 1977 (Supp. 77-1). Amended effective February 22, 1978 (Supp. 78-1). Former Section R4-1-14 renumbered as Section R4-1-114 without change effective July 1, 1983 (Supp. 83-4). Amended effective December 6, 1995 (Supp. 95-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014.

§ R4-1-115. Accounting and Auditing and Tax Advisory Committees

A. The Board may appoint advisory committees concerning accounting reports, taxation and other areas of public accounting as the Board deems appropriate. The committees shall evaluate investigation files referred by the Board, hold voluntary informal interviews and make advisory recommendations to the Board concerning settlement, dismissal or other disposition of the reviewed matter.

B. The Board, in its discretion, may accept, reject, or modify the recommendation of the advisory committee .

History:

Adopted effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014.

§ R4-1-115.01. Law Review Advisory Committee

A. The Board may appoint an advisory committee to assist in the evaluation of statutory and regulatory provisions. The committee shall make advisory recommendations to the Board.

B. The Board, in its discretion, may accept, reject, or modify the recommendations of the advisory committee.

History:

Adopted effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014.

§ R4-1-115.02. Continuing Professional Education Advisory Committee

A. The Board may appoint an advisory committee to assist in the evaluation of CPE. The committee shall make advisory recommendations to the Board concerning the following:

1. CPE programs;

2. A registrant's satisfaction of CPE requirements; and

3. A registrant's compliance with disciplinary orders requiring CPE.

B. The Board, in its discretion, may accept, reject, or modify the recommendations of the advisory committee.

History:

Adopted effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014.

§ R4-1-115.03. Peer Review Oversight Advisory Committee

A. The Board may appoint an advisory committee to monitor and conduct the peer review program. Upon appointment the committee shall:

1. Make advisory recommendations to the Board concerning peer review, and

2. Monitor the peer review program and report to the Board on its effectiveness.

B. The Board may accept, reject, or modify recommendations of the Peer Review Oversight Advisory Committee.

History:

New Section made by final rulemaking at 10 A.A.R. 4352, effective December 4, 2004 (04-4). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014. Amended by final rulemaking at 26 A.A.R. 339, effective 4/5/2020. Amended by final rulemaking at 28 A.A.R. 1106, effective 7/3/2022.

§ R4-1-115.04. Certification Advisory Committee

A. The Board may appoint an advisory committee to assist in the evaluation of applicants for the Uniform Certified Public Accountant Examination and for certified public accountant. The committee shall review applications, transcripts, and related materials, and make advisory recommendations to the Board concerning the qualifications of applicants for the Uniform Certified Public Accountant Examination and for certification of certified public accountants.

B. The Board, in its discretion, may accept, reject, or modify the advisory recommendation in determining the qualifications of applicants.

History:

Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014.

§ R4-1-116. Renumbered

History:

Adopted effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Renumbered by final rulemaking at 20 A.A.R. 520, effective 2/4/2014.

§ R4-1-117. Procedure: Witnesses; Service

A. Pleadings; depositions; briefs; and related documents. A party shall print or type all pleadings, depositions, briefs, and related documents and use only one side of the paper.

B. Witness' depositions. If a party wants to take the oral deposition of a witness residing outside the state, the party shall file with the Board a petition for permission to take the deposition stating the name and address of the witness and describing in detail the nature and substance of the testimony expected to be given by the witness. The petition may be denied if the testimony of the witness is not relevant and material. If the petition is granted, the party may proceed to take the deposition of the witness by complying with the Arizona Rules of Civil Procedure. The party applying to the Board for permission to take a deposition shall bear the expense of the deposition.

C. Witness' interrogatories. A party desiring to take the testimony of a witness residing outside the state by means of interrogatories may do so by serving the adverse party as in civil matters and by filing with the Board a copy of the interrogatories and a statement showing the name and address of the witness. The adverse party may file in duplicate cross-interrogatories with a copy of the statement within 10 days following service on the adverse party. A party that objects to the form of an interrogatory or cross-interrogatory may file a statement of the objection with the Board within five days after service of the interrogatories or cross-interrogatories and may suggest to the Board any amendment to an interrogatory or cross-interrogatory. The Board may amend, add, or strike out an interrogatory or cross-interrogatory when the Board determines it is proper to do so.

1. Notwithstanding the fact that a party may petition for permission to take the oral deposition of a witness, the Board may require that the information be provided through written interrogatories and vice versa.

2. A party shall provide a copy of answers to the interrogatories to the Board within 45 days after the interrogatories are answered.

D. Subpoenas. The Board officer presiding at a hearing may authorize subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence, and shall administer oaths. A party desiring the Board to issue a subpoena for the production of evidence, documents or to compel the appearance of a witness at a hearing shall apply for the subpoena in writing stating the substance of the witness's testimony. If the testimony appears to be relevant and material, the Board shall issue the subpoena. Affixing the seal of the Board and the signature of a Board

officer is sufficient to show that the subpoena is genuine. The party applying for the subpoena shall bear the expense of service.

E. Service.

1. Service of any decision, order, subpoena, notice, or other document may be made personally in the same manner as a summons served in a civil action. If a document is served personally, service is deemed complete at the time of delivery.

2. Except as provided in subsection (E)(3), service of any document may also be made by:

a. Personal service.

b. By enclosing a copy of the document in a sealed envelope and depositing the envelope in the United States mail, with first-class postage prepaid, addressed to the party, at the address last provided to the Board.

i. Service by mail is deemed complete when the document to be served is deposited in the United States mail. If the distance between the place of mailing and the place of address is more than 100 miles, service is deemed complete one day after the deposit of the document for each 100 miles to a maximum of six days after the date of mailing.

ii. In computing time, the date of mailing is not counted. All intermediate Sundays and holidays are counted. If the last day falls on a Sunday or holiday, that day is not counted and service is considered completed on the next business day.

c. By attaching the document to an email and sending it to the email address last provided to the Board.

3. The Board shall mail each notice of hearing and final decision by certified mail to the last known address reflected in the records of the Board.

4. Service on attorney. Service on an attorney who has appeared for a party constitutes service on the party.

5. Proof of service. A party shall demonstrate proof of service by filing an affidavit, as provided by law, proof of mailing by certified mail, or an affidavit of first-class mailing.

History:

Former Rules 3A, 3B, 3C, 3D, 4A, 4B, 4C, 4D; Amended effective January 3, 1977 (Supp. 77-1). Former Section R4-1-15 renumbered as Section R4-1-117without change effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014. Amended by final rulemaking at 27 A.A.R. 921, effective 8/1/2021.

§ R4-1-118. Repealed

History:

Former Rule 8; Amended effective January 3, 1977 (Supp. 77-1). Amended effective November 5, 1980 (Supp. 80-6). Former Section R4-1-16 renumbered as Section R4-1-118 without change effective July 1, 1983 (Supp. 83-4). Amended effective November 1, 1995 (Supp. 95-4). Repealed by final rulemaking at 20 A.A.R. 520, effective 2/4/2014.

§ R4-1-226. Expired

History:

Former Rules 6A, 6B, 6C; Amended effective January 15, 1976 (Supp. 76-1). Amended effective December 1, 1976 (Supp. 76-5). Amended effective July 17, 1978 (Supp. 78-4). Amended effective November 5, 1980 (Supp. 80-5). Former Section R4-1-26 renumbered as Section R4-1-226 and amended in subsections (B) and (C) effective July 1, 1983 (Supp. 83-4). Amended effective August 21, 1986 (Supp. 86-4). Amended subsection (C) effective May 25, 1989 (Supp. 89-2). Amended effective January 1, 1994; filed in the Office of the Secretary of State September 21, 1993 (Supp. 93-3). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 5 A.A.R. 4575, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 4815, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 9 A.A.R. 5022, effective January 3, 2004 (Supp. 03-4). Section expired under A.R.S. §41-1056(E) at 15 A.A.R. 372, effective December 31, 2008 (Supp. 09-1).

§ R4-1-226.01. Applications; Examination - Computer-based

A. A person desiring to take the Uniform Certified Public Accountant Examination who is qualified under A.R.S. §32-723 may apply by submitting an initial application. A person whose initial application has already been approved by the Board to sit for the Uniform CPA Examination may apply by submitting an application for re-examination.

1. The requirements for initial application for examination are:

a. A completed application for initial examination,

b. A $100 initial application fee if:

i. The applicant has not previously filed an application for initial examination in Arizona, or

ii. The Board administratively closed a previously submitted application, or

iii. The applicant has been previously denied by the Board.

c. University or college transcripts to verify that the applicant meets the educational requirements and if necessary for education taken outside the United States an additional course-by-course evaluation from the National Association of State Boards of Accountancy International Evaluation Services (NIES).

d. Other information or documents requested by the Board to determine compliance with eligibility requirements.

2. The requirements for application for re-examination are:

a. A completed application for re-examination, and

b. A $50 re-examination application fee.

B. Within 30 days of receiving an initial application, the Board shall provide written notice to the applicant that the application is either complete or incomplete. If the application is incomplete, the notice shall specify what information is missing. The applicant has 30 days from the date of the Board's letter to respond to the Board's request for additional information or the Board or its designee may administratively close the file. An applicant whose file is administratively closed and who later wishes to apply shall reapply under subsection (A)(1).

C. The Board's certification advisory committee (CAC) shall evaluate the applicant's file and make a recommendation to the Board to approve or deny

the application. The CAC may defer a decision on the applicant's file to a subsequent CAC meeting to provide the applicant opportunity to submit any information requested by written notice by the CAC that the CAC believes is relevant to make a recommendation to the Board. The applicant has 30 days from the date of the Board's letter to respond to the CAC's request for additional information or the Board or its designee may administratively close the file.

D. If the Board approves the application, the Board shall notify the applicant in writing and send an authorization to test (ATT) to the National Association of State Boards of Accountancy (NASBA) to permit the applicant to take the specified section or sections of the examination for which the applicant applied. If the Board denies the application, the Board shall send the applicant written notice explaining:

1. The reason for denial, with citations to supporting statutes or rules;

2. The applicant's right to seek a fair hearing to challenge the denial; and

3. The time periods for appealing the denial.

E. If the applicant does not timely pay to the NASBA the fees owed for the examination section or sections for which the applicant applied, the ATT expires. An applicant that still wishes to take a section or sections of the Uniform CPA Examination shall submit an application for re-examination under subsection (A)(2).

F. After an applicant has paid NASBA, NASBA shall issue a notice to schedule (NTS) to the applicant. A NTS enables an applicant to schedule testing at an approved examination center. The NTS is effective on the date of issuance and expires when the applicant sits for all sections listed on the NTS or six months from the date of issuance, whichever occurs first. Upon written request to the Board and showing good cause that prevents the applicant from appearing for the examination, an applicant may be granted by the Board a 90-day extension to a current NTS.

G. The Board shall send the applicant any written notice required by this section in accordance with R4-1-117(E)(1) or (2).

History:

New Section made by final rulemaking at 9 A.A.R. 5022, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014. Amended by final rulemaking at 24 A.A.R. 3413, effective 2/4/2019. Amended by final rulemaking at 26 A.A.R. 339, effective

4/5/2020. Amended by final rulemaking at 27 A.A.R. 921, effective 8/1/2021.

§ R4-1-227. Repealed

History:

Former Rule 6D; Amended effective July 17, 1978 (Supp. 78-4). Former Section R4-1-27 renumbered and amended as Section R4-1-227 effective July 1, 1983 (Supp. 83-4). Section R4-1-227 repealed effective November 20, 1998 (Supp. 98-4).

§ R4-1-228. Denial of Examination

An applicant whose application for examination is denied by the Board is entitled to a hearing before the Board or an ALJ.

1. Written application. The applicant shall file a notice of appeal under A.R.S. §41-1092.03 within 30 days after receipt of the notice of denial.

2. Hearing notice. The Board shall provide the applicant with notice of the hearing in the manner prescribed by A.R.S. §41-1092.05.

3. Conduct of hearing. The Board or the ALJ shall conduct the hearing in accordance with A.R.S. Title 41, Chapter 6, Article 10 and applicable rules governing hearings.

4. Burden of persuasion. At the hearing, the applicant is the moving party and has the burden of persuasion.

5. Matters limited. At the hearing, the Board or ALJ shall limit the issues to those originally presented to the Board.

History:

Former Rules 6E, 6F; Former Section R4-1-28 renumbered as Section R4-1-228without change effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014. Adopted by final rulemaking at 26 A.A.R. 339, effective 4/5/2020.

§ R4-1-229. Conditioned Credit

A. An applicant is allowed to sit for each section individually and in any order. An applicant is given conditioned credit for each section of the examination passed. A conditioned credit is valid for 18 months from the score release date of the examination. Upon written request to the Board and showing good cause, an applicant may be granted by the Board a 90-day extension to a conditioned credit.

B. Transfer of conditioned credit. The Board shall give an applicant credit for all sections of an examination passed in another jurisdiction if the credit has been conditioned. If an applicant transfers conditioned credit from another jurisdiction, the applicant shall pass the remaining sections of the examination within the 18-month period from the score release date that the first section was passed. An applicant who fails to pass all sections of the Uniform CPA Examination within 18 months shall retake previously passed sections of the Uniform CPA Examination to ensure passage of all sections within an 18-month period.

C. Any candidate with Uniform CPA Examination credit or credits on January 1, 2024 will have such credit or credits extended to June 30, 2025.

History:

Former Rules 6G, 6H; Former Section R4-1-29 renumbered as Section R4-1-229without change effective July 1, 1983 (Supp. 83-4). Amended effective August 21, 1986 (Supp. 86-4). Section repealed, new Section adopted effective January 1, 1994; filed in the Office of the Secretary of State September 21, 1993 (Supp. 93-3). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 9 A.A.R. 5022, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014. Amended by final rulemaking at 26 A.A.R. 339, effective 4/5/2020. Amended by final rulemaking at 27 A.A.R. 921, effective 8/1/2021. Amended by final rulemaking at 29 A.A.R. 1184, effective 7/3/2023.

§ R4-1-230. Expired

History:

Former Rule 6I; Former Section R4-1-30 renumbered as Section R4-1-230 without change effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 9 A.A.R. 5022, effective January 3, 2004 (Supp. 03-4). Section expired under A.R.S. §41-1056(E) at 15 A.A.R. 372, effective December 31, 2008 (Supp. 09-1).

§ R4-1-231. Expired

History:

Former Rule 6J; Former Section R4-1-31 renumbered as Section R4-1-231 without change effective July 1, 1983 (Supp. 83-4). Section repealed, new Section adopted effective January 1, 1994; filed in the Office of the Secretary of State September 21, 1993 (Supp. 93-3). Section expired under A.R.S. §41-1056(E) at 10 A.A.R. 419, effective December 31, 2003 (Supp. 04-1).

§ R4-1-341. CPA Certificates; Firm Registration; Reinstatement; Reactivation

A. An applicant may apply for a certificate of certified public accountant or for reinstatement of a certificate by submitting:

1. An application fee of $100; and

2. For an applicant applying for certification under A.R.S. § 32-721(A) and (B), a completed application including:

a. Verification that the applicant passed the Uniform CPA Examination,

b. Verification that the applicant meets the education and experience requirements specified in R4-1-343,

c. Proof of a score of at least 90% on the American Institute of Certified Public Accountants (AICPA) examination in professional ethics taken within the two years immediately before the application is submitted,

d. Evidence of lawful presence in the United States, and

e. Other information or documents requested by the Board to determine compliance with eligibility requirements.

3. For an applicant applying for certification under A.R.S. § 32-721(A) and (C), a completed application including:

a. Verification that the applicant has passed the International Qualification Examination (IQEX),

b. License verification from each jurisdiction in which the applicant has ever been issued a certificate as a certified public accountant of which at least one must be an active certification from a jurisdiction with requirements determined by the Board to be substantially equivalent to the requirements in A.R.S. § 32-721(B) or verification that the applicant meets the education and experience requirements specified in R4-1-343,

c. Evidence of lawful presence in the United States, and

d. Other information or documents requested by the Board to determine compliance with eligibility requirements.

4. For an applicant applying for certification under A.R.S. § 32-721(A) and (D) for mutual recognition agreements adopted by the Board a completed application including:

a. Verification that the applicant has passed the International Qualification Examination (IQEX),

b. License verification from the applicant's country which has a mutual recognition agreement with the National Association of State Boards of Accountancy that has been adopted by the Board,

c. Evidence of lawful presence in the United States, and

d. Other information or documents requested by the Board to determine compliance with eligibility requirements.

5. For an applicant applying for certification under A.R.S. § 32-4302, a completed application including:

a. License verification from each jurisdiction in which the applicant holds a license;

b. Evidence of lawful presence in the United States;

c. Proof of residency;

d. Disciplinary history, if applicable;

e. Other information or documents requested by the Board to determine compliance with eligibility requirements.

6. For an applicant applying for reinstatement from cancelled status under A.R.S. § 32-732(B) a completed application including:

a. CPE that meets the requirements of R4-1-453(C)(8) and (E), and

b. Evidence of lawful presence in the United States.

7. For an applicant applying for reinstatement from expired, relinquished, or revoked status under A.R.S. § 32-732(C), a completed application including:

a. CPE that meets the requirements of R4-1-453(C)(8) and (E),

b. Evidence of lawful presence in the United States,

c. If not waived by the Board as part of a disciplinary order, evidence from an accredited institution or a college or university that maintains standards comparable to those of an accredited institution that the individual has completed at least one hundred fifty semester hours of education as follows:

i. At least 36 semester hours are accounting courses of which at least 30 semester hours are upper level courses.

ii. At least 30 semester hours are related courses.

d. If prescribed by the Board as part of a disciplinary order, evidence that the individual has retaken and passed the Uniform Certified Public Accountant Examination.

B. An applicant may apply for a certified public accountant firm registration or for reinstatement of a registration by submitting:

1. For an applicant applying for a new firm under A.R.S. § 32-731, a completed application including:

a. Approved Articles of Incorporation for professional corporations, approved Articles of Organization for limited liability companies or professional limited liability companies, confirmation of business name on the Secretary of State's website for partnerships, limited liability partnerships, or an individual or sole proprietorship with a trademark name;

b. If applicable, peer review results as prescribed by R4-1-454(A); and

c. Other information or documents requested by the Board to determine compliance with eligibility requirements.

2. For an applicant applying for reinstatement from cancelled under A.R.S. § 32-732(E) a completed application including:

a. Approved Articles of Incorporation for professional corporations, approved Articles of Organization for limited liability companies or professional limited liability companies, confirmation of business name on the Secretary of State's website for partnerships, limited liability partnerships, or an individual or sole proprietorship with a trademark name;

b. If applicable, peer review results as prescribed by R4-1-454(A); and

c. Other information or documents requested by the Board to determine compliance with eligibility requirements.

3. For an applicant applying for reinstatement from expired, relinquished, or revoked status under A.R.S. § 32-732(F) a completed application including:

a. Approved Articles of Incorporation for professional corporations, approved Articles of Organization for limited liability companies or professional limited liability companies, confirmation of business name on the Secretary of State's website for partnerships, limited liability partnerships, or an individual or sole proprietorship with a trademark name;

b. If applicable, peer review results as prescribed by R4-1-454(A);

c. If applicable, substantial evidence that the applicant has been completely rehabilitated with respect to the conduct that was the basis of the expiration, relinquishment or revocation of the firm's registration; and

d. Other information or documents requested by the Board to determine compliance with eligibility requirements.

C. Pursuant to Title 41, Chapter 6, Article 7.1, the Board's licensing time frames are as follows:

1. Certification/Reinstatement/Reactivation

a. Administrative Completeness Review Time Frame. The Board shall notify the applicant within 30 days from the receipt of the application that the application is complete.

i. If the application is incomplete, an incomplete notice shall specify what information is missing. If the Board issues an incomplete notice, the administrative completeness review time frame and the overall time frame are suspended from the date the notice is issued until the date the Board receives the missing information from the applicant.

ii. The applicant has 30 days from the date of the incomplete notice to respond in writing and provide all the missing information or the Board may administratively close the file. An applicant whose file is administratively closed shall reapply under subsection (A).

b. Substantive Review Time Frame. The Board has 60 days to complete its substantive review.

i. If the Board finds deficiencies during the substantive review of the application, the Board may issue one comprehensive written request to the applicant for additional information. If the Board issues a comprehensive written request, or a supplemental request by mutual agreement, the substantive review time frame and the overall time frame are suspended from the date the request is issued until the date the Board receives the additional information from the applicant.

ii. The applicant has 30 days from the date of the written request to respond in writing and provide all the additional information or the Board may administratively close the file. An applicant whose file is administratively closed shall reapply under subsection (A).

c. Overall Time Frame. The Board has 150 days to issue a written notice to an applicant approving or denying an application.

2. Firm Registration

a. Administrative Completeness Review Time Frame. The Board shall notify the applicant within 10 days from the receipt of the application that the application is complete.

i. If the application is incomplete, an incomplete notice shall specify what information is missing. If the Board issues an incomplete notice, the administrative completeness time frame and the overall time frame are suspended from the date the notice issued until the date the Board receives the missing information from the applicant.

ii. The applicant has 30 days from the date of the incomplete notice to respond in writing and provide all the missing information or the Board may administratively close the file. An applicant whose file is administratively closed shall reapply under subsection (B).

b. Substantive Review Time Frame. The Board has 60 days to complete its substantive review.

i. If the Board finds deficiencies during the substantive review of the application, the Board may issue one comprehensive written request to the applicant for additional information. If the Board issues a comprehensive written request, or a supplemental request by mutual agreement, the substantive time frame and the overall time frame are suspended from the date the request is issued until the date the Board receives the additional information from the applicant.

ii. The applicant has 30 days from the date of the written request to respond in writing and provide all the additional information or the Board may administratively close the file. An applicant whose file is administratively closed shall reapply under subsection (B).

c. Overall Time Frame. The Board has 90 days to issue a written notice to an applicant approving or denying an application.

D. If the Board denies an applicant's request under this section, the Board shall send the applicant written notice explaining:

1. The reason for denial, with citations to supporting statutes or rules;

2. The applicant's right to seek a fair hearing to challenge the denial; and

3. The time periods for appealing the denial.

E. The Board shall send the applicant any written notice required by this section in accordance with R4-1-117(E)(1) or (2).

History:

Former Rule 7A; Amended effective December 1, 1976 (Supp. 76-5). Amended effective November 5, 1980 (Supp. 80-5). Former Section R4-1-41 renumbered as Section R4-1-341without change effective July 1, 1983 (Supp. 83-4). Amended effective August 21, 1986 (Supp. 86-4). Amended effective September 24, 1997 (Supp. 97-3). Amended by final rulemaking at 9 A.A.R. 5022, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 13 A.A.R. 2151, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014. Amended by final rulemaking at 23 A.A.R. 3246, effective 1/1/2018. Amended by final rulemaking at 26 A.A.R. 339, effective 4/5/2020. Amended by final rulemaking at 27 A.A.R. 921, effective 8/1/2021. Amended by final rulemaking at 29 A.A.R. 1184, effective 7/3/2023.

§ R4-1-341.01. Repealed

History:

Adopted effective November 1, 1995 (Supp. 95-4). Amended effective September 24, 1997 (Supp. 97-3). Amended by final rulemaking at 9 A.A.R. 5022, effective January 3, 2004 (Supp. 03-4). Section repealed by final rulemaking at 13 A.A.R. 2151, effective August 4, 2007 (Supp. 07-2).

§ R4-1-342. Repealed

History:

Former Rule 7B; Amended effective December 1, 1976 (Supp. 76-5). Amended effective November 5, 1980 (Supp. 80-6). Former Section R4-1-42 renumbered as Section R4-1-342 without change effective July 1, 1983 (Supp. 83-4). Amended effective March 26, 1987 (Supp. 87-1). Amended effective September 24, 1997 (Supp. 97-3). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 13 A.A.R. 2151, effective August 4, 2007 (Supp. 07-2). Repealed by final rulemaking at 20 A.A.R. 520, effective 2/4/2014.

§ R4-1-343. Education and Accounting Experience

A. To demonstrate compliance with the experience requirements of A.R.S. §32-721(B), an applicant for certification by examination or grade transfer shall submit to the Board:

1. One or more certificates of experience, completed, signed and dated by an individual who:

a. Possesses personal knowledge of the applicant's work, and

b. Is able to confirm the applicant's accounting experience, and

c. Is a certified public accountant; or

d. Has accounting education and experience similar to that of a certified public accountant; and

2. Other information requested by the Board for explanation or clarification of experience.

B. To demonstrate compliance with the experience requirements of A.R.S. §32-721(C), an applicant for certification by reciprocity shall submit to the Board:

1. One or more certificates of experience, completed, signed and dated by an individual who:

a. Possesses personal knowledge of the applicant's work, and

b. Is able to confirm the applicant's accounting experience, and

c. Is a certified public accountant; or

d. Has accounting education and experience similar to that of a certified public accountant; or

2. If the applicant is self-employed, the applicant shall provide a signed and dated statement indicating self-employment and three signed and dated client letters, confirming years of work experience, and

3. Other information requested by the Board for explanation or clarification of experience.

C. To demonstrate compliance with the education requirements of Title 32, Chapter 6, an applicant for certification or reinstatement shall submit to the Board:

1. University or college transcripts verifying that the applicant meets the educational requirements and if necessary for education taken outside the United States, an additional course-by-course evaluation from the National Association of State Boards of Accountancy International Evaluation Services (NIES), and

2. Other information requested by the Board for explanation or clarification of education.

History:

Former Rule 7C; Former Section R4-1-43 repealed, new Section R4-1-43 adopted effective February 22, 1978 (Supp. 78-1). Former Section R4-1-43 renumbered as Section R4-1-343 without change effective July 1, 1983 (Supp. 83-4). Amended effective May 31, 1991 (Supp. 91-2). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 13 A.A.R. 2151, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014. Amended by final rulemaking at 24 A.A.R. 3413, effective 2/4/2019.

§ R4-1-344. Denial of Certification, Firm Registration, or Reinstatement

An applicant whose application for certification, firm registration, or reinstatement of a certificate or registration is denied by the Board is entitled to a hearing before the Board or an ALJ.

1. Written application. The applicant shall file a notice of appeal under A.R.S. §41-1092.03 within 30 days after receipt of the notice of denial.

2. Hearing notice. The Board shall provide the applicant with notice of the hearing in the manner prescribed by A.R.S. §41-1092.05.

3. Conduct of hearing. The Board or the ALJ shall conduct the hearing in accordance with A.R.S. Title 41, Chapter 6, Article 10 and applicable rules governing hearings.

4. Burden of persuasion. At the hearing, the applicant is the moving party and has the burden of persuasion.

5. Matters limited. At the hearing, the Board or ALJ shall limit the issues to those originally presented to the Board.

History:

Former Rule 7D; Former Section R4-1-44 renumbered as Section R4-1-344without change effective July 1, 1983 (Supp. 83-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014. Amended by final rulemaking at 26 A.A.R. 339, effective 4/5/2020.

§ R4-1-345. Registration; Fees

A. Initial registration: After the Board approves an applicant's request for certification or firm registration, the registrant shall file a registration in a format prescribed by the Board and pay a registration fee under subsection (C).

B. Renewal registration: A registrant shall file an application for renewal registration in a format prescribed by the Board no later than 5:00 p.m. on the last business day of the month. A renewal registration is deemed filed on the date and time received in the Board office. The Board shall record the date and time either by electronic date stamp in Arizona time or on physical receipt in the board's office. The Board shall not accept a postmark as evidence of timely filing. It is the sole responsibility of the registrant to complete the renewal registration requirements at the following times:

1. Individual registrant: An individual registrant shall renew registration at the following times:

a. A registrant born in an even-numbered year shall renew registration during the month of birth in each even-numbered year.

b. A registrant born in an odd-numbered year shall renew registration during the month of birth in each odd-numbered year.

2. Firm registrant: A firm shall renew registration at the following times:

a. A business organization firm that initially registered with the Board in an even-numbered year shall renew registration during the board-approved month of the initial registration in each even-numbered year.

b. A business organization firm that initially registered with the Board in an odd-numbered year shall renew registration during the board-approved month of the initial registration in each odd-numbered year.

c. An individual or a sole proprietorship firm shall renew its registration pursuant to paragraph (B)(1).

C. Registration fees:

1. Initial Registration Fee -

a. Certification - $300 and, if applicable, a late fee of $50.

b. The registration fee shall be prorated by month for an initial registration period of less than two years.

2. Biennial Registration Fee -

a. Certification - $300 and, if applicable, a late fee of $50.

i. For registrations due during the period from July 1, 2020 to June 30, 2024, the biennial registration fee will be reduced temporarily to $275.

ii. For registrations due beginning July 1, 2024, the biennial registration fee will revert to $300.

b. Firm Registration - $300 and, if applicable, a late fee of $50. Under A.R.S. §32-729, the Board shall not charge a fee for the registration of additional offices of the same firm or for the registration of a sole practitioner.

History:

Former Rule 7E; Amended effective December 1, 1976 (Supp. 76-5). Amended effective February 22, 1978 (Supp. 78-1). Amended effective July 17, 1978 (Supp. 78-4). Amended effective November 5, 1980 (Supp. 80-6). Former Section R4-1-54 renumbered and amended as Section R4-1-345effective July 1, 1983 (Supp. 83-4). Amended effective March 26, 1987 (Supp. 87-1). Amended effective July 1, 1991; filed May 2, 1991 (Supp. 91-2). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 5 A.A.R. 4575, effective January 1, 2000 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 4815, effective January 1, 2001 (Supp. 00-4). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014. Amended by final rulemaking at 23 A.A.R. 3246, effective 1/1/2018. Amended by final rulemaking at 26 A.A.R. 339, effective 4/5/2020. Amended by final rulemaking at 28 A.A.R. 1106, effective 7/3/2022.

§ R4-1-346. Notice of Change of Address

Within 30 days of any email, business, mailing, or residential change of address, a registrant shall notify the Board of the new address by filling out the change of address form prescribed by the Board.

History:

Former Rule 7F; Amended effective January 3, 1977 (Supp. 77-1). Amended effective November 5, 1980 (Supp. 80-6). Former Section R4-1-55 renumbered and amended as Section R4-1-346effective July 1, 1983 (Supp. 83-4). Amended effective January 1, 1994; filed in the Office of the Secretary of State September 21, 1993 (Supp. 93-3). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 13 A.A.R. 2151, effective August 4, 2007 (Supp. 07-2). . Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014. Amended by final rulemaking at 26 A.A.R. 339, effective 4/5/2020. Amended by final rulemaking at 27 A.A.R. 921, effective 8/1/2021.

§ R4-1-453. Continuing Professional Education

A. Measurement Standards. The Board shall use the following standards to measure the hours of credit given for CPE programs completed by an individual registrant.

1. CPE credit shall be given in one-fifth or one-half increments for periods of not less than one class hour except as noted in paragraph 8. The computation of CPE credit shall be measured as follows:

a. A class hour shall consist of a minimum of 50 continuous minutes of instruction

b. A half-class hour shall consist of a minimum of 25 continuous minutes of instruction

c. A one-fifth class hour shall consist of a minimum of 10 continuous minutes of instruction.

2. Courses taken at colleges and universities apply toward the CPE requirement as follows:

a. Each semester - system credit hour is worth 15 CPE credit hours,

b. Each quarter - system credit hour is worth 10 CPE credit hours, and

c. Each noncredit class hour is worth one CPE credit hour.

3. Each self-study program hour is worth one CPE credit hour.

4. Acting as a lecturer or discussion leader in a CPE program, including college courses, may be counted as CPE credit. The Board shall determine the amount of credit on the basis of actual presentation hours, and shall allow CPE credit for preparation time that is less than or equal to the presentation hours. A registrant may only claim as much preparation time as is actually spent for a presentation. Total credit earned under this subsection for service as a lecturer or discussion leader, including preparation time may not exceed 40 credit hours of the renewal period's requirement. Credit is limited to only one presentation of any seminar or course with no credit for repeat teaching of that course.

5. The following may be counted for a maximum of 20 hours of CPE credit during each renewal period.

a. Credit may be earned for writing and publishing articles or books that contribute to the accounting profession and is published by a recognized

third-party publisher of accounting material or a sponsor as long as it is not used in conjunction with a seminar.

b. Credit may be earned for the writing or development of online course curriculum for undergraduate, graduate, or doctoral education that contribute to the accounting profession.

c. Two credit hours will be given for each 3,000 words of original material written or developed into curriculum. Materials must be at least 3,000 words in length. Multiple authors may share credit for material written or developed into curriculum.

6. A registrant may earn a combined maximum of 40 hours of CPE credit under subsections (A)(4) and (5) above during each renewal period.

7. A registrant may earn a maximum of 20 hours of CPE during each renewal period by completing introductory computer-related courses. Computer-related courses may qualify as consulting services pursuant to subsection (C).

8. A registrant may earn a maximum of 4 hours of CPE during each renewal period by completing nano-learning courses. A nanolearning program is a tutorial program designed to permit a participant to learn a given subject in a ten-minute time-frame through the use of electronic media and without interaction with a real time instructor.

9. CPE credit shall be given in one-fifth or one-half hour increments if the CPE is a segment of a continuing series related to a specific subject as long as the segments are connected by an overarching course that is a minimum of one hour and taken within the same CPE reporting period.

10. Credit shall not be allowed for repeat participation in any seminar or course during the registration period.

B. Programs that Qualify. CPE credit may be given for a program that provides a formal course of learning at a professional level and contributes directly to the professional competence of participants.

1. The Board shall accept a CPE course as qualified if it:

a. Is developed by persons knowledgeable and experienced in the subject matter,

b. Provides written outlines or full text,

c. Is administered by an instructor or organization knowledgeable in the program, and

d. Uses teaching methods consistent with the study program.

2. The Board shall accept a self-study program which includes online or computer based programs if the sponsors maintain written records of each student's participation and records of the program outline for three years following the conclusion of the program.

3. An ethics program taught or developed by an employer or co-worker of a registrant does not qualify for the ethics requirements of subsection (C)(4).

C. Hour Requirement. As a prerequisite to registration pursuant to A.R.S. § 32-730(C) or to reactivate from inactive status pursuant to A.R.S. § 32-732(A), a registrant shall complete the CPE requirements during the two-year period immediately before registration or application respectively as specified under subsections (C)(1) through (C)(5). For registration periods of less than two years CPE may be prorated by quarter, with the exception of ethics.

1. A registrant whose last registration period was for two years shall complete 80 hours of CPE.

2. A registrant shall complete a minimum of 40 hours in the subject areas of accounting, auditing, taxation, business law, or consulting services with a minimum of 16 hours in the subject areas of accounting, auditing, or taxation.

3. A registrant shall complete a minimum of 16 of the required hours:

a. In a classroom setting,

b. Through an interactive live webinar, or

c. By acting as a lecturer or discussion leader in a CPE program, including college courses

4. A registrant shall complete four hours of CPE in the subject area of ethics. The four hours required by this subsection shall include a minimum of one hour of each of the following subjects:

a. Ethics related to the practice of accounting including the Code of Professional Conduct of the American Institute of Certified Public Accountants, and

b. Board statutes and administrative rules.

5. A registrant shall report, at a minimum, the CPE hours required for the registration period.

6. CPE hours completed for a registration period may not be used for a subsequent registration period in any of the following instances:

a. To vacate a suspension for nonregistration,

b. To vacate a suspension for noncompliance with CPE requirements, or

c. To comply with a granted CPE extension.

7. As a prerequisite to reactivate from retired status or reinstate from cancelled, expired, relinquished or revoked status, a registrant or an applicant shall complete up to 160 hours of CPE during the four-year period immediately before application to reactivate or reinstate. For periods of less than four years CPE may be prorated by quarter, with the exception of ethics.

a. A registrant or an applicant shall complete a minimum of 80 hours in the subject areas of accounting, auditing, taxation, business law, or consulting services with a minimum of 32 hours in the subject areas of accounting, auditing or taxation.

b. A registrant or an applicant shall complete a minimum of 32 hours of the required hours:

i. In a classroom setting,

ii. Through an interactive live webinar, or

iii. By acting as a lecturer or discussion leader in a CPE program, including college courses.

c. A registrant or an applicant shall complete CPE in the subject area of ethics. Four hours of ethics CPE shall be required if 1 - 24 months have passed since the last registration due date for which CPE was completed. Eight hours of ethics CPE shall be required if 25 - 48 months have passed since the last registration due date for which CPE was completed. The hours required by this subsection shall include a minimum of one hour of each of the following subjects. The following subjects shall be completed during the two-year period immediately preceding application for reactivation or reinstatement:

i. Ethics related to the practice of accounting including the Code of Professional Conduct of the American Institute of Certified Public Accountants; and

ii. Board statutes and administrative rules.

D. Reporting: A registrant or an applicant for reactivation or reinstatement, a registrant who is subject to an audit, or a registrant completing their registration must report the following details about their completed CPE:

1. Sponsoring organization,

2. Number of CPE credit hours,

3. Title of program or description of content,

4. Dates attended,

5. Subject, and

6. Method.

E. In addition to the information required under subsection (D), a registrant or an applicant for reactivation or reinstatement from cancelled, expired, relinquished or revoked status, or a registrant subject to a CPE audit pursuant to subsection (G) shall provide the Board the following CPE records at its request: copies of transcripts, course outlines, and certificates of completion that include registrant's name, course provider or sponsor, course title, credit hours, and date of completion.

F. CPE Record Retention: A registrant shall maintain CPE records for three years from the date the registration was dated as received by the Board the following documents for all CPE completed for the registration period, even if not reported on the registration: transcripts, course outlines, and certificates of completion that include registrant's name, course provider or sponsor, course title, credit hours, and date of completion.

G. CPE audits: The Board, at its discretion, may conduct audits of a registrant's CPE and require that the registrant provide the CPE records that the registrant is required to maintain under subsection (F) to verify compliance with CPE requirements.

H. The Board may grant a full or partial exemption from CPE requirements on demonstration of good cause for a disability for only one registration period.

I. A non-resident registrant seeking renewal of a certificate in this state shall be determined to have met the CPE requirements of this rule by meeting the CPE requirements for renewal of a certificate in the jurisdiction in which the registrant's principal place of business is located.

1. Non-resident applicants for renewal shall demonstrate compliance with the CPE renewal requirements of the jurisdiction in which the registrant's principal place of business is located by signing a statement to that effect on the renewal application of this state.

2. If a non-resident registrant's principal place of business jurisdiction has no CPE requirements for renewal of a certificate or license, the non-resident registrant must comply with all CPE requirements for renewal of a certificate in this state.

History:

Adopted effective December 19, 1979 (Supp. 79-6). Amended effective November 5, 1980 (Supp. 80-6). Former Section R4-1-53 renumbered as Section R4-1-453 and amended in subsections (A) and (B) effective July 1, 1983 (Supp. 83-4). Former Section R4-1-453 repealed, new Section R4-1-453 adopted effective July 15, 1988 (Supp. 88-3). Correction, Historical Note for Supp. 88-3 should read "Former Section R4-1-453 repealed, new Section R4-1-453adopted effective January 1, 1990, filed July 15, 1988" (Supp. 89-1). Section repealed, new Section adopted effective December 6, 1995 (Supp. 95-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 10 A.A.R. 1886, effective January 1, 2005 (Supp. 04-2). Amended by final rulemaking at 14 A.A.R. 2927, effective January 1, 2009 (Supp. 08-3). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014. Amended by final rulemaking at 23 A.A.R. 3246, effective 1/1/2018. Amended by final rulemaking at 24 A.A.R. 3413, effective 2/4/2019. Amended by final rulemaking at 26 A.A.R. 339, effective 4/5/2020. Amended by final rulemaking at 27 A.A.R. 921, effective 8/1/2021. Amended by final rulemaking at 28 A.A.R. 1106, effective 7/3/2022. Amended by final rulemaking at 29 A.A.R. 1184, effective 7/3/2023.

§ R4-1-454. Peer Review

A. Each firm, review team, and member of a review team shall comply with the Standards for Performing and Reporting on Peer Reviews, issued April 2019 and published June 15, 2022 in the AICPA Professional Standards by the American Institute of Certified Public Accountants, 220 Leigh Farm Road, Durham, North Carolina 27707-8110 (www.aicpa.org), which is incorporated by reference. This incorporation by reference does not include any later amendments or editions. The incorporated material is available for inspection and copying at the Board's office.

B. A firm must allow the sponsoring organization to make the following documents accessible to the Board via the FSBA process:

1. Peer review report which has been accepted by the sponsoring organization,

2. Firm's letter of response accepted by the sponsoring organization, if applicable,

3. Completion letter from the sponsoring organization,

4. Letter or letters accepting the documents signed by the firm with the understanding that the firm agrees to take any actions required by the sponsoring organization, if applicable, and

5. Letter signed by the sponsoring organization notifying the firm that required actions have been appropriately completed, if applicable.

C. Information discovered solely as a result of a peer review is not grounds for suspension or revocation of a certificate.

D. Firms that reorganize a current firm, rename a firm, or create a new firm, within which at least one of the prior CPA owners remains an owner or employee, shall remain subject to the provisions of this Section. If a firm is merged, combined, dissolved, or separated, the sponsoring organization shall determine which resultant firm shall be considered the succeeding firm. The succeeding firm shall retain its peer review status and the review due date.

History:

Adopted effective July 1, 1983 (Supp. 83-4). Repealed effective November 20, 1998 (Supp. 98-4). New Section made by final rulemaking at 10 A.A.R. 4352, effective December 4, 2004. Amended by final rulemaking at 12 A.A.R. 2823, effective September 9, 2006 (Supp. 06-3). Amended by final

rulemaking at 20 A.A.R. 520, effective 2/4/2014. Amended by final rulemaking at 23 A.A.R. 3246, effective 1/1/2018. Amended by final rulemaking at 26 A.A.R. 339, effective 4/5/2020. Amended by final rulemaking at 27 A.A.R. 921, effective 8/1/2021. Amended by final rulemaking at 28 A.A.R. 1106, effective 7/3/2022. Amended by final rulemaking at 29 A.A.R. 1184, effective 7/3/2023.

§ R4-1-455. Professional Conduct and Standards

A. It is the Board's policy that the rules governing registrants be consistent with the rules governing the accounting profession generally. Except as otherwise set forth in these regulations, registrants shall conform their conduct to the Code of Professional Conduct, published June 15, 2022 in the AICPA Professional Standards by the American Institute of Certified Public Accountants, 220 Leigh Farm Road, Durham, North Carolina 27707-8110 (www.aicpa.org), available from the AICPA.

B. The AICPA Code of Professional Conduct, and any interpretations and ethical rulings by the issuing body, shall apply to all registrants, including those who are not members of the AICPA. The version specified above, including any interpretations and ethical rulings in effect shall apply. Any later amendments, additions, interpretations, or ethical rulings shall not apply.

History:

Former Rule 9; Amended effective January 15, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp. 77-1). Amended effective February 22, 1978 (Supp. 78-1). Amended effective November 5, 1980 (Supp. 80-6). Former Section R4-1-56 renumbered as Section R4-1-455 and amended in subsections (B) and (D) effective July 1, 1983 (Supp. 83-4). Section R4-1-455 amended and divided into R4-1-455 and R4-1-455.01 thru R4-1-455.04effective April 22, 1992 (Supp. 92-2). Amended effective December 6, 1995 (Supp. 95-4). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014. Amended by final rulemaking at 23 A.A.R. 3246, effective 1/1/2018. Amended by final rulemaking at 26 A.A.R. 339, effective 4/5/2020. Amended by final rulemaking at 27 A.A.R. 921, effective 8/1/2021. Amended by final rulemaking at 28 A.A.R. 1106, effective 7/3/2022. Amended by final rulemaking at 29 A.A.R. 1184, effective 7/3/2023.

§ R4-1-455.01. Professional Conduct: Definitions; Interpretations

Interpretation of definitions: All terms defined in A.R.S. §32-701 et seq. shall be construed, to the extent possible, to be consistent with corresponding definitions in the professional standards adopted in R4-1-455. The foregoing notwithstanding, for purposes of R4-1-455 and the professional standards adopted therein

references to "member" shall be to "registrant" as defined in A.R.S. § 32-701.

History:

Section R4-1-455.01 renumbered from R4-1-455(B) and amended effective April 22, 1992 (Supp. 92-2). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014. Amended by final rulemaking at 23 A.A.R. 3246, effective 1/1/2018. Amended by final rulemaking at 26 A.A.R. 339, effective 4/5/2020.

§ R4-1-455.02. Professional Conduct: Competence and Technical Standards

A. In reporting on financial statements for which a registrant has performed attest services (as defined in A.R.S. §32-701) any of the following will constitute a violation of A.R.S. §32-741(A)(4):

1. In an audit engagement, failing to:

a. Prepare audit documentation that is sufficient to enable an experienced auditor, having no previous connection with the audit, to understand:

i. The nature, timing, and extent of the audit procedures performed;

ii. The results of the audit procedures performed, and the audit evidence obtained; and

iii. Significant findings or issues arising during the audit, the conclusions reached thereon, and significant professional judgments made in reaching those conclusions;

b. Obtain sufficient appropriate evidence to conclude that the financial statements taken as a whole are free from material misstatement; or

c. Modify the opinion in the auditor's report when:

i. The financial statements as a whole are materially misstated; or

ii. Sufficient appropriate audit evidence to conclude that the financial statements as a whole are free from material misstatement has not been obtained.

2. In a review engagement, failing to:

a. Accumulate sufficient review evidence to provide a reasonable basis for obtaining limited assurance that there are no material modifications that should be made to the financial statements in order to be in conformity with the applicable financial reporting framework; or

b. Modify the accountant's review report for a departure from the applicable financial reporting framework, including inadequate disclosure, that is material to the financial statements.

3. In an examination of prospective financial statements engagement, failing to:

a. Obtain sufficient evidence to provide a reasonable basis for the conclusion that is expressed in the report; or

b. Modify the report when:

i. One or more significant assumptions do not provide a reasonable basis for the prospective financial statements; or

ii. The examination is affected by conditions that preclude application of one or more procedures considered necessary in the circumstances.

B. The provisions of this subsection are not intended to be all inclusive or to limit the application of A.R.S. § 32-741(A)(4).

History:

Section R4-1-455.02 renumbered from R4-1-455(C) and amended effective April 22, 1992 (Supp. 92-2). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014. Amended by final rulemaking at 23 A.A.R. 3246, effective 1/1/2018.

§ R4-1-455.03. Professional Conduct: Specific Responsibilities and Practices

A. Discreditable acts: In addition to any other acts prohibited by any standards incorporated in these rules, a registrant shall not commit an act that reflects adversely on the registrant's fitness to engage in the practice of public accounting, including and without limitation:

1. Violating a provision of R4-1-455, R4-1-455.01, R4-1-455.02, R4-1-455.03 or R4-1-455.04;

2. Violating a fiduciary duty or trust relationship with respect to any person; or

3. Violating a provision of A.R.S. Title 32, Chapter 6, Article 3, or this Chapter.

B. Advertising practices and solicitation practices: A registrant has violated A.R.S. §32-741(A)(4) and engaged in dishonest or fraudulent conduct in the practice of public accounting in connection with the communication or advertising or solicitation of accounting services through any media, if the registrant willfully engages in any of the following conduct:

1. Violates A.R.S. §44-1522 and a court finds the violation willful;

2. Engages in fraudulent or misleading practices in the advertising of accounting services that leads to a conviction pursuant to A.R.S. §44-1481; or

3. Engages in fraudulent practices in the advertising of accounting services that leads to a conviction for a violation of any other state or federal law.

C. Form of practice and name: A registrant shall not use a professional or firm name or designation that is misleading about the legal form of the firm, or about the persons who are partners, officers, members, managers, or shareholders of the firm, or about any other matter. A firm name or designation shall not include words such as "& Company," "& Associates," or "& Consultants" unless the terms refer to additional full-time CPAs that are not otherwise mentioned in the firm name.

D. Communications: When requested, a registrant shall file a written response to a communication from the Board within 30 days of the date of the mailing of such communication by certified mail. A written response is deemed filed on the date and time received in the Board office. The Board shall record the date and time either by electronic date stamp in Arizona

time or on physical receipt in the Board's office. The Board shall not accept a postmark as evidence of timely filing.

E. The provisions of R4-1-455.03(A) through (C) are not intended to be all inclusive or to limit the application of any standards incorporated by R4-1-455.

History:

Section R4-1-455.03 renumbered from R4-1-455(D) and amended effective April 22, 1992 (Supp. 92-2). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 12 A.A.R. 2823, effective September 9, 2006 (Supp. 06-3). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014. Amended by final rulemaking at 23 A.A.R. 1807, effective 6/15/2017. Amended by final rulemaking at 23 A.A.R. 3246, effective 1/1/2018.

§ R4-1-455.04. Professional Conduct: Records Disposition

Document retention policies. Except as set forth in A.R.S. §32-744(D), a registrant may retain and dispose of documents prescribed in A.R.S. §32-744(C) in compliance with a reasonable document retention policy.

History:

Section R4-1-455.04 renumbered from R4-1-455(E) and amended effective April 22, 1992 (Supp. 92-2). Section number corrected (Supp. 97-3). Amended effective November 20, 1998 (Supp. 98-4). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014. Amended by final rulemaking at 23 A.A.R. 3246, effective 1/1/2018.

§ R4-1-456. Reporting Practice Suspensions and Violations

A. A registrant shall report to the Board:

1. Any suspension or revocation of the right to practice accounting before the federal Securities and Exchange Commission, the Internal Revenue Service, or any other state or federal agency;

2. Any final judgment in a civil action or administrative proceeding in which the court or public agency makes findings of violations, by the registrant, of any fraud provisions of the laws of this state or of federal securities laws;

3. Any final judgment in a civil action in which the court makes findings of accounting violations, dishonesty, fraud, misrepresentation, or breach of fiduciary duty by the registrant;

4. Any final judgment in a civil action involving negligence in the practice of public accounting by the registrant; and

5. All convictions of the registrant of any felony, or any crime involving accounting or tax violations, dishonesty, fraud, misrepresentation, embezzlement, theft, forgery, perjury, or breach of fiduciary duty.

B. A registrant required to report under subsection (A) shall make the report in the form of a written letter and ensure that the report is received by the Board within 30 days after the entry of any judgment or suspension or revocation of the registrant's right to practice before any agency. The registrant shall ensure that the letter contains the following information:

1. Description of the registrant's activities that resulted in a suspension or revocation;

2. Final judgment or conviction;

3. Name of the state or federal agency that restricted the registrant's right to practice;

4. Effective date and length of any practice restriction;

5. Case file number of any court action, civil or criminal;

6. Name and location of the court rendering the final judgment or conviction; and

7. Entry date of the final judgment or conviction.

History:

Adopted effective November 5, 1980 (Supp. 80-6). Former Section R4-1-57 renumbered as Section R4-1-456without change effective July 1, 1983 (Supp. 83-4). Amended effective February 23, 1993 (Supp. 93-1). Amended by final rulemaking at 20 A.A.R. 520, effective 2/4/2014. Amended by final rulemaking at 26 A.A.R. 339, effective 4/5/2020.

APPENDIX A. Repealed

History:

Adopted effective February 22, 1978 (Supp. 78-1). Amended effective December 19, 1979 (Supp. 79-6). Editorial correction, Footnote**, Rules reference corrected (Supp. 83-4). Repealed effective May 31, 1991 (Supp. 91-2).

APPENDIX B. Repealed

History:

Adopted effective February 22, 1978 (Supp. 78-1). Repealed effective April 22, 1992 (Supp. 92-2).

§ 32-703. Powers and duties; rules; executive director; advisory committees and individuals

A. The primary duty of the board is to protect the public from unlawful, incompetent, unqualified or unprofessional certified public accountants through certification, regulation and rehabilitation.

B. The board may:

1. Investigate complaints filed with the board or on its own motion to determine whether a certified public accountant has engaged in conduct in violation of this chapter or rules adopted pursuant to this chapter.

2. Establish and maintain high standards of competence, independence and integrity in the practice of accounting by a certified public accountant as required by generally accepted auditing standards and generally accepted accounting principles and, in the case of publicly held corporations or enterprises offering securities for sale, in accordance with state or federal securities agency accounting requirements.

3. Establish reporting requirements that require registrants to report:

(a) The imposition of any discipline on the right to practice before the federal securities and exchange commission, the internal revenue service, any state board of accountancy, other government agencies or the public company accounting oversight board.

(b) Any criminal conviction, any civil judgment involving negligence in the practice of accounting by a certified public accountant and any judgment or order as described in section 32-741, subsection A, paragraphs 7 and 8.

4. Establish basic requirements for continuing professional education of certified public accountants, except that the requirements shall not exceed eighty hours in any registration renewal period.

5. Adopt procedures concerning disciplinary actions, administrative hearings and consent decisions.

6. Issue to qualified applicants certificates executed for and on behalf of the board by the signatures of the president and secretary of the board.

7. Adopt procedures and rules to administer this chapter.

8. Require peer review pursuant to rules adopted by the board on a general and random basis of the professional work of a registrant engaged in the practice of accounting.

9. Subject to title 41, chapter 4, article 4, employ an executive director and other personnel that it considers necessary to administer and enforce this chapter.

10. Appoint accounting and auditing, tax, peer review, law, certification, continuing professional education or other committees or individuals as it considers necessary to advise or assist the board or the board's executive director in administering and enforcing this chapter. These committees and individuals serve at the pleasure of the board.

11. Take all action that is necessary and proper to effectuate the purposes of this chapter.

12. Sue and be sued in its official name as an agency of this state.

13. Adopt and amend rules concerning the definition of terms, the orderly conduct of the board's affairs and the effective administration of this chapter.

14. Delegate to the executive director the authority to:

(a) Approve an applicant to take the uniform certified public accountant examination pursuant to section 32-723.

(b) Issue a certificate of certified public accountant pursuant to section 32-721.

(c) Approve an application for firm registration pursuant to section 32-731.

(d) Approve a registrant's name change and reissue a certificate of certified public accountant due to the name change.

(e) Approve a registrant's cancellation request pursuant to section 32-730.02.

(f) Approve a request for retired status pursuant to section 32-730.04.

(g) Approve reactivation from inactive status or retired status pursuant to section 32-732.

(h) Approve compliance with peer review requirements pursuant to this section.

(i) Approve compliance with continuing professional education audits.

(j) Approve continuing professional education compliance with decisions and orders.

(k) Terminate decisions and orders based on a registrant's successful completion of all order requirements.

(l) Approve a request for continuing professional education reciprocity.

C. The board or an authorized agent of the board may:

1. Issue subpoenas to compel the attendance of witnesses or the production of documents. If a subpoena is disobeyed, the board may invoke the aid of any court in requiring the attendance and testimony of witnesses and the production of documents.

2. Administer oaths and take testimony.

3. Cooperate with the appropriate authorities in other jurisdictions in investigation and enforcement concerning violations of this chapter and comparable statutes of other jurisdictions.

4. Receive evidence concerning all matters within the scope of this chapter.

History:

Amended by L. 2020, ch. 72,s. 2, eff. 8/25/2020. Amended by L. 2018, ch. 268,s. 4, eff. 8/3/2018. Amended by L. 2013, ch. 136,s. 2, eff. 9/13/2013. L12, ch 321, sec 45.

F-10.

DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS
Title 8, Chapter 2, Article 7

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: May 7, 2024

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

FROM: Council Staff

DATE: **April 4, 2024**

SUBJECT: **DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS**
Title 8, Chapter 2, Article 7

Summary

This Five Year Review Report (5YRR) from the Department of Emergency and Military Affairs (Department) covers four (4) rules in Title 8, Chapter 2, Article 7 related to Registration of Emergency Workers. These rules establish procedures for the state, its agencies, and political subdivisions to register emergency workers in support of emergency management activities or performing emergency functions. Registration of an emergency worker is required to extend immunity from liability; exemption from laws, ordinances and rules; all pensions, relief, and disability workers' compensation; and other benefits that apply to the activity of emergency workers pursuant to A.R.S. § 26-314.

The Department did not complete its prior proposed course of action due to staffing changes prior to the onset of the 2020 COVID-19 pandemic. However, An amendment to A.R.S. § 1-215(24) by Laws 2021 Chapter 269 made the prior proposed course of action to define "moral turpitude" moot.

Proposed Action

The Department intends to submit a final rulemaking to the Council by December 2024, to amend R8-2-702 with updated citation as the emergency response worker immunity citation for hazardous materials response as part of the Community Right to Know Act was realigned to

Title 49 under the Arizona Department of Environmental Quality by Laws 2015 Chapter 208 (HB 2274).

1. **Has the agency analyzed whether the rules are authorized by statute?**

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

According to the Department, there has been minimal to no economic, small business or consumer impact as anticipated in the 2008 EIS from the original making of the rules. State agencies and political subdivisions incur minimal cost to register emergency workers as compared to the benefits directly received from the ability to utilize those emergency workers during a disaster. There is no economic impact to an individual who registers as an emergency worker with an agency of political subdivision of the state, who in return to registering receives the economic benefit of the worker and legal protections prescribed under A.R.S. 26-314. The consumer of the services of an emergency worker receives the benefit of those emergency management and response activities, as does a small business.

Stakeholders include the Department, state agencies, political subdivisions, individuals registered as emergency workers, and individuals intending to register as emergency workers.

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

According to the Department, the rules impose the least burden and cost necessary for the rules to accomplish their regulatory objective to protect the public's health, safety, and welfare. The only burden and cost that may be incurred on the state and its political subdivisions through compliance of these rules are the cost of forms for registration if applicable, maintaining a current database of emergency workers, and for criminal history and driving record background checks required for the registration of emergency workers. These burdens and costs are outweighed by the benefits of registration, including the cost of criminal history and driving record background checks for emergency workers. Maintaining a current database of emergency workers and performing the stated background checks are significantly less expensive for the state and its political subdivisions compared to spending monies to secure outside services and overtime hours of employees during an emergency event.

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 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 states the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

The Department states they enforce 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 there are no federal requirements for the registration of emergency workers.

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 the rules do not require issuance of a regulatory permit, license, or authorization.

11. **Conclusion**

This Five Year Review Report from the Department of Emergency and Military Affairs covers four rules in Title 8, Chapter 2, Article 7 related to Registration of Emergency Workers. As stated above, the Department indicates the rules are clear, concise, and understandable; enforced as written; and effective in achieving its objectives.

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

Katie Hobbs
GOVERNOR

STATE OF ARIZONA
DEPARTMENT OF EMERGENCY AND MILITARY AFFAIRS

5636 East McDowell Road
Phoenix, Arizona 85008-3495
(602) 267-2700 DSN: 853-2700

Major General Kerry L. Muehlenbeck
THE ADJUTANT GENERAL

December 5, 2023

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

RE: Department of Emergency and Military Affairs A.A.C. Title 8, Chapter 2, Article 7 Five Year Review Report

Dear Ms. Sornsin:

Pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, the Arizona Department of Emergency and Military Affairs (DEMA) submits the following Five-Year Review Report for A.A.C. Title 8, Chapter 2, Article 7 to the Governor's Regulatory Review Council for your consideration.

Per the requirements of A.A.C. R1-6-301(B),

1. No rules were left out of this Five-Year Review Report with the intention to be expired under A.R.S. § 41-1056(J).
2. There are no rules subject to rescheduling by the Council.
3. DEMA certifies that it is in compliance with A.R.S. § 41-1091 regarding posting of substantive policy statements and rules. DEMA currently does not have a substantive policy statement.

If you have any additional questions or comments regarding this report, please contact Travis Schulte, Legislative Liaison, at (602) 267-2732 or travis.schulte@azdema.gov.

Sincerely,

KERRY L. MUEHLENBECK
Major General, AZANG
The Adjutant General

cc: Ms. Kennesha Jackson, Governor's Policy Advisor

Department of Emergency & Military Affairs

Governor's Regulatory Review Council
Five-Year Regulatory Review

Arizona Administrative Code
Title 8. Emergency and Military Affairs
Chapter 2. Department of Emergency and Military Affairs –
Division of Emergency Management
Article 7

Submitted December 8, 2023

The Arizona Department of Emergency and Military Affairs has published rules that appear in Arizona Administrative Code Title 8, Chapter 2, Article 7 (Registration of Emergency Workers) that were formally adopted January 31, 2009.

Pursuant to A.R.S. § 41-1056, the Arizona Department of Emergency and Military Affairs (DEMA) submits the following five-year review report.

Overview of Rules

The Registration of Emergency Workers Rules establishes procedures for the state, its agencies, and political subdivisions to register emergency workers in support of emergency management activities or performing emergency functions. Registration of an emergency worker by the state, its agencies, and political subdivisions is required to extend immunity from liability; exemptions from laws, ordinances and rules; all pensions, relief, and disability workers' compensation; and other benefits that apply to the activity of emergency workers of this state or of any political subdivision when performing their respective functions per A.R.S. § 26-314.

Arizona Department of Emergency and Military Affairs
Title 8, Chapter 2, Article 7
Five-Year Review Report

1. **Authorization of the rule by existing statutes:**

General Statutory Authority:

- A.R.S. § 26-306(A)(3) establishes the Division's general authority to adopt rules.

Specific Statutory Authority:

- A.R.S. § 26-314(E) states, "The division shall adopt rules prescribing the procedures for registration of emergency workers."

2. **The objective of each rule:**

Rule	Objective
R8-2-701	To provide the public with the scope of applicability for the rules within Article 7. This will prevent confusion on behalf of the state, political subdivisions of the state, and the public regarding to whom the rules and registration process apply, and what protections the registration procedures provide to registered volunteer emergency workers.
R8-2-702	To specify that an individual must be registered with an entity of the state or political subdivision as an emergency worker in order to qualify for the benefits and legal protections provided by A.R.S. § 26-314, which alleviates confusion and direct volunteers to the appropriate place to register as an emergency worker. The objective of this rule is also to make those intending to register as an emergency worker aware that the information they provide may be used to perform a criminal history and driving record background check. Performing criminal history and driving record background checks on individuals who register as emergency workers protects the public health, safety, and welfare from individuals who may either be unqualified to serve or perform certain activities as an emergency worker, or those considered undesirable to serve as an emergency worker to a potentially vulnerable population. Additionally, the objective is to create the mechanism for maintaining a ready reserve of registered emergency workers by requiring annual reviews of registered workers, and to design the mechanism to provide for the registering of temporary emergency workers to rapidly augment those who are permanently registered and manage the public's willingness to volunteer and assist during an emergency.
R8-4-703	To establish the minimum amount of information required to register with the state or a political subdivision as an emergency worker that imposed the least burden upon the registrant while identifying eligibility to serve and unique skill-sets that could be potentially applicable. This completed information provides the state or a political subdivision with the appropriate amount of information to register an individual as a temporary emergency worker per the procedures identified in R8-2-702

	as well as maintaining the individual as a registered emergency worker that is annually reviewed and updated.
R8-2-704	To identify the circumstances under which the registration of an emergency worker, and the benefits and legal protections that designation entails, may be denied or revoked. These procedures are inherently necessary to protect the public health, safety, and welfare from emergency workers who are unable or unqualified to serve, either due to a health condition that limits their ability to serve in an emergency environment, by being untruthful in completing the application process, or by having a history of conviction for a felony or misdemeanor involving moral turpitude.

3. **Are the rules effective in achieving their objectives?** **Yes _X_** **No ___**

The rules have effectively and efficiently provided the guidance necessary for agencies of the state and political subdivisions to register emergency workers and extend to them the benefits and legal protections prescribed under A.R.S. § 26-314.

4. **Are the rules consistent with other rules and statutes?** **Yes _X_** **No ___**

These are the only set of rules for registering emergency workers, as defined by A.R.S. § 26-301, and extends the benefits and legal protections prescribed by A.R.S. § 26-314. The Division has no intra-agency or inter-agency consistency issues with its regulations. There are no federal statutes governing registration procedures of emergency workers.

5. **Are the rules enforced as written?** **Yes _X_** **No ___**

The rules are consistently and fairly applied by agencies and political subdivisions of the state to register emergency workers.

6. **Are the rules clear, concise, and understandable?** **Yes _X_** **No ___**

The rules are clear, concise, and understandable.

7. **Written criticisms received within the last five years?** **Yes ___** **No _X_**

The Division has not received any written or verbal criticisms of these rules.

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

There has been minimal to no economic, small business or consumer impact as anticipated in the 2008 EIS from the original making of the rules. State agencies and political subdivisions incur minimal cost to register emergency workers as compared to the benefits directly received from

the ability to utilize those emergency workers during a disaster. There is no economic impact to an individual who registers as an emergency worker with an agency of political subdivision of the state, who in return for registering receives the economic benefit of the worker and legal protections prescribed under A.R.S. § 26-314. The consumer of the services of an emergency worker receives the benefit of those emergency management and response activities, as does a small business.

9. Has the agency received any business competitiveness analyses of the rules? Yes ___ No _X_

The Division has not received any analysis by another party comparing the impact of the rules reviewed in this report on this state's business competitiveness or to the impact on business in other states.

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

The agency was not able to secure approval to proceed with the course of action identified in the previous five-year-review report due to staff changes prior to the onset of the 2020 COVID-19 pandemic. An amendment to A.R.S. § 1-215(24) by Laws 2021 Chapter 269 to define "moral turpitude" has made that course of action unnecessary. The statutory definition of moral turpitude also made the establishment of a definitions section unnecessary as all other terms are either commonly used or defined in statute.

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:

As written, the rules impose the least burden and cost necessary for the rules to accomplish their regulatory objective to protect the public's health, safety, and welfare. The only burden and cost that may be incurred on the state and its political subdivisions through compliance of these rules are the cost of forms for registration if applicable, maintaining a current database of emergency workers, and for criminal history and driving record background checks required for the registration of emergency workers. These burdens and costs are outweighed by the benefits of registration, including the cost of criminal history and driving record background checks for emergency workers. Criminal background checks ensure registered emergency workers do not have a history of felony convictions or misdemeanor convictions involving moral turpitude,

which is a necessary consideration when utilizing an individual's services with a population that is potentially vulnerable during an emergency. Similarly, driving record background checks ensure volunteers with a history of traffic violations or a suspended driver' license are not assigned driving related responsibilities. Maintaining a current database of emergency workers and performing the stated background checks are significantly less expensive for the state and its political subdivisions compared to spending monies to secure outside services and overtime hours of employees during an emergency event.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X_

Not applicable. There are no federal requirements for the registration of emergency workers.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Not applicable. The rules do not require issuance of a regulatory permit, license, or authorization.

14. Proposed course of action

The Division needs to amend R8-2-702 to update the citation of A.R.S. § 26-353 to A.R.S. § 49-133. This emergency response worker immunity citation for hazardous materials response as part of the Community Right to Know Act was formerly codified in Title 26, but was realigned to Title 49 under the Arizona Department of Environmental Quality by Laws 2015 Chapter 208 (HB 2274). The Division anticipates submitting a notice of final rulemaking to the Council by December 2024.

§ R8-2-701. Scope

This Article is applicable for the registering of emergency workers in accordance with A.R.S. §26-314.

History:

Section made by final rulemaking at 14 A.A.R. 4519, effective January 31, 2009 (Supp. 08-4).

§ R8-2-702. Registration

Except what is provided in A.R.S §26-353, registration is a prerequisite for eligibility of emergency workers for benefits and legal protections under A.R.S. §26-314.

1. Emergency workers shall register with a department or agency of the state or a political subdivision of the state.

2. The information provided during registration may be used to conduct criminal history and driving record background checks.

3. Temporary registration.

a. Temporary registration may be used in emergency situations requiring immediate or on-scene recruitment of emergency workers.

b. Persons shall be temporarily registered if they have provided the required registration information in accordance with R8-2-703, but have not provided supporting documentation.

c. Period of temporary registration ends when the registering participant has been cleared pursuant to R8-2-702(1) and (2) or when the registering agency determines that the emergency for which the registering participant received a temporary registration is closed whichever occurs first.

4. Registration information shall be reviewed and updated annually.

History:

Section made by final rulemaking at 14 A.A.R. 4519, effective January 31, 2009 (Supp. 08-4)

§ R8-2-703. Required Registration Information

The following information is the minimum information required to register as an emergency worker:

1. Full name;

2. Birth date;

3. Gender;

4. Social Security Number;

5. Citizenship, to include a document verifying citizenship;

6. Provide verification of eligibility to work in the United States;

7. Address;

8. Contact phone number and e-mail address;

9. Driver's license number, issuing state and expiration date;

10. Registering jurisdiction;

11. Registering agency/organization;

12. Employer name, address and phone number;

13. Personal reference name, address and phone number;

14. Emergency contact name, address and phone number;

15. Professional licenses, certificates and registrations, to include numbers and expiration dates (copies will be provided);

16. Court record of felony convictions;

17. Record of misdemeanor convictions involving moral turpitude; and

18. Medical conditions which may limit ability to perform as an emergency worker.

History:

Section made by final rulemaking at 14 A.A.R. 4519, effective January 31, 2009 (Supp. 08-4)

§ R8-2-704. Registration Denial or Revocation; Denied Compensation

A. Failure to truthfully respond to statements set forth on the registration form may result in the denial of registration, revocation of registration as an emergency worker, or denial of compensation for claims arising under A.R.S §23-1028(a).

B. Registration may be denied or revoked in the event of the following:

1. Failure to satisfactorily provide the information required in Section R8-2-703,

2. Health conditions that could limit the applicant's performance as an emergency worker, or

3. Felony convictions.

History:

Section made by final rulemaking at 14 A.A.R. 4519, effective January 31, 2009 (Supp. 08-4)

§ 26-306. Powers and duties of the director of emergency management

A. The director, subject to the approval of the adjutant general, shall:

1. Be the administrative head of the division.

2. Be the state director for emergency management.

3. Make rules necessary for the operation of the division.

4. Develop and test plans for meeting any condition constituting a state of emergency or state of war emergency, except those emergency plans specifically assigned by the governor to other state agencies. Such plans shall provide for the effective mobilization and management of personnel and equipment of the state.

5. During a state of war emergency, coordinate the emergency activities of all state agencies except the national guard.

6. During a state of emergency or a local emergency, coordinate the emergency activities of all state agencies and the national guard.

7. Coordinate the use of state personnel, equipment, services and facilities, including communication services, if requested by political subdivisions in support of emergency management activities.

8. Coordinate the use of personnel, equipment, services and facilities, including communication services, of one or more political subdivisions in support of any other political subdivision in meeting emergency needs, including search or rescue operations, on the request of the using political subdivision.

9. Develop, test and maintain a plan pursuant to section 26-305.01 for response by agencies of this state and its political subdivisions to an accident at a commercial nuclear generating station.

10. Every two years, submit a recommendation to the legislature in connection with the assessment prescribed by section 26-306.01 with supporting documentation and information.

11. Collaborate with the state forester in presentations to legislative committees on issues associated with forest management, wildfire prevention and suppression and wildfire emergency response and management as provided by section 37-1302, subsection B.

12. Develop, implement and maintain a state hazardous materials emergency response and recovery plan as part of the hazardous materials emergency management program pursuant to section 49-123.

13. Coordinate the development, implementation and maintenance of standardized curricula for hazardous materials training and education.

B. The director, subject to the approval of the adjutant general, may:

1. Propose, develop, negotiate and consummate contractual arrangements with the federal government, state agencies and political subdivisions for technical, administrative and financial support from the federal, state and local government in connection with the emergency management activities of the state.

2. Represent the state at conferences in the development and promotion of the emergency management capability of the state.

3. Establish a disaster prevention council to plan for disaster prevention. The council shall consist of the members of the state emergency council and other members as determined by the director. The disaster prevention council shall coordinate the disaster prevention expertise of representatives of federal, state and local business and industry and promote partnerships to substantially reduce property loss from natural and technological disasters.

History:

Amended by L. 2016, ch. 128,s. 4, eff. 6/30/2016. Amended by L. 2015, ch. 208,s. 10, eff. 7/2/2015.

§ 26-314. Immunity of state, political subdivisions and officers, agents, employees and emergency workers; limitation; rules; definitions

A. This state and its departments, agencies, boards and commissions and all political subdivisions are not liable for any claim based on the exercise or performance, or the failure to exercise or perform, a discretionary function or duty by any emergency worker, except for wilful misconduct, gross negligence or bad faith of the emergency worker, in engaging in emergency management activities or performing emergency functions pursuant to this chapter or title 36, chapter 6, article 9, including operating an unmanned aircraft or a public unmanned aircraft, while engaged in or supporting emergency management activities or performing emergency functions pursuant to this chapter or title 36, chapter 6, article 9.

B. The immunities from liability, exemptions from laws, ordinances and rules, all pensions, relief, disability workers' compensation and other benefits that apply to the activity of officers, agents, employees or emergency workers of this state or of any political subdivision when performing their respective functions within this state or the territorial limits of their respective political subdivisions apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially under this chapter or title 36, chapter 6, article 9, except for wilful misconduct, gross negligence or bad faith.

C. Emergency workers engaging in emergency management activities or performing emergency functions under this chapter or title 36, chapter 6, article 9, in carrying out, complying with or attempting to comply with any order or rule issued under this chapter, title 36, chapter 6, article 9 or any local ordinance, or performing any of their authorized functions or duties or training for the performance of their authorized functions or duties have the same degree of responsibility for their actions and enjoy the same immunities and disability workers' compensation benefits as officers, agents and employees of this state and its political subdivisions performing similar work. Except as otherwise provided under chapter 3, article 1 of this title, this state and its departments, agencies, boards and commissions and all political subdivisions that supervise or control emergency workers engaging in emergency management activities or performing emergency functions under this chapter or title 36, chapter 6, article 9 are responsible for providing for liability coverage, including legal defense, of an emergency worker if necessary. Coverage is provided if the emergency worker is acting within the course and scope of assigned duties and is engaged in an authorized activity, except for actions of wilful misconduct, gross negligence or bad faith.

D. Any other state or its officers, agents, emergency workers or employees rendering aid in this state pursuant to any interstate mutual aid arrangement, agreement or compact are not liable on account of any act or omission in good faith on the part of the state or its officers, agents, emergency workers or employees while so engaged or on account of the maintenance or use of any equipment or supplies in connection with an emergency.

E. The division shall adopt rules prescribing the procedures for registration of emergency workers.

F. For the purposes of this section, "public unmanned aircraft" and "unmanned aircraft" have the same meanings prescribed in section 13-3729.

History:

Amended by L. 2019, ch. 312,s. 1, eff. 8/27/2019. Amended by L. 2018, ch. 116,s. 1, eff. 8/3/2018.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 22 Article 21

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: May 7, 2024

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

FROM: Council Staff

DATE: April 18, 2024

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 22, Article 21

Summary

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS) relates to four (4) rules in Title 9, Chapter 22, Article 21 regarding the Trauma and Emergency Services Fund (Fund). Specifically, these rules outline general provisions regarding the Fund, describe distribution of the Fund to Level I Trauma Centers and hospitals' Emergency Services including specific date timeframes for which they will receive reimbursement for the services provided during the year, and describe additional trauma and emergency services payments under the Section 1115 Waiver.

In the prior 5YRR for these rules, which was approved by the Council in March 2019, AHCCCS did not propose to amend any of the rules.

Proposed Action

In the current report, AHCCCS does not propose to take any action related to these rules.

1. Has the agency analyzed whether the rules are authorized by statute?

AHCCCS cites both general and specific statutory authority for the rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

According to AHCCCS, the actual economic, small business, and consumer impact is consistent with what was anticipated during the last rulemaking. As was expected by defining the hospital covered under this type of payment in the definition in rule, AHCCCS continues to make payments consistent with the federal requirements of these supplemental payments to level 1 trauma centers. Since AHCCCS added clarity to the definition of which hospitals were eligible for this type of payment, the number of hospitals meets the anticipated number of payments.

Stakeholders include AHCCCS, AHCCCS's members, and hospitals.

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?

There are no proposed changes to these current rules. AHCCCS indicates the rulemaking improves the economic help of eligible trauma centers within the state, thus promoting fiscal health, and economic development and a direct benefit to AHCCCS members because it allows a greater number of hospitals to achieve a more efficient administration of health care delivery. Due to the fact that this payment to trauma centers is in AHCCCS's state waiver with Centers for Medicare and Medicaid Services (CMS), any change would require extensive staff time and negotiation with the federal government, therefore, the current rule language is the lowest cost and benefit for the public.

4. Has the agency received any written criticisms of the rules over the last five years?

AHCCCS indicates it did not receive any written criticism of the rules within the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

AHCCCS indicates the rules are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

AHCCCS indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

AHCCCS indicates the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

AHCCCS indicates that the rules are enforced as written.

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

Not applicable. AHCCCS indicates there is no corresponding federal law and the Fund described in these rules is only supported by state statute.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

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

11. Conclusion

This 5YRR from AHCCCS relates to four (4) rules in Title 9, Chapter 22, Article 21 regarding the Trauma and Emergency Services Fund (Fund). Specifically, these rules outline general provisions regarding the Fund, describe distribution of the Fund to Level I Trauma Centers and hospitals' Emergency Services, and describe additional trauma and emergency services payments under the Section 1115 Waiver.

AHCCCS indicates the rules are clear, concise, understandable, consistent, effective, and enforced as written and does not intend to to take any action related to the rules.

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 21;

Dear Ms. Sornsin:

Please find enclosed AHCCCS's Five-Year Review Report for Title 9, Chapter 22, Article 21.

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 21

October 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2903.07

Specific Statutory Authority: A.R.S. § 36-2901

2. The objective of each rule:

Rule	Objective
R9-22-2101	The objective of the rule is to describe the general provisions for trauma and emergency services fund.
R9-22-2102	The objective of the rule is to describe distribution of trauma and emergency services fund to Level I Trauma Centers.
R9-22-2103	The objective of the rule is to describe distribution of trauma and emergency services fund to hospitals' Emergency Services.
R9-22-2104	The objective of the rule is to describe additional trauma and emergency services payments under the Section 1115 Waiver.

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 current rules are still the least burdensome and most cost effective method of administering this program.

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?

There was no proposed course of action in the prior 5YRR, therefore the agency has completed any changes needed.

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

No proposed course of action.

year. If a woman continues to meet the requirements of eligibility for the Breast and Cervical Cancer Treatment Program under this Article, the Administration shall notify the woman of continued eligibility. A woman is not required to be screened for breast and cervical cancer through AZ-NBCCEDP at redetermination.

B. Change in circumstance. The Administration shall complete a redetermination of eligibility if there is a change in the woman's circumstances that may affect eligibility, including a change in treatment.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

ARTICLE 21. TRAUMA AND EMERGENCY SERVICES FUND

Article 21, consisting of Sections R9-22-2101 through R9-22-2103, made by exempt rulemaking at 9 A.A.R. 4001, effective October 19, 2003 (Supp. 03-3).

R9-22-2101. General Provisions

A. A.R.S. § 36-2903.07 establishes the Administration as the authority to administer the Trauma and Emergency Services Fund.

B. The Administration shall distribute 90% of monies from the trauma and emergency services fund to a level I trauma center, as defined in subsection (F) of this Section, for unrecovered trauma center readiness costs as defined in subsection (F) of this Section. Reimbursement is limited to no more than the amount of unrecovered trauma center readiness costs as determined in subsections (D) and (E) of this Section. Unexpended funds may be used to reimburse unrecovered emergency room costs under subsection (C) of this Section.

C. The Administration shall distribute 10% of monies from the trauma and emergency services fund, for unrecovered emergency services costs, to a hospital having an emergency department, using criteria under R9-22-2103. Reimbursement is limited to no more than the amount of unrecovered emergency services costs as determined in R9-22-2103. The Administration may distribute more than 10% of the monies for unrecovered emergency room costs when there are unexpended monies under subsection (B) of this Section.

D. The Administration shall distribute a reporting tool and guidelines to level I trauma centers to determine, on an annual basis, the unrecovered trauma center readiness costs for level I trauma centers as defined in subsection (F) of this Section. The reporting time-frame is July 1 of the prior year through June 30 of the reporting year. A level I trauma center shall submit the requested data and a copy of the most recently completed uniform accounting report under A.R.S. § 36-125.04 to the Administration no later than October 31 of each reporting year.

E. When a level I trauma center closes in a county where there are one or more level I trauma center(s) remaining in operation, the following shall occur:

1. The closing level I trauma center shall submit the requested data under subsection (D) of this Section for the months of the reporting time-frame in which it met the definition of a level I trauma center, and
2. The data under subsection (D) of this Section, which is submitted by the closing level I trauma center, shall be added to the remaining level I trauma center(s) in that county for the current reporting time-frame only.

F. In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

1. "Level I trauma center" means any acute care hospital designated by the Arizona Department of Health Services as a level I trauma center, a provisional level I trauma center, a pediatric level 1 trauma center or an initial level I trauma center.
2. "Unrecovered trauma center readiness costs" means losses incurred treating trauma patients:
   a. Determined in accordance with Generally Accepted Accounting Principles,
   b. Based on both clinical and professional costs incurred by a level I trauma center necessary for the provision of level I trauma care, and
   c. Based on administrative and overhead costs directly associated with providing level I trauma care.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 4001, effective October 19, 2003 (Supp. 03-3). Amended by final rulemaking at 24 A.A.R. 2855, effective November 16, 2018 (Supp. 18-3).

R9-22-2102. Distribution of Trauma and Emergency Services Fund: Level I Trauma Centers

A. On or after November 1, 2003, the Administration shall distribute monies, under R9-22-2101(B), to level I trauma centers using monies available in the trauma and emergency services fund at the time of payment. The Administration shall take into consideration the proportion of those hospitals' trauma case volume. The Administration shall:

1. Recalculate the November 2003 payments in July 2004 using the formula in subsection (B) of this Section;
2. Recoup November 2003 overpayments by reducing the July 2004 distributions under subsection (C) as appropriate; and
3. Redistribute recouped funds, with the July 2004 payment, to level I trauma centers underpaid in November 2003.

B. On or after January 31 of each year, the Administration shall distribute monies, under R9-22-2101(B), to level I trauma centers using monies available in the trauma and emergency services fund at the time of payment. The Administration shall determine each hospital's unrecovered trauma center readiness costs for the current fiscal year using data from the most recent reporting year as provided under R9-22-2101(D) and (E). The proportion of each hospital's share of the fund for unrecovered trauma center readiness costs is determined after considering:

1. The professional, clinical, administrative, and overhead costs directly associated with providing level I trauma care, and
2. The volume and acuity of trauma care provided by each hospital.

C. On or after July 31 of each year, the Administration shall distribute monies to level I trauma centers using monies, under R9-22-2101(B), available in the trauma and emergency services fund at the time of payment according to the proportions calculated and used for the January payments in the same year, under subsection (B) of this Section.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 4001, effective October 19, 2003 (Supp. 03-3).

R9-22-2103. Distribution of Trauma and Emergency Ser-

vices Fund: Emergency Services

On or after June 30 of each year, the Administration shall distribute monies available in the trauma and emergency services fund at the time of payment as follows:

1. As allocated under R9-22-2101(C),
2. To hospitals that had an emergency department from July 1 through June 30 of the prior year, and
3. On a pro rata share of each hospital's cost of uncompensated emergency care as a percentage of the total statewide cost of uncompensated emergency care provided by hospitals under subsection (2) as reported in the uniform accounting reports to the Arizona Department of Health Services under A.R.S. § 36-125.04.

Historical Note

New Section made by exempt rulemaking at 9 A.A.R. 4001, effective October 19, 2003 (Supp. 03-3). Amended by exempt rulemaking at 18 A.A.R. 1748, effective July 1, 2012 (Supp. 12-2).

R9-22-2104. Additional Trauma and Emergency Services Payments under the Section 1115 Waiver

A. Notwithstanding R9-22-2101(D), for the reporting years ending June 30, 2011 and June 30, 2012, the Administration shall distribute an amount equal to the balance of the Trauma and Emergency Services fund in the following manner:

1. Ninety percent of the amount shall be distributed to Level I trauma centers based upon each center's pro rata share of each center's acuity-adjusted volume as a percentage of the total acuity-adjusted volume for all centers in the state. The acuity-adjusted volume is calculated by multiplying the Injury Severity Score employed by trauma.org by the number of trauma cases at that level treated at the center during the reporting year. Hospitals shall report trauma scores and case volume on a worksheet prescribed by the Administration.
2. Ten percent of the amount shall be distributed proportionately to hospitals that had an emergency department from July 1 through June 30 of the reporting year based the pro rata share of each hospital's cost of emergency care as a percentage of the total statewide cost of emergency care provided by hospitals as reported on the Worksheet B, column 27, line 61 of the hospital's most current Medicare Cost Report as of January 31 following the end of each reporting year.

B. For the reporting years ending June 30, 2011 and June 30, 2012, the Administration shall distribute an amount equal to the federal financial participation made available under the section 1115 waiver for the purpose of making payments for unrecovered trauma and emergency services as follows:

1. Thirty percent of such funds to a Level I trauma center, in amounts calculated in the same manner as described in subsection (A)(1) of this Section, for any unrecovered trauma center readiness costs not reimbursed under subsection (A) of this Section;
2. Thirty percent of such funds to a hospital having an emergency department from July 1 through June 30 of the reporting year, in amounts calculated in the same manner as described in subsection (A)(2) of this Section, for any unrecovered emergency services costs not reimbursed under subsection (A) of this Section; and
3. Forty percent of such funds to rural hospitals, as defined in R9-22-718 that are not Level 1 trauma centers as defined in R9-22-2101(F), having an emergency department from July 1 through June 30 of the reporting year, in amounts calculated in the same manner as described in subsection (A)(2) of this Section, for any unrecovered emergency services costs not reimbursed under subsections (A) and (B)(2) of this Section.

C. For the reporting years ending June 30, 2011 and June 30, 2012, payments made under this Article shall not be made in an amount that results in aggregate payments to the hospital by the Administration and contractors exceeding of the upper payment limit for the hospital services as calculated in accordance with 42 CFR 447.

D. For the reporting years ending June 30, 2011 and June 30, 2012, to ensure compliance with subsection (C), payments under this Article shall be reconciled to the federal fiscal year that is two years subsequent to the payment.

E. Any payments that are determined under subsection (D) to exceed the limit in subsection (C) shall be distributed as described in this Article to hospitals that have not received payments in excess of the limit in subsection (C).

Historical Note

New Section made by exempt rulemaking at 18 A.A.R. 1748, effective July 1, 2012 (Supp. 12-2).

36-2903.07. Trauma and emergency services fund

(Caution: 1998 Prop. 105 applies)

A. The trauma and emergency services fund is established consisting of monies deposited pursuant to section 5-601.02(H)(3)(b)(ii) and interest earned on those monies. The Arizona health care cost containment system administration shall administer the fund. The fund is not subject to appropriation, and expenditures from the fund are not subject to outside approval notwithstanding any statutory provision to the contrary.

B. Monies received pursuant to section 5-601.02 shall be deposited directly with the trauma and emergency services fund. On notice from the administration, 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. No monies in the trauma and emergency services fund shall revert to or be deposited in any other fund, including the state general fund. Monies in the trauma and emergency services fund are exempt from the provisions of section 35-190 relating to the lapsing of appropriations. Monies provided from the trauma and emergency services fund shall supplement, not supplant, existing monies.

C. Monies in the fund shall only be used to reimburse hospitals in Arizona for unrecovered trauma center readiness costs and unrecovered emergency services costs as provided for in this section.

D. For purposes of this section:

1. "Trauma center readiness costs" means clinical, professional and operational costs that are incurred by a level I trauma center and that are necessary for the provision of level I trauma care on a twenty-four hour, seven days per week basis. Trauma center readiness costs include only those administrative and overhead costs that are directly associated with providing level I trauma care.

2. "Emergency services costs" means clinical, professional and operational costs that are necessarily incurred by a hospital in providing emergency services.

3. "Unrecovered" means the difference between the costs incurred by a hospital in providing the service and the amount that the hospital has been paid for providing the service.

E. Within six months of the effective date of this section, the administration shall promulgate rules pursuant to Arizona Revised Statutes title 42, chapter 6, except that the rules shall not be subject to article 5 of that chapter. The rules shall set forth:

1. A methodology to determine Arizona hospitals' unrecovered trauma center readiness costs and unrecovered emergency services costs;

2. A procedure to distribute all monies from the trauma and emergency services fund to Arizona hospitals in proportion to those hospitals' unrecovered trauma center readiness costs and unrecovered emergency services costs.

F. The administration shall distribute all monies from the trauma and emergency services fund to Arizona hospitals in accordance with the rules promulgated pursuant to this section.

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 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.

F-12.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 22, Article 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 11, 2024**

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 22, Article 14

Summary

This Five Year Review Report for the Arizona Health Care Cost Containment System (AHCCCS) or (Agency) covers twenty-two (22) rules in Title 9, Chapter 22, Article 14 related to AHCCCS Medical Coverage for Households. AHCCCS is the single State agency responsible for administration of the Medicaid program in Arizona. The program is jointly funded by the State, counties, and the federal government. Federal law imposes a substantial number of conditions on the receipt of federal financial assistance reflected in federal statutes and regulation. Article 14 applies to eligibility requirements applicable to certain Medicaid coverage for families and individuals.

In its previous 5YRR for these rules approved by Council May 7, 2019, AHCCCS proposed to begin an expedited rulemaking to address the issues found in the report. AHCCCSdid not enact changes indicated due to a priority rulemaking which pertain specifically to certain rules in Article 14. That rulemaking was a result of a 2021-2022 policy update contained in Arizona's state plan. This policy change enacted was an extension to postpartum eligibility for pregnant women and was required to be enacted within a specific window allotted by the federal government.

Proposed Action

The Agency intends to begin the process for an expedited rulemaking within 30 days of GRRC's approval of this report in order to make these changes identified in this report and submit a Notice of Final Rulemaking to Council by August 2024.

1. **Has the agency analyzed whether the rules are authorized by statute?**

   AHCCCS cites both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Administration states that the objective of this rule is to specify that the Department of Economic Security (DES) determines eligibility as described in this Article and must do so in a non-discriminatory manner. According to the Administration, the last rulemaking focused on eligibility for postpartum pregnant women and there was no anticipated cost to the state because the federal government approved a waiver that allowed for 100% federal funds to cover the additional period of eligibility. This anticipated impact was carried out in the actual impact of the rule.

The Administration indicates that no economic impact will occur due to the proposed changes since these changes are still the most cost efficient and most beneficial way to craft these rules. Stakeholders include AHCCCS, DES 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 has reviewed the rule and states that the proposed changes will provide clarity and align with federal requirements. The Administration also states that since the federal requirements govern current administration of this program there will be no additional costs to members, and the benefit of these changes will provide added clarity.

4. **Has the agency received any written criticisms of the rules over the last five years?**

   AHCCCS has not received written criticism over the rules in the past five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

AHCCCS states the rules are clear, concise, and understandable with the following exceptions:

- R9-22-1420: should be revised for clarity
- R9-22-1432: should be revised for clarity

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

AHCCCS states the rules are consistent with other rules and statutes with the following exceptions:

- R9-22-1413: should be revised to comply with 42 C.F.R. 435.916(a)(3)(iii)
- R9-22-1432: should be revised to comply with 42 CFR 435.150(b)(3)
- R9-22-1441: should be revised to comply with 42 CFR 435, Subpart E.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

AHCCCS states the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

AHCCCS 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?**

AHCCCS 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?**

AHCCCS states the rules are not applicable as the rules do not require an issuance of a regulatory permit, license, or agency authorization.

11. **Conclusion**

This Five Year Review Report for the Arizona Health Care Cost Containment System covers twenty-two rules in Title 9, Chapter 22, Article 14 related to AHCCCS Medical Coverage for Households. As indicated above, the rules are generally clear, concise, and understandable, enforced as written and effective in achieving its objectives. 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 22, Article 14;

Dear Ms. Sornsin:

Please find enclosed AHCCCS's Five-Year Review Report for Title 9, Chapter 22, Article 14.

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 14

September 2023

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2903.01.

Specific Statutory Authority: A.R.S. § 36-2901.

2. The objective of each rule:

Rule	Objective
R9-22-1401	The objective of the rule is to provide definitions of terms used in the rules for Article 14.
R9-22-1403	The objective of the rule is to specify that the Department of Economic Security (DES) determines eligibility as described in this Article and must do so in a non-discriminatory manner.
R9-22-1407	Describes the effect of an applicant's death on the eligibility process.
R9-22-1413	Describes the timeframes and reinstatement process of an application.
R9-22-1416	Describes the effective dates of eligibility of members.
R9-22-1420	Describes the eligibility criteria for members regarding income.
R9-22-1421	Describes the eligibility criteria for members under the Modified Adjusted Gross Income (MAGI) standard.
R9-22-1422	Describes the methods for calculating income of members on a monthly basis.
R9-22-1423	Expands on the use of calculation methods of income of members on a monthly basis.
R9-22-1424	Expands on the use of calculation methods of income of members on a monthly basis based on type of income.
R9-22-1427	Describes the types of medical coverage under MAGI eligibility.
R9-22-1429	Describes the eligibility status of a newborn infant.
R9-22-1432	Describes young adult transitional insurance.
R9-22-1435	Describes eligibility for members with income over 100% of the federal poverty line (FPL).
R9-22-1436	Outlines the definition of family unit under federal regulations.
R9-22-1437	Describes eligibility under the family income requirements.
R9-22-1438	Describes eligibility requirements under the family resource requirements.
R9-22-1439	Outlines the effective date of eligibility.
R9-22-1440	Outlines the eligibility period of six months for members under the medical eligibility program.
R9-22-1441	Outlines the procedures for a member to file an eligibility appeal.

R9-22-1442	Outlines when coverage will not be approved for eligible members.
R9-22-1443	Describes the eligibility process under the AHCCCS Cares program.

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_

R9-22-1413	42 C.F.R. 435.916(a)(3)(iii) requires eligibility be redetermined upon receipt of the renewal form or missing information without requiring a new application, but does not require a reinstatement of eligibility to the date eligibility was lost. Suggest revising subsection B as follows, "The Administration or its designee shall ~~reopen or reinstate~~ redetermine eligibility of an individual who is discontinued for failure to submit the renewal form or necessary information, without requiring a new application, if the individual submits the renewal form or necessary information within 90 days after the date of discontinuance."
R9-22-1432	Revise for clarity and alignment with federal regulations at 42 CFR 435.150(b)(3). The current language does not match federal regulation or current practice. The CFR provisions are broader than State foster care under the referenced titles and Chapters, and references foster care under the responsibility of the State or a Tribe within the State. Current practice matches the CFR Suggest revising subsection 2 as follows: "Was in foster care under the responsibility of the State or Tribe within the State ~~the custody of the Department of Economic Security under A.R.S. Title 8, Chapter 5 or Chapter 10~~ on the individual's 18th birthday;"
R9-22-1441	Revise for clarity, to update inconsistent and outdated terminology and to reflect recent changes in federal regulations at 42 CFR 435, Subpart E.

5. Are the rules enforced as written? **Yes** _X__ **No** __

6. Are the rules clear, concise, and understandable? **Yes** _____ **No** _X_

R9-22-1420	Revise for clarity. Subsection A(1) cross-references subsection B, but it is unclear to whom within that section it is referring.
R9-22-1432	Revise for clarity and accuracy. Detail should be added to subsection B(1) to identify that monthly household income must not exceed the appropriate percentage of the FPL under R9-22-1427. Similarly, suggest adding "percent" before "FPL" in subsection B(3).

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 anticipates no impact on economic, small business and consumers as compared to last making of these rules. These changes are required to bring the rules into compliance with federal regulations, so that AHCCCS may still draw down federal matching funds for services provided to these members. These rules do not impose compliance or reporting requirements on small businesses beyond those already necessary to comply with federal law and state statute. Therefore these changes are the most cost effective way to continue to fund the care for these members, with no anticipated increase in costs to AHCCCS.

The last rulemaking focused on eligibility for postpartum pregnant women and there was no anticipated cost to the state because the federal government approved a waiver that allowed for 100% federal funds to cover the additional period of eligibility. This anticipated impact was carried out in the actual impact of the rule. Therefore, the cost to the state for these rules remains the same as during the last rulemaking, and these changes are compliance-related in nature, with not anticipated additional cost.

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 Administration did not enact changes indicated in previous five-year-report immediately following the prior 5YRR due to a priority rulemaking which pertained specifically to certain rules in Article 14. This rulemaking was a result of a 2021-2022 policy update contained in Arizona's state plan, a contract the structures the AHCCCS program with the Center for Medicare and Medicaid Services. This policy change enacted was an extension to postpartum eligibility for pregnant women and was required to be enacted within a specific window allotted by the federal government. Prior to this rulemaking, agency resources had been diverted to address COVID-19 public health emergency. At this time, the 5YRR adopts those changes recommended in the prior 5YRR, and AHCCCS has already received approval of an exemption from the rulemaking moratorium from the Governor's Office and plans to initiate the regular rulemaking immediately following GRRC's approval of this 5YRR.

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 proposed changes will provide clarity and align with federal requirements. Since the federal requirements govern the current administration of this program there will be no additional costs to members, and the benefit of these changes will provide added clarity, while keeping these rules in compliance with federal regulation.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No _X__

The regulations are not more stringent than 42 C.F.R. 435.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

These rules do not require an issuance of a regulatory permit, license, or agency authorization, therefore, compliance with the general permit requirements of A.R.S. 41-1037 or explanation why the agency believes an exception applies is not applicable.

14. Proposed course of action

The Administration has received an approval from the Governor's office to begin a rulemaking immediately following GRRC's approval of this report in order to make the changes outlined above and update the rules in Article 14, therefore the rulemaking will be initiated in May 2024, with an anticipated submission to GRRC by August 2024.

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).

R9-22-1403. Agency Responsible for Determining Eligibility
The Administration or its designee shall determine eligibility under the provisions of this Article. The Administration or its designee shall not discriminate against an applicant or member because of race, color, creed, religion, ancestry, national origin, age, sex, or physical or mental disability.

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).

R9-22-1404. 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). Section repealed; new Section made 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).

R9-22-1405. 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 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed; new Section made 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).

R9-22-1406. 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). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1407. 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). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 19 A.A.R. 3309, November 30, 2013 (Supp. 13-4). Section repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014; this Section was slated to be codified as repealed in Supp. 14-1. Due to a clerical error the Section wasn't repealed in this Chapter until Supp. 20-4.

R9-22-1408. 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). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1409. 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). Section repealed; new Section made 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).

R9-22-1410. 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). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1411. 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). Section repealed; new Section made 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).

R9-22-1412. 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 exempt rulemaking at 10 A.A.R. 23, effective December 9, 2003 (Supp. 03-4). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Section repealed; new Section made 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).

R9-22-1413. Time-frames, Reinstatement of an Application

A. The Administration or its designee shall complete an eligibility determination under R9-22-306(A)(1) unless:
1. The applicant is pregnant. The Administration or its designee shall complete an eligibility determination for a pregnant woman within 20 days after the application date unless additional information is required to determine eligibility; or
2. The applicant is in a hospital as an inpatient at the time of application. Within seven days of the Administration or its designee's receipt of a signed application the Administration or its designee shall complete an eligibility determination if the Administration or its designee does not need additional information or verification to determine eligibility.

B. The Administration or its designee shall reopen or reinstate eligibility of an individual who is discontinued for failure to submit the renewal form or necessary information, without requiring a new application, if the individual submits the renewal form or necessary information within 90 days after the date of discontinuance.

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). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1414. 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). Section repealed; new Section made 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).

R9-22-1415. 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). Section repealed; new Section made 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).

R9-22-1416. Effective Date of Eligibility

A. Except as provided in R9-22-303 and subsections (B), (C) and (D), the effective date of eligibility is the first day of the month that the applicant files an application if the applicant is eligible that month, or the first day of the first eligible month following the application month except for:
1. The MED program under R9-22-1439, and
2. Eligibility for a newborn under R9-22-1429.

B. The effective date of eligibility for an applicant who moves into Arizona is no sooner than the date Arizona residency is established.

C. The effective date of eligibility for an inmate applying for medical coverage is the date the applicant no longer meets the definition of an inmate of a public institution.

D. The effective date of eligibility for a newborn is no sooner than the date of birth.

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). Section repealed; new Section made 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).

R9-22-1417. 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). Section repealed; new Section made 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).

R9-22-1418. 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). Section repealed; new Section made 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).

R9-22-1419. 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 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed; new Section made 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).

R9-22-1419.01. Repealed

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1419.02. Repealed

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1419.03. Repealed

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1419.04. Repealed

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Section repealed by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1420. Income Eligibility Criteria

A. Evaluation of income. In determining eligibility, the Administration or its designee shall evaluate the following types of income received by a person identified in subsection (B):
1. Earned income, including in-kind income, before any deductions. For purposes of this Section, in-kind income means room, board, or provision for other needs in exchange for work performed. The person identified in subsection (B) shall ensure that the provider of the in-kind income establishes and verifies the monetary value of the item provided. The provider may be, but is not limited to:
   a. A landlord who provides all or a portion of rent or utilities in exchange for services;
   b. A store owner who gives goods such as groceries, clothes, or furniture in exchange for services; or
   c. An individual who trades goods such as a car, tools, trailer, building material, or gasoline in exchange for services;
2. Self-employment income under R9-22-1424, including gross business receipts minus business expenses; and
3. Unearned income, including deemed income under R9-22-317 from the sponsor of a non-citizen applicant.

B. MAGI income group. The Administration or its designee shall include the following persons in the MAGI income group:
1. When the applicant is a taxpayer include:
   a. The applicant,
   b. Everyone the applicant expects to claim as a tax dependent for the current year, and
   c. The applicant's spouse, when living with the applicant.
2. Except as provided in subsection (B)(3), when the applicant expects to be claimed as a tax dependent for the current year include:
   a. The taxpayer claiming the applicant,
   b. Everyone else the taxpayer expects to claim as a tax dependent,
   c. The taxpayer's spouse when living with the taxpayer, and
   d. The applicant's spouse, when living with the applicant.
3. When any of the following apply, determine the persons whose income is included as described in subsection (4)(a) or (4)(b) based on the applicant's age:
   a. The applicant expects to be claimed as a tax dependent by someone other than a spouse or natural, adopted or step-parent;
   b. The applicant is under age 19, expects to be claimed as a tax dependent by a natural, adopted or step-parent, lives with more than one such parent and the parents do not expect to file a joint tax return; or
   c. The applicant is under age 19 and expects to be claimed as a tax dependent by a non-custodial parent.
4. When the applicant is not a taxpayer, does not expect to be claimed as a tax dependent and is:
   a. Under age 19. Include the income of the applicant and when living with the applicant, the applicant's:
      i. Spouse;
      ii. Natural, adopted and step-children;
      iii. Natural, adopted and step-parents;
      iv. Natural, adopted and step-siblings; and
   b. Age 19 or older. Include the income of the applicant and when living with the applicant, the applicant's:
      i. Spouse;
      ii. Natural, adopted and step-children under age 19.
5. When the applicant is a pregnant woman, the Administration or its designee shall also include the number of expected babies only for the pregnant woman's income group.
6. When the taxpayer cannot reasonably establish that a person is the taxpayer's tax dependent, inclusion of the person in the taxpayer's MAGI income group is determined as provided in subsection (B)(4).

C. A person whose income is counted. The Administration or its designee shall count the MAGI-based income of all members of an applicant's MAGI income group with the following exceptions:
1. The income of an individual who is included in the MAGI income group of his or her natural, adoptive or step parent and is not expected to be required to file a tax return for the year in which eligibility for Medicaid is being determined, is not counted whether or not the individual files a tax return.
2. The income of a tax dependent other than the taxpayer's spouse or biological, adopted or stepchild who is not expected to be required to file a tax return for the year in which eligibility for Medicaid is being determined is not counted when the tax dependent is included in the taxpayer's MAGI income group, whether or not the tax dependent files a tax return.

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). Section repealed; new Section made 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).

R9-22-1421. MAGI based Income Eligibility

A. In determining eligibility, if an individual would otherwise be ineligible under this Article due to excess income, the Administration or its designee shall subtract an amount equivalent to five percentage points of the Federal Poverty Level (FPL) from the household income.

B. A person is eligible under this Article when:
1. Subject to subsection (A), the monthly household income does not exceed the appropriate FPL;
2. If ineligible under (B)(1), the household income determined in accordance with 26 CFR 1.36B–1(e) is below 100 percent FPL; or
3. For eligibility under R9-22-1437, the person's income during the period defined in R9-22-1437(C) does not exceed the FPL under R9-22-1437(B).

C. The Administration or its designee shall consider the following factors when determining the income period to use to determine monthly income:
1. Type of income,
2. Frequency of income,
3. If source of income is new or terminated, or
4. Income fluctuation.

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). Section repealed; new Section made 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).

R9-22-1422. Methods for Calculating Monthly Income

A. Projecting income.
1. Description. Projecting income is a method of determining the amount of income that a person will receive.
2. Calculation. The Administration or its designee shall project income by:
   a. Converting income to a monthly equivalent,
   b. Using unconverted income, or
   c. Prorating income to determine a monthly equivalent.
3. Exclusion. When calculating projected monthly income, the Administration or its designee shall exclude an unusual variation in income under R9-22-1424(E), except for a month in which the variation is anticipated to occur.

B. Averaged income.
1. Description. Averaging income proportionally distributes the person's income received on a regular basis.
2. Calculation. To average income, the Administration or its designee shall add the amount of the income and divide by the total number of pay periods. If the amount of income received per pay period fluctuates, and the fluctuation is expected to continue, the Administration or its designee shall:
   a. Use the averaged weekly or bi-weekly amounts to convert weekly or bi-weekly income to a monthly equivalent;
   b. Use the averaged monthly or semi-monthly amounts to project monthly income; and
   c. Use the averaged hours worked and multiply the average by the current rate of pay. If there is a change in the rate of pay, use the new rate of pay when calculating projected income under subsection (A).

C. Prorated income.
1. Description. Prorated income evenly distributes a person's income over the period the income is intended to cover to calculate a monthly equivalent.
2. Calculation. To prorate income, the Administration or its designee shall divide the total amount of the person's income received during the period by the number of months that the income is intended to cover.

D. Converted income.
1. Description. Converted income is income received weekly or biweekly that is changed to a monthly equivalent.
2. Calculation.
   a. The Administration or its designee shall average the weekly or bi-weekly income amounts before converting to the monthly equivalent if the person's past income fluctuates and the fluctuation is expected to recur.
   b. To convert income paid weekly to a monthly equivalent, the Administration or its designee shall multiply the weekly average by 4.3 weeks.
   c. To convert income paid bi-weekly to a monthly equivalent, the Administration or its designee shall multiply the bi-weekly average by 2.15 weeks.

E. Unconverted income.
1. Description. Unconverted income is the actual amount of income received or projected to be received during a month.
2. Calculation. The Administration or its designee shall sum the actual amount of income received or projected to be received during a month.

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). Section repealed; new Section made 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).

R9-22-1423. Calculations and Use of Methods Listed in R9-22-1422 Based on Frequency of Income

A. Monthly income. If otherwise countable income is received monthly or in a lump sum, the Administration or its designee shall use the unconverted method for calculating monthly income.
1. Lump sum means a nonrecurring payment that serves as a complete payment.
2. Lump sum payments include but are not limited to: rebates or credits; inheritances; insurance settlements; and payments for prior months from such sources as Social Security, Railroad Retirement, or other benefits.

3. A lump sum payment may include a portion intended for the current month.

B. Weekly income. If income is received weekly, the Administration or its designee shall convert the income to a monthly equivalent under R9-22-1422(D).

C. Bi-weekly income. If income is received bi-weekly, the Administration or its designee shall convert the income to a monthly equivalent under R9-22-1422(D).

D. Semi-monthly or daily income. If income is received semi-monthly or daily, the Administration or its designee shall use the unconverted method for calculating monthly income under R9-22-1422(E).

E. Bimonthly, quarterly, semi-annual, or annual income. If income is received bimonthly, quarterly, semi-annually, or annually, the Administration or its designee shall prorate the income received or projected to be received under R9-22-1422(C).

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). Section repealed; new Section made 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).

R9-22-1424. Use of Methods Listed in R9-22-1423 Based on Type of Income

A. New income.
1. Description. New income is income received from a new source during the first calendar month that the income is received from the source.
2. Calculating monthly income.
   a. If a full month's income is received, the Administration or its designee shall use the appropriate method described in R9-22-1423 to calculate the monthly income.
   b. If less than a full month's income is received, the Administration or its designee shall use the unconverted method to calculate the monthly income.

B. Terminated income.
1. Terminated income is income received during the last calendar month when no more income is expected to be received from that source.
2. Calculating monthly income.
   a. If a full month's income is received, the Administration or its designee shall use the appropriate method described in R9-22-1423 to calculate the monthly income.
   b. If less than a full month's income is received, the Administration or its designee shall use the unconverted method to calculate the monthly income.

C. Break in income.
1. Description. A break in income is a break in established frequency of income of one calendar month or more.
2. Calculating monthly income.
   a. If a full month's income is received, the Administration or its designee shall use the appropriate method described in R9-22-1423 to calculate the monthly income.
   b. If less than a full month's income is received, the Administration or its designee shall use the unconverted method to calculate the monthly income.

D. Contract or regular seasonal income.
1. Descriptions.
   a. Contract income is income a person earns under a contract that specifies a length of time the contract covers, the amount of income to be paid, and the frequency of payment.
   b. Regular seasonal income is income that fluctuates based on season or is only received during a certain season, and can reasonably be anticipated based on history or other verification.
2. Calculating monthly income.
   a. When the contract or regular seasonal income will not fluctuate over the 12-month period beginning with the month the application or renewal is submitted, the Administration or its designee shall use the appropriate income calculation method in R9-22-1423 for the frequency of receipt.
   b. When the contract or regular seasonal income is anticipated to fluctuate over the 12-month period beginning with the month the application or renewal is submitted, the Administration or its designee shall calculate the monthly income as follows:
      i. For a one-time contract that ends between the month the application or renewal is submitted and the end of the calendar year, divide the income that will be received from the application or renewal month through the end of the calendar year by the number of months in that period to get a monthly equivalent;
      ii. For contracts that extend into the next calendar year, contracts that are anticipated to be renewed and regular seasonal income, the Administration or its designee shall divide the income that will be received in the 12-month period beginning with the application or renewal month by 12 to get the monthly equivalent.

E. Unusual variation in the amount of income.
1. Description. Unusual variation is an amount of income that is different from the established amount received and is not projected to continue or recur.
2. Calculating monthly income.
   a. When calculating income for the month in which an unusual variation in income occurs, the Administration or its designee shall include the unusual variation in the income calculation.
   b. When an unusual variation in income occurs during the month, the Administration or its designee shall use the converted method for calculating monthly income if income is received weekly or bi-weekly.
   c. When projecting income for the months following the month in which the unusual variation occurs, the Administration or its designee shall exclude the unusual variation in income from the income calculation.

F. Self-employment income.
1. Description. Self-employment income is income a person earns from the person’s own trade or business less allowable expenses.

2. Calculating monthly income. The Administration or its designee shall prorate the income under R9-22-1422.

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). Section repealed; new Section made 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).

R9-22-1425. 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). Section repealed; new Section made 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).

R9-22-1426. 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). Section repealed; new Section made 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).

R9-22-1427. Eligibility Under MAGI

A. Caretaker Relatives. An individual is eligible for AHCCCS medical coverage as a Caretaker Relative when the individual meets the following requirements:
1. Is a caretaker relative as defined in R9-22-1401.
2. The total countable income under R9-22-1420(B) does not exceed 106 percent of the FPL for the number of people in the MAGI income group.

B. Continued medical coverage.
1. A caretaker relative eligible under subsection (A) and all dependent children eligible under subsection (D) in the caretaker relative's MAGI income group are entitled to continued AHCCCS coverage for up to 12 months if eligible under subsection (B)(1)(c)(i) and up to four months if eligible under subsection (B)(1)(c)(ii) if the MAGI income group's income exceeds the limit for the income group's size and the following conditions are met:
   a. The caretaker relative still lives with a dependent child;
   b. A caretaker relative in the income group received AHCCCS medical coverage under this Section for three calendar months out of the most recent six months; and
   c. The loss of AHCCCS coverage under this Section is due to:
      i. Increased earned income of a caretaker relative, or
      ii. Increased spousal support.
2. An applicant may be added to the continued medical coverage under subsection (B)(1), if the applicant did not reside in the household at the time continued medical coverage under this Section was determined and the applicant is:
   a. The spouse or dependent child of a caretaker relative receiving continued medical coverage, or
   b. The parent of a dependent child who is receiving continued medical coverage.

C. Pregnant Women. A pregnant woman is eligible for AHCCCS medical coverage when the total countable income under R9-22-1420(B) does not exceed 156 percent of the FPL for the number of people in the MAGI income group. A pregnant woman who applies for AHCCCS medical coverage during the pregnancy or postpartum period and is determined eligible, remains eligible throughout the postpartum period. The postpartum period begins the day the pregnancy terminates and ends the last day of the month in which the 60th day following pregnancy termination occurs.

D. Children. A child less than 19 years of age is eligible for AHCCCS medical coverage when the total countable income under R9-22-1420(B) does not exceed the following percentage of the FPL for the number of people in the MAGI income group:
1. 147 percent for a child under one year of age,
2. 141 percent for a child age one through five years of age, or
3. 133 percent for all other persons.

E. Adults. An individual is eligible for AHCCCS medical coverage when the individual meets the following eligibility requirements:
1. Is 19 years of age or older but less than 65 years of age;
2. Is not pregnant;
3. Is not eligible for AHCCCS Medical Coverage under any other coverage group listed in 42 U.S.C. 1396a(a)(10)(A)(i);
4. Is not entitled to or enrolled for Medicare benefits under Part A or Part B;
5. The total countable income under R9-22-1420(B) does not exceed 133 percent of the FPL for the number of people in the MAGI income group; and
6. When the individual is a caretaker relative, but has income exceeding the limit in subsection (A)(2), each child under age 19 living with the individual is receiving AHCCCS medical coverage or KidsCare, or is enrolled in minimum essential coverage as defined in 42 CFR 435.4.

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). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Section R9-22-1427 repealed; new Section R9-22-1427 made by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1428. 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). Section repealed; new Section made by final rulemaking

at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1429. Eligibility for a Newborn

A child born to a mother eligible for and receiving medical coverage under this Article, Article 15 of the Chapter, or 9 A.A.C. 28, is automatically eligible for AHCCCS medical coverage for a period not to exceed 12 months. Automatic eligibility begins on the child's date of birth and ends with the last day of the month in which the child turns age one.

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). Section repealed; new Section made 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, effective January 7, 2014 (Supp. 14-1). Amended by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

R9-22-1430. 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). Section repealed; new Section made 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).

R9-22-1431. 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). Section repealed; new Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 2633, effective July 10, 2007 (Supp. 07-3). Amended by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2). Amended by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1). Repealed by final rulemaking at 21 A.A.R. 1241, effective September 5, 2015 (Supp. 15-3).

R9-22-1432. Young Adult Transitional Insurance

An individual is eligible for AHCCCS medical coverage when the individual meets all of the following eligibility requirements:

1. Is 18 through 25 years of age;
2. Was in the custody of the Department of Economic Security under A.R.S. Title 8, Chapter 5 or Chapter 10 on the individual's 18th birthday;
3. Was eligible for and receiving AHCCCS Medical Coverage on the individual's 18th birthday; and
4. Is not eligible for AHCCCS Medical Coverage under 42 U.S.C. 1396a(a)(10)(A)(i)(I) - (VII).

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). Section repealed; new Section made 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).

R9-22-1433. 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). Section repealed; new Section made 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).

R9-22-1434. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by exempt rulemaking at 7 A.A.R. 5701, effective December 1, 2001 (Supp. 01-4). Section repealed by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4).

R9-22-1435. Eligibility for a Person With Medical Expenses Whose Income is Over 100 Percent FPL

An applicant who is not eligible for AHCCCS medical coverage due to excess income may become AHCCCS eligible by deducting medical expenses from the applicant's income. This coverage is called Medical Expense Deduction (MED).

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1436. MED Family Unit

A. For the purpose of this Section, a child is an unmarried person under age 18.

B. The Department shall consider each of the following to be a family when living together:

1. A parent and the parent's children;
2. A married couple without children;
3. A married couple and the children of either or both spouses;
4. Unmarried parents who live with at least one child in common, and the parents' other children, whether in common or not; and
5. A person without children.

C. If an applicant is pregnant, the family unit includes the number of unborn children.

D. A child of the children included in subsections (B)(1), (B)(3), or (B)(4) is considered part of the family unit when living together.

E. The Department shall not include a SSI-cash recipient in the MED family unit even if the SSI-cash recipient is a parent, spouse, or child.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1437. MED Income Eligibility Requirements

A. Income exclusions. The exclusions in R9-22-1420(C) apply to the MED family unit.

B. Income standard.

1. The Department shall divide the annual FPL for the MED family unit that is in effect during each month of the income period by 12 to determine the monthly FPL.
2. The Department shall add the monthly FPLs for the income period and multiply the resulting amount by 40 percent.
3. Changes to the annual FPL are implemented in April of each year.

C. Income period. The income period is the month of application and the next two months. The Department shall add together the three months' income to establish the MED family unit's income amount.

D. Medical expense deduction period. The medical expense deduction period is a three-month period consisting of:

1. For a new application, the month before the application month, the month of application, and month following the application month; or
2. For a MED eligibility review, the last month of the prior MED eligibility period and the following two months.

E. The Department shall calculate the amount of countable monthly income as follows:

1. Subtract a $90 cost of employment allowance from the gross amount of earned income for each person whose earned income is counted;
2. Disregard from the remaining earned income an amount billed by the provider for the care of each dependent child under age 18 or incapacitated adult member of the MED family unit if the care is for the purpose of allowing the person to work. If more than one person in the household is responsible for and billed for the care of a dependent child, the disregard may be split between the wage earners if splitting the disregard is to the benefit of the family, but shall not exceed the maximum disregards as follows:
   a. A maximum of $200 for a child under age two and $175 for other dependents for a wage-earner employed full-time (86 or more hours per month); and
   b. A maximum of $100 for a child under age two, and $88 for other dependents for a wage earner employed part-time (less than 86 hours a month);
3. Add the remaining earned income for each MED family member to the unearned income of all MED family members;
4. Compare the MED family's unit countable income amount to the income standard in subsection (B). The difference is the amount of medical expenses the family shall incur during the medical expense deduction period to become eligible;
5. Subtract allowable medical expense deductions that were incurred by:
   a. A member of the MED family unit;
   b. A deceased spouse or minor child of a MED family unit if this person would have been a member of the MED unit during the MED expense deduction period;
   c. A person who was a minor child of a MED family unit member when the expense was incurred but who is no longer a minor child; or
   d. A minor child, including a child who is a runaway, who left home before the date of application to live with someone other than a parent; and
6. Compare the net MED family income to the income standard listed in subsection (B).

F. The family is eligible if the net income in subsection (E)(6) does not exceed the income standard in subsection (B).

Historical Note

New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1438. MED Resource Eligibility Requirements

A. Including countable resources. The Department shall include the resources not excluded that belong to and are available to members of the family of a qualified alien under A.R.S. § 36-2903.03 and the sponsor and sponsor's spouse of a person who is a qualified alien.

B. Ownership and availability. The Department shall evaluate the ownership of resources to determine the availability of resources to a person listed in subsection (A).

1. Jointly owned resources with ownership records containing the words "and" or "and/or" between the owners' names are available to each owner except if one of the owners refuses to sell. A consent to sale is not required if all owners are members of the MED family unit.
2. Jointly owned resources with ownership records containing the word "or" between the owners' names are presumed to be available in full to each owner. The applicant or member may rebut the presumption by providing clear and convincing evidence of intent to establish a different type of ownership. If the presumption is rebutted, the resource is available to the owners:
   a. Consistent with the intent of the owners, or
   b. Based on each owner's proportionate net contribution if there is not clear and convincing evidence of a different allocation.
3. The Department shall establish availability of a trust under 42 U.S.C. 1396p(d)(4)(A) or (C).

C. Unavailability. The Department shall consider the following resources unavailable:

1. Property subject to spendthrift restriction, such as:
   a. Accounts established by the SSA, Veteran's Administration, or similar sources that mandate that the funds in the account be used for the benefit of a person not residing with the MED family unit; or
   b. Trusts established by a will or funded solely by the income and resources of someone other than a member of the MED family unit.
2. A resource being disputed in a divorce proceeding or probate matter;
3. Real property located on a Native American reservation;

4. A resource held by a conservator to the extent court-imposed restrictions make the resource unavailable to the applicant, member, or member of the family unit for:
   a. Medical care,
   b. Food,
   c. Clothing, or
   d. Shelter.

D. Resource exclusion. The Department shall exclude the following resources from the calculation of resources under subsection (E):
1. One burial plot for each person listed in R9-22-1436;
2. Household furnishings and personal items that are necessary for day-to-day living;
3. Up to $1500 of the value of one prepaid funeral plan for each person listed in R9-22-1436 that specifically covers only funeral-related expenses as evidenced by a written contract;
4. The value of one motor vehicle regularly used for transportation. If the MED family unit owns more than one vehicle, the exclusion is applied to the vehicle with the highest equity value;
5. The value of a vehicle used to earn income and not used simply for transportation to and from employment;
6. The value of a vehicle in which a SSI-cash recipient has an ownership interest; and
7. The value of any vehicle used for medical treatment, employment, or transportation of a SSI-cash disabled child, and that is excluded by SSI for that reason.
8. Funds set aside in an Individual Development Account under 6 A.A.C. 12, Article 4; and
9. Any other resource specifically excluded by federal law.

E. Calculation of resources. The Department shall determine the value of all household resources as follows:
1. Calculate the total amount of countable liquid resources;
2. Calculate the equity value of each countable non-liquid resource. The Department shall determine the equity value of a countable non-liquid resource by subtracting the amount of valid encumbrances on that resource from:
   a. The market value of real property if there is no assessor's evaluation of the property,
   b. The market value of real property if the assessor's value of the real property does not include the value of permanent structures on that property,
   c. The assessor's full cash value if subsections (E)(2)(a) and (E)(2)(b) do not apply, and
   d. The market value of a non-liquid resource that is not real property;
3. Not assign an equity value to a resource that is less than zero; and
4. Determine the MED family unit's resources by adding the totals determined in subsections (1) and (2).

F. Resource standard to be eligible for MED. A person is not eligible for MED if the resources determined in subsection (E) exceed $100,000 or if more than $5,000 are liquid resources.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1439. MED Effective Date of Eligibility

A. A MED family unit is eligible on the day the income and resource eligibility requirements are met but no earlier than the first day of the month of application. If the family unit meets the income requirements in the application month but does not meet the resource limit until the following month, the family unit's effective date of eligibility is the first day of the month following the month of application.

B. The Department shall adjust the effective date of eligibility under subsection (A) to an earlier date if:
1. A member presents verification of additional allowable medical expenses incurred on an earlier date during the medical expense deduction period that allow the member to meet the income requirements, and
2. The member presents the verification within 60 days of approval of eligibility under this Section.

C. The Department shall not adjust an effective date of eligibility more than one time per application.

D. The Department shall adjust the effective date no later than 30 days after the end of the 60-day period under subsection (B)(2).

E. The Department shall deny an application and provide the applicant a denial notice when the applicant does not meet the MED requirements under this Article during the month of application or the month following the month of application.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1440. MED Eligibility Period

The Department shall approve eligibility for six months. Changes in circumstances do not affect eligibility for the first three months.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1441. Eligibility Appeals

A. Adverse actions. An applicant or member may appeal by requesting a hearing from the Department concerning any of the following adverse actions:
1. Complete or partial denial of eligibility under R9-22-1413;
2. Suspension, termination, or reduction of AHCCCS medical coverage under R9-22-1415;
3. Delay in the eligibility determination beyond the timeframes under this Article;
4. The imposition of or increase in a premium or copayment; or
5. The effective date of eligibility.

B. Notice of Adverse Action. The Department shall personally deliver or send, by regular mail, a Notice of Adverse Action to the person affected by the action. For the purpose of this Section, the date of the Notice of Adverse Action shall be the date of personal delivery to the applicant or the postmark date, if mailed.

C. Automatic change and hearing rights.
1. An applicant or a member is not entitled to a hearing if the sole issue is a federal or state law requiring an automatic change adversely affecting some or all recipients.
2. An applicant or a member is entitled to a hearing if a federal or state law requires an automatic change and the applicant or member timely files an appeal that alleges a misapplication of the facts to the law.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 4942, effective December 31, 2005 (Supp. 05-4).

R9-22-1442. Cessation of MED Coverage

The Department shall not approve any individual or family who has applied on or after May 1, 2011 as eligible for MED coverage. With

respect to any applications that are pending as of May 1, 2011, the Department shall not approve any individual or family as eligible for MED coverage who has not met all eligibility requirements prior to May 1, 2011.

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 1028, effective May 1, 2011 (Supp. 11-2).

R9-22-1443. Repealed

Historical Note

New Section made by exempt rulemaking at 17 A.A.R. 1345, effective July 8, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 2624, effective July 8, 2011 (Supp. 11-4). Repealed by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014 (Supp. 14-1).

ARTICLE 15. AHCCCS MEDICAL COVERAGE FOR PEOPLE WHO ARE AGED, BLIND, OR DISABLED

R9-22-1501. General Information

A. General. The Administration shall determine eligibility for AHCCCS medical coverage for the following applicants or members using the eligibility criteria and requirements in this Article and Article 3:

1. A person who is aged, blind, or disabled and does not receive SSI cash; and
2. A person terminated from the SSI cash program under R9-22-1505.

B. Definitions. In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

"Aged" means a person who is 65 years of age or older as specified in 42 U.S.C. 1382c(a)(1)(A).

"Blind" means a person who has been determined blind by the Department of Economic Security, Disability Determination Services Administration, under 42 U.S.C. 1382c(a)(2) and 42 CFR 435.530 as of October 1, 2012, which are incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW Washington, DC, 20401. This incorporated by reference contains no future editions or amendments.

"Disabled" means a person who has been determined disabled by the Department of Economic Security, Disability Determination Services Administration, under 42 U.S.C. 1382c(a)(3)(A) through (E) and 42 CFR 435.540 as of October 1, 2012, which are incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments.

C. Eligibility effective date.

1. Eligibility is effective on the first day of the month that all eligibility requirements are met, including the period described under R9-22-303.
2. The effective date of eligibility for an applicant who moves into Arizona is no sooner than the date Arizona residency is established.
3. The effective date of eligibility for an inmate applying for medical coverage is the date the applicant no longer meets the definition of an inmate of a public institution.

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 9 A.A.R. 5123, effective January 3, 2004 (Supp. 03-4). Amended by exempt rulemaking at 10 A.A.R. 23, effective December 9, 2003 (Supp. 03-4). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). 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, effective January 7, 2014 (Supp. 14-1). Amended by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4). Section amended by final rulemaking at 20 A.A.R. 192, with an immediate effective date of January 7, 2014; amendments to this Section were slated to be codified in Supp. 14-1 but due to a clerical error, were not published. The amendments to this Section were published in Supp. 20-4 and no additional amendments have been made to this Section since January 7, 2014 (Supp. 20-4).

R9-22-1502. 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).

R9-22-1503. Financial Eligibility Criteria

A. General income eligibility. Except as provided under subsection (B) of this rule, the Administration or its designee shall count the identified income under 42 U.S.C. 1382a and 20 CFR 416 Subpart K.

B. Exceptions.

1. In-kind support and maintenance under 42 U.S.C. 1382a(a)(2)(A) is excluded.
2. For a person living with a spouse, the Administration or its designee calculates net income for an eligible couple under 20 CFR 416.1160 as of April 1, 2013, which is incorporated by reference and on file with the Administration, and available from the U.S. Government Printing Office, Mail Stop: IDCC, 732 N. Capitol Street, NW, Washington, DC, 20401. This incorporation by reference contains no future editions or amendments, even if the spouse is not eligible for or applying for SSI or coverage under this Article.
3. In determining the net income of a married couple living with a child or the net income of a person who is not living with a spouse but living with a child, a child allocation is allowed as a deduction from the combined net income of the couple for each child regardless of whether the child is ineligible or eligible. For the purposes of this Section, a child means a person who is unmarried, natural or adopted, and under age 18 or under age 22 if a full-time student. Each child's allocation deduction is reduced by that child's income, including public income maintenance payments, using the methodology under 20 CFR 416.1163(b)(1) and (2) as of April 1, 2013, which is incorporated by reference and on file with the Adminis-

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 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.

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.

I.

CONSIDERATION AND DISCUSSION OF A.R.S. § 41-1033(G) AND (F) PETITION FROM ARIZONA STATE ASSOCIATION OF PHYSICIAN ASSISTANTS RELATED TO ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS RULES R4-17-401 AND R4-17-402

GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM

MEETING DATE: May 7, 2024

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

FROM: Council Staff

DATE: April 22, 2024

SUBJECT: **A.R.S. 41-1033(F) and (G) Petition Related to Arizona Regulatory Board of Physician Assistants rules R4-17-401 and R4-17-402**

Summary

On March 8, 2024, Council staff received a petition ("Petition") from attorney Craig Morgan on behalf of the Arizona State Association of Physician Assistants ("Petitioner") challenging the Arizona Regulatory Board of Physician Assistants' ("Board") rules R4-17-401 and R4-17-402. Specifically, Petitioner alleges these rules "exceed the Board's statutory authority, are unduly burdensome, conflict with the statute, and are unnecessary to specifically fulfill a public health, safety, or welfare concern" and requests the Council "declare the rules invalid." *See* Petition at 1.

Petitioner's Arguments

In April 2023, the Governor signed HB2043 into law. Petitioner alleges this legislation removed the requirement that all Physician Assistants ("PAs") must practice under a written Supervision Agreement. The Petitioner alleges, now, PAs with at least 8,000 hours of Board-certified clinical practice ("Experienced PAs") do not need a written Supervision Agreement or specific Supervising Physician. *See* A.R.S. § 32-2531(B). Furthermore, the Petitioner claims an Experienced PA may provide "any legal medical service" that the PA is competent to perform based on "education, training, and experience" in "collaboration" with a Physician or Entity. *See* A.R.S. § 32-2531(A), (B). The Petitioner states a Physician or Entity need only designate "one or more physicians by name or position who is responsible for oversight of the [PA]." *See* A.R.S. § 32-2501(6). The Petitioner alleges this frees Experienced

PAs from a tether to a single supervisor under a rigid written agreement so the PA can more effectively provide healthcare to patients.

Rule R4-17-402(B)-(G) is Inconsistent with Statute

Relying on exempt rulemaking authority in HB2043, the Board implemented amendments to rules R4-17-401 and R4-17-402. Petitioner alleges these amendments are inconsistent with statutory changes implemented by HB2043. Specifically, rule R4-17-402(B) states that "[a]s required under A.R.S. § 32-2531(B), a collaborating physician or entity shall develop written policies regarding collaboration for each physician assistant employed under [A.A.C. R4-17-402(A)]." However, Petitioner alleges A.R.S. § 32-2531(B) does not say the "policies" must be in writing and states HB2043 expressly repealed the requirement that every PA have a Supervising Physician who keeps "a written agreement."

Furthermore, the Petitioner states under rule R4-17-402(B)–(C), Experienced PAs and "the physician providing oversight" must execute written policies that specify the (1) PA's name, license, and contact information; (2) name or position of the Physician "responsible for providing oversight" of the PA; (3) level of collaboration required between the PA and Physician "providing oversight" with that Physician's contact information; (4) PA's practice setting; (5) PA's specialty; and (6) PA's practice limits. The Petitioner alleges these Rules require a "physician providing oversight" despite HB2043 expressly allowing Experienced PAs to collaborate with a Physician or Entity and not mandating Physician collaboration.

Finally, the Petitioner states the rules require a collaborating Physician or Entity to review the written policies at least annually, "make necessary changes[,]" and execute a revised writing (R4-17-402(D)), there must be written policies for each relationship between a PA and Physician or Entity if there are multiple (R4-17-402(F)), and these written policies must be available to the Board on request (R4-17-402(G)). The Petitioner alleges all these requirements mimic the mandatory Supervision Agreements that HB2043 expressly repealed for Experienced PAs.

For the foregoing reasons, the Petitioner alleges the Board's rule R4-17-402(B)–(G) is inconsistent with statute.

Rule Amendments are Procedurally Invalid

The Petitioner further alleges that the Board's exempt rulemaking to amend rules R4-17-401 and R4-17-402 was procedurally invalid. First, the Petitioner alleges the Board did not receive an exception from the rulemaking moratorium from the Governor's Office to engage in the exempt rulemaking pursuant to A.R.S. § 41-1039(A). Second, the Petitioner alleges HB2043's one-time grant of exempt rulemaking to the Board "for purposes of the act" did not give the Board authority to engage in exempt rulemaking under its general authority to promulgate amendments to rules R4-17-401 and R4-17-402.

Rule R4-17-402(B)-(G) are Invalid Occupational Regulations

Petitioner cites to A.R.S. § 41-1093.01 and A.R.S. § 41-1093.03(B) alleging "[a]n agency shall limit all occupational regulations to regulations that are demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern," and an agency must "prove by a preponderance of the evidence that the challenged occupational regulation is demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern," respectively. However, these statutory provisions relate to petitions filed directly with the agency in question or actions filed in a court of general jurisdiction to challenge an occupational regulation. While the Council may review a final rule or regulatory licensing requirement that the petitioner alleges is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern pursuant to A.R.S. § 41-1033(G), the Council has no authority to review occupational regulations under the standards outlined A.R.S. § 41-1093.01 or A.R.S. § 41-1093.03(B).

Board's Informal Response

In response to the Petition, the Board addresses the complaints in an informal response, stating that R4-17-402(B)-(G) are consistent with A.R.S § 41-1033(A), the rules are procedurally valid, and the rules are not unduly burdensome.

R4-17-402(B)-(G) Are Consistent with A.R.S § 41-1033(A)

The Board states the rules are both consistent with statute and reasonably necessary for the Board to carry out their purpose. The Board states A.R.S. § 32-2536(B) requires the Board to develop rules that ensure that collaborating physician assistants who become employed in an area of practice that is not substantially similar to previous practice areas are safe to practice in their newly chosen field. The Board determined that this requirement was best accomplished at the practice level, rather than through more restrictive alternatives, such as having the Board dictate continuing education/supervision requirements through an affirmative application and review process. In order to make these determinations, collaborating physicians and entities would need to have sufficient and objective data for review. For that reason, R4-17-402(B)-(D) and (F) requires collaborating physicians and entities to have written and annually reviewed policies articulating the collaborating physician's scope of practice. These written policies could be used by any prospective collaborating physician or entity to determine whether additional training or supervision is necessary at the initiation of the collaborative relationship as required by A.R.S. § 32-2536(B).

For the foregoing reasons, the Board alleges R4-17-402(B)-(G) are consistent with A.R.S § 41-1033(A).

The Rules are Procedurally Valid

The Board states they obtained the approval of the Governor's Office prior to promulgating the rules (Approval obtained from the Governor's Office December 19, 2023).

For the foregoing reasons, the Board alleges R4-17-402(B)-(G) are procedurally valid.

The Rules are Not Unduly Burdensome

The Board states that they carefully considered the intent of the statute, the language within the statute, and the input it received from physician assistant members of the board, stakeholders and from Ms. Kathy Busby, the lobbyist, who was involved in the legislative process. The Board also discussed and weighed its obligation to protect the public and therefore does not find it unreasonable or contrary to statute to have a written business record articulating the relationship between a collaborating physician assistant and their respective collaborating physician or entity. The Board states the rule requirements do not limit the designation to a single physician, nor do they "tether" the collaborating physician assistant to a specific physician like a supervisory agreement would. The requirements were left flexible to allow for the possibility that the collaboration agreement would designate a physician collaborator by role or department within an entity. However, while the rules do not "tether" a collaborating physician assistant to a specific physician, neither the statute nor the rule contains language that would lead to a complete "untethering" of the relationship between the collaborating physician and the collaborating physician assistant as there remains the statutory obligation for "oversight." The statute indicates that the level of collaboration would be made at the practice level, and determined by the policies of the practice setting at which the physician assistant is employed. The Board continues, stating, the written policies referenced in R4-17-402 call for a plan individualized for the collaborating physician assistant's education, experience, and competencies. While collaboration is not defined in statute, the distinction between supervision and collaboration is a matter of degree, as made evident by language in A.R.S. § 32-2531(B) requiring a collaborating physician assistant to "continue to collaborate with, consult with or refer to the appropriate health care professional as indicated by the patient's condition and by the physician assistant's education, experience and competencies."

For the foregoing reasons, the Board alleges the rules are not unduly burdensome.

Relevant Statutes

A.R.S. § 41-1033(F) allows a person to "petition the council to request a review of a final rule based on the person's belief that the final rule does not meet the requirements prescribed in section 41-1030." A.R.S. § 41-1030(A) states, "[a] rule is invalid unless it is consistent with the statute, reasonably necessary to carry out the purpose of the statute and is made and approved in substantial compliance with sections 41-1021 through 41-1029 and articles 4, 4.1 and 5 of this chapter, unless otherwise provided by law." Furthemore, A.R.S. § 41-1030(D) states an agency shall not "[m]ake a rule under a specific grant of rulemaking authority that exceeds the subject matter areas listed in the specific statute authorizing the rule", "[m]ake a rule under a general grant of rulemaking authority to supplement a more specific grant of rulemaking authority", or "[m]ake a rule that is not specifically authorized by statute."

A.R.S. § 41-1033(G) allows a person to "petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, exceeds the agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to

specifically fulfill a public health, safety or welfare concern. On receipt of a properly submitted petition pursuant to this section, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section."

If the Council receives information pursuant to A.R.S. § 41-1033(F) or (G), and at least three Council members request of the Chairperson that the matter be heard in a public meeting:

1. Within ninety days after receipt of the third council member's request, the council shall determine whether the agency practice or substantive policy statement constitutes a rule, whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

2. Within ten days after receipt of the third council member's request, the council shall notify the agency that the matter has been or will be placed on an agenda.

3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement not more than five double-spaced pages to the council that addresses whether the existing agency practice, substantive policy statement constitutes a rule or whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

See A.R.S. § 41-1033(H).

Analysis and Conclusion

A.R.S. § 41-1033 does not provide requirements or standards to guide the Council in determining whether this petition should be given a hearing. Therefore, Council members should make their own assessments as to what information is relevant in determining whether this petition may be heard.

In Council staff's view, the petition raises legitimate concerns about whether the Board's amendments to R4-17-402 are consistent with statute given recent changes enacted by HB2043, whether the rules are unduly burdensome on physician assistants, and whether the rule is necessary to specifically fulfill a public health, safety or welfare concern. *See* A.R.S. § 41-1033(F) and (G). However, Council staff does not believe the Council may review these rules pursuant to A.R.S. § 41-1093.01 and A.R.S. § 41-1093.03(B) as these statutes relate to petitions filed directly with the agencies or actions filed in a court of general jurisdiction to challenge an occupational regulation and are outside the scope of the Council's statutory

authority. It is Council staff's recommendation that the Council request of the Chair that this petition be heard at a future Council Meeting.

LAW OFFICES
SHERMAN & HOWARD L.L.C.
2555 East Camelback Road, Suite 1050
PHOENIX, ARIZONA 85016
TELEPHONE: (602) 240-3000
FAX: (602) 240-6600
(AZ BAR FIRM NO. 00441000)
Gregory W. Falls (AZ Bar No. 011206)
(GFalls@ShermanHoward.com)
Craig A. Morgan (AZ Bar No. 023373)
(CMorgan@ShermanHoward.com)
Jake T. Rapp (AZ Bar No. 036208)
(JRapp@ShermanHoward.com)
Attorneys for Petitioner Arizona State Association of Physician Assistants

BEFORE THE GOVERNOR'S REGULATORY REVIEW COUNCIL

AGENCY/BOARD:	**PETITION FOR REVIEW OF A.A.C. R4-17-401 & A.A.C. R4-17-402**
Arizona Regulatory Board of Physician Assistants	

Pursuant to A.R.S. § 41-1033(F), (G) and A.A.C. R1-6-402, the Arizona State Association of Physician Assistants ("Petitioner") asks the Governor's Regulatory Review Council to (1) review A.A.C. R4-17-401 and -402 (the "Rules") promulgated by the Arizona Regulatory Board of Physician Assistants (the "Board") because the Rules exceed the Board's statutory authority, are unduly burdensome, conflict with the statute, and are unnecessary to specifically fulfill a public health, safety, or welfare concern; and (2) declare the Rules invalid. **Ex. A** (the Rules).

I. FACTUAL BACKGROUND

In April 2023, Governor Hobbs signed HB 2043 into law. **Ex. B**. HB 2043 repealed the requirement that all Physician Assistants ("PAs") must practice under a written Supervision Agreement. Now, PAs with at least 8,000 hours of Board-certified clinical practice ("Experienced PAs") do not need a written Supervision Agreement or specific Supervising Physician. *Id.* at A.R.S. § 32-2531(B). An Experienced PA may provide "any legal medical service" that the PA is competent to perform based on "education, training, and experience" in "collaboration" with a Physician *or Entity*. *Id.* at A.R.S. § 32-2531(A), (B). The Physician *or Entity* need only designate "one or more physicians by name or position who is responsible for oversight of the [PA]." *Id.* at A.R.S. § 32-2501(6) (emphasis added). This frees Experienced PAs from a tether to a single supervisor under a rigid written agreement so the PA can more effectively provide healthcare to patients. **Ex. C** (articles that discuss harms caused by the "tether").

HB 2043 became effective on December 31, 2023. Between April and December 2023, the Board

made public comments about potential rules that would contradict HB 2043. **Ex. D** (Final Minutes for August 17, 2023 Meeting). The Board's Executive Director, by email, informed licensed PAs and Physicians that, under the proposed rules, "[a] Supervision Agreement that describes the [PA]'s scope of practice and prescribing authority is nonetheless required prior to performing health care tasks." **Ex. E**. And the Board's FAQ webpage for HB 2043 falsely asserts that "[a]s required under A.R.S. § 32-2531(B), a collaborating physician or entity shall develop written policies regarding collaboration for each [PA] employed under subsection (A)." *See* **Ex. F**; *see also* **Ex. B** at A.R.S. § 32-2531(B) (*no* writing requirement for Experienced PAs). Such rules ignore HB 2043's repeal of mandatory written Supervision Agreements for Experienced PAs. **Ex. B** at A.R.S. §§ 32-2501(6) (Experienced PAs do not need "a supervision agreement"), -2531(B) (same). Petitioner warned the Board such rules would contradict HB 2043. **Ex. G** (August 29, 2023 Letter). The Board promulgated its rules. **Ex. A** at A.A.C. R4-17-402(B)–(G) (even Experienced PAs must execute written policies nearly identical to the Supervision Agreements that HB 2043 states are not required). The Rules conflict with HB 2043.

Representative Selina Bliss, the Legislator who sponsored HB 2043, agrees with Petitioner that the Board's Rules conflict with HB 2043. **Exhibit H**. Representative Bliss noted, like Petitioner, that HB 2043 "does not require an *agreement* between a named physician or physicians." *Id.* And her "major concern is that the rules promulgated by the Board require a written policy SIGNED by a physician and PA, which is tantamount to an agreement, which is not required, contemplated, or intended by the legislation." *Id.* The Board appears steadfast in its position. *Id.* Accordingly, Petitioner seeks the Council's review to ensure that HB 2043 is correctly implemented for PAs, Physicians, and their patients.

II. THE COUNCIL SHOULD INVALIDATE THE RULES

A. A.A.C. R4-17-402(B)–(G) ARE SUBSTANTIVELY INVALID

"A rule is invalid unless it is consistent with the statute," *and* "reasonably necessary to carry out the purpose of the statute" A.R.S. § 41-1030(A). Here, A.A.C. R4-17-402(B) falsely states that "*[a]s required under A.R.S. § 32-2531(B)*, a collaborating physician or entity shall develop *written* policies regarding collaboration for each physician assistant employed under [A.A.C. R4-17-402(A)]." ***But A.R.S. § 32-2531(B) does not say the "policies" must be in writing***. HB 2043 expressly repealed the requirement that every PA have a Supervising Physician who keeps "a *written* agreement" updated annually. **Ex. I** (A.R.S. §

32-2531(H) (West 2022) (emphasis added)); **Ex. B** at A.R.S. § 32-2531 (HB 2043 removed § 32-2531(H) in its entirety). The Legislature could have required a writing as evidenced by such requirements appearing in other statutes. *See, e.g.*, **Ex. B** at A.R.S. §§ 32-2501(19) ("Supervision agreement" means "a ***written*** or electronic signed agreement . . . ." (emphasis added)), (20) ("Unprofessional conduct" includes "knowingly making any *written* or oral false or fraudulent statement . . . ." (emphasis added)), -2532(E) ("A prescription by a [PA] for a schedule III controlled substance that is an opioid or benzodiazepine is not refillable without the *written* consent of a physician." (emphasis added)). Yet A.R.S. § 32-2531(B) lacks such a requirement. We "will not read into a statute something which is not within the manifest intention of the legislature as gathered from the statute itself . . . ." *Roberts v. State*, 253 Ariz. 259, 266, ¶ 20 (2022) (cleaned up).

Under A.A.C. R4-17-402(B)–(C), Experienced PAs and "the physician providing oversight" must execute *written* policies that specify the (1) PA's name, license, and contact information; (2) name or position of the Physician "responsible for providing oversight" of the PA; (3) level of collaboration required between the PA and Physician "providing oversight" with that Physician's contact information; (4) PA's practice setting; (5) PA's specialty; and (6) PA's practice limits. These Rules require a "physician providing oversight" despite HB 2043 expressly allowing Experienced PAs to collaborate with a Physician *or Entity* and *not* mandating *Physician* collaboration. *Id.*; **Ex. B** at A.R.S. §§ 32-2501(6), -2531(B). Under HB 2043, only PAs with less than 8,000 Board-certified clinical practice hours need a Physician who provides oversight. **Ex. B** at A.R.S. §§ 32-2501(6), (17), (19)(b). HB 2043 eliminates such requirements for Experienced PAs. *Id.* at A.R.S. § 32-2501(6). But the Rules reinstate those requirements and effectively nullify HB 2043 by forcing Experienced PAs to collaborate with a Physician instead of choosing an Entity.

In addition to the writing requirements in A.A.C. R4-17-402(B)–(C), paragraph (D) requires a collaborating Physician or Entity to review the written policies at least annually, "make necessary changes[,]" and execute a revised writing. While an Experienced PA "may be employed and practice collaboratively with multiple" Physicians or Entities, there must be written policies for each relationship. **Ex. A** at A.A.C. R4-17-402(F). Which means there must be a "physician providing oversight" for each set of written policies. *See id.* at A.A.C. R4-17-402(B)(2)–(3), (C). And these written policies must be available to the Board on request. *Id.* at A.A.C. R4-17-402(G). All these requirements mimic the mandatory Supervision Agreements that HB 2043 *expressly repealed* for Experienced PAs. **Ex. I** at A.R.S. § 32-

2531(H)(4) (prior statute provided that a Supervising Physician must "[m]aintain a written agreement with" any PA). Those Agreements had to (1) say the Physician will supervise the PA and retain responsibility for any care rendered by the PA; (2) be executed by the Supervising Physician and PA; (3) updated at least annually; and (4) made available to the Board on request. *Id.* So, the Rules effectively revived the requirement that all PAs have a Supervision Agreement with a specific supervisor. *Compare* **Ex. A** at A.A.C. R4-17-402(B)–(G), *with* **Ex. I** at A.R.S. § 32-2531(H).

The Legislature made it clear: Experienced PAs are "*not required to practice pursuant to a supervision agreement* but shall continue to collaborate with, consult with or refer to the appropriate health care professional . . . ." **Ex. B** at A.R.S. § 32-2531(B) (emphasis added). A "Collaborating Physician or Entity" is one who collaborates with an Experienced PA who, again, "*does not require a supervision agreement* . . . ." *Id.* at A.R.S. § 32-2501(6) (emphasis added). A "Supervision Agreement" is "a *written* or electronic signed agreement that, in part, "[d]escribes the scope of practice for a [PA] who has less than 8,000 hours of clinical practice." *Id.* at A.R.S. § 32-2501(19) (emphasis added). To be sure, under A.R.S. § 32-2531(C), a PA with less than 8,000 Board-certified clinical practice hours "shall work in accordance with a supervision agreement that describes the [PA's] scope of practice." But "[o]n receipt of board certification of the [PA's] completion of at least [8,000] hours of clinical practice, *a [PA] is no longer subject to the requirements of [A.R.S. § 32-2531(C)]*." *Id.* (emphasis added). Because A.A.C. R4-17-402(B)–(G) ignore these statutory requirements, and in fact controvert them, those Rules are substantively invalid.

B. THE RULES IN THEIR ENTIRETY ARE PROCEDURALLY INVALID

The Board relied on its exempt rulemaking authority in HB 2043 to promulgate the Rules. **Ex. B** at Sec. 11 ("Notwithstanding any other law, for purposes of this act, the [Board] is exempt from the rulemaking requirements of title 41, chapter 6[] . . . for one year after" December 31, 2023). But this exemption only applies to the "rulemaking requirements" in title 41, chapter 6, rather than the entirety of chapter 6. *See id.* And that exemption only applies "*for purposes of*" HB 2043. *Id.* (emphasis added).

"*Notwithstanding any other law*, a state agency may not conduct any rulemaking *including* . . . *exempt rulemaking*, without prior written approval of the governor." A.R.S. § 41-1039(A) (emphasis added). HB 2043's grant of one-time exempt rulemaking falls under this procedure. Upon information and belief, the Governor did not give prior written approval for the Rules because approval was never sought. So, the

Rules are procedurally invalid. Even if there was written approval from the Governor, the Board still lacked authority to promulgate A.A.C. R4-17-402(B)–(G) through exempt rulemaking. There are only four rulemaking grants in HB 2043. None apply to A.A.C. R4-17-402(B)–(G). *See* A.R.S. §§ 32-2531(G) (rulemaking for civil penalties), -2536(A)(1) (rulemaking for how to decide whether PA is an Experienced PA), (A)(2) (more rulemaking for certification standards for Experienced PAs), (B) (rulemaking for certification standards for Experienced PAs who seek employment for position "not substantially similar to" the PA's practice setting where certified).

Moreover, the Board cannot use exempt rulemaking under its general authority to "make and adopt rules necessary or proper for the administration of [title 32, chapter 25]." A.R.S. § 32-2504(C). This general authority is not part of the "act" (*i.e.,* HB 2043). *See* **Ex. B** (HB 2043 made no changes to A.R.S. § 32-2504(C)). Therefore, HB 2043's one-time grant of exempt rulemaking "for purposes of the act" does not give the Board authority to engage in exempt rulemaking under its general authority. The Board's Executive Director appeared to rely on the Board's general authority to justify the Rules to Representative Bliss. **Ex. H**. It is undisputed that the Board did not comply with the rulemaking requirements in title 41, chapter 6 for the Rules. Hence, to the extent the Rules were promulgated under the Board's general authority, the Rules are procedurally invalid.

C. A.A.C. R4-17-402(B)–(G) ARE INVALID OCCUPATIONAL REGULATIONS

"An agency shall limit all occupational regulations to regulations that are demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern." A.R.S. § 41-1093.01. An agency must "prove by a preponderance of the evidence that the challenged occupational regulation is demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern." A.R.S. § 41-1093.03(B).

As explained above, A.A.C. R4-17-402(B)–(G) reintroduced an administrative hurdle on the PA profession. Namely, subjecting Experienced PAs to written policies under a specific Physician despite such requirements being eliminated by HB 2043. This, however, is an invalid occupation regulation. Thus, the Council should review these Rules and determine they are unnecessary to specifically fulfill a public health, safety, or welfare concern. Petitioner and the PA profession writ large recognize the Rules to be both unnecessary and harmful to the goal of providing quality affordable medical care to all Arizonans. *See* **Exs. C**–**D**, **I**.

RESPECTFULLY SUBMITTED: March 8, 2024.

SHERMAN & HOWARD L.L.C.

By: /s/*Craig A. Morgan*

Gregory W. Falls
Craig A. Morgan
Jake T. Rapp
2555 E. Camelback Road, Suite 1050
Phoenix, Arizona 85016
Phone: 602.240.3000
Attorneys for Petitioner Arizona State Association of Physician Assistants

Submitted via mail and e-mail on
March 8, 2024, to:

Governor's Regulatory Review Council
c/o
Jessica Klein, Chairperson
100 N. 15th Avenue, Suite 302
Phoenix, AZ 85007
grrc@azdoa.gov

/s/*Ella Meshke*

EXHIBIT A

ARTICLE 4. COLLABORATIVE PRACTICE; REGULATION

R4-17-401. Application for Certification of Clinical Practice Hours; Waiver of Documentation

A. As required under A.R.S. § 32-2536(A), a physician assistant who is licensed by the Board and in good standing may apply to the Board for certification of the clinical practice hours required to practice collaboratively with a physician or entity.

1. For the purpose of this rule, good standing shall mean not be currently under investigation, or the subject of a public or confidential probation.

B. To be eligible to practice collaboratively with a physician or entity, a physician assistant shall have at least 8,000 hours of clinical practice, as described in subsection (E), obtained:

1. In the five years before the date of the application submitted under subsection (C), or
2. In the ten years before the date of the application submitted under subsection (C) if:
   a. At least 2,000 hours of clinical practice were obtained in the three years before the date of application submitted under subsection (C); and
   b. The physician assistant is currently certified by the National Commission on Certification of Physician Assistants.

C. To apply for certification of clinical practice hours, a physician assistant shall submit to the Board an application form, which is available on the Board's website.

D. In addition to complying with subsection (C), a physician assistant applying for certification of clinical practice hours shall have submitted directly to the Board by the document custodian or an individual with direct knowledge, documentation of hours of clinical practice performed by the physician assistant. Documentation may be submitted by multiple persons.

E. Clinical practice includes:

1. Performing medical services related directly to patient care;
2. Providing instruction to physician assistants at an institution accredited by the Accreditation Review Commission on Education for the Physician Assistant. Time spent preparing to provide instruction or preforming administrative tasks related to providing instruction is not clinical practice.

F. The Board may waive the documentation requirement specified under subsection (D). To obtain a waiver of the documentation requirement, the physician assistant shall submit to the Board a written request that includes the following information:

1. The physician assistant's name and license number;
2. Date on the request for waiver;

3. Identification and an estimate of the number of clinical hours for which documentation has not been submitted under subsection (D);
4. Description of the physician assistant's efforts to have the documentation submitted as required under subsection (D);
5. Explanation of why the documentation cannot be submitted;
6. If applicable, evidence that supports the request for waiver; and
7. The physician assistant's affirmation that the physician assistant has performed the required hours of clinical practice even though documentation has not been submitted.

G. The Board shall waive the documentation requirement if the Board determines the documentation is unavailable for a reason beyond the control of the physician assistant requesting the waiver. In making this determination, the Board shall consider:

1. The sufficiency of the physician assistant's effort to have the documentation submitted;
2. Evidence it is not possible to have the documentation submitted because:
   a. The required document does not exist;
   b. The individual or entity responsible for maintaining and submitting the documentation is unable to do so; or
   c. Another reason beyond the control of the physician assistant; and
3. Whether the Board is able to obtain the required documentation from another source.

H. The Board shall document the Board's decision regarding a request for waiver submitted under subsection (F) in the official record regarding the application submitted under subsection (C). The Board's decision regarding a request for waiver is not subject to review or appeal.

I. The Board shall maintain on the Board's website a list of physician assistants who have at least 8,000 hours of clinical practice certified by the Board and are eligible to practice in collaboration with a physician, physician group practice, or health care institution.

R4-17-402. Policies Regarding Collaboration with a Physician Assistant

A. Before employing and practicing collaboratively with a physician assistant, the collaborating physician or entity shall verify that the physician assistant is qualified under A.R.S. § 32-2536 and R4-17-401 to practice collaboratively. The collaborating physician or entity shall maintain evidence of the verification in the employment file of the physician assistant as long as the physician assistant is employed by the collaborating physician or entity.

B. As required under A.R.S. § 32-2531(B), a collaborating physician or entity shall develop written policies regarding collaboration for each physician assistant employed under subsection (A). The

policies, which shall be individualized for the physician assistant's education, experience, and competencies, shall specify:

1. The physician assistant's name, license number, and contact information;
2. The name or position of the physician responsible for providing oversight of the physician assistant;
3. Description of the level of collaboration required between the physician assistant and the physician providing oversight including specific information to enable the physician assistant to contact the physician providing oversight;
4. Description of the practice setting in which the physician assistant will work;
5. Description of the practice specialty in which the physician assistant will work; and
6. Description of practice limitations, if any, applicable to the physician assistant.

C. Both the physician providing oversight and the physician assistant shall sign and date the policies developed under subsection (B). The collaborating physician or entity shall provide a copy of the signed policies to the physician assistant and put a copy in the employment file of the physician assistant.

D. The collaborating physician or entity shall review the policies developed under subsection (B) at least annually and make necessary changes. The collaborating physician or entity shall sign and date the policies as evidence the required review was performed. If changes are made to the policies, the collaborating physician or entity shall ensure the requirements of subsection (C) are performed.

E. If a change made under subsection (D) involves a practice setting or specialty in which the physician assistant has not previously practiced collaboratively, the collaborating physician or entity shall ensure the physician assistant is provided additional training and oversight until the physician assistant acquires the necessary education, experience, and competence.

1. If the collaborating physician or entity determines it is in the best interest of public health and safety, the collaborating physician or entity shall require the physician assistant to enter a supervision agreement, as defined at A.R.S. § 32-2501, until the physician assistant acquires the education, experience, and competence necessary to practice in the practice setting or specialty in which the physician assistant had not previously practiced collaboratively.
2. The collaborating physician or entity shall ensure that all actions taken under this subsection, including additional training and oversight, entering a supervision agreement, and terminating a supervision agreement, are noted in the employment file of the physician assistant.

F. A physician assistant may be employed by and practice collaboratively with multiple collaborating physicians or entities. Each collaborating physician or entity shall comply with this Section.

G. When requested by the Board, a collaborating physician or entity shall provide a copy of the policies required under this Section to the Board.

EXHIBIT B

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

CHAPTER 54

HOUSE BILL 2043

AN ACT

AMENDING SECTIONS 32-2501, 32-2502, 32-2531, 32-2532 AND 32-2533, ARIZONA REVISED STATUTES; REPEALING SECTION 32-2534, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 25, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 32-2534; AMENDING SECTION 32-2535, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 25, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-2536; AMENDING SECTION 32-2551, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 32-2501, Arizona Revised Statutes, is amended to read:

32-2501. Definitions

In this chapter, unless the context otherwise requires:

1. "Active license" means a regular license issued pursuant to this chapter.

2. "Adequate records" means legible medical records containing, at a minimum, sufficient information to identify the patient, support the diagnosis, justify the treatment, accurately document the results, indicate advice and cautionary warnings provided to the patient and provide sufficient information for another practitioner to assume continuity of the patient's care at any point in the course of treatment.

3. "Advisory letter" means a nondisciplinary letter to notify a physician assistant that either:

(a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.

(b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.

(c) While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.

4. "Approved program" means a physician assistant educational program accredited by the accreditation review commission on education for physician assistants, or one of its predecessor agencies, the committee on allied health education and accreditation or the commission on the accreditation of allied health educational programs.

5. "Board" means the Arizona regulatory board of physician assistants.

6. "COLLABORATING PHYSICIAN OR ENTITY" MEANS A PHYSICIAN, PHYSICIAN GROUP PRACTICE, PHYSICIAN PRIVATE PRACTICE OR LICENSED HEALTH CARE INSTITUTION THAT EMPLOYS OR COLLABORATES WITH A PHYSICIAN ASSISTANT WHO HAS AT LEAST EIGHT THOUSAND HOURS OF CLINICAL PRACTICE AS CERTIFIED BY THE BOARD PURSUANT TO SECTION 32-2536 AND DOES NOT REQUIRE A SUPERVISION AGREEMENT AND THAT DESIGNATES ONE OR MORE PHYSICIANS BY NAME OR POSITION WHO IS RESPONSIBLE FOR THE OVERSIGHT OF THE PHYSICIAN ASSISTANT.

~~6.~~ 7. "Completed application" means an application for which the applicant has supplied all required fees, information and correspondence requested by the board on forms and in a manner acceptable to the board.

~~7.~~ 8. "Immediate family" means the spouse, natural or adopted children, father, mother, brothers and sisters of the physician assistant and the natural or adopted children, father, mother, brothers and sisters of the physician assistant's spouse.

~~8.~~ 9. "Letter of reprimand" means a disciplinary letter that is issued by the board and that informs the physician assistant that the physician assistant's conduct violates state or federal law and may require the board to monitor the physician assistant.

~~9.~~ 10. "Limit" means a nondisciplinary action that is taken by the board and that alters a physician assistant's practice or medical activities if there is evidence that the physician assistant is or may be mentally or physically unable to safely engage in health care tasks.

~~10.~~ 11. "Medically incompetent" means that a physician assistant lacks sufficient medical knowledge or skills, or both, in performing delegated health care tasks to a degree likely to endanger the health or safety of patients.

~~11.~~ 12. "Minor surgery":

(a) Means those invasive procedures that may be ~~delegated to~~ PERFORMED BY a physician assistant ~~by a supervising physician~~, that are consistent with the training and experience of the physician assistant, that are normally taught in courses of training approved by the board, ~~and~~ that have been approved by the board as falling within ~~a~~ THE scope of practice of a physician assistant AND THAT ARE CONSISTENT WITH THE PRACTICE SETTING REQUIREMENTS OF THE PHYSICIAN ASSISTANT. ~~Minor surgery~~

(b) Does not include a surgical abortion.

~~12.~~ 13. "Physician" means a physician who is licensed pursuant to chapter 13 or 17 of this title.

~~13.~~ 14. "Physician assistant" means a person who is licensed pursuant to this chapter ~~and who practices medicine with physician supervision~~.

~~14.~~ 15. "Regular license" means a valid and existing license that is issued pursuant to section 32-2521 to perform health care tasks.

~~15.~~ 16. "Restrict" means a disciplinary action that is taken by the board and that alters a physician assistant's practice or medical activities if there is evidence that the physician assistant is or may be medically incompetent or guilty of unprofessional conduct.

~~16.~~ 17. "Supervising physician" means a physician who holds a current unrestricted license, who supervises a physician assistant WHO HAS LESS THAN EIGHT THOUSAND HOURS OF CLINICAL PRACTICE and who assumes legal responsibility for health care tasks performed by the physician assistant.

~~17.~~ 18. "Supervision" means a physician's opportunity or ability to provide or exercise direction and control over the services of a physician assistant. Supervision does not require a physician's constant physical presence if the supervising physician is or can be easily in contact with the physician assistant by telecommunication.

19. "SUPERVISION AGREEMENT" MEANS A WRITTEN OR ELECTRONIC SIGNED AGREEMENT THAT BOTH:

(a) DESCRIBES THE SCOPE OF PRACTICE FOR A PHYSICIAN ASSISTANT WHO HAS LESS THAN EIGHT THOUSAND HOURS OF CLINICAL PRACTICE.

(b) IS BETWEEN THE PHYSICIAN ASSISTANT AND A PHYSICIAN OR THE PHYSICIAN ASSISTANT'S EMPLOYER THAT EMPLOYS OR HAS ON MEDICAL STAFF AT LEAST ONE PHYSICIAN WHO MAY PROVIDE OVERSIGHT, AS APPLICABLE, AND WHO HOLDS A CURRENT UNRESTRICTED LICENSE. FOR THE PURPOSES OF THIS SUBDIVISION, "EMPLOYER" MEANS A PHYSICIAN, PHYSICIAN GROUP PRACTICE, PHYSICIAN PRIVATE PRACTICE OR LICENSED HEALTH CARE INSTITUTION.

~~18.~~ 20. "Unprofessional conduct" includes the following acts by a physician assistant that occur in this state or elsewhere:

(a) Violating any federal or state law or rule that applies to the performance of health care tasks as a physician assistant. Conviction in any court of competent jurisdiction is conclusive evidence of a violation.

(b) Claiming to be a physician or knowingly ~~permitting~~ ALLOWING another person to represent that person as a physician.

(c) Performing health care tasks that ~~have not been delegated by the supervising physician~~ DO NOT MEET THE SUPERVISION OR COLLABORATION REQUIREMENTS, AS APPLICABLE, PURSUANT TO SECTION 32-2531.

(d) Exhibiting a pattern of using or being under the influence of alcohol or drugs or a similar substance while performing health care tasks or to the extent that judgment may be impaired and the ability to perform health care tasks detrimentally affected.

(e) Signing a blank, undated or predated prescription form.

(f) Committing gross malpractice, repeated malpractice or any malpractice resulting in the death of a patient.

(g) Representing that a manifestly incurable disease or infirmity can be permanently cured or that a disease, ailment or infirmity can be cured by a secret method, procedure, treatment, medicine or device, if this is not true.

(h) Refusing to divulge to the board on demand the means, method, procedure, modality of treatment or medicine used in ~~the treatment of~~ TREATING a disease, injury, ailment or infirmity.

(i) Prescribing or dispensing controlled substances or prescription-only drugs for which the physician assistant is not approved or in excess of the amount authorized pursuant to this chapter.

(j) Committing any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public.

(k) Violating a formal order, probation or stipulation issued by the board.

(l) Failing to clearly disclose the person's identity as a physician assistant in the course of the physician assistant's employment.

(m) Failing to use and affix the initials "P.A." or "P.A.-C." after the physician assistant's name or signature on charts, prescriptions or professional correspondence.

(n) Procuring or attempting to procure a physician assistant license by fraud, misrepresentation or knowingly taking advantage of the mistake of another.

(o) Having professional connection with or lending the physician assistant's name to an illegal practitioner of any of the healing arts.

(p) Failing or refusing to maintain adequate records ~~on~~ FOR a patient.

(q) Using controlled substances that have not been prescribed by a physician, physician assistant, dentist or nurse practitioner for use during a prescribed course of treatment.

(r) Prescribing or dispensing controlled substances to members of the physician assistant's immediate family.

(s) Prescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes.

(t) Dispensing a schedule II controlled substance that is an opioid, except as provided in section 32-2532.

(u) Knowingly making any written or oral false or fraudulent statement in connection with the performance of health care tasks or when applying for privileges or renewing an application for privileges at a health care institution.

(v) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(w) Having a certification or license refused, revoked, suspended, limited or restricted by any other licensing jurisdiction for the inability to safely and skillfully perform health care tasks or for unprofessional conduct as defined by that jurisdiction that directly or indirectly corresponds to any act of unprofessional conduct as prescribed by this paragraph.

(x) Having sanctions including restriction, suspension or removal from practice imposed by an agency of the federal government.

(y) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate a provision of this chapter.

(z) Using the term "doctor" or the abbreviation "Dr." on a name tag or in a way that leads the public to believe that the physician assistant is licensed to practice as an allopathic or ~~an~~ osteopathic physician in this state.

(aa) Failing to furnish legally requested information to the board or its investigator in a timely manner.

(bb) Failing to allow properly authorized board personnel to examine on demand documents, reports and records of any kind relating to the physician assistant's performance of health care tasks.

(cc) Knowingly making a false or misleading statement on a form required by the board or in written correspondence or attachments furnished to the board.

(dd) Failing to submit to a body fluid examination and other examinations known to detect the presence of alcohol or other drugs pursuant to an agreement with the board or an order of the board.

(ee) Violating a formal order, probation agreement or stipulation issued or entered into by the board or its executive director.

(ff) Except as otherwise required by law, intentionally betraying a professional secret or intentionally violating a privileged communication.

(gg) Allowing the use of the licensee's name in any way to enhance or ~~permit~~ ALLOW the continuance of the activities of, or maintaining a professional connection with, an illegal practitioner of medicine or the performance of health care tasks by a person who is not licensed pursuant to this chapter.

(hh) Committing false, fraudulent, deceptive or misleading advertising by a physician assistant or the physician assistant's staff or representative.

(ii) Knowingly failing to disclose to a patient on a form that is prescribed by the board and that is dated and signed by the patient or guardian acknowledging that the patient or guardian has read and understands that the licensee has a direct financial interest in a separate diagnostic or treatment agency or in nonroutine goods or services that the patient is being prescribed and ~~if~~ WHETHER the prescribed treatment, goods or services are available on a competitive basis. This subdivision does not apply to a referral by one physician assistant to another physician assistant or to a doctor of medicine or a doctor of osteopathic medicine within a group working together.

(jj) With the exception of heavy metal poisoning, using chelation therapy in the treatment of arteriosclerosis or as any other form of therapy without adequate informed patient consent or without conforming to generally accepted experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a medical peer review committee, or without approval by the United States food and drug administration or its successor agency.

(kk) Prescribing, dispensing or administering anabolic or androgenic steroids for other than therapeutic purposes.

(ll) Prescribing, dispensing or furnishing a prescription medication or a prescription-only device as defined in section 32-1901 to a person unless the licensee first conducts a physical examination of that person or has previously established a professional relationship with the person. This subdivision does not apply to:

(i) A physician assistant who provides temporary patient care on behalf of the patient's regular treating licensed health care professional.

(ii) Emergency medical situations as defined in section 41-1831.

(iii) Prescriptions written to prepare a patient for a medical examination.

(iv) Prescriptions written or antimicrobials dispensed to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661 by the prescribing or dispensing physician assistant.

(mm) Engaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the professional relationship, was in a dating or engagement relationship with the licensee. For the purposes of this subdivision, "sexual conduct" includes:

(i) Engaging in or soliciting sexual relationships, whether consensual or nonconsensual.

(ii) Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature with a patient.

(iii) Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.

(nn) Performing health care tasks under a false or assumed name in this state.

Sec. 2. Section 32-2502, Arizona Revised Statutes, is amended to read:

32-2502. Arizona regulatory board of physician assistants; membership; appointment; terms; immunity

A. The Arizona regulatory board of physician assistants is established consisting of the following members:

1. Five physician assistants who hold a current regular license pursuant to this chapter. The governor may appoint these members from a list of qualified candidates submitted by the Arizona state association of physician assistants. The governor may seek additional input and nominations before the governor makes the physician assistant appointments.

2. Two public members who are appointed by the governor.

3. Two physicians who are actively engaged in the practice of medicine and who are licensed pursuant to chapter 17 of this title, one of whom supervises OR COLLABORATES WITH a physician assistant at the time of appointment, and who are appointed by the governor.

4. Two physicians who are actively engaged in the practice of medicine and who are licensed pursuant to chapter 13 of this title, one of whom supervises OR COLLABORATES WITH a physician assistant at the time of appointment, and who are appointed by the governor.

B. Before appointment by the governor, a prospective member of the board shall submit a full set of fingerprints to the governor for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

C. The term of office of members of the board is four years to begin and end on July 1.

D. Each board member is eligible for appointment to not more than two full terms, except that the term of office for a member appointed to fill a vacancy that is not caused by the expiration of a full term is for the unexpired portion of that term and the governor may reappoint that member to not more than two additional full terms. Each board member may continue to hold office until the appointment and qualification of that member's successor. ~~However,~~ The governor may remove a member after notice and a hearing~~,~~ on a finding of continued neglect of duty, incompetence or unprofessional or dishonorable conduct. That member's term ends when the finding is made.

E. A board member's term automatically ends:

1. On written resignation submitted to the board chairperson or to the governor.

2. If the member is absent from this state for more than six months during a one-year period.

3. If the member fails to attend three consecutive regular board meetings.

4. Five years after retirement from active practice.

F. Board members are immune from civil liability for all good faith actions they take pursuant to this chapter.

Sec. 3. Section 32-2531, Arizona Revised Statutes, is amended to read:

32-2531. Physician assistant scope of practice; health care tasks; supervision agreements; supervising physician duties; civil penalty

~~A. A supervising physician may delegate health care tasks to a physician assistant.~~

A. EXCEPT AS PROHIBITED IN SUBSECTION E OF THIS SECTION, A PHYSICIAN ASSISTANT MAY PROVIDE ANY LEGAL MEDICAL SERVICE FOR WHICH THE PHYSICIAN ASSISTANT HAS BEEN PREPARED BY EDUCATION, TRAINING AND EXPERIENCE AND THAT THE PHYSICIAN ASSISTANT IS COMPETENT TO PERFORM, INCLUDING:

1. OBTAINING COMPREHENSIVE HEALTH HISTORIES AND PERFORMING PHYSICAL EXAMINATIONS.

2. EVALUATING AND DIAGNOSING PATIENTS AND MANAGING AND PROVIDING MEDICAL TREATMENT AND THERAPEUTIC INTERVENTIONS.

3. ORDERING, PERFORMING AND INTERPRETING DIAGNOSTIC STUDIES AND THERAPEUTIC PROCEDURES.

4. EDUCATING PATIENTS ON HEALTH PROMOTION AND DISEASE PREVENTION AND PROVIDING COUNSELING AND EDUCATION TO MEET PATIENT NEEDS.

5. PROVIDING CONSULTATION ON REQUEST.

6. WRITING MEDICAL ORDERS.

7. OBTAINING INFORMED CONSENT.

8. ASSISTING IN SURGERY.

9. DELEGATING AND ASSIGNING THERAPEUTIC AND DIAGNOSTIC MEASURES TO AND SUPERVISING LICENSED OR UNLICENSED PERSONNEL.

10. MAKING APPROPRIATE REFERRALS.

11. ORDERING, PRESCRIBING, DISPENSING AND ADMINISTERING DRUGS AND MEDICAL DEVICES.

12. PRESCRIBING PRESCRIPTION-ONLY MEDICATIONS.

13. PRESCRIBING SCHEDULE IV OR SCHEDULE V CONTROLLED SUBSTANCES AS DEFINED IN THE CONTROLLED SUBSTANCES ACT (P.L. 91-513; 84 STAT. 1242; 21 UNITED STATES CODE SECTION 802).

14. PRESCRIBING SCHEDULE II AND SCHEDULE III CONTROLLED SUBSTANCES AS DEFINED IN THE CONTROLLED SUBSTANCES ACT.

15. PERFORMING MINOR SURGERY.

16. PERFORMING NONSURGICAL HEALTH CARE TASKS THAT ARE NORMALLY TAUGHT IN COURSES OF TRAINING APPROVED BY THE BOARD AND THAT ARE CONSISTENT WITH THE PHYSICIAN ASSISTANT'S EDUCATION, TRAINING AND EXPERIENCE.

17. CERTIFYING THE HEALTH OR DISABILITY OF A PATIENT AS REQUIRED BY ANY LOCAL, STATE OR FEDERAL PROGRAM.

18. ORDERING HOME HEALTH SERVICES.

B. PURSUANT TO THE REQUIREMENTS OF THIS CHAPTER AND THE STANDARD OF CARE, A PHYSICIAN ASSISTANT WHO HAS AT LEAST EIGHT THOUSAND HOURS OF CLINICAL PRACTICE CERTIFIED BY THE BOARD PURSUANT TO SECTION 32-2536 IS NOT REQUIRED TO PRACTICE PURSUANT TO A SUPERVISION AGREEMENT BUT SHALL CONTINUE TO COLLABORATE WITH, CONSULT WITH OR REFER TO THE APPROPRIATE HEALTH CARE PROFESSIONAL AS INDICATED BY THE PATIENT'S CONDITION AND BY THE PHYSICIAN ASSISTANT'S EDUCATION, EXPERIENCE AND COMPETENCIES. THE LEVEL OF COLLABORATION REQUIRED BY THIS SUBSECTION IS DETERMINED BY THE POLICIES OF THE PRACTICE SETTING AT WHICH THE PHYSICIAN ASSISTANT IS EMPLOYED, INCLUDING A PHYSICIAN EMPLOYER, PHYSICIAN GROUP PRACTICE OR HEALTH CARE INSTITUTION. COLLABORATION, CONSULTATION OR A REFERRAL PURSUANT TO THIS SUBSECTION MAY OCCUR THROUGH ELECTRONIC MEANS AND DOES NOT REQUIRE THE PHYSICAL PRESENCE OF THE APPROPRIATE HEALTH CARE PROFESSIONAL AT THE TIME OR PLACE THE PHYSICIAN ASSISTANT PROVIDES MEDICAL

SERVICES. THIS SUBSECTION DOES NOT PROHIBIT A PHYSICIAN ASSISTANT WHO HAS AT LEAST EIGHT THOUSAND HOURS OF CLINICAL PRACTICE CERTIFIED BY THE BOARD PURSUANT TO SECTION 32-2536 FROM PRACTICING PURSUANT TO A SUPERVISION AGREEMENT.

C. A PHYSICIAN ASSISTANT WHO HAS LESS THAN EIGHT THOUSAND HOURS OF CLINICAL PRACTICE CERTIFIED BY THE BOARD SHALL WORK IN ACCORDANCE WITH A SUPERVISION AGREEMENT THAT DESCRIBES THE PHYSICIAN ASSISTANT'S SCOPE OF PRACTICE. A PHYSICIAN ASSISTANT MAY NOT PERFORM HEALTH CARE TASKS UNTIL THE PHYSICIAN ASSISTANT HAS COMPLETED AND SIGNED A SUPERVISION AGREEMENT. UNDER A SUPERVISION AGREEMENT, SUPERVISION MAY OCCUR THROUGH ELECTRONIC MEANS AND DOES NOT REQUIRE THE PHYSICAL PRESENCE OF THE SUPERVISING PHYSICIAN AT THE TIME OR PLACE THE PHYSICIAN ASSISTANT PROVIDES MEDICAL SERVICES. THE SUPERVISION AGREEMENT MUST BE KEPT ON FILE AT THE MAIN LOCATION OF THE PHYSICIAN ASSISTANT'S PRACTICE AND, ON REQUEST, BE MADE AVAILABLE TO THE BOARD OR THE BOARD'S REPRESENTATIVE. ON RECEIPT OF BOARD CERTIFICATION OF THE PHYSICIAN ASSISTANT'S COMPLETION OF AT LEAST EIGHT THOUSAND HOURS OF CLINICAL PRACTICE, A PHYSICIAN ASSISTANT IS NO LONGER SUBJECT TO THE REQUIREMENTS OF THIS SUBSECTION. THE BOARD MAY COUNT PRACTICE HOURS EARNED IN ANOTHER JURISDICTION TOWARD THE HOURS OF CLINICAL PRACTICE REQUIRED BY THIS SUBSECTION.

D. A PHYSICIAN ASSISTANT WHO DOES NOT PRACTICE PURSUANT TO A SUPERVISION AGREEMENT IS LEGALLY RESPONSIBLE FOR THE HEALTH CARE SERVICES PERFORMED BY THE PHYSICIAN ASSISTANT.

~~B.~~ E. A physician assistant shall not perform surgical abortions as defined in section 36-2151.

~~C. The physician assistant may perform those duties and responsibilities, including the ordering, prescribing, dispensing and administration of drugs and medical devices, that are delegated by the supervising physician.~~

~~D. The physician assistant may provide any medical service that is delegated by the supervising physician if the service is within the physician assistant's skills, is within the physician's scope of practice and is supervised by the physician.~~

~~E.~~ F. ~~The~~ A physician assistant may pronounce death and~~, if delegated,~~ may authenticate, by the physician assistant's signature, CERTIFICATION, STAMP, VERIFICATION, AFFIDAVIT OR ENDORSEMENT, any form that may be authenticated by a physician's signature, CERTIFICATION, STAMP, VERIFICATION, AFFIDAVIT OR ENDORSEMENT.

~~F. The physician assistant is the agent of the physician assistant's supervising physician in the performance of all practice related activities, including the ordering of diagnostic, therapeutic and other medical services.~~

~~G. The physician assistant may perform health care tasks in any setting authorized by the supervising physician, including physician offices, clinics, hospitals, ambulatory surgical centers, patient homes,~~

~~nursing homes and other health care institutions. These tasks may include:~~

~~1. Obtaining patient histories.~~

~~2. Performing physical examinations.~~

~~3. Ordering and performing diagnostic and therapeutic procedures.~~

~~4. Formulating a diagnostic impression.~~

~~5. Developing and implementing a treatment plan.~~

~~6. Monitoring the effectiveness of therapeutic interventions.~~

~~7. Assisting in surgery.~~

~~8. Offering counseling and education to meet patient needs.~~

~~9. Making appropriate referrals.~~

~~10. Prescribing schedule IV or V controlled substances as defined in the federal controlled substances act of 1970 (P.L. 91-513; 84 Stat. 1242; 21 United States Code section 802) and prescription-only medications.~~

~~11. Prescribing schedule II and III controlled substances as defined in the federal controlled substances act of 1970.~~

~~12. Performing minor surgery as defined in section 32-2501.~~

~~13. Performing other nonsurgical health care tasks that are normally taught in courses of training approved by the board, that are consistent with the training and experience of the physician assistant and that have been properly delegated by the supervising physician.~~

~~H. The supervising physician shall:~~

~~1. Meet the requirements established by the board for supervising a physician assistant.~~

~~2. Accept responsibility for all tasks and duties the physician delegates to a physician assistant.~~

~~3. Notify the board and the physician assistant in writing if the physician assistant exceeds the scope of the delegated health care tasks.~~

~~4. Maintain a written agreement with the physician assistant. The agreement must state that the physician will exercise supervision over the physician assistant and retains professional and legal responsibility for the care rendered by the physician assistant. The agreement must be signed by the supervising physician and the physician assistant and updated annually. The agreement must be kept on file at the practice site and made available to the board on request. Each year the board shall randomly audit at least five per cent of these agreements for compliance.~~

~~I. A physician's ability to supervise a physician assistant is not affected by restrictions imposed by the board on a physician assistant pursuant to disciplinary action taken by the board.~~

~~J. Supervision must be continuous but does not require the personal presence of the physician at the place where health care tasks are performed if the physician assistant is in contact with the supervising physician by telecommunication. If the physician assistant practices in a location where a supervising physician is not routinely present, the physician assistant must meet in person or by telecommunication with a~~

~~supervising physician at least once each week to ensure ongoing direction and oversight of the physician assistant's work. The board by order may require the personal presence of a supervising physician when designated health care tasks are performed.~~

~~K. At all times while a physician assistant is on duty, the physician assistant shall wear a name tag with the designation "physician assistant" on it.~~

~~L.~~ G. The board by rule may prescribe a civil penalty for a violation of this article. The penalty shall not exceed ~~fifty dollars~~ $50 for each violation. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it receives from this penalty in the state general fund. A physician assistant and the supervising PHYSICIAN OR COLLABORATING physician OR ENTITY may contest the imposition of this penalty pursuant to board rule. The imposition of a civil penalty is public information, and the board may use this information in any future disciplinary actions.

Sec. 4. Section 32-2532, Arizona Revised Statutes, is amended to read:

32-2532. Prescribing, administering and dispensing drugs; limits and requirements; notice

A. Except as provided in subsection ~~F~~ G of this section, a physician assistant shall not prescribe, dispense or administer:

1. A schedule II or schedule III controlled substance as defined in the ~~federal~~ controlled substances act ~~of 1970~~ (P.L. 91-513; 84 Stat. 1242; 21 United States Code section 802) without ~~delegation by the supervising physician,~~ board approval and United States drug enforcement administration registration. IF THE PHYSICIAN ASSISTANT HAS LESS THAN EIGHT THOUSAND CLINICAL PRACTICE HOURS, THE SUPERVISION AGREEMENT SHALL SPECIFY THE PHYSICIAN ASSISTANT'S ABILITY TO PRESCRIBE, DISPENSE OR ADMINISTER A SCHEDULE II OR SCHEDULE III CONTROLLED SUBSTANCE.

2. A schedule IV or schedule V controlled substance as defined in the ~~federal~~ controlled substances act ~~of 1970~~ without United States drug enforcement administration registration ~~and delegation by the supervising physician~~. IF THE PHYSICIAN ASSISTANT HAS LESS THAN EIGHT THOUSAND CLINICAL PRACTICE HOURS, THE SUPERVISION AGREEMENT SHALL SPECIFY THE PHYSICIAN ASSISTANT'S ABILITY TO PRESCRIBE, DISPENSE OR ADMINISTER A SCHEDULE IV OR SCHEDULE V CONTROLLED SUBSTANCE.

~~3. Prescription-only medication without delegation by the supervising physician.~~

~~4.~~ 3. Prescription medication intended to perform or induce an abortion.

B. IF THE PHYSICIAN ASSISTANT HAS LESS THAN EIGHT THOUSAND CLINICAL PRACTICE HOURS, THE SUPERVISION AGREEMENT SHALL SPECIFY THE PHYSICIAN ASSISTANT'S ABILITY TO PRESCRIBE, DISPENSE OR ADMINISTER PRESCRIPTION-ONLY MEDICATION.

~~B.~~ C. All prescription orders issued by a physician assistant shall contain the name, address and telephone number of the physician assistant. A physician assistant shall issue prescription orders for controlled substances under the physician assistant's own United States drug enforcement administration registration number.

~~C.~~ D. If THE PHYSICIAN ASSISTANT IS certified for prescription privileges pursuant to section 32-2504, subsection A, initial prescriptions BY THE PHYSICIAN ASSISTANT for schedule II controlled substances that are opioids are subject to the limits prescribed in sections 32-3248 and 32-3248.01 ~~if the physician assistant has been delegated to prescribe schedule II controlled substances by the supervising physician pursuant to this section~~. For each schedule IV or schedule V controlled substance, the physician assistant may not prescribe the controlled substance more than five times in a six-month period for each patient.

~~D.~~ E. A prescription BY A PHYSICIAN ASSISTANT for a schedule III controlled substance that is an opioid or benzodiazepine is not refillable without the written consent of ~~the supervising~~ A physician.

~~E.~~ F. A PHYSICIAN ASSISTANT MAY NOT DISPENSE, PRESCRIBE OR REFILL prescription-only drugs ~~shall not be dispensed, prescribed or refillable~~ for a period exceeding one year FOR EACH PATIENT.

~~F.~~ G. Except in an emergency, a physician assistant may dispense schedule II or schedule III controlled substances for a period of use of not to exceed seventy-two hours with board approval or any other controlled substance for a period of use of not to exceed ninety days and may administer controlled substances without board approval if it is medically indicated in an emergency dealing with potential loss of life or limb or major acute traumatic pain. Notwithstanding the authority granted in this subsection, a physician assistant may not dispense a schedule II controlled substance that is an opioid, except for an implantable device or an opioid that is for medication-assisted treatment for substance use disorders.

~~G.~~ H. Except for samples provided by manufacturers, all drugs dispensed by a physician assistant shall be labeled to show the name of the physician assistant.

~~H.~~ I. A physician assistant shall not obtain a drug from any source other than ~~the supervising~~ A physician or a pharmacist. A physician assistant may receive manufacturers' samples ~~if delegated to do so by the supervising physician~~.

~~I.~~ J. If a physician assistant is approved by the board to prescribe, administer or dispense schedule II and schedule III controlled substances, the physician assistant shall maintain an up-to-date and complete log of all schedule II and schedule III controlled substances the physician assistant administers or dispenses. The board may not grant a physician assistant the authority to dispense schedule II controlled

substances that are opioids, except for implantable devices or opioids that are for medication-assisted treatment for substance use disorders.

~~J.~~ K. The ARIZONA REGULATORY board OF PHYSICIAN ASSISTANTS shall advise the Arizona state board of pharmacy and the United States drug enforcement administration of all physician assistants who are authorized to prescribe or dispense drugs and any modification of their authority.

~~K.~~ L. The Arizona state board of pharmacy shall notify all pharmacies at least quarterly of physician assistants who are authorized to prescribe or dispense drugs.

Sec. 5. Section 32-2533, Arizona Revised Statutes, is amended to read:

32-2533. Supervising physicians; responsibilities

A. A supervising physician is responsible for all aspects of the performance of a physician assistant WHO HAS LESS THAN EIGHT THOUSAND HOURS OF CLINICAL PRACTICE, whether or not the supervising physician actually pays the physician assistant a salary. The supervising physician is responsible for supervising the physician assistant and ensuring that the health care tasks performed by a physician assistant are within the physician assistant's scope of training and experience and have been properly delegated by the supervising physician.

B. Each physician-physician assistant team must ensure that:

1. The physician assistant's scope of practice is identified.

2. The delegation of medical tasks is appropriate to the physician assistant's level of competence.

3. The relationship of, and access to, the supervising physician is defined.

4. A process for evaluating the physician assistant's performance is established.

C. A supervising physician shall not supervise more than six physician assistants who work at the same time.

D. A supervising physician shall develop a system for recording and reviewing all instances in which the physician assistant prescribes schedule II or schedule III controlled substances.

Sec. 6. Repeal

Section 32-2534, Arizona Revised Statutes, is repealed.

Sec. 7. Title 32, chapter 25, article 3, Arizona Revised Statutes, is amended by adding a new section 32-2534, to read:

32-2534. Billing; direct payment

A PHYSICIAN ASSISTANT MAY BILL AND RECEIVE DIRECT PAYMENT FOR THE PROFESSIONAL SERVICES PROVIDED BY THE PHYSICIAN ASSISTANT.

Sec. 8. Section 32-2535, Arizona Revised Statutes, is amended to read:

32-2535. Emergency medical care

A. Notwithstanding the requirements of this article, in response to a natural disaster, accident or other emergency, a physician assistant who

is licensed pursuant to this chapter, licensed or certified by another regulatory jurisdiction in the United States or credentialed as a physician assistant by a federal employer may provide medical care at any location, and ~~with or without supervision.~~ THE PHYSICIAN ASSISTANT IS NOT REQUIRED TO HAVE COMPLETED EIGHT THOUSAND CLINICAL PRACTICE HOURS PURSUANT TO SECTION 32-2531.

B. A physician who supervises a physician assistant who is providing medical care pursuant to this section is not required to comply with the requirements of this article relating to supervising physicians.

Sec. 9. Title 32, chapter 25, article 3, Arizona Revised Statutes, is amended by adding section 32-2536, to read:

32-2536. Physician assistants; documentation; certification; rules

A. A PHYSICIAN ASSISTANT WHO IS LICENSED PURSUANT TO THIS CHAPTER, WHO IS IN GOOD STANDING, WHO HAS GRADUATED FROM AN ACCREDITED PHYSICIAN ASSISTANT PROGRAM IN THE UNITED STATES AND WHO HAS AT LEAST EIGHT THOUSAND CLINICAL PRACTICE HOURS WITHIN THE PREVIOUS FIVE YEARS IN THIS STATE OR ANOTHER JURISDICTION SHALL PROVIDE THE BOARD WITH DOCUMENTATION OF HAVING COMPLETED AT LEAST EIGHT THOUSAND HOURS OF CLINICAL PRACTICE IN ORDER TO MEET THE REQUIREMENTS OF SECTION 32-2531, SUBSECTION B. THE BOARD SHALL DEVELOP:

1. A POLICY THAT SETS FORTH THE PROCESS OF ATTESTATION OR DOCUMENTATION REQUIRED AS PROOF OF COMPLETION OF AT LEAST EIGHT THOUSAND CLINICAL PRACTICE HOURS AND ISSUANCE OF CERTIFICATION OF COMPLETION OF THE EIGHT THOUSAND CLINICAL PRACTICE HOURS.

2. AN ALTERNATIVE COMPARABLE STANDARD FOR CERTIFICATION OF EIGHT THOUSAND HOURS OF CLINICAL PRACTICE FOR PHYSICIAN ASSISTANTS WHO HAVE BEEN ACTIVELY PRACTICING FOR MORE THAN FIVE YEARS.

B. THE BOARD SHALL ADOPT RULES ESTABLISHING ADDITIONAL CERTIFICATION STANDARDS OR REQUIREMENTS FOR PHYSICIAN ASSISTANTS WHO PREVIOUSLY COMPLETED EIGHT THOUSAND CLINICAL PRACTICE HOURS CERTIFIED BY THE BOARD AND WHO ARE SEEKING EMPLOYMENT WITH A COLLABORATING PHYSICIAN OR ENTITY FOR A POSITION THAT IS NOT SUBSTANTIALLY SIMILAR TO THE PRACTICE SETTING OR SPECIALTY IN WHICH THE PHYSICIAN ASSISTANT WAS PREVIOUSLY CERTIFIED. THE CERTIFICATION STANDARDS OR REQUIREMENTS SHALL ENSURE APPROPRIATE TRAINING AND OVERSIGHT, INCLUDING A SUPERVISION AGREEMENT IF WARRANTED, FOR THE PHYSICIAN ASSISTANT'S NEW PRACTICE SETTING OR SPECIALTY.

Sec. 10. Section 32-2551, Arizona Revised Statutes, is amended to read:

32-2551. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice; civil penalty

A. The board on its own motion may investigate any evidence that appears to show that a physician assistant is or may be medically

incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to carry out approved health care tasks. Any physician, physician assistant or health care institution as defined in section 36-401 shall, and any other person may, report to the board any information the physician, physician assistant, health care institution or other person has that appears to show that a physician assistant is or may be medically incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to carry out approved health care tasks. If the board begins an investigation pursuant to this section, it may require the physician assistant to promptly provide the name and address of the ~~physician assistant's~~ supervising physician or ~~physicians~~ COLLABORATING PHYSICIAN OR ENTITY, AS APPLICABLE. The board or the executive director shall notify the physician assistant ~~and the supervising physician~~ of the content of the reported information in writing within one hundred twenty days ~~of its~~ AFTER THE BOARD'S receipt of the information. Any physician, physician assistant, health care institution or other person that reports or provides information to the board in good faith is not subject to an action for civil damages as a result of reporting or providing information, and, if requested, the name of the reporter shall not be disclosed unless the information is essential to proceedings conducted pursuant to this section.

B. The board or, if delegated by the board, the executive director may require a mental, physical or medical competency examination or any combination of those examinations or may make investigations, including investigational interviews, between representatives of the board and the physician assistant and the supervising physician, THE COLLABORATING PHYSICIAN OR A PHYSICIAN REPRESENTATIVE OF THE COLLABORATING ENTITY, AS APPLICABLE, as ~~it~~ THE BOARD deems necessary to fully inform itself with respect to any information reported pursuant to subsection A of this section. These examinations may include biological fluid testing and other examinations known to detect the presence of alcohol or other drugs. The board or, if delegated by the board, the executive director may require the physician assistant, at the physician assistant's expense, to undergo assessment by a ~~board approved~~ BOARD-APPROVED rehabilitative, retraining or assessment program.

C. If the board finds, based on the information it receives under subsections A and B of this section, that the public safety imperatively requires emergency action~~,~~ and incorporates a finding to that effect in its order, the board may restrict a license or order a summary suspension of a license pending proceedings for revocation or other action. If the board acts pursuant to this subsection, the physician assistant shall also be served with a written notice of complaint and formal hearing, setting forth the charges, and is entitled to a formal hearing before the board or an administrative law judge on the charges within sixty days pursuant to title 41, chapter 6, article 10.

D. If, after completing its investigation, the board finds that the information provided pursuant to subsection A of this section is not of sufficient seriousness to merit disciplinary action against the physician assistant's license, ~~it~~ THE BOARD may take the following actions:

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

2. File an advisory letter. The licensee may file a written response with the board within thirty days after receiving the advisory letter.

3. Require the licensee to complete designated continuing medical education courses.

E. If the board finds that it can take rehabilitative or disciplinary action without the presence of the physician assistant at a formal interview it may enter into a consent agreement with the physician assistant to limit or restrict the physician assistant's practice or to rehabilitate the physician assistant, protect the public and ensure the physician assistant's ability to safely practice. The board may also require the physician assistant to successfully complete a ~~board approved~~ BOARD-APPROVED rehabilitative, retraining or assessment program at the physician assistant's own expense.

F. The board shall not disclose the name of the person who provided the information regarding a licensee's drug or alcohol impairment or the name of the person who files a complaint if that person requests anonymity.

G. If, after completing its investigation, the board believes that the information is or may be true and that the information may be of sufficient seriousness to merit direct action against the physician assistant's license, it may request a formal interview with the physician assistant and the supervising physician, THE COLLABORATING PHYSICIAN OR A PHYSICIAN REPRESENTATIVE OF THE COLLABORATING ENTITY, AS APPLICABLE. If the physician assistant refuses the invitation for a formal interview, the board may issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. The board shall notify the physician assistant in writing of the time, date and place of the formal interview at least twenty days before the interview. The notice shall include the right to be represented by counsel and shall fully set forth the conduct or matters to be discussed.

H. After the formal interview, the board may take the following actions:

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

2. File an advisory letter. The licensee may file a written response with the board within thirty days after receiving the advisory letter.

3. Enter into a stipulation with the physician assistant to restrict or limit the physician assistant's practice or medical activities or to rehabilitate, retrain or assess the physician assistant, in order to protect the public and ensure the physician assistant's ability to safely perform health care tasks. The board may also require the physician assistant to successfully complete a ~~board approved~~ BOARD-APPROVED rehabilitative, retraining or assessment program at the physician assistant's own expense as prescribed in subsection E of this section.

4. File a letter of reprimand.

5. Issue a decree of censure. A decree of censure is a disciplinary action against the physician assistant's license and may include a requirement for restitution of fees to a patient resulting from violations of this chapter or rules adopted under this chapter.

6. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the physician assistant. Failure to comply with any terms of probation is cause for initiating formal proceedings pursuant to title 41, chapter 6, article 10. Probation may include:

(a) Restrictions on the health care tasks the physician assistant may perform.

(b) Temporary suspension for not ~~to exceed~~ MORE THAN twelve months.

(c) Restitution of patient fees.

(d) Education or rehabilitation at the licensee's own expense.

7. Require the licensee to complete designated continuing medical education courses.

I. If the board finds that the information provided pursuant to subsection A of this section warrants suspension or revocation of a physician assistant's license, ~~it~~ THE BOARD shall immediately initiate formal proceedings ~~for the suspension~~ TO SUSPEND or ~~revocation of~~ REVOKE the license as provided in title 41, chapter 6, article 10. The notice of complaint and hearing is fully effective by mailing a true copy of the notice of complaint and hearing by certified mail addressed to the physician assistant's last known address of record in the board's files. The notice of complaint and hearing is complete at the time of its deposit in the mail.

J. A physician assistant who after a formal hearing pursuant to title 41, chapter 6, article 10 is found to be medically incompetent, guilty of unprofessional conduct or mentally or physically unable to safely carry out the physician assistant's approved health care tasks, or any combination of these, is subject to censure, probation, suspension or revocation, or any combination of these, for a period of time or permanently and under conditions the board deems appropriate ~~for the protection of~~ TO PROTECT the public health and safety.

K. In a formal interview pursuant to subsection G of this section or in a hearing pursuant to subsection I of this section, the board in

addition to any other action may impose a civil penalty in the amount of ~~not less than three hundred dollars nor~~ AT LEAST $300 BUT NOT more than ~~ten thousand dollars~~ $10,000 for each violation of this chapter or a rule adopted under this chapter.

L. An advisory letter is a public document and may be used in future disciplinary actions against a physician assistant.

M. The board may charge the costs of a formal hearing to the licensee if it finds the licensee in violation of this chapter.

N. If the board acts to modify a physician assistant's prescription writing privileges, the Arizona regulatory board of physician assistants shall immediately notify the Arizona state board of pharmacy and the United States drug enforcement administration of this modification.

O. If during the course of an investigation the ~~Arizona regulatory~~ board ~~of physician assistants~~ determines that a criminal violation may have occurred involving the PHYSICIAN ASSISTANT'S performance of health care tasks, ~~it~~ THE BOARD shall provide evidence of the violation to the appropriate criminal justice agency.

P. The board may accept the surrender of an active license from a person who admits in writing to any of the following:

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

2. Having committed an act of unprofessional conduct.

3. Having violated this chapter or a board rule.

Q. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a licensee.

Sec. 11. Rulemaking; exemption

Notwithstanding any other law, for the purposes of this act, the Arizona regulatory board of physician assistants is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this act.

Sec. 12. Effective date

This act is effective from and after December 31, 2023.

APPROVED BY THE GOVERNOR APRIL 17, 2023.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2023.

EXHIBIT C

Optimal Team Practice

What Is Optimal Team Practice?

Optimal Team Practice occurs when PAs, physicians, and other healthcare professionals work together to provide quality care without burdensome administrative constraints.

To support Optimal Team Practice, states should: eliminate the legal requirement for a specific relationship between a PA, physician, or any other healthcare provider in order for a PA to practice to the full extent of their education, training and experience; create a separate majority-PA board to regulate PAs or add PAs and physicians who work with PAs to medical or healing arts boards; and authorize PAs to be eligible for direct payment by all public and private insurers.

Want more resources on Optimal Team Practice? Join AAPA today!

Do you want to help advance the profession in your state? AAPA members can access additional Tools for State Advocates related to Optimal Team Practice. If you're not a member, join now!

Optimal Team Practice FAQ

Read the FAQ below to learn more about Optimal Team Practice. Don't see your question here? Email us!

What exactly is Optimal Team Practice?

Optimal Team Practice occurs when PAs, physicians, and other healthcare professionals work together to provide quality care without burdensome administrative constraints.

To support Optimal Team Practice, states should: eliminate the legal requirement for a specific relationship between a PA, physician or any other healthcare provider in order for a PA to practice to the full extent of their education, training and experience; create a separate majority-PA board to regulate PAs or add PAs and physicians who work with PAs to medical or healing arts boards; and authorize PAs to be eligible for direct payment by all public and private insurers.

Like every clinical provider, PAs are responsible for the care they provide. Nothing in the law should require or imply that a physician is responsible or liable for care provided by a PA, unless the PA is acting on the specific instructions of the physician.

Why do PAs want to practice without a specific relationship with a physician or any other healthcare provider?

The current legal requirement in nearly all states for a PA to have a specific relationship with a physician doesn't align with current PA practice — or how healthcare is delivered to patients. "Specific relationship" represents a legal tether, which may come in the form of a practice agreement with a physician, or another type of arrangement, like the requirement for PAs to complete a form that designates a specific physician with whom they work. Regardless, any type of legal tether between a PA and another provider can be incredibly burdensome, not only for the provider but also on the health system or facility.

How would removing the requirement for PAs to have a specific relationship with a physician improve healthcare for patients?

When a PA isn't legally tethered to a physician, PA employers (health systems, hospitals, and group practices) can be more flexible in determining healthcare teams. This will allow them to more effectively meet patient needs. It will also make it easier for PAs to practice in medically underserved communities where there are not enough physicians (and, in some cases, no physicians) to care for patients. PAs would also be able to provide volunteer medical services and respond to disasters and emergencies —situations in which physicians might not be available or willing to enter into specific relationships with PAs, but immediate care is needed.

Why do PAs want to be eligible for direct payment from Medicare and insurers?

Allowing PAs to be eligible for direct payment will eliminate an important disparity between PAs and other providers, particularly nurse practitioners (NPs). Unlike physicians and advanced practice registered nurses (APRNs), which include NPs, PAs are not eligible for direct payment from Medicare and nearly all commercial insurance payers. Most payers require that payment be made to a PA's employer, which can unintentionally limit PA employment opportunities with staffing companies and in certain practice arrangements, such as when hospitals contract with a group practice to provide services.

As the healthcare system continues its rapid transformation toward more innovative care models, PAs must have the same reimbursement flexibility enjoyed by other healthcare professionals, so they are not disadvantaged in the marketplace. Read more.

Why do PAs want changes to the boards that regulate PA practice?

Today, physicians are regulated by state medical boards composed of physicians. Nurses are regulated by boards made up of nurses. Only PAs are regulated by boards that often have no members actively working in their own profession. This means the boards that regulate PA practice may lack knowledge of current PA practice or how rules and regulations may affect PA practice. This dearth of insight can lead to unnecessary restrictions and administrative burdens for PAs, physicians, and employers.

PAs deserve what physicians and nurses already have: regulatory boards with current knowledge about their profession. States can determine whether this is best accomplished by creating separate PA boards or by adding PAs and physicians who work with PAs to medical or healing arts boards. Read more.

Why are these changes good for patients?

Numerous studies have shown that PAs provide high-quality patient care and bring value to patients and PA employers. Currently, the retirement or sudden relocation, disability, or death of a physician with whom a PA has a legal relationship can mean the PA can no longer provide healthcare services to patients, even if the PA has been their primary care provider. Ultimately, when state laws and regulations remove the legal requirement for PAs to have a specific relationship with a physician, patients will have greater access to care, especially for medically underserved populations and patients in rural areas.

Why are these changes good for healthcare employers?

When a PA isn't required to have a specific relationship with a physician, their employer can be more flexible in creating healthcare teams, allowing them to more effectively meet patient needs and reduce provider burnout. Ending this requirement also removes physician liability for the care that PAs provide when physicians are not involved and reduces physician and employer risk of disciplinary action for administrative reasons. Also, allowing PAs to receive payments directly will expand the number of available providers through the use of healthcare staffing companies and other business arrangements that require PAs to reassign insurance payments.

Why are these changes good for physicians?

Physicians will benefit from these changes in many ways. First, when PAs are not required to have a specific relationship with a physician, physicians will no longer be responsible for care provided by the PA when the physician is not involved. This could substantially reduce physician exposure to liability.

Second, healthcare teams could be determined on a case-by-case basis at the practice level, allowing physicians to work with different PAs on different cases. Third, it would allow physicians to work with PAs more easily when they are employed in hospitals, health systems, and other corporate structures that use staffing companies. Currently, PAs are often prevented from participating in these staffing arrangements since, unlike NPs, they are not eligible for direct payment, and, therefore, cannot reassign their insurance reimbursements to the staffing company.

Are PAs ready to practice without a specific relationship with a physician?

Absolutely. PA practice has been extensively studied and evaluated, and PAs have been found to provide high-quality patient care. Even under existing administratively burdensome laws and regulations, many — if not most — PAs have their own panels of patients and often serve as a patient's primary healthcare provider. State laws and regulations have simply not kept pace with the changes in the healthcare marketplace or the changing needs of patients and PA employers.

Whether a PA is highly experienced, a new graduate, or changing the specialty area in which they work, they would continue to practice in teams with physicians, and their scope of practice would be determined at the practice level. If a patient's condition falls outside of a PA's training, education, and experience, a PA will still consult with other healthcare providers and make referrals when appropriate. If they don't, that PA will be subject to disciplinary action by the state medical board, just as any other medical provider would be.

Under Optimal Team Practice, a newly licensed PA would, at their place of employment, be able to report to or be supervised by a physician, a senior PA, or a chief PA rather than having a specific relationship with a physician. Every PA and PA employer will continue to be responsible for assuring that there is adequate access to consultation and back-up. Removing the requirement for a specific relationship between a PA and a physician does not diminish those responsibilities.

Is Optimal Team Practice the same as independent practice?

The reality is that, in today's healthcare environment, there is no such thing as "independent practice." Gone are the days of the solo practitioner, working completely alone. Just like physicians, PAs will continue to collaborate with, consult with, and refer patients to other healthcare providers whenever the patient's condition falls outside of their education, training, and experience. The PA profession's commitment to team practice is powerful. The PA and physician who work together get to keep all the benefits of the team without the legal risks and administrative burdens that agreements entail. In addition, employers will have access to a wider range of providers and won't have to file unnecessary administrative burden. Everyone wins.

Will federal laws and regulations also require changes?

Medicare policy says: "State law or regulation governing a PA's scope of practice in the State where the services are performed applies." However, the Current Medicare statute uses the word "supervision" to describe how physicians work with PAs. Medicare rules must also change as state laws describing team practice continue to evolve, moving away from the word and concept of "supervision." AAPA has been advocating for this change. In the proposed 2020 Medicare Physician Fee Schedule, CMS proposes language that would modify Medicare's existing physician supervision requirement to defer to state law regarding how PAs practice with physicians and other members of the healthcare team.

How OTP Can Improve Healthcare

Convenient Care Association Voices Support for Eliminating Barriers to Employing PAs

The Convenient Care Association (CCA), the national trade association of companies and healthcare systems that provide consumers with healthcare in retail-based locations, recently voiced its support for eliminating the requirement for a specific relationship between a PA and a physician.

Healthcare Access Stalled at Red Cliff Reservation

PA Khou Xiong's patients experienced an interruption in care when the health center she works for unexpectedly lost its physician medical director. Read how modernizing PA-practice laws could improve the status quo for PA Xiong and PAs in similar situations across the country.

Miles to go for Quality Healthcare, Frontier Nevada Residents Rely on PA Miles

Ann Miles, PA-C, achieved one of her life-long goals of opening a rural healthcare clinic in Frontier Nevada. Learn more about her journey and some of the challenges she still faces due to outdated PA-practice laws in the state.

1.
2.
3.

Resources

Guidelines for State Regulation of PAs

Updated in May 2017, this document provides recommendations for state governmental control of PA practice.

DOWNLOAD NOW

OTP Infographic

1.
2.
3.

DOWNLOAD NOW

What OTP Means for Healthcare

Strengthen the PA voice on important issues like this one. Become an AAPA member today!

DOWNLOAD NOW

AAPA Response to AMA's #StopScopeCreep Campaign

November 2, 2020

Susan R. Bailey, MD
President

James L. Madara, MD
Chief Executive Officer & Executive Vice President

American Medical Association
AMA Plaza
330 N. Wabash Ave., Suite 39300
Chicago, IL 60611-5885

Dear Drs. Bailey and Madara,

On behalf of the more than 140,000 PAs across this country who work alongside physicians in every medical setting and specialty, we ask that the American Medical Association (AMA) cease advancing the false and offensive narrative in your #StopScopeCreep campaign, which suggests PA care is not safe and jeopardizes patient safety.

While this misleading narrative from AMA is not new, we are writing today with a renewed sense of urgency. Over the weekend, AMA posted particularly ill-timed social media messages that have since been deleted. These messages denigrated the PA profession and misled the public.

The COVID-19 pandemic has made this year especially challenging for all medical providers. Three out of five PAs have tested, treated, and diagnosed COVID-19 patients. Like physicians, PAs have experienced furloughs, layoffs, reduced hours—and have contracted and died from the virus. So, AMA's whimsical graphic with the PA profession represented on Scrabble tiles with the message "because patient safety isn't a game" was unconscionable.

Most egregious is AMA's tone-deaf attempt to instill more fear and uncertainty in the public at a time of already heightened anxiety. As we have seen across the country, patients continue to delay life-saving care due to COVID-19. Using scare tactics to disincentivize patients from accessing healthcare during a pandemic is disconcerting and reckless to public health.

[Please consider becoming an AAPA member today. Join now!]

Our professional organizations should work together to find solutions to current healthcare challenges, for example, increasing acceptance and delivery of vaccines. We should focus on combatting misinformation, such as the recent suggestions that physicians and other clinicians are falsely attributing deaths to COVID-19. We should build public confidence in our nation's healthcare workforce. Instead, your organization is attempting to divide rather than unite by attacking other healthcare providers.

Your assertion that a patient's safety is at risk if they see a PA is simply false and AMA's continued efforts to suggest otherwise are deceitful. Study after study confirms that PAs provide high-quality care.[1-2] In fact, additional studies find that PAs have similar health outcomes as physicians.[1,3-5]

We would also like to address the AMA's antiquated concept of "physician-led patient care and training." This is not only contrary to what evidence shows is best for patients but is also out of touch with how medicine is practiced today. The most up-to-date practice laws allow healthcare teams to decide at the practice level how they will collaborate to best meet the needs of patients. Evidence demonstrates the most successful clinical teams are those that utilize the skills and abilities of each team member most fully, and a team approach supports efficient patient-centered healthcare.[6-8] The keyword is "team."

PAs, like physicians, seek to reduce unnecessary and outdated administrative burdens that limit patient care. Removing the legal tether, such as a practice agreement between a PA and another specific healthcare provider, allows healthcare teams to be more flexible in meeting patient care needs. This was most recently evidenced during the pandemic when the governors of eight states removed supervision requirements for PAs and another 13 did so through previous legislation specific to PA practice during a public health emergency. PAs did what they were trained to do: go where they are needed most.

Whether during a pandemic or not, PAs will continue to collaborate with, consult with, and refer patients to other healthcare providers whenever the patient's condition falls outside of their education, training, and experience.

It is also worth noting that removing this legal tether has many benefits to physicians, something which AMA should explain to its members. These benefits include removing physician liability for the care that PAs provide when physicians are not involved and reducing physician and employer risk of disciplinary action for administrative reasons.

PAs have great respect for the breadth and depth of physician training and are proud to practice medicine alongside physicians every day. We ask for mutual respect and for AMA to not hide behind inflammatory social media messages.

We would like to meet with AMA leaders to clear up any misperceptions and to begin working together toward improving and expanding access to high-quality care for patients. We look forward to the opportunity to further this conversation.

Beth R. Smolko, DMSc, MMS, PA-C
President and Chair of the Board
American Academy of PAs

Lisa M. Gables, CPA
CEO
American Academy of PAs

References

1. Kurtzman ET, Barnow BS. A Comparison of Nurse Practitioners, Physician Assistants, and Primary Care Physicians' Patterns of Practice and Quality of Care in Health Centers. *Med Care.* 2017;55(6):615-622. doi:10.1097/MLR.0000000000000689.
2. U.S. Department of Health and Human Services, Health Resources and Services Administration. National Practitioner Data Bank. Rockville, MD: U.S. Department of Health. https://www.npdb.hrsa.gov/index.jsp. Accessed November 2, 2020.
3. Jackson GL, Smith VA, Edelman D, et al. Intermediate Diabetes Outcomes in Patients Managed by Physicians, Nurse Practitioners, or Physician Assistants: A Cohort Study. *Ann Intern Med*. 2018;169(12):825-835. doi:10.7326/M17-1987.
4. Rymer JA, Chen AY, Thomas L, et al. Advanced Practice Provider Versus Physician-Only Outpatient Follow-Up After Acute Myocardial Infarction. *J Am Heart Assoc*. 2018;7(17):e008481. doi:10.1161/JAHA.117.008481.

5. Yang Y, Long Q, Jackson SL, et al. Nurse Practitioners, Physician Assistants, and Physicians Are Comparable in Managing the First Five Years of Diabetes. *Am J Med*. 2018;131(3):276-283.e2. doi:10.1016/j.amjmed.2017.08.026.
6. Mitchell PM, Wynia R, Golden B, et al. Institute of Medicine. Core principles and values of effective team-based health care. https://nam.edu/perspectives-2012-core-principles-values-of-effective-team-based-health-care. Published October 2, 2012. Accessed November 2, 2020.
7. Doherty RB, Crowley RA; Health and Public Policy Committee of the American College of Physicians. Principles supporting dynamic clinical care teams: an American College of Physicians position paper. *Ann Intern Med*. 2013;159(9):620-626. doi:10.7326/0003-4819-159-9-201311050-00710.
8. Jabbarpour Y, DeMarchis E, Bazemore A, Grundy P. The impact of primary care practice transformation on cost, quality, and utilization: A systematic review of research published in 2016. Washington, DC: Patient Centered Primary Care Collaborative. https://www.pcpcc.org/sites/default/files/resources/pcmh_evidence_report_08-1-17%20FINAL.pdf. Published July 2017. Accessed November 2, 2020.

Click here for the PDF version of this letter.

SUNRISE REPORT

PROPOSED ESTABLISHMENT OF THE OPTIMAL TEAM PRACTICE MODEL IN THE PHYSICIAN ASSITANT PRACTICE ACT AND ITS IMPACT ON THE CURRENT USE OF FLUROSCOPY BY PHYSICIAN ASSISTANTS

Submitted by:

November 1, 2021

ASAPA
THE ARIZONA STATE ASSOCIATION OF PHYSICIAN ASSISTANTS

November 1, 2021

The Honorable Karen Fann
The Honorable Rusty Bowers
Arizona Legislature
1700 West Washington
Phoenix, Arizona 85007

RE: Sunrise Application for Optimal Team Practice within the Physician Assistants Practice Act

Dear President Fann and Speaker Bowers:

Out of an abundance of caution, on behalf of the Arizona State Association of Physician Assistants, this Sunrise Application is being submitted in support of the proposed modernization of the Physician Assistants Practice Act through the proposed enactment of the Optimal Team Practice model.

Briefly, Optimal Team Practice occurs when physician assistants, physicians and other healthcare professionals work together to provide quality care without burdensome administrative constraints. While Optimal Team Practice does not eliminate oversight, the practice model allows physician assistants to maximize their education, training and experience within the limitation of the clinical setting in which they practice.

Under existing Arizona statutes, a physician assistant is required to secure a delegation agreement from a specific supervising physician to practice in Arizona. In contrast, under Optimal Team Practice, qualified physician assistants with a minimum of 4,000 hours of clinical practice experience may work within the constraints established by the clinical setting in which they practice, as opposed to being tethered to a specific supervising physician.

It is critical to appreciate that Optimal Team Practice does not eliminate the current oversight of a physician assistant, nor does the practice model allow for independent practice. Nevertheless, Optimal Team Practice replaces the current administrative burdens with a more efficient oversight mechanism that reflects the present relationship between healthcare professionals in a clinical setting.

Under the existing Practice Act, the scope of practice for a licensed physician assistant is determined by each physician assistant's education, training and experience and is limited by provisions contained in the delegation agreement established by the supervising physician. Physician assistants provide medical services within the scope of their delegation agreement, which requires an annual update.

Similarly, under the proposed Optimal Team Practice model, the limitations on what medical services a physician assistant can provide will be determined by their respective education, training and experience as well as the limitations established by the clinical setting in which they practice.

Accordingly, based on the above overview of Optimal Team Practice, the Arizona State Association of Physician Assistants respectfully asserts that there is no increase in the scope of practice that results from the proposed legislation, as physician assistants will continue to be subject to regulatory oversight and limitations on their scope of work in a manner consistent with their respective education, training and experiences and within the limitations established by the clinical setting in which they practice.

On a narrow focus, the proposed legislation does contain clarifying provisions relating to a qualified physician assistant's ability to perform fluoroscopy. Under existing statutes, physician assistants provide fluoroscopic guided procedures under the authority of the delegation agreement.

The proposed Optimal Team Practice legislation contains specific training requirements for physician assistants to provide fluoroscopy within the constraints of the clinical practice setting. We believe adding a specific training requirement enhances the current standard in which a qualified physician assistant provides fluoroscopic guided procedures to patients. In essence, the specific training requirements are intended to enhance public safety and do not suggest that this is an increase in the scope of practice.

A similar discussion about specific training requirements for physician assistants providing fluoroscopy occurred in 2016 between the Arizona Medical Association and the Arizona State Association of Physician Assistants. Ultimately, at the time, the Arizona Regulatory Board of Physician Assistants opted to maintain the current practice of requiring the delegation agreement, as opposed to specific training requirements.

From the perspective of the Arizona State Association of Physician Assistants, under the proposed Optimal Team Practice legislation there is no increase in the scope of practice of a physician assistant providing fluoroscopic guided procedures, as qualified physician assistants are presently providing such services under existing Arizona law. Nevertheless, as expressed above, the attached Sunrise Application is being submitted out of the abundance of caution in order to meet any procedural challenges during the legislative discussion on Optimal Team Practice.

Thank you in advance for your consideration.

Sincerely,

Sarah Bolander, PA-C
President, Arizona State Association of Physician Assistants

The Arizona State Association of Physician Assistants (ASAPA) is seeking a clarification in the statutes that regulate physician assistants regarding fluoroscopy to ensure there are no interruptions in patient care should Optimal Team Practice be enacted in Arizona. From the perspective of ASAPA, there is no increase in the scope of practice of a physician assistant from that clarification; however, we are submitting the attached Sunrise Application out of an abundance of caution and in order to proactively address any procedural challenges during the legislative discussion on Optimal Team Practice.

1. **Why an increased scope of practice is beneficial, including the extent to which health care consumers need and will benefit from safe, quality care from practitioners with this scope of practice.**

Physician assistants (PAs) practice in nearly all specialties of medicine, providing safe and efficient health care to patients across Arizona. Physician assistants practice has been well received by the public and is an established part of the health care team, with collaboration between supervising physicians and physician assistants expanding access to care.

As part of a health care team, physician assistants practice in major radiology departments, performing health care tasks delegated by supervising physicians, often radiologists. As part of these health care tasks, fluoroscopic guided procedures performed by physician assistants extend the care of both interventional and diagnostic radiologists. In addition to radiology, physician assistants also practice in other clinical settings that commonly employ radiology as a part of patient care, including but not limited to general surgery, subsurgical specialties, emergency medicine, and orthopedics.

Physician assistants have been performing diagnostic and interventional procedures that use ionizing radiation since the early days of the profession. Under existing law, fluoroscopy is currently within a physician assistant's scope of practice if they have the proper training, experience, and education and the procedure has been delegated to the physician assistant as part of their delegation agreement.

In addition, ARS 30-672, which regulates ionizing radiation, states physician assistants, along with other occupations, are governed by their own licensing acts and the Arizona Department of Health Services cannot require them to obtain any other license to use a diagnostic x-ray machine.

This sunrise application seeks to ensure there is no disruption in patient care related to fluoroscopy should Optimal Team Practice be enacted in Arizona.

2. **Whether those health professionals seeking an increased scope of practice currently have or will be required to have didactic and clinical education from accredited professional schools or training from recognized programs that prepare them to perform the proposed scope of practice, and details on what that education or training includes for that proposed scope of practice.**

Under existing Arizona statutes, a physician assistant is required to secure a delegation agreement from a specific supervising physician to practice in Arizona. In contrast, under Optimal Team Practice, qualified physician assistants with a minimum of 4,000 hours of clinical practice experience may work within the constraints established by the clinical setting in which they practice, as opposed to being tethered to a specific supervising physician.

As part of the Optimal Team Practice legislation that ASAPA is pursuing, a Physician Assistant with over 4,000 hours of practice under a delegation agreement (renamed collaboration agreement) documented to the Arizona Regulatory Board of Physician Assistants, will be required to collaborate with, consult with or refer to the appropriate member of the health care team as indicated by the patient's condition and as indicated by the physician assistant's education, experience and competencies. The level of collaboration required will be determined by their practice setting, not the collaboration agreement.

To ensure adequate training, ASAPA is seeking to require that a physician assistant has at least 16 hours of documented training in radiation safety to operate a fluoroscopy machine.

3. Whether the subject matter of the proposed increased scope of practice is currently tested by nationally recognized and accepted examinations for applicants for professional licensure and the details of the examination relating to the increased scope of practice.

Physician assistants are educated at the master's degree level. There are more than 277 physician assistant programs in the country and admission is highly competitive, requiring a bachelor's degree and completion of courses in basic and behavioral sciences as prerequisites. Incoming physician assistant students bring with them an average of more than 3,000 hours of direct patient contact experience, having worked as paramedics, athletic trainers, or medical assistants, for example. Physician assistant programs are approximately 27 months (three academic years) and include classroom instruction and more than 2,000 hours of clinical rotations. Specifically:

Prerequisites:

- Bachelor's degree with courses in basic and behavioral sciences (typically 2 years of coursework in these areas)
    - Majority of programs have the following prerequisites: chemistry, physiology, anatomy, microbiology, biology
- Clinical experience (average is 3,000 hours of direct patient contact experience)
    - Common types of experience: medical assistant, EMT, paramedic, medic/medical corpsman, Peace Corps volunteer, lab assistant/phlebotomist, R.N., emergency room technician, surgical tech, CNA
- Standardized tests: varies, about half of programs require the GRE, few require the MCAT, few have no requirement, few are starting to adopt the PA-CAT

Program length: The typical length is 27 continuous months (equivalent to approximately 3 academic years), but ranges from 24-36 months

Curriculum:

Didactic phase: Basic medical sciences (anatomy, physiology, etc.), pharmacology, physical diagnosis, behavioral sciences, medical ethics, clinical medicine

On average, PA students take:

- 75 hrs pharmacology
- 175 hrs behavioral sciences
- 400 hrs basic sciences
- 580 hrs clinical medicine

Clinical phase: rotations in medical and surgical disciplines (family medicine, internal medicine, general surgery, pediatrics, OB/GYN, emergency medicine, psychiatry)

On average, by graduation PA students will have completed at least 2,000 hours of supervised clinical practice

Degree awarded: Master's degree (entry-level and terminal degree for profession)

Practice Requirements

- Pass the Physician Assistant National Certifying Examination (PANCE) developed by the National Commission on Certification of Physician Assistants
    - To maintain certification, physician assistants must log 100 hours of continuing education (50 hours must be category 1) every 2 years and pass the Physician Assistant National Recertification Exam (PANRE) every 10 years
- Obtain a license issued by the applicable state regulatory jurisdiction, in the case of Arizona, the Arizona Regulatory Board of Physician Assistants

4. The extent to which the proposed increased scope of practice will impact the practice of those who are currently licensed in this state or the entry into practice of those individuals who have relocated from other states with substantially equivalent requirements for registration, certification, or licensure as this state.

The proposal will not have a negative impact on those currently licensed as physician assistants. The goal of this change is to ensure that physician assistants who currently practice fluoroscopy will have the ability to continue doing so should the Optimal Team Practice model be enacted in Arizona.

For individuals that relocate to Arizona, it will be dependent on the scope of practice that they had in the jurisdiction they practiced in. If the individual has the education/experience and can document that to the Arizona Regulatory Board of Physician Assistants, they will still be able to practice fluoroscopy, assuming their delegation agreement (collaboration agreement) or practice setting allows for that. If they do not have the education/experience, they will be able to gain that education/experience in Arizona assuming their delegation agreement (collaboration agreement) or practice setting allows for fluoroscopy.

5. The extent to which implementing the proposed increased scope of practice may result in savings or a cost to this state and to the public.

There will not be a cost to the state or the public since physician assistants already perform fluoroscopy.

There will be a continued cost savings to the state by having a physician assistant available to perform fluoroscopy for AHCCCS members.

6. The relevant health profession licensure laws, if any, in this or other states.

Physician assistants are regulated in every state throughout the U.S. From an Arizona perspective, the current Physician Assistant Practice Act is contained in Title 32, Chapter 25

7. Recommendations, if any, from the applicable regulatory entity or entities, from the department of health services and from accredited educational or training programs.

None.

EXHIBIT D

Arizona Regulatory Board of Physician Assistants
1740 W. Adams St, Suite 4000, Phoenix, AZ 85007
Telephone: 480-551-2700 • Fax: 480-551-2705 • www.azpa.gov

FINAL MINUTES FOR MEETING OF JOINT LEGISLATION AND RULES COMMITTEE TELECONFERENCE MEETING Held on Thursday, August 17, 2023 1740 W. Adams St., Board Room 4100, Phoenix, AZ 85007

Committee Members
Susan Reina, P.A.-C., Chair
David J. Bennett, D.O.
Kevin K. Dang, Pharm D.
Michelle DiBaise, D.H.S.c., P.A.-C., D.F.A.A.P.A.
John J. Shaff, PA-C, DFAAPA

A. CALL TO ORDER

Chairwoman Reina called the meeting to order a 5:04 p.m.

B. ROLL CALL

The following Committee Members participated via Zoom: Dr. Bennet, Dr. Dang and PA DiBaise.

The following Committee Member was present in the room: PA Reina and PA Shaff.

ALSO PRESENT
The following Board staff participated in the meeting: Patricia McSorley, Executive Director; Kristina Jensen, Deputy Director; Michelle Robles, Board Operations Manager. Also present: Carrie Smith, Assistant Attorney General ("AAG").

C. CALL TO THE PUBLIC

Sarah Bolander, Amanda Shelley and Melanie Lyon from ASAPA addressed the Committee during the Call to the Public.

D. APPROVAL OF MINUTES

- June 23, 2023 Joint Legislation and Rules Committee Teleconference

  MOTION: PA Shaff moved to approve the June 23, 2023 Joint Legislation and Rules Committee Teleconference.
  SECOND: PA DiBaise.
  The following Committee Members voted in favor of the motion: Dr. Dang, PA DiBaise, PA Reina and PA Shaff. The following Committee Member was absent: Dr. Bennet.
  VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
  MOTION PASSED.

E. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING RULES FOR THE IMPLEMENTATION OF HB2043 AND COLLABORATIVE PRACTICE BY PHYSICIAN ASSISTANTS

Ms. McSorley noted the definition of collaborating physician or entity on page 1 which is regarding designating one or more physicians by name or position, who is responsible for the oversight of the physician assistant. Ms. McSorley also noted the language in section 32 2536 on page 14 which is the nuts and bolts of regarding the documentation and certification for collaborative practice. Ms. McSorley provided the Committee with the rules. The first step is the process would be certification of the physician assistant for collaborative practice. This will be done at the staff level and will provide the

application to the PA, who is in good standing. The PA is going to provide the application with proof of the 8,000 clinical hours within the previous five years. Ms. McSorley read for the record the definition of a "clinical hour". The idea is that the PA will gather the documentation necessary, and we'll have an attestation from a previous employer confirming the hours. If the PA satisfactorily meets all of the requirements for collaborative physician assistant staff will certify them and maintain a list on the Board's website. Ms. McSorley noted that this is the only piece that Board staff will be involved in. The next part goes to the certification for an area of practice, and that's going to be completely dealt with at the practice level. Ms. McSorley noted that the next rule is regarding the requirements for collaborative practice agreement and certification to practice in a specified area. This is being done to comply with the rule regarding what collaborative practice is and that there needs to be a position, name, or position from the entity that is going to be responsible for oversight of the physician assistant. Ms. McSorley noted that oversight and supervision are different. Oversight is to have a mechanism in place should the PA need to collaborate or refer with somebody. Ms. McSorley also noted that if an investigation is required, the Board is going to have to look to the collaborating physician and interview that person, so the Board needs a record of it. The agreement and any addendums would need to be maintained by both the practice and the PA. If a collaborating physician considers certifying a PA for an area practice that is not substantially similar to an area practice for which the PA was previously certified, certification should only take place at the time and there needs to be a record of it. Ms. McSorley stated that the collaborative agreement addresses the need for certification, which is set forth in the statute. Ms. McSorley reiterated that this is all done at the practice level and is through a discussion between the PA and the collaborating physician. There is also language in the rules regarding if the PA requires supervision. Regarding supervision prior to acting in a collaborative manner, the length of supervision shall be determined by the physician accepting responsibility for the training and supervision of the PA. The terms of the supervision shall be documented in the collaboration agreement. Ms. McSorley noted that section J's language is to create a communication chain and to create a mechanism to be able to refer to the collaborator.

PA DiBaise opine that the Board does not need to create the collaborating agreement since the supervising agreement is at the practice level. PA DiBaise opined that these proposed rules are stringent compared to supervision.

Ms. McSorley noted that these collaborating agreements are not required to be submitted to the Board unless there is an investigation.

PA Reina commented that the proposed form is to be used as a universal template. PA Shaff opined that having a template would make the process easier and more uniform. PA Shaff noted that since it is decided and kept at the practice level it is not more restrictive.

PA DiBaise expressed concern that this is codifying more terminology and rules for a collaborative PA that what is required for supervising. PA DiBaise opined that the onus is on the practice and the PA to have everything in order.

PA Reina noted that the bill specifically states you must designate a physician by name or position.

PA DiBaise expressed concern regarding naming a collaborative physician by name when it can just state the position.

Committee members discussed if there is an investigation or a change in practice what that would look like if only a position was listed on the collaborative agreement instead of a physician by name.

Ms. Smith clarified that the statute states "the Board shall adopt rules establishing additional certification, standards, or requirements. Physician or physician assistants who previously completed the 8,000 hours and were seeking employment with a collaborating physician or entity for a position

that is not substantially similar to the practice setting or specialty in which the PA was previously certified.". This requires the Board to establish some rules for when a PA changes practice.

Regarding a change in practice or supervisory agreement, PA DiBaise opined that this should be decided at the practice level.

PA Shaff confirmed that the rule states if they change to a field that is substantially different or not, it is decided at the practice level whether they need to go to a supervisory position until they are able to go to a collaborating position or they can sign off to collaborate in a substantially different role. This is determined between the PA and their practice.

PA DiBaise expressed concern that the draft language reads as if it gets turned into the Board.

PA Reina confirmed that there is no language that states it needs to be turned into the Board. It only needs to be submitted if there is an investigation.

PA Shaff noted that the application and documents for certification get turned into the Board, everything else is at the practice level.

PA DiBaise noted the language in Point B and suggested using the language certify a collaborative "scope of practice" instead of "area of practice".

Ms. McSorley noted that she used the term "certification" to be in line with the statute.

PA Shaff noted that the Board is doing the initial certification. The collaborative agreement is saying this is the area that I'm working in and here are my collaborating physicians. PA Shaff suggested replacing the word "certify" with "state" as it may be more appeasing.

Ms. Smith informed the Committee that it is a policy decision.

Ms. McSorley agreed that certification is a strong word but that is the language in the statute. Ms. McSorley explained that she is trying to get the Committee to agree on the concepts and a process. A professional rule writer will get the language in the right form for public comment and then to turn it into GIRC. Once the Committee agrees on the concepts, Ms. McSorley suggested that a FAQ should be sent out to the community.

Regarding Point B, PA DiBiase opined that only the person who's agreed to have oversight needs to be listed and not have a list of everyone you could potentially work with.

PA Reina commented that the understanding is that one physician or position is needed but multiple can be added. PA Reina noted that this language was proposed by the ASAPA lobbyist.

PA DiBaise requested that staff touch base with ASAPA's lobbyist to clarify the intent of what's stated in Point B.

PA Shaff agreed that the language can be cleaned up but it is just asking for the collaborating physician's information.

PA DiBaise agreed with alternate pathway regarding the 8,000 hours within five year for certification but expressed concern regarding section four that requires the PA to get a signed attestation. PA DiBaise opined that this seems superfluous and inquired what would happen if there is an issue obtaining the attestation.

PA Shaff agreed that point four seems redundant.

PA DiBaise commented that claiming didactic hours may require an attestation but it may not be needed if the PA has the required documentation.

Ms. McSorley stated that the Committee can determine if just documentation of the hours is sufficient or if an attestation is needed as well.

PA DiBaise commented that the attestation can be another form of documentation.

Committee members suggested adding language that an attestation from a previous employer, clinical practice, credentialing department or supervising physician for the 8,000 clinical hours should be added as an option in Section 3 and remove Point 4.

Ms. Smith encouraged the Committee to provide Board staff with the tools necessary to address those who aren't utilizing the process in good faith and complying with the law. There should be some way for Board staff to be authorized to communicate with these prior employers in order to give the Board the investigatory functionality in the instance where there is a concern that the information being presented to the Board is not truthful.

Ms. McSorley commented, in the context of looking at these clinical hours, if staff has a question perhaps the Committee can add some language that staff may contact previous employers to confirm the number of hours.

Committee members agreed that is reasonable.

Ms. McSorley also suggested as an alternative, the attestation from the employer can be primary source and sent directly from the employer to the Board.

PA DiBaise inquired about what would occur if the attestation cannot be obtain due to some catastrophic reason.

Ms. Smith noted that the MD Board has language regarding waiver requests in its application rules and suggested that the Committee can be provided with something translated from that for consideration.

PA DiBaise agreed with having a waiver of some form to address those situations where an attestation cannot be obtained.

PA Reina inquired about language regarding a substantial lapse in employment.

PA Shaff commented that if they have kept their license active do we ask if they have been clinically working.

Ms. McSorley noted that if the PA kept an active license they would be keeping up to date with their CME and would have maintained licensure and education requirements.

PA DiBiase noted that the PA would be evaluated at the practice level.

PA Reina clarified that this is for the initial application.

PA Shaff noted that this is addressed in the language, if the physician assistant can provide proof of 8,000 hours within 10 years of the date of the application.

Ms. McSorley noted that this is a situation or question that can also be added to the FAQs.

PA Reina requested that this topic be added to the full Board's meeting and if needed a specialty meeting can be held.

F. DISCUSSION OF DATES AND TOPICS FOR UPCOMING COMMITTEE MEETING

G. ADJOURNMENT

MOTION: PA DiBaise moved to adjourn the meeting.
SECOND: PA Shaff.
The following Committee Members voted in favor of the motion: Dr. Dang, PA DiBaise, PA Reina and PA Shaff. The following Committee Member was absent: Dr. Bennet.
VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

The meeting adjourned at 6:29 p.m.

Patricia E. McSorley, Executive Director

EXHIBIT E

Changes to the Physician Assistant Practice Act after enactment of HB 2043, effective December 31,2023

Dear Licensed Arizona Physician Assistants,

This email is being sent to update you and provide you with information regarding some important changes to the Physician Assistant Practice Act after the enactment of HB 2043 and effective December 31,2023. HB 2043, is attached.

The new legislation allows for collaborative practice for licensed Arizona physician assistants who have worked at least 8,000 clinical hours, and who are certified by the Board to work without supervision. The anticipated requirements for certification for collaborative practice are set forth in the attached frequently asked questions and the recently adopted rules for collaborative practice. The application will be available on the ARBoPA website later in December.

In addition, the new legislation changes the requirements needed in Supervision Agreements between the physician assistant and the supervising physician or the physician's employer. Previously, the law mandated a physician assistant could only perform the health care tasks delegated by a supervising physician, the new legislation allows for a physician assistant to provide “any legal medical service for which the physician assistant has been prepared by education, training and experience and that the physician assistant is competent to perform” including the tasks previously identified in the statute. Health care tasks are no longer required to be specifically delegated by a supervising physician. A Supervision Agreement that describes the physician assistant’s scope of practice and prescribing authority is nonetheless required prior to performing health care tasks.

Please take the time to familiarize yourself with the changes that will become effective on December 31, 2023. If you have any questions for regarding HB 2043, please send an email to: licensingreport@azmd.gov and Board Staff will respond.

Patricia McSorley
Executive Director

Arizona Medical Board

Arizona Regulatory Board of Physician Assistants

Resources:

HB2043 (https://azmbfileblob.blob.core.windows.net/azmd/MD_202312101233_f5d09a29c484488587e0b75fa95dcff6.pdf?sv=2

Amendments to the Physician Assistant Practice Act (https://azmbfileblob.blob.core.windows.net/azmd/MD_202312101233_9d

FAQs for a Collaborative Practice (https://azmbfileblob.blob.core.windows.net/azmd/MD_202312101234_bbbb9e715b7944b9a

Article 4. Collaborative Practice; Regulation (https://azmbfileblob.blob.core.windows.net/azmd/MD_202312101235_a525e055eb

Contact Us (/Misc/ContactUS)

Address: 1740 W Adams, Suite 4000
Phoenix, AZ 85007
Hours: 8am - 5pm Mon - Fri
Phone: (480) 551-2700
Toll Free: (877) 255-2212
Fax: (480) 551-2702
Email: Contact the Board (/Misc/ContactUSEmail?board=PA&contactType=0)

Right to Petition Governor's Regulatory Review Council

Arizona Revised Statute (ARS) § 41-1033 provides that a person may petition Governor's Regulatory Review Council (GRRC) to request a review of a final rule... (/Resource/Resource/pa-grrc)

Occupational Regulation

You have the right to petition this agency to repeal or modify the occupational regulation or bring an action in a court of general jurisdiction to challenge the occupational regulation and to ensure compliance with section 41-1093.01, Arizona Revised Statutes. (/Resource/Resource/pa-occupational-reg)

The Ombudsman-Citizens Aide

Helps citizens to resolve ongoing issues with state agencies... (https://www.azoca.gov/)

(/Misc/LocalMap)

Privacy Policy (/Misc/PrivacyPolicy)
Accessibility Policy (/Misc/AccessibilityPolicy)
Glossary (/Misc/Glossary)
Employment (/Misc/Employment)
Open Books (https://openbooks.az.gov)

Changes to the Physician Assistant Practice Act after enactment of HB 2043, effective December 31,2023

Dear Licensed Arizona Physician Assistants,

This email is being sent to update you and provide you with information regarding some important changes to the Physician Assistant Practice Act after the enactment of HB 2043 and effective December 31,2023. HB 2043, is attached.

The new legislation allows for collaborative practice for licensed Arizona physician assistants who have worked at least 8,000 clinical hours, and who are certified by the Board to work without supervision. The anticipated requirements for certification for collaborative practice are set forth in the attached frequently asked questions and the recently adopted rules for collaborative practice. The application will be available on the ARBoPA website later in December.

In addition, the new legislation changes the requirements needed in Supervision Agreements between the physician assistant and the supervising physician or the physician's employer. Previously, the law mandated a physician assistant could only perform the health care tasks delegated by a supervising physician, the new legislation allows for a physician assistant to provide “any legal medical service for which the physician assistant has been prepared by education, training and experience and that the physician assistant is competent to perform” including the tasks previously identified in the statute. Health care tasks are no longer required to be specifically delegated by a supervising physician. A Supervision Agreement that describes the physician assistant’s scope of practice and prescribing authority is nonetheless required prior to performing health care tasks.

Please take the time to familiarize yourself with the changes that will become effective on December 31, 2023. If you have any questions for regarding HB 2043, please send an email to: questions-noreply@azmd.gov and Board Staff will respond.

Patricia McSorley
Executive Director

Arizona Medical Board

Arizona Regulatory Board of Physician Assistants

Resources:

HB2043 (https://azmbfileblob.blob.core.windows.net/azmd/MD_202312101233_f5d09a29c484488587e0b75fa95dcff6.pdf?sv=2

Amendments to the Physician Assistant Practice Act (https://azmbfileblob.blob.core.windows.net/azmd/MD_202312101233_9d

FAQs for a Collaborative Practice (https://azmbfileblob.blob.core.windows.net/azmd/MD_202312101234_bbbb9e715b7944b9a

Article 4. Collaborative Practice; Regulation (https://azmbfileblob.blob.core.windows.net/azmd/MD_202312101235_a525e055eb

Contact Us (/Misc/ContactUSEmail?board=MD&contactType=0)

Arizona Medical Board

Address: 1740 W Adams St, Suite 4000
Phoenix, AZ 85007
Hours: 8am - 5pm Mon - Fri
Phone: (480) 551-2700
Toll Free: (877) 255-2212
Fax: (480) 551-2702
Email: Contact the Board (/Misc/ContactUSEmail?board=MD&contactType=0)

Right to Petition Governor's Regulatory Review Council

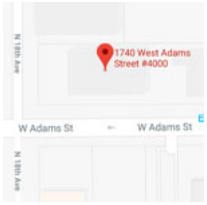
Arizona Revised Statute (ARS) § 41-1033 provides that a person may petition Governor's Regulatory Review Council (GRRC) to request a review of a final rule... (/Resource/Resource/md-grrc)

Occupational Regulation

You have the right to petition this agency to repeal or modify the occupational regulation or bring an action in a court of general jurisdiction to challenge the occupational regulation and to ensure compliance with section 41-1093.01, Arizona Revised Statutes. (/Resource/Resource/md-occupational-reg)

The Ombudsman-Citizens Aide

Helps citizens to resolve ongoing issues with state agencies... (https://www.azoca.gov/)



(/Misc/LocalMap)

Follow @AZMedicalBoard (https://twitter.com/AZMedicalBoard?ref_src=twsrc%5Etfw)
Privacy Policy (/Misc/PrivacyPolicy)
Accessibility Policy (/Misc/AccessibilityPolicy)
Glossary (/Misc/Glossary)
Employment (/Misc/Employment)
Open Books (https://openbooks.az.gov/)

EXHIBIT F

FAQs for Collaborative PA Practice in Arizona (HB2043)

In 2023, the Arizona Legislature passed HB 2043 to allow Physician Assistants (PAs) with significant experience to practice collaboratively with a physician or collaborating entity, rather than with a Supervising Physician pursuant to a Delegation Agreement. The Arizona Regulatory Board of Physician Assistants will continue to regulate both supervised and collaborating PAs to ensure patient safety.

1. What is collaborative practice?

Collaborative practice allows a PA to provide medical services without a Supervising Agreement, after applying and receiving certification by the Board to practice as a Collaborating PA.

After the Board certifies the PA for collaborative practice, the PAs area of practice, shall be determined and documented at the practice level by the PA and their collaborating physician or entity after taking into consideration the PAs prior education, training, and experience.

A collaborating PA shall continue to collaborate with, consult with or refer to the appropriate health care professional as indicated by the patient's condition as well as the PAs training, experience, and competencies. The level of collaboration should be determined at the practice level and setting. Collaboration can occur electronically, telephonically or in-person.

2. How does a PA receive certification to practice as a collaborating PA?

In order receive certification to practice as a collaborating PA, the PA must submit an application on a form provided by the Board and comply with the statutory requirements of A.R.S. § 32-2563(A): be licensed as a PA in Arizona, have graduated from an accredited physician assistant program and **not currently be under investigation, or subject to a public or confidential probation.**

In addition, an applicant for collaborative practice shall provide proof of completing at least 8,000 clinical practice hours within the previous five years submitted by the applicant's employer(s) directly to the Board. The submission shall contain an attestation that indicates the number of clinical hours obtained during the period of employment and shall be submitted by the employer's custodian of records, clinical practice manager, credentialing department, or supervising physician. A template for the attestation will be available on the Board's website.

Alternatively, a PA who has been actively practicing for more than five years and who has completed 8,000 hours of clinical practice in the last 10 years may qualify for certification to practice collaboratively if the PA has completed 2,000 hours of clinical practice within the last three years, and at the time of submitting the application for certification for collaborative practice holds current NCCPA certification.

The Board will maintain a list on its website indicating the PAs who have been certified for

collaborative practice.

3. What is considered a clinical hour to obtain certification as a collaborating PA?

A clinical practice hour is any hour spent performing medical services directly related to patient care, including but not limited to patient call backs, chart review, diagnostic reviews, and referrals.

For those physician assistants applying for certification for collaborative practice who are or who have been engaged in the education of physician assistants at an ARC-PA accredited institution, actual hours spent in didactic instruction shall be counted towards the required 8,000 hours. The performance of administrative tasks associated with education, training and supervision will not be considered when calculating the required 8,000 hours of clinical practice.

Alternatively, a PA who has been actively practicing for more than five years and has been engaged in the education of physician assistants at an ARC-PA accredited institution, may count the actual hours spent in didactic instruction towards the required 8,000 hours. However, the 8,000 hours of didactic instruction or clinical practice in the last 10 years may qualify for certification to practice collaboratively if the PA has completed 2,000 hours of clinical practice or didact instruction within the least three years, and at the time of submitting the application for certification for collaborative practice holds current NCCPA certification.

4. What documentation is required for collaborative practice?

Before employing or practicing collaboratively with a PA , the collaborating physician or entity shall verify that the PA is qualified under A.R.S. § 32-2536 and R4-17-401 to practice collaboratively, the collaborating physician entity shall maintain evidence of the verification in the employment of the PA as long as the PA is employed by a collaborative physician entity .

5. What other documentation is need for the establishment of a collaborative practice

As required under A.R.S. § 32-2531(B), a collaborating physician or entity shall develop written policies regarding collaboration for each physician assistant employed under subsection (A). The policies, which shall be individualized for the physician assistant's education, experience, and competencies, shall specify:

a. The physician assistant's name, license number, practice name and address, email, and business phone number.

b. The physician designee(s) (by name or position) responsible for the oversight of the physician assistant.

c. The date the agreement will commence.

d. The area of practice in which the physician assistant may practice collaboratively.

e. A statement regarding whether the collaborative physician or entity determines that the area of practice is substantially similar to the PA's previous setting or specialty. If it is not substantially similar, a description of the additional training, oversight and education that will be provided to the PA in order to ensure that the PA can safely practice in the new setting/specialty. This shall include documentation regarding any supervision agreement that the collaborating entity/physician determines may be warranted (for more information see the answer to question 6, below)

f. The signature of a collaborating physician, or physician designated by the entity to provide oversight and the PA.

6. What is required when a collaborative PA seeks to practice in an area of medicine that is not substantially similar to a practice setting or specialty for which PA previously practiced collaboratively?

Prior to engaging in a practice that is not substantially similar to the areas of practice in which the physician assistant has previously practiced collaboratively, the collaborating physician or entity shall ensure that the physician assistant is provided with any additional training or oversight necessary to ensure that the physician assistant can safely practice in the new practice setting or specialty.

The collaborating agreement shall describe the additional training or oversight that will be provided to the physician assistant. If the collaborating physician or entity determines that a supervision agreement is warranted, the expected duration of the supervision agreement shall also be identified, and a separate supervision agreement that meets the requirements of A.R.S. §§ 32-2501 *et. seq*. shall be executed prior to the physician assistant's initiation of practice.

Once the collaborating physician or entity determines that supervision is no longer needed, the separate supervision agreement may be terminated, and the physician assistant may practice collaboratively.

Completion of the additional training or oversight and, if applicable, termination of the supervision agreement shall be noted in an addendum to the individualized policy maintained by the collaborating physician or entity.

The individualized policy or any addendums shall be maintained as a business record at the practice and by the physician assistant. The individualized policy governing collaborative practice shall be produced immediately upon request by the Board.

7. May a collaborative PA bill directly for the performance of medical services?

A collaborative PA may bill and receive direct payment for the professional services provided.

8. Are there any additional responsibilities imposed on a collaborative PA?
Yes. A collaborative PA may provide medical services that the collaborative PA is competent to perform, and those services are listed in ARS 32-2531(A). The medical services that may be provided by a collaborative PA includes "delegating and assigning therapeutic and diagnostic measures to and supervising licensed or unlicensed personnel. " ARS 32-2531(A)(9).

According to statute a PA who does not practice pursuant to a supervision agreement is legally responsible for the health care services performed by the physician assistant." ARS 32-2531(D). Therefore , a collaborative PA is legally responsible for any therapeutic and diagnostic measures delegated or assigned to licensed or unlicensed personnel. In addition, the collaborative PA is responsible for supervising licensed or unlicensed personnel to whom the collaborative PA delegates or assigns medical tasks.

9. What if I am unable to obtain all the required documentation to show that I have 8.000 hours of clinical practice required for certification as a collaborative PA?

The Board has a waiver policy set forth in R4-17-401 (F) that allows the PA to make a request to the Board to waive the requirement to produce the documentation. The request must identify and estimate the number of clinical hours for which documentation cannot be obtained and where those clinical hours were performed. In addition, any request for waiver must include the steps that the PA has taken in an effort to obtain the documentation .

In determining whether to issue a waiver the Board will consider the following:

1. The sufficiency of the physician assistant's effort to have the documentation submitted;
2. Evidence it is not possible to have the documentation submitted because:
a. The required document does not exist;
b. The individual or entity responsible for maintaining and submitting the documentation is unable to do so; or
c. Another reason beyond the control of the physician assistant; and
3. Whether the Board is able to obtain the required documentation from another source.

EXHIBIT G

Sherman & Howard L.L.C.
2555 East Camelback Road, Suite 1050
Phoenix, Arizona 85016-4258
Telephone: 602.240.3000

shermanhoward.com

Craig A. Morgan
Direct Dial Number: 602.240.3062
E-mail: cmorgan@shermanhoward.com

August 29, 2023

Sent Via Mail & E-Mail

Arizona Regulatory Board of Physician Assistants
c/o Patricia McSorley, Executive Director
1740 W. Adams, Suite 4000
Phoenix, AZ 85007
Email: patricia.mcsorley@azmd.gov

RE: THE ARIZONA REGULATORY BOARD OF PHYSICIAN ASSISTANTS' (THE "BOARD") RULEMAKING WITH REGARD TO HB2043 (THE "NEW LAW")

Dear Ms. McSorley:

My name is Craig Morgan. I am an attorney with Sherman & Howard, LLC. We represent The Arizona Association of Physician Assistants (the "Association").

I write because the Association has serious concerns that the Board plans to pass and implement rules and procedures inconsistent with the New Law which would render superfluous its core purpose – to remove the tether and associated restrictions of a Supervision Agreement so that those Arizonans most in need can have affordable access to critical basic healthcare services.

The purpose of this letter is to outline the Association's concerns so that the Board can act with fidelity to the New Law and avoid the necessity for future proceedings that will only frustrate the timely and lawful implementation of the New Law as intended. ***Please note that we have copied the Governor's Office so that they, too, can be aware of the Association's concerns, proactively participate in their resolution, and review and approve the Board's rulemaking as the law requires***. *See* A.R.S. § 41-1039 (requiring the Governor's written approval of any rules as stated therein).

I.
AFTER CAREFUL AND COLLABORATIVE NEGOTIATION, ARIZONA PASSES THE NEW LAW SO PHYSICIAN ASSISTANTS CAN PROVIDE ARIZONANS THE CRITICAL MEDICAL SERVICES THEY NEED

Earlier this year, Governor Hobbs signed HB2043 into law. The New Law's purpose is to address community shortages in, and access to, "routine, preventative and necessary medical care." **Exhibit 1** (AZ News Rel. H.R. Rep. Apr. 18, 2023). To that end, the New Law expands the autonomy of a qualified Physician Assistant's practice by, among other things:

- Expanding a Physician Assistant's autonomy in practice from health care tasks delegated by a supervising physician to any legal medical service for which the Physician Assistant has been prepared by education, training and experience and that the Physician Assistant is competent to perform, and several new medical services that a Physician Assistant may provide;

- Exempting a Physician Assistant who has at least 8,000 hours of Board-certified clinical practice from the requirement to practice pursuant to a Supervision Agreement and requires the Physician Assistant to continue to collaborate with, consult with or refer to the appropriate health care professional as indicated by the patient's condition and by the Physician Assistant's education, experience and competencies;

- Specifying that the authority for a Physician Assistant who has 8,000 hours of Board-certified clinical practice to practice without a Supervision Agreement does not prohibit the Physician Assistant from practicing pursuant to a Supervision Agreement;

- Requiring a licensed Physician Assistant who is in good standing, who has graduated from an accredited United States-based Physician Assistant program and who has at least 8,000 hours of clinical practice within the previous five years in Arizona or another jurisdiction to provide the Board with documentation of having completed at least 8,000 hours of clinical practice;

- Requiring a Physician Assistant who has less than 8,000 hours of Board-certified clinical practice to work in accordance with a Supervision Agreement that describes the Physician Assistant's practice and prohibits the Physician Assistant from performing health care tasks until the Physician Assistant has completed and signed a Supervision Agreement;

- Exempting a Physician Assistant from the Supervision Agreement requirements on receipt of AZPA-certification of the Physician Assistant's completion of at least 8,000 hours of clinical practice;

- Requiring the Board to develop an alternative comparable standard for certification of 8,000 hours of clinical practice for Physician Assistants who have been actively practicing for more than five years; and

- Requiring the Board to adopt rules establishing additional certification standards or requirements for Physician Assistants who previously completed 8,000 hours of Board-certified clinical practice and who are seeking employment with a collaborating physician

or entity for a position that is not substantially similar to the practice setting or specialty in which the Physician Assistant was previously certified.

See **Exhibits 2** (Ariz. State Senate Fact Sheet for H.B. 2043); **3** (AZ H.R. B. Summ., 2023 Reg. Sess. H.B. 2043); *see also* A.R.S. §§ 32-2501, *et seq*. In short, the necessary, critical medical care a Physician Assistant can provide for all Arizonans has expanded, and those Physician Assistants with 8,000 or more hours of Board-certified clinical practice are no longer required to be tethered to a single physician by a Supervision Agreement.

The Association has several concerns with how the Board intends to regulate the New Law. We will outline the applicable law, and the Association's concerns, in turn.

II.
THE BOARD MUST ACT WITH FIDELITY TO THE NEW LAW AND CANNOT NULLIFY OR REWRITE IT THROUGH THE EXERCISE OF REGULATORY OR RULEMAKING AUTHORITY

Arizona's courts presume that the Legislature did not intend to do a futile act by including a statutory provision that is inoperative, inert, or trivial. *See Patterson v. Maricopa Cnty. Sheriff's Office*, 177 Ariz. 153 (App.1993) (cleaned up). Therefore, Arizona's courts will give each word, phrase, clause, and sentence meaning so that no part of the statute is rendered superfluous, void, insignificant, redundant, or contradictory. *Id.; see also Morrissey v. Garner*, 248 Ariz. 408, 410, ¶ 10 (2020) ("We strive to give meaning, if possible, to every word and provision so that no word or provision is rendered superfluous."); *Williams v. Thude*, 188 Ariz. 257, 259 (1997) ("Each word, phrase, clause, and sentence of a statute must be given meaning so that no part will be void, inert, redundant, or trivial." (cleaned up)); *Compassionate Care Dispensary, Inc. v. Ariz. Dep't of Health Services*, 244 Ariz. 205, 212, ¶ 21 (App. 2018) (citing *Williams*); SCALIA & GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS*, at 176 ("Because legal drafters should not include words that have no effect, courts avoid a reading that renders some words altogether redundant.").

Moreover, courts will not read into a statute a requirement or restriction not otherwise expressly contained within that statute. *See Roberts v. State*, 253 Ariz. 259, 266, ¶ 20 (2022) (noting "courts will not read into a statute something which is not within the manifest intention of the legislature as gathered from the statute itself") (cleaned up). "Where a statute is silent on an issue, [our courts] will not read into it . . . nor will [they] inflate, stretch or extend the statute to matters not falling within its expressed provisions." *Ponderosa Fire Dist. v. Coconino Cnty.*, 235 Ariz. 597, 604, ¶ 30 (App. 2014). Nor will courts "interpret a statute in a manner that would lead to an absurd result." *Green Cross Med., Inc. v. Gally*, 242 Ariz. 293, 297, ¶ 11 (App. 2017).

"[T]he scope of an agency's power is measured by the statute and may not be expanded by agency fiat." *Cochise County v. Ariz. Health Care Cost Containment Sys*., 170 Ariz. 443, 445 (App. 1991). Thus, "a rule or regulation of an administrative agency should not be inconsistent with or contrary to the provision of a statutes, particularly the statute it seeks to effectuate." *Sharpe v. Ariz. Health Care Cost Containment Sys*., 220 Ariz. 488, 495 (App. 2009). An administrative

agency cannot "enact regulation nor make an order that would conflict with the proper interpretation of [a] statute." *McCarrell v. Lane*, 76 Ariz. 67, 70 (1953). In short: "an administrative rule that diminishes rights in an enabling statute is not valid." *Freelance Interpreting Services, Inc. v.State, Dept. of Econ. Sec.*, 212 Ariz. 457, 461, ¶ 26 (App. 2006); *see also In re Pima Cnty. Mental Health No. MH-2010-0047*, 228 Ariz. 94, 98, ¶ 15 (App. 2011) (noting "if an agency rule conflicts with a statute, the rule must yield." (quoting *Ariz. Bd. of Regents v. Ariz. State Personnel Bd.*, 195 Ariz. 173, ¶ 9 (1999)). Therefore, courts are constrained to strike down an agency's rule that "would defeat the legislative purpose" behind the statute for which the rule is enacted to implement. *Dioguardi v. Superior Court*, 184 Ariz. 414, 417 (App. 1995) (cleaned up).

Accordingly, the Board cannot enact a rule or regulation that conflicts with the New Law, and any rule or regulation that does so is unlawful and void.

III.
THE ASSOCIATION HAS CONCERNS WITH THE BOARD'S INTERPRETATION OF A.R.S. § 32-2501(6)

A.R.S. § 32-2501(6) states:

> "Collaborating Physician or Entity" means a physician, physician group practice, physician private practice or licensed health care institution that employs or collaborates with a physician assistant who has at least eight thousand hours of clinical practice as certified by the board pursuant to section 32-2536 ***and does not require a supervision agreement and that designates one or more physicians by name or position*** who is responsible for the oversight of the physician assistant.

(Emphasis added).

This definition of "Collaborating Physician or Entity" expressly provides that a Physician Assistant with 8,000 hours of clinical practice can ***forego*** a supervision agreement and the "Collaborating Physician or Entity" need only designate one or more physicians by name ***or*** position. This means that the physician designation can be by name (*i.e.*, Dr. Jane Doe, M.D.) or by position (*i.e.*, Chief Medical Officer; Chief Cardiologist; Head of Internal Medicine); it need not be both, and it certainly cannot be revised by rule to require one to the exclusion of the other. Moreover, the New Law does not require a written collaboration plan; the parties involved are left to determine the appropriate level of collaboration. This makes sense, given a (if not ***the***) core purpose behind the New Law is to remove the tether to a single named physician so that a Physician Assistant can collaborate with a physician or entity in a team setting and deliver critical and affordable basic health services to Arizonans (especially those in marginalized and disadvantaged communities who are most in need).

We understand that the Board is contemplating the passage of a rule that requires either the name of a physician or both a name and position – both of which are tantamount to the very tether the New Law has removed. We understand the purpose of such a rule (and if not, then, the effect) is to continue to tether an otherwise qualified Physician Assistant to a physician, rendering the concept of a "Collaborating Physician or Entity" a nullity, because requiring a specific physician to be involved in a collaboration scenario is tantamount to requiring a Supervision Agreement.

Such a rule would offend the plain meaning of A.R.S. § 32-2501(6), nullify the entire reason for a collaborative relationship (*i.e.*, to remove the tether to a single physician so a more team-oriented affordable approach to healthcare delivery can occur), and therefore would be void. Our Legislature means what it says. Had the Legislature desired to require both, as opposed to one or the other, the Legislature would have said so by using the word "and". But the Legislature chose differently and the Board cannot rewrite the law through the rulemaking process.

The Association urges the Board to pass a rule that comports with A.R.S. § 32-2501(6) and only requires a "Collaborating Physician or Entity" to designate one or more physicians by name ***or*** position – and not both (as the New Law clearly intends).

IV.
THE ASSOCIATION HAS CONCERNS WITH THE BOARD'S INTERPRETATION OF A.R.S. § 32-2536

A.R.S. § 32-2536 states, in part:

> A. A physician assistant who is licensed pursuant to this chapter, who is in good standing, who has graduated from an accredited physician assistant program in the United States and who has at least eight thousand clinical practice hours within the previous five years in this state or another jurisdiction shall provide the board with documentation of having completed at least eight thousand hours of clinical practice in order to meet the requirements of section 32-2531, subsection B. The board shall develop:
>
> > 1. A policy that sets forth the process of attestation or documentation required as proof of completion of at least eight thousand clinical practice hours and issuance of certification of completion of the eight thousand clinical practice hours.
> >
> > 2. An alternative comparable standard for certification of eight thousand hours of clinical practice for physician assistants who have been actively practicing for more than five years.
>
> B. The board shall adopt rules establishing additional certification standards or requirements for physician assistants who previously completed eight thousand

> clinical practice hours certified by the board and who are seeking employment with a collaborating physician or entity for a position that is not substantially similar to the practice setting or specialty in which the physician assistant was previously certified. The certification standards or requirements shall ensure appropriate training and oversight, including a supervision agreement if warranted, for the physician assistant's new practice setting or specialty.

The Association has concerns with the Board's recent public statements indicating how the Board interprets and plans to implement this statute.

First, the Association has concerns with the Board's apparent direction as it pertains to implementing A.R.S. § 32-2536(A)(2). It appears that the Board has not considered an "alternative comparable standard" that is indeed alternative, comparable and actually takes into consideration that many Physician Assistants who have been "actively practicing for more than five years" may not have been continuously practicing throughout that time in what the Board may (for better or worse) consider a "traditional" manner. For example, any "alternative comparable standard" must account for those who have engaged in part-time clinical practice for more than five years, or those who taught in a clinical setting, or have taken substantial clinical coursework, or have engaged in the equivalent of a clinical practice (for example, someone who has worked to achieve a doctorate, and while doing so, has worked in a clinical setting for several years, even if part-time). The failure to consider these practical realities when implementing A.R.S. § 32-2536(A)(2) will result in the failure to effectuate its legislative purpose. Simply requiring these individuals to meet the same 8,000 hour standard as a more "traditional" full-time active practitioner would render the "alternative comparable standard" in 32-2536(A)(2) superfluous; there would be no alternative (let alone comparable) standard at all. Any rule or regulation that does so will violate the law.

Second, the Association has concerns with the Board's direction as it pertains to its implementation A.R.S. § 32-2536(B). In its public discussions, the Board appears to plan to implement this portion of the New Law by requiring any Physician Assistant who did not spend 8,000 hours in a particular specialty, but who desires to work in that specialty, to have to start their career anew and gain 8,000 hours of clinical experience ***in that specialty*** in order to be able to avoid the tether of a Supervision Agreement. This would likely deprive Arizonans access to affordable critical basic healthcare, and in any event, it is not the intent of A.R.S. § 32-2536(B).

As the Board knows, a Physician Assistant is not taught, nor do they practice, in a specific discipline or "specialty". In fact, there is no requirement that a Physician Assistant's initial 8,000 hours of clinical experience be in the exact same discipline or "specialty". Physician Assistants conduct physical exams, diagnose and treat illnesses, order and interpret tests, counsel on preventive health care, assist in surgery, and write prescriptions. A Physician Assistant's practice may also include education, research, and administrative services. All of these traverse many disciplines or "specialties" (*i.e.*, internal medicine, women's health, rehabilitation, emergency medicine, urgent care, pediatrics, OBGYN, orthopedics, or endocrinology). It was not the Legislature's intent to make a Physician Assistant, in any instance where they desire to move from

one area of practice to another, start anew and amass 8,000 more hours of clinical experience in a specific area. Indeed, given the overlap of a Physician Assistant's clinical experience across disciplines and specialties, such an interpretation makes no sense.

This is why the Legislature proscribed that any "requirements shall" simply "ensure appropriate training and oversight, including a supervision agreement ***if warranted***, for the physician assistant's new practice setting or specialty." A.R.S. § 32-2536(B) (emphasis added). Merely defaulting to an 8,000 hour requirement in every instance is to ignore the Legislature's command that every instance of a Physician Assistant seeking to practice in a given area must be viewed independently so that the Board can truly ascertain what training and oversight is necessary, and whether a supervision agreement is "warranted". *Id*. Indeed, the Board cannot deny that in many instances, the "appropriate training and oversight" may need only consist of a collaboration relationship and sufficient continuing education.

The only way to honor the spirit and purpose of A.R.S. § 32-2536(B) is to develop rules and regulations that consider what "appropriate training and oversight" a given Physician Assistant necessarily requires, taking into account the overlap of qualifications a well-educated and experienced Physician Assistant will have that translate equally across various specialties and practice settings. Had the Legislature desired for the Board to revert back to a draconian 8,000 hours standard for those Physician Assistants who have already met or exceeded that standard, then the Legislature would not have mandated that the Board's rules (1) must account for a Physician Assistant's existing qualifications when determining what "appropriate training and oversight" may be necessary, and (2) only require a Supervision Agreement "if warranted".

Thus, we encourage the Board to take into account the need to effectuate A.R.S. § 32-2536(B) in a manner that both preserves legislative intent and enables an implementation of the New Law that is harmonious with its overall purpose: to remove the tether of restrictive Supervision Agreements so that underserved Arizonans can obtain the critical basic healthcare services they so desperately need.

V.
THE BOARD HAS AN OPPORTUNITY TO HELP ARIZONANS GAIN ACCESS TO CRITICAL AND NECESSARY BASIC HEALTHCARE SERVICES

Arizona has chosen to become a leader in modern healthcare delivery by becoming the fourth state to remove the tether between a Physician Assistant and a specific physician so that Arizona can expand access to patient care through more modernized, team-based healthcare.

In its path toward modernizing healthcare delivery, Arizona has recognized that the most appropriate approach is to allow healthcare ***teams*** to decide at the practice level how they will collaborate to best meet patient needs. This is why Arizona enacted the New Law. And this patient-centered change must not, and cannot, be nullified through administrative overreaching and haphazard rulemaking and regulation.

We are confident many on the Board agree with the Association's position and understand its concerns. We ask that those who do share the Association's concerns work hand-in-hand with their colleagues, the Association, and other stakeholders to reflect on the Board's present path, and divert it as necessary to ensure fidelity to the New Law's meaning and purpose.

If you have any questions or desire to discuss these matters further, please do not hesitate to contact me (for legal matters) or Melinda Rawcliffe at melindarawcliffe@gmail.com (for non-legal, substantive matters). In the meantime, the Association expressly reserves all remedies, at law or in equity, it may have to address these issues.

Very truly yours,

Craig A. Morgan

CAM/em

cc: Bo Dul
General Counsel
Governor Katie Hobbs
E-Mail: Bdul@az.gov .

Client

Exhibit 1

Exhibit 1

AZ News Rel., H.R. Rep. 4/18/2023

Image 1 within document in PDF format.

Arizona House Republican Caucus News Release, April 18, 2023

April 18, 2023
Arizona House of Representatives Republican Caucus
Fifty-sixth Legislature, First Regular Session, 2023

Tuesday, April 18, 2023

FOR IMMEDIATE RELEASE

Governor Signs Representative Bliss's Bill to Increase Access to
Medical Care for Communities Experiencing Severe Shortages

STATE CAPITOL, PHOENIX - State Representative Selina Bliss is pleased to announce the signing of HB 2043, legislation she sponsored to increase access to healthcare in critical needs areas in Arizona by establishing a collaborative relationship between physicians and physician assistants (PAs) after the PA has completed 8,000 hours of clinical practice hours under a supervision agreement with a physician.

"The signing of HB 2043 is a step in the right direction for communities experiencing severe shortages to have better access to routine, preventive, and necessary medical care," said Representative Bliss. **"The law addresses healthcare worker shortages by allowing PAs to perform appropriate and agreed upon medical services based on their education, training, and clinical experience. The advance practice nurses entered into collaborative agreements with physician providers two years ago, and I believe it was time that the PAs do so as well."**

Representative Bliss's legislation, which received wide bipartisan support in the legislature, was patterned after other states that have established similar models and seen success. More detail on the provisions of HB 2043 is available here.

Selina Bliss is a Republican member of the Arizona House of Representatives serving Legislative District 1 in Yavapai County and Chairs the House Appropriations Subcommittee on Fiscal Accountability. Follow her on Twitter at @SelinaBliss.

AZ News Rel., H.R. Rep. 4/18/2023

Exhibit 2

Exhibit 2

ARIZONA STATE SENATE

Fifty-Sixth Legislature, First Regular Session

FACT SHEET FOR H.B.2043

physician assistants; supervision; collaboration

Purpose

Effective January 1, 2024, allows a physician assistant (PA) who has at least 8,000 hours of clinical practice certified by the Arizona Regulatory Board of Physician Assistants (AZPA) to practice without a supervision agreement in collaboration with appropriate health care professionals. Requires a PA who has less than 8,000 hours of AZPA-certified clinical practice to work under a supervision agreement.

Background

PAs in Arizona are licensed and regulated by the AZPA. PAs may work under the supervision of a licensed physician in physician offices, clinics, hospitals, surgical centers, patient homes, nursing homes or other health care institutions. The duties of a PA include: 1) ordering, prescribing, dispensing or administering drugs and medical devices; 2) pronouncing and authenticating deaths; 3) obtaining patient histories; 4) performing physical examinations; 5) ordering and performing diagnostic and therapeutic procedures; 6) formulating diagnostic impressions; 7) developing and implementing treatment plans; 8) monitoring the effectiveness of therapeutic interventions; 9) assisting in surgery; 10) offering counseling and education; 11) making appropriate referrals; 12) prescribing schedule II, III, IV or V controlled substances; 13) performing minor surgery; and 14) performing other delegated nonsurgical health care tasks.

A physician supervising a PA must: 1) meet AZPA supervision requirements; 2) accept responsibility for all tasks and duties delegated to a PA; 3) notify the AZPA and the PA in writing if the PA exceeds the scope of the delegated health care tasks; and 4) maintain a written agreement with the PA that describes the PA's scope of practice (A.R.S. § 32-2531).

The AZPA certifies PAs for 30-day prescription privileges for schedule II, III, IV and V controlled substances that are opioids or benzodiazepine and 90-day prescription privileges for schedule II, III, IV and V controlled substances that are not opioids or benzodiazepine if the physician assistant meets outlined requirements (A.R.S. §. 32-2504).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

PA Scope of Practice

1. Expands a PA's scope of practice from health care tasks delegated by a supervising physician to any legal medical service for which the PA has been prepared by education, training and experience and that the PA is competent to perform and adds, to the medical services that a PA may provide:
   a) interpreting diagnostic studies and therapeutic procedures;

b) providing, rather than offering, counseling and education to meet patient needs;
c) providing consultation on request;
d) writing medical orders;
e) obtaining informed consent;
f) delegating and assigning therapeutic and diagnostic measures to and supervising licensed or unlicensed personnel; and
g) prescribing prescription-only medications for up to one year for each patient.

Collaborative PAs

2. Exempts a PA who has at least 8,000 hours of AZPA-certified clinical practice from the requirement to practice pursuant to a supervision agreement and requires the PA to continue to collaborate with, consult with or refer to the appropriate health care professional as indicated by the patient's condition and by the PA's education, experience and competencies.

3. Deems a PA who does not practice pursuant to a supervision agreement as legally responsible for the health care services performed by the PA.

4. Specifies that the level of collaboration required of a PA is determined by the policies of the practice setting at which the PA is employed, including a physician employer, physician group practice or health care institution.

5. Allows a PA's collaboration, consultation or referral to an appropriate health care professional to occur through electronic means and specifies that the collaboration, consultation or referral does not require the physical presence of the appropriate health care professional at the time or place the PA provides medical services.

6. Specifies that the authority for a PA who has 8,000 hours of AZPA-certified clinical practice to practice without a supervision agreement does not prohibit the PA from practicing pursuant to a supervision agreement.

7. Requires a licensed PA who is in good standing, who has graduated from an accredited U.S. PA program and who has at least 8,000 hours of clinical practice within the previous five years in Arizona or another jurisdiction to provide the AZPA with documentation of having completed at least 8,000 hours of clinical practice.

8. Allows a PA to bill and receive direct payment for the professional services provide by the PA.

PAs Working Under a Supervision Agreement

9. Requires a PA who has less than 8,000 hours of AZPA-certified clinical practice to work in accordance with a supervision agreement that describes the PA's scope of practice and prohibits the PA from performing health care tasks until the PA has completed and signed a supervision agreement.

10. Requires the supervision agreement to specify the PA's ability to prescribe, dispense or administer prescription-only medication or schedule II, III, IV or V controlled substances.

11. Allows, under a supervision agreement, supervision to occur through electronic means and specifies that the physical presence of the supervising physician is not required at the time or place the PA provides medical services.

12. Exempts a PA from the supervision agreement requirements on receipt of AZPA-certification of the PA's completion of at least 8,000 hours of clinical practice.

AZPA

13. Allows the AZPA to count practice hours earned in another jurisdiction toward the hours of required clinical practice.

14. Requires the AZPA to develop:
    a) a policy that sets forth the process of attestation or documentation required as proof of completion of at least 8,000 hours of clinical practice and issuance of certification of completion of the 8,000 hours of clinical practice; and
    b) an alternative comparable standard for certification of 8,000 hours of clinical practice for PAs who have been actively practicing for more than five years.

15. Requires the AZPA to adopt rules establishing additional certification standards or requirements for PAs who previously completed 8,000 hours of AZPA-certified clinical practice and who are seeking employment with a collaborating physician or entity for a position that is not substantially similar to the practice setting or specialty in which the PA was previously certified.

16. Modifies AZPA membership by allowing collaborating physicians to fulfil the physician member positions.

17. Removes the requirement for the AZPA to randomly audit at least five percent of supervision agreements each year.

18. Exempts the AZPA from rulemaking requirements for one year.

Supervising Physicians

19. Removes requirements for a supervising physician to:
    a) meet AZPA-established supervisory requirements;
    b) notify the AZPA and PA in writing if the PA exceeds the scope of the delegated health care tasks.

20. Removes the requirement, if a PA practices in a location where a supervising physician is not routinely present, for the PA to meet with the supervising physician at least once each week to ensure ongoing direction and oversight of the PAs work.

Miscellaneous

21. Applies requirements for supervising physicians in disciplinary action investigations to collaborating physicians.

22. Specifies that a PA is not required to have completed 8,000 hours of clinical practice to provide medical care in response to a natural disaster, accident or other emergency.

23. Adds, to the methods of pronouncing death or authenticating a form, a PA's certification, stamp, verification, affidavit or endorsement.

24. Removes the requirement for a PA to wear a name tag with the designation *physician assistant* while on duty.

25. Defines *collaborating physician or entity* and *supervision agreement*.

26. Modifies the definition of *unprofessional conduct* to include the PA performing a health care task that does not meet the applicable supervision or collaboration requirements.

27. Makes technical and conforming changes.

28. Becomes effective on January 1, 2024.

House Action

HHS	2/13/23	DPA	6-3-0-0
3rd Read	3/7/23		42-18-0

Prepared by Senate Research
March 24, 2023
MG/slp

Exhibit 3

Exhibit 3

ARIZONA HOUSE OF REPRESENTATIVES

Fifty-sixth Legislature
First Regular Session

House: HHS DPA 6-3-0-0 | 3rd Read 42-18-0-0
Senate: HHS DP 6-1-0-0 | 3rd Read 19-10-1-0

HB 2043: physician assistants; supervision; collaboration
Sponsor: Representative Bliss, LD 1
Transmitted to the Governor

Overview

Permits, beginning January 1, 2024, physician assistants with at least 8,000 hours of clinical practice certified by the Arizona Regulatory Board of Physician Assistants (Board) to practice with a collaborating physician or entity without a supervision agreement. Subjects a physician assistant with less than 8,000 hours of Board-certified clinical practice to work under a supervision agreement.

History

The Board is authorized to license and regulate physician assistants. Physician assistants are licensed to practice medicine within the scope of their supervising physician's area of practice. A physician assistant may perform those duties and responsibilities, including the ordering, prescribing, dispensing and administration of drugs and medical devices that are delegated by the supervising physician. A physician assistant may provide any medical services that are delegated by the supervising physician if the service is within the physician assistant's skills, scope of practice and supervised by the physician. Physician assistants may pronounce death and is the physician's agent in the performance in all practice related activities, including the ordering of diagnostic, therapeutic and other medical services. These health professionals may practice in any setting authorized by the supervising physician (A.R.S. §§ 32-2504 and 32-2531).

Provisions

Collaborative Physician Assistants

1. Outlines the scope of practice for collaborative physician assistants with at least 8,000 hours of clinical practice certified by the Board. (Sec. 3)
2. Asserts that a physician assistant with at least 8,000 hours of Board-certified clinical practice is not required to practice pursuant to a supervision agreement, but must continue to collaborate, consult or refer to the appropriate health care professional as indicated by the patient's condition and by the physician assistant's education, experience and competencies. (Sec. 3)
3. Specifies that the level of collaboration is determined by the policies of the practice setting at which the physician assistant is employed, including a physician employer, group practice or health care institution. (Sec. 3)
4. Permits collaboration, consultation or referrals to occur through electronic means and does not require the physical presence of the appropriate health care professional at the time or place the physician assistant provides medical services. (Sec. 3)
5. Stipulates that this does not prohibit a physician assistant with at least 8,000 hours of Board-certified clinical practice from practicing pursuant to a supervision agreement. (Sec. 3)

6. Requires physician assistants who are in good standing, have graduated from an accredited physician assistant program in the U.S. and with at least 8,000 clinical practice hours within the previous five years in this state or another jurisdiction to provide to the Board documentation of having completed 8,000 clinical hours to practice collaboratively. (Sec. 9)
7. Requires the Board to develop a policy that sets forth the process including attestation or documentation required as proof of completion and issuance of certification of completion of at least 8,000 clinical practice hours. (Sec. 9)
8. Requires the Board to develop an alternative comparable standard for certification of the 8,000 hours for physician assistants who have been actively practicing for more than five years. (Sec. 9)
9. Directs the Board to adopt rules establishing certification standards or requirements for physician assistants who have previously completed the 8,000 certified hours and who are seeking employment with a collaborating physician or entity for a position not substantially similar to the practice setting or specialty in which they were certified. (Sec. 9)
10. Requires the certification standards or requirements must ensure appropriate training and oversight, including a supervision agreement if warranted for the physician assistant new practice setting or environment. (Sec. 9)

Supervision Agreements

11. Requires a physician assistant with less than 8,000 hours of Board-certified clinical practice to work in accordance with a supervision agreement that describes the physician's scope of practice. (Sec. 3)
12. Prohibits physician assistants from performing health care tasks until they have completed and signed a supervision agreement. (Sec. 3)
13. Permits supervision to occur through electronic means and does not require the physical presence of the appropriate health care professional at the time or place the physician assistant provides medical services while under a supervision agreement. (Sec. 3)
14. Requires the supervision agreement to be kept on file at the main location of the physician assistant's practice and, on request, be made available to the Board or their representative. (Sec. 3)
15. Specifies that a physician assistant is no longer subject to the supervision agreement requirements upon receipt of Board certification that they have completed at least 8,000 hours of clinical practice. (Sec. 3)
16. Allows the Board to count practice hours earned in another jurisdiction toward the required hours for clinical practice. (Sec. 3)
17. Asserts that a physician assistant who does not practice pursuant to a supervision agreement is legally responsible for the health care services performed by them. (Sec. 3)
18. Requires the supervision agreement to specify the physician assistant's ability to prescribe, dispense or administer a schedule II, III, IV or V controlled substance or prescription-only medication. (Sec. 4)
19. States that a supervising physician is responsible for all aspects of the physician assistant's performance who has less than 8,000 hours of clinical practice, whether the supervising physician pays the physician assistant a salary. (Sec. 5)

20. States that a physician assistant is not required to have completed 8,000 clinical practice hours if providing medical care in response to a natural disaster, accident or other emergency. (Sec. 8)

Miscellaneous

21. Defines *collaborative physician or entity*. (Sec. 1)
22. Defines *supervision agreement*. (Sec. 1)
23. Modifies terms. (Sec. 1)
24. Deems it *unprofessional conduct* for physician assistants to perform health care tasks that do not meet applicable supervision or collaboration requirements. (Sec. 1)
25. Modifies Board membership to include two licensed Medical Doctors and two licensed Osteopathic Physicians who are actively engaged in the practice of medicine and that collaborate with physician assistants. (Sec. 2)
26. Allows a supervising physician, collaborating physician or entity to contest the imposition of a civil penalty issued by the Board. (Sec. 3)
27. Specifies that a physician assistant may not dispense, prescribe or refill prescription-only drugs for a period exceeding one year for each patient. (Sec. 4)
28. Requires the Board to advise the Arizona State Board of Pharmacy and the U.S. Drug Enforcement Administration of all the physician assistant's authorized to prescribe or dispense drugs and any modification of their authority. (Sec. 4)
29. Repeals statute relating to physician assistant's initiation of practice. (Sec. 6)
30. Allows physician assistants to bill and receive direct payment for their professional services. (Sec. 7)
31. Specifies that if the Board begins an investigation, it may require the physician assistant to promptly provide the name and address of the supervising physician or collaborating physician or entity, as applicable. (Sec. 10)
32. Allows the Board or, if delegated by the Board, the executive director to require a mental, physical or medical competency examination or any combination of those examination or investigations for a collaborating physician or physician representative of the collaborating entity, as applicable. (Sec. 10)
33. Exempts the Board from rulemaking requirements for one year after the effective date of this act. (Sec. 11)
34. Contains an effective date of January 1, 2024. (Sec. 12)
35. Makes technical and conforming changes. (Sec. 1-5, 8,10)

☐ Prop 105 (45 votes) ☐ Prop 108 (40 votes) ☐ Emergency (40 votes) ☐ Fiscal Note

EXHIBIT H

Arizona Revised Statutes Annotated
Title 32. Professions and Occupations (Refs & Annos)
Chapter 25. Physician Assistants (Refs & Annos)
Article 3. Scope of Practice and Approval of Employment

This section has been updated. Click here for the updated version.

A.R.S. § 32-2531

§ 32-2531. Physician assistant scope of practice; health care tasks; supervising physician duties; civil penalty

Effective: July 24, 2014 to December 31, 2023

<Section effective until Jan. 1, 2024. See, also, section 32-2531 effective Jan. 1, 2024.>

A. A supervising physician may delegate health care tasks to a physician assistant.

B. A physician assistant shall not perform surgical abortions as defined in § 36-2151.

C. The physician assistant may perform those duties and responsibilities, including the ordering, prescribing, dispensing and administration of drugs and medical devices, that are delegated by the supervising physician.

D. The physician assistant may provide any medical service that is delegated by the supervising physician if the service is within the physician assistant's skills, is within the physician's scope of practice and is supervised by the physician.

E. The physician assistant may pronounce death and, if delegated, may authenticate by the physician assistant's signature any form that may be authenticated by a physician's signature.

F. The physician assistant is the agent of the physician assistant's supervising physician in the performance of all practice related activities, including the ordering of diagnostic, therapeutic and other medical services.

G. The physician assistant may perform health care tasks in any setting authorized by the supervising physician, including physician offices, clinics, hospitals, ambulatory surgical centers, patient homes, nursing homes and other health care institutions. These tasks may include:

1. Obtaining patient histories.

2. Performing physical examinations.

3. Ordering and performing diagnostic and therapeutic procedures.

4. Formulating a diagnostic impression.

5. Developing and implementing a treatment plan.

6. Monitoring the effectiveness of therapeutic interventions.

7. Assisting in surgery.

8. Offering counseling and education to meet patient needs.

9. Making appropriate referrals.

10. Prescribing schedule IV or V controlled substances as defined in the federal controlled substances act of 1970 (P.L. 91-513; 84 Stat. 1242; 21 United States Code § 802) and prescription-only medications.

11. Prescribing schedule II and III controlled substances as defined in the federal controlled substances act of 1970.

12. Performing minor surgery as defined in § 32-2501.

13. Performing other nonsurgical health care tasks that are normally taught in courses of training approved by the board, that are consistent with the training and experience of the physician assistant and that have been properly delegated by the supervising physician.

H. The supervising physician shall:

1. Meet the requirements established by the board for supervising a physician assistant.

2. Accept responsibility for all tasks and duties the physician delegates to a physician assistant.

3. Notify the board and the physician assistant in writing if the physician assistant exceeds the scope of the delegated health care tasks.

4. Maintain a written agreement with the physician assistant. The agreement must state that the physician will exercise supervision over the physician assistant and retains professional and legal responsibility for the care rendered by the physician assistant. The agreement must be signed by the supervising physician and the physician assistant and updated annually. The agreement must be kept on file at the practice site and made available to the board on request. Each year the board shall randomly audit at least five per cent of these agreements for compliance.

I. A physician's ability to supervise a physician assistant is not affected by restrictions imposed by the board on a physician assistant pursuant to disciplinary action taken by the board.

J. Supervision must be continuous but does not require the personal presence of the physician at the place where health care tasks are performed if the physician assistant is in contact with the supervising physician by telecommunication. If the physician assistant practices in a location where a supervising physician is not routinely present, the physician assistant must meet in person or by telecommunication with a supervising physician at least once each week to ensure ongoing direction and oversight of the physician assistant's work. The board by order may require the personal presence of a supervising physician when designated health care tasks are performed.

K. At all times while a physician assistant is on duty, the physician assistant shall wear a name tag with the designation "physician assistant" on it.

L. The board by rule may prescribe a civil penalty for a violation of this article. The penalty shall not exceed fifty dollars for each violation. The board shall deposit, pursuant to §§ 35-146 and 35-147, all monies it receives from this penalty in the state general fund. A physician assistant and the supervising physician may contest the imposition of this penalty pursuant to board rule. The imposition of a civil penalty is public information, and the board may use this information in any future disciplinary actions.

Credits

Added by Laws 1984, Ch. 102, § 5. Amended by Laws 1988, Ch. 113, § 6; Laws 1993, Ch. 197, § 16; Laws 1994, Ch. 262, § 2; Laws 1998, Ch. 205, § 15; Laws 2000, Ch. 193, § 312; Laws 2010, Ch. 172, § 8, eff. Jan. 1, 2011; Laws 2014, Ch. 123, § 8.

Notes of Decisions (1)

A. R. S. § 32-2531, AZ ST § 32-2531

Current through legislation of the Second Regular Session of the Fifty-Sixth Legislature (2024), effective as of February 9, 2024.

End of Document

EXHIBIT I

SELINA BLISS
1700 WEST WASHINGTON, SUITE H
PHOENIX, ARIZONA 85007-2844
CAPITOL PHONE: (602) 926-4018
TOLL FREE: 1-800-352-8404
sbliss@azleg.gov

DISTRICT 1

COMMITTEES:
APPROPRIATIONS
APPROPRIATIONS
SUBCOMMITTEE ON
HEALTH & WELFARE,
Chairman
HEALTH & HUMAN SERVICES
JUDICIARY,
Vice-Chairman

February 9, 2024

Patricia McSorley
Executive Director, Arizona Medical Board,
Arizona Regulatory Board of Physician Assistants
1740 W. Adams St. #4000
Phoenix, AZ 85007

Re: Rulemaking regarding Physician Assistants

Dear Ms. McSorley,

I am writing you with some concerns regarding the recently adopted rules for Physician Assistants (PAs) to implement HB2043 ("the Bill") passed in last year's legislative session. As sponsor of this legislation, I am concerned that several of the rules may be interpreted in a manner which is contrary to the intent of the Bill.

HB2043, in Section 32-2536(B) directed the Board to adopt "rules establishing additional certification standards or requirements for physician assistants who previously completed eight thousand clinical practice hours certified by the board and who are seeking employment with a collaborating physician or entity for a position that is not substantially similar to the practice setting or specialty in which the physician assistant was previously certified." I do not believe there was a necessity for rulemaking on other provisions of the bill but appreciate the work you have put into implementing the bill and have a few concerns I have outlined below.

I am concerned that the following rules do not align with the purposes of the Bill:

- R4-17-402(C) requires that a PA and collaborating physician must sign a written "policy" that must contain specific information set forth in the preceding section. This would seem to require what is tantamount to an agreement, not very different from a supervision agreement, between the PA and physician. That could undermine the purpose of the Bill to eliminate supervision agreements after the 8,000 hours depending on the practice. It also can result in the same

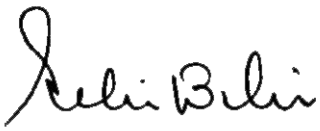
concerns that were discussed during the passing of the Bill, in which PAs were paying for supervision. The same may result with a written and signed policy.

- R4-17-402(F) Requires that each physician that the PA may collaborate with also sign a policy as described above. This is quite burdensome to PAs that may collaborate with multiple physicians, such as those working in surgery, emergency departments, as hospitalists, etc.

I also am concerned that these requirements also don't account for the many PA practice owners we have across the state. Is the requirement of "the employer" making certain decisions, providing proof of the 8,000 hours, etc. left up to a PA practice owner? That should be clarified.

The goal of the Bill is to eliminate administrative barriers so that PAs may continue to deliver great health care to Arizonans across the state. I appreciate all the Board's work on these issues and hope that we can clarify and refine the rules I have referenced so we are not taking a step back, rather than forward in our efforts to do so.

Respectfully,



Rep. Selina Bliss
Legislative District 1

Katie Hobbs
Governor

Arizona Regulatory Board of Physician Assistants
1740 W. Adams, Suite 4000 • Phoenix, Arizona 85007
Telephone: 480-551-2700 • Toll Free: 877-255-2212 • Fax: 480-551-2704
Website: www.azpa.gov

Susan Reina, PA-C
Chair

February 16, 2024

Honorable Representative Selina Bliss
Arizona House of Representatives
1700 W. Washington, Ste. H
Phoenix, AZ 85007

RE: Rulemaking regarding Physician Assistants

Dear Representative Bliss,

Thank you for reaching out regarding this important issue. In creating the rules for collaborative practice, multiple meetings of the Arizona Regulatory Board of Physician Assistants (ARBoPA) were held, some were attended by stakeholders, and HB 2043, was carefully reviewed to ensure that the words of the statute directed the formation of the rules. ARBoPA is aware that many PAs are frustrated with the bill as they believe they were being given the statutory right to practice independently, and that they would be free of any financial burden associated with "supervision." However, HB2043 is clear that even under the collaborative model, a certain level of oversight is still mandated, and the collaborating physician assistant must collaborate, consult and refer to appropriate health care professionals based on the physician assistant's education, experience and competencies.

The rules created by ARBoPA were designed to be consistent with this statutory requirement for oversight and to ensure that the collaborative practice would be implemented to meet the stated requirements of the bill, and to protect the public, particularly when a collaborative physician assistant might be embarking on a practice that "is not substantially similar to the practice setting or specialty in which the physician assistant was previously certified."

A.R.S. § 32-2501 requires a collaborating entity to designate "one or more physicians by name or position who is responsible for oversight of the physician assistant:

> 6. "Collaborating physician or entity" means a physician, physician group practice, physician private practice or licensed health care institution that employs or collaborates with a physician assistant who has at least eight thousand hours of clinical practice as certified by the board pursuant to section 32-2536 and does not require a supervision agreement **and that designates one or more physicians by name or position who is responsible for the oversight of the physician assistant.**

A.R.S. § 32-2531(B) requires collaboration between a collaborating physician assistant as set forth in their practice setting's policies:

> B. Pursuant to the requirements of this chapter and the standard of care, a physician assistant who has at least eight thousand hours of clinical practice certified by the board pursuant to section 32-2536 is not required to practice pursuant to a supervision agreement **but shall continue to collaborate with, consult with or refer to the appropriate health care professional as indicated by the patient's condition and by the physician assistant's education, experience and competencies. The level of collaboration required by this subsection is determined by the policies of the practice setting at which the physician assistant is employed, including a physician employer, physician group practice or health care institution.**

Lastly, A.R.S. § 32-2536(B) required ARBoPA to adopt rules to ensure that collaborating physician assistants continue to be safe when they move to new areas of practice:

B. The board shall adopt rules establishing additional certification standards or requirements for physician assistants who previously completed eight thousand clinical practice hours certified by the board and who are seeking employment with a collaborating physician or entity for a position that is not substantially similar to the practice setting or specialty in which the physician assistant was previously certified. The certification standards or requirements shall ensure appropriate training and oversight, including a supervision agreement if warranted, for the physician assistant's new practice setting or specialty.

ARBoPA approached the implementation of HB2043 with the goal of identifying the least restrictive manner in which to enforce the provisions of the bill. To that end, the rules adopted by ARBoPA leave the authority at the practice level for ensuring that the collaborating physician assistant practices in accordance with A.R.S. § 32-2531(B) as well as ensuring that collaborating physician assistants who move into new areas of practice are properly educated and trained to practice safely. It should be noted that during the deliberations regarding the new rules, the Board considered and rejected requirements to have the policies submitted to the Agency, and for the Agency to affirmatively regulate the training and education requirements of A.R.S. § 32-2536(B).

Thus, the requirement for a collaborating physician or entity to maintain policies regarding the collaborating physician assistant is already in statute. The language of R4-17-402 simply ensures that those policies are in writing and sufficiently clear so that all parties involved can understand the degree of collaboration required by the entity for the physician assistant. Additionally, the rules are designed to meet the Agency's obligation under the statute to ensure that collaborating physician assistants remain competent to practice when they change practice areas.

It should be noted that as part of every investigation of a PA, a supervision or collaboration agreement is requested, which provides the Board with written documentation supporting the identity of the supervising/collaborating physician. Without this requirement, the Board would have no ability to confirm the identity of the reported physician supervising or collaborating with the PA. Since PA's cannot practice independently, the supervising/collaborating physician is required to provide a response related to the complaint and their supervision/collaboration of the PA. Therefore, the requirement for written policies assists the Board to meet its obligation to investigate and regulate unsafe practice, which is the primary duty of ARBoPA. *See* A.R.S. § 32-2504(A)(1) (stating that the Board shall, "As its primary duty, protect the public from unlawful, incompetent, unqualified, impaired or unprofessional physician assistants.)

I hope that this letter has answered the concerns that you have raised. The goal of the rules is to create a process that is clear, and to provide the least amount of administrative barriers by shifting much of the oversight away from the Board to the practice level, but still protects the public.

I am happy to engage in any further discussion if that would be helpful.

Respectfully,

Patricia E. McSorley
Executive Director

SELINA BLISS
1700 WEST WASHINGTON, SUITE H
PHOENIX, ARIZONA 85007-2844
CAPITOL PHONE: (602) 926-4018
TOLL FREE: 1-800-352-8404
sbliss@azleg.gov

DISTRICT 1

COMMITTEES:
APPROPRIATIONS
APPROPRIATIONS
SUBCOMMITTEE ON
HEALTH & WELFARE,
Chairman
HEALTH & HUMAN SERVICES
JUDICIARY,
Vice-Chairman

February 26, 2024

Patricia E. McSorley
Executive Director
Arizona Regulatory Board of Physician Assistants
1740 W. Adams, #400
Phoenix, AZ 85007

Re: Rulemaking regarding Physician Assistants

Dear Ms. McSorley,

Thank you for your Feb. 16 response to my letter regarding the Board's rulemaking which arose from the passage of HB2043. After reviewing your response, I still have concerns that the rulemaking is exceeding the letter and intent of the bill. I will address your response in the order they appear in your letter.

You referenced that you are "aware that many PAs are frustrated with the bill as they believe they were being given the statutory right to practice independently, and they would be free of any financial burden associated with "supervision." While it is debatable what "practicing independently" may mean, it was the understanding when passing the legislation that PAs may currently own a practice even while a supervision agreement was required and that there is a financial burden placed on many PAs by the supervision agreement. It was contemplated and intended in this legislation that the various current practice arrangements could continue and that the financial burden placed upon the PAs by a supervision agreement could be removed.

As I stated in my previous letter, the rulemaking authority provided to the Board in the legislation was regarding a PA who may be embarking on a practice that is not substantially similar to the practice setting….". The bill did not contemplate further rulemaking on other aspects of the bill, particularly when those rules provide more restrictions and requirements than set forth in the bill.

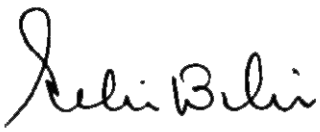
The definition cited of a "collaborating physician or entity" from the bill provides that one or more physicians be designated by name OR position. It does not require an *agreement* between a named physician or physicians. Clearly if an entity or practice is collaborating, they can

designate a position such as medical director etc., or list specific physicians, but a written and signed agreement is not required.

Further, A.R.S. Sect. 32-2531(B) provides that the level of collaboration is determined "by the policies of the practice setting at which the physician assistant is *employed*." However, it neither requires the policies to be in writing nor signed by the applicable physician(s) and PA. Further, the policies apply to those PAs who are "employed", not a contracted PA or a PA who owns a practice. The major concern is that the rules promulgated by the Board require a written policy SIGNED by a physician and PA, which is tantamount to an agreement, which is not required, contemplated, or intended by the legislation.

I appreciate your diligence and the work of the Board in implementing this legislation and look forward to continuing to consult with you on rule revisions which will align with the intent of the bill.

Respectfully,



Representative Selina Bliss

Katie Hobbs
Governor

Susan Reina, P.A.-C
Chair

Arizona Regulatory Board of Physician Assistants
1740 W. Adams Street, Ste. 4000 • Phoenix, Arizona 85007
Telephone: 480-551-2700 • Toll Free: 877-255-2212 • Fax: 480-551-2704
Website: www.azpa.gov

April 1, 2024

Patricia Grant, Esq.
Staff Attorney
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 302
Phoenix, AZ 85007

Via email: patricia.grant@azdoa.gov

RE: Petition for Review of A.A.C. R4-17-401 and A.A.C. R4-17402

Dear Ms. Grant,

The purpose of this letter is to serve as a preliminary response to the Petition for Review of A.A.C. R4-17-401 and A.A.C. R4-17402 as passed by the Arizona Regulatory Board of Physician Assistants ("Board" or "ARBoPA") through exempt rulemaking and to provide Governor's Regulatory Rule Council ("GRRC") with the Board's rationale for the rules as adopted. Additionally, this letter should serve to supplement the record regarding the Board's deliberations on implementation of HB2043, and other relevant issues. In short, the Board's rules are consistent with statute, reasonably necessary to carry out the purpose of the statute, and procedurally valid. To that end, this letter will address the concerns identified by the Petitioner in their brief.

1. **A.A.C. R4-17-402(B)-(G) are Consistent with A.R.S § 41-1033(A)**

Attached are the Board and Committee meeting minutes reflecting the substantial deliberation and careful study undertaken by the Board in coming to the final version of Rules R4-17-401 and 402.(*See* Board and Committee meeting minutes attached as Exhibit 1.) The Board's review was focused on the following key portions of the new statutory language created by SB2043:

A.R.S. § 32-2501(6):

> "Collaborating physician or entity" means a physician, physician group practice, physician private practice or licensed health care institution that employs or collaborates with a physician assistant who has at least eight thousand hours of clinical practice as certified by the board pursuant to section 32-2536 and does not require a supervision agreement **and that designates one or more physicians by name or position who is responsible for the oversight of the physician assistant.**

A.R.S. § 32-2531(B):

> B. Pursuant to the requirements of this chapter and the standard of care, a physician assistant who has at least eight thousand hours of clinical practice certified by the board pursuant to section 32-2536 is not required to practice pursuant to a supervision agreement **but shall continue to collaborate with, consult with or refer to the appropriate health care professional** as indicated by the patient's condition and by the physician assistant's education, experience and competencies. **The level of collaboration required by this subsection is determined by the policies of the practice setting at which the physician assistant is employed, including a physician employer, physician group practice or health care institution.** Collaboration, consultation or a referral pursuant to this subsection may occur through electronic means and does not require the physical presence of the appropriate health care professional at the time or place the physician assistant provides medical services. This subsection does not prohibit a physician assistant who has at least eight thousand hours of clinical practice certified by the board pursuant to section 32-2536 from practicing pursuant to a supervision agreement.

A.R.S. § 32-2536(B):

> B. **The board shall adopt rules establishing additional certification standards or requirements for physician assistants** who previously completed eight thousand clinical practice hours certified by the board and who are seeking employment with a collaborating physician or entity for a position that is not substantially similar to the practice setting or specialty in which the physician assistant was previously certified. The certification standards or requirements shall ensure appropriate training and oversight, including a supervision agreement if warranted, for the physician assistant's new practice setting or specialty.

A.A.C. R4-17-402(B)-(G) is both consistent with these statutes and reasonably necessary for the Board to carry out their purpose. In short, A.R.S. § 32-2536(B) requires the Board to develop rules that ensure that collaborating physician assistants who become employed in an area of practice that is not substantially similar to previous practice areas are safe to practice in their newly chosen field.

The Board ultimately determined that this was best accomplished at the practice level, rather than more restrictive alternatives, such as having the Board determine substantial similarity or dictate continuing education/supervision requirements through an affirmative application and review process. However, the Board recognized that in order to make these determinations, collaborating physicians and entities would need to have sufficient and objective data for review. For that reason, R4-17-402(B)-(D) and (F) requires collaborating physicians and entities to have written and annually reviewed policies articulating the collaborating physician's scope of practice. As noted in the Board's response to Senator Bliss, the requirement for a collaborating physician or entity to have policies is articulated in A.R.S. § 32-2531(B). (*See* Board's Response to Senator Bliss dated February 16, 2024 attached as Exhibit 2.)These written policies could then be used by any prospective collaborating physician or entity to determine substantial similarity and whether additional training or supervision is necessary at the initiation of the collaborative relationship. R4-17-402(E) serves to ensure that the new collaborating physician or entity provides the necessary training and oversight as required by A.R.S. § 32-2536(B). In the event that the

Board undertakes an investigation regarding a collaborating physician assistant, R4-17-402 (G) simply addresses the collaborating physician or entity's obligation to provide them to the Board upon request.

Thus, these rules are both consistent with the Board's new statutes and reasonably necessary to carry out the purpose of A.R.S. § 32-2536(B).

2. The Rules are Procedurally Valid

The Board obtained the approval of the Governor's Office prior to promulgating the rules. Attached are the emails between the Board's Executive Director and the Governor's Office in December, 2023. (*See* emails attached as Exhibit 3.) Approval was obtained on December 19, 2023.

3. The Rules are not Unduly Burdensome.

The Board in its multiple meetings held to consider and draft rules for collaborative practice and the directives in HB2043, and carefully considered the intent of the statute, the language within the statute and the input it received from physician assistant members of the board, stakeholders and from Ms. Kathy Busby, the lobbyist, who was involved in the legislative process. The Board also discussed and weighed its obligation to protect the public.

The Board did not find it unreasonable or contrary to statute to have a written business record articulating the relationship between a collaborating physician assistant and their respective collaborating physician or entity. The rule requirements do not limit the designation to a single physician, nor do they "tether" the collaborating physician assistant to a specific physician like a supervisory agreement would. The rules embrace the Optimal Team Practice model cited by the Petitioner in its original Sunrise Application, and the requirements were left flexible to allow for the possibility that the collaboration agreement would designate a physician collaborator by role or department within an entity. (See Sunrise Application, attached as Exhibit 4.)

While the rules do not tether a collaborating physician assist to a specific physician, neither the statute nor the rule contains language that would lead to a complete untethering of the relationship between the collaborating physician and the collaborating physician assistant as there remains the statutory obligation for "oversight." *See* A.R.S. § 2501(6).

The Petitioner finds any requirement for written documentation for collaborating physician assistants objectionable; however, the statute itself indicates that the level of collaboration would be made at the practice level, and determined by the policies of the practice setting at which the physician assistant is employed. *See* A.R.S. § 32-2531(B) From a healthcare management perspective, and in light of the legal liabilities related to the practice of medicine, it strains belief that the "policies" referenced in the statute would intend to be verbal in nature and devoid of lack a mutual agreement and understanding at the initiation of a collaborative practice relationship where oversight is required by law.

Further, the written policies referenced in R4-17-402 call for a plan individualized for the collaborating physician assistant's education, experience, and competencies. There are no requirements under the written policies for the collaborating physician to exercise direction or control over the performance of health care services as defined in A.R.S. § 32-2501(18):

> 18. "Supervision means a physician's opportunity or ability to provide or exercise direction or control over the services of a physician assistant. Supervision does not require a

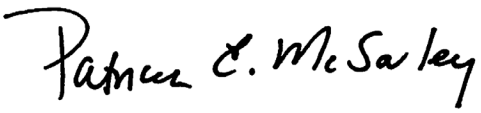
physician's constant physical presence if the supervising physician is or can be easily in contact with the physician assistant by telecommunication.

While collaboration is not defined in statute, the distinction between supervision and collaboration is a matter of degree, as made evident by language in A.R.S. § 32-2531(B) requiring a collaborating physician assistant to "continue to collaborate with, consult with or refer to the appropriate health care professional as indicated by the patient's condition and by the physician assistant's education, experience and competencies."

4. Conclusion

Thank you for the opportunity to submit this initial response. I hope this provides GRRC with additional context and background necessary to understand the Board's rationale with regard to the challenged rules. The Board is committed to engaging in rulemaking that meets statutory requirements to protect the public and effectuate its governing practice act, while also minimizing regulatory impact on practitioners. For this reason, the Board is concurrently requesting approval from the Governor's Office to open a rulemaking docket pursuant to A.R.S. § 41-1095 to review and finalize A.A.C. R4-17-401 and R4-17-402. Please advise if any additional information would be helpful for your review.

Respectfully submitted,



Patricia E. McSorley

Executive Director

Arizona Regulatory Board of Physician Assistants

Arizona Regulatory Board of Physician Assistants
1740 W. Adams St, Suite 4000, Phoenix, AZ 85007
Telephone: 480-551-2700 • Fax: 480-551-2705 • www.azpa.gov

FINAL MINUTES FOR MEETING OF JOINT LEGISLATION AND RULES COMMITTEE TELECONFERENCE MEETING Held on Friday, June 23, 2023 1740 W. Adams St., Board Room 4100, Phoenix, AZ 85007

Committee Members
Susan Reina, P.A.-C., Chair
David J. Bennett, D.O.
Kevin K. Dang, Pharm D.
Michelle DiBaise, D.H.S.c., P.A.-C., D.F.A.A.P.A.
John J. Shaff, PA-C, DFAAPA

A. CALL TO ORDER

Chairwoman Reina called the meeting to order a 3:04 p.m.

B. ROLL CALL

The following Committee Members participated via Zoom: Dr. Bennet, Dr. Dang and PA DiBaise.

The following Committee Member was present in the room: PA Reina and PA Shaff.

ALSO PRESENT

The following Board staff participated in the meeting: Patricia McSorley, Executive Director; Kristina Jensen, Deputy Director; Michelle Robles, Board Operations Manager. Also present: Carrie Smith, Assistant Attorney General ("AAG").

C. CALL TO THE PUBLIC

No individuals addressed the Committee at the Call to the Public.

D. APPROVAL OF MINUTES

- April 29, 2021 Joint Legislation and Rules Committee Teleconference

  MOTION: PA Shaff moved to approve the April 29, 2021 Joint Legislation and Rules Committee Teleconference.
  SECOND: Dr. Bennett.
  The following Committee Members voted in favor of the motion: Dr. Bennet, Dr. Dang, PA DiBaise, PA Reina and PA Shaff.
  VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
  MOTION PASSED.

E. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING RULES FOR THE IMPLEMENTATION OF HB2043 AND COLLABORATIVE PRACTICE BY PHYSICIAN ASSISTANTS

Ms. McSorley provided a copy of the statute, a preliminary draft and information on how other states are handling the collaborative practice to the Committee. She stated that the goal is to create rules that better explain the statute. It should include how and who is going to establish the hours and the methodology for how the hours have been met. The statute also requires some type of certification by the Board. Finally, if the PA is initially certified in a specialty but changes to a substantially different area there needs to be rules on how to transition.

Ms. Smith noted that the courts will use a dictionary definition if they cannot find a legal definition.

PA Reina commented that Arizona is unique in the transition to another substantially different type of practice. The Committee needs to determine the requirements for certification of that transition.

PA Shaff commented that the Board can include a timeframe and training for new area.

PA DiBaise asked about why the Board was considering classification of areas of practice.

PA Reina discussed designating 3 specialties and the PA would provide documentation of the 8000 hours of training for the specialty. The Committee would need to determine how to create the certification for these PAs to begin.

Ms. Smith noted that the bill addresses the minimum requirements; the issue is how to best address the qualitative requirements in the statute.

PA Shaff opined that the rules should not create too many obstacles. If the collaborative physician (CP) approves of the hours and signs off on the training it should be adequate. This would mirror the current process.

PA Reina stated that the Committee needs to establish whether the certification is a general certification or a subspecialty certification.

Dr. Bennet noted that it would be difficult to put a timeframe or 8000 hours for each subspeciality and it would make it difficult to get PAs licensed. Dr. Bennet opined that it should be simple and if the collaborative physician agrees that they are ready and agreement between the CP and the PA can be signed.

Ms. McSorley noted an example collaborative agreement that the Committee can use as a starting point.

Ms. Smith referred the Committee to A.R.S. § 32-2536(B) which requires the Board to adopt rules establishing additional certification standards for collaborating PAs who seek employment for a position that is not substantially similar to the area in which the PA was previously certified. Ms. Smith stated that this is policy decision.

PA DiBaise noted the Oregon agreement and opined that it is simple and easy to follow. The PA can reapply instead of transitioning when changing practices.

PA Shaff noted that currently, if a PA's practice changes they have ten days to inform the board therefore it can be as simple as informing the Board of their new position and collaborative practice agreement.

PA Reina expressed concern about having sufficient ability to protect the public.

PA DiBaise noted that PAs can already do these things and ultimately this process would require a legal document and would need a CP.

PA Shaff opined that unfortunately there is always going to be a few bad eggs and overall this won't change too much about how PA's practice.

PA Reina commented that a CP takes away the legal liability whereas a supervising physician has a legal liability to what the PA does. PA Reina opined that the Committee needs to be careful when wording this to protect the public.

PA DiBaise noted that if utilizing this route PAs will be responsible for their own liability insurance.

PA Reina suggested adding language that the CP must be in the same area of practice to help protect the public.

Ms. McSorley stated that staff can create language that the PA's area of practice should be substantially similar to the CP and if changing then apply for recertification.

PA DiBiase commented that this statute is not intended to restrict the PA who has obtained the 8000 hours to practice at the top of their practice.

Committee members agreed that this should not make the PA's practice more restrictive, this should be used to move the PA practice forward.

PA Shaff opined that the Maryland Board had a good definition of what collaborative practice is. The Board can use the current process but for a CP and duties would be delegated on the practice level. The only change is taking the liability from the physician.

PA Reina inquired about clarifying how PA's can establish that they've obtained the 8000 hours.

PA DiBaise suggesting letting the site that they work at or who's hiring them verify the work history and make that determination.

Ms. McSorley noted Maryland's transition statute language, which is restrictive.

PA Reina commented that even if you have a collaborative certification, when moving to a substantially different area the PA can sign a supervising physician delegation agreement for a certain amount of hours before qualifying for a collaborative agreement in the new area.

PA DiBaise reiterated that the 8000 hours should be determined at the practice site otherwise if the Board sets an arbitrary limit it would make the Board a certifying body.

Ms. Smith reiterated that this is a policy decision for the Board but noted that the legislature has made a policy decision by wanting the Board to be involved in the change of practice area process. Ms. Smith noted the language of the statute which states, "The certification standards, or requirements shall ensure appropriate training and oversight, including a supervision agreement if warranted for the physician assistant's new practice setting or specialty."

PA Shaff suggested that the Board can use those exact words but include that the certification for a new practice setting or specialty qualification would be decided at the practice level and a new affidavit of collaboration would be signed to certify the change.

Ms. Smith opined that the proposed language would likely meet the statutory criteria.

PA Shaff noted that if there is a change in practice the PA has 10 days to notify the Board, otherwise they're in violation of the statute, and you can get brought in front of the Board.

Ms. Smith stated that the Committee will have to create some draft rules and get them through the GRRC process.

PA Shaff stated that the rules can contain language to fulfil subsection b, that anytime you change jobs you need to submit this form with x, y, z within 10 days. From a practice standpoint the Board doesn't want to make things more difficult but need to create the steps to meet section b.

PA Reina summarized that the generalized certification is for 8000 hours within the last 5 years. It would document the scope of practice, and then in order to satisfy the language in the statute if you have any sort of lateral movement the PA will have to submit the collaborating agreement again. The form can state that it is on the practice level to establish you've met the requirement. The PA doesn't need to have a collaborating agreement but can opt for a supervising agreement.

The Committee agreed with the idea to have the PA re-submit the collaborative agreement.

Ms. Smith opined that this would satisfy the requirement by directing the PA and the practice to ensure this is met. Ms. Smith noted that this proposed rule would need to be brought to the Board and GRRC.

PA Reina stated that is should include that if there is any change in practice the PA has 10 days to inform the Board with a new collaborative agreement

Ms. McSorley stated that staff will create a draft form for consideration by the Committee prior to sending it to the Board.

PA Reina suggested having another Committee meeting prior to the full Board's August meeting.

Ms. McSorley requested guidance for calculating the 8000 hours.

PA Shaff noted that there are 2000 hours per year if working full time, so there needs to be at least four years' worth of work within the five-year timeframe. This can be verified by getting a letter from the employer verifying the hours and can be submitted with the application. The PA can attest on the application that they had 8000 clinical practice.

Ms. McSorley confirmed the application will include obtaining an attestation from the employers over the 5 year and have it sent directly to the Board.

Ms. Smith noted that it is important to define a clinical hour in the rule, policy or on the application.

PA Shaff opined that a clinical hour is anything directly related to patient care.

F. DISCUSSION OF DATES AND TOPICS FOR UPCOMING COMMITTEE MEETING

G. ADJOURNMENT

MOTION: PA Shaff moved for adjournment.
SECOND: Dr. Bennett.
The following Committee Members voted in favor of the motion: Dr. Bennet, Dr. Dang, PA DiBaise, PA Reina and PA Shaff.
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

The Committee's meeting adjourned at 4:30 p.m.

Patricia E. McSorley, Executive Director

Arizona Regulatory Board of Physician Assistants
1740 W. Adams St, Suite 4000, Phoenix, AZ 85007
Telephone: 480-551-2700 • Fax: 480-551-2705 • www.azpa.gov

FINAL MINUTES FOR MEETING OF JOINT LEGISLATION AND RULES COMMITTEE TELECONFERENCE MEETING Held on Thursday, August 17, 2023 1740 W. Adams St., Board Room 4100, Phoenix, AZ 85007

Committee Members
Susan Reina, P.A.-C., Chair
David J. Bennett, D.O.
Kevin K. Dang, Pharm D.
Michelle DiBaise, D.H.S.c., P.A.-C., D.F.A.A.P.A.
John J. Shaff, PA-C, DFAAPA

A. CALL TO ORDER

Chairwoman Reina called the meeting to order a 5:04 p.m.

B. ROLL CALL

The following Committee Members participated via Zoom: Dr. Bennet, Dr. Dang and PA DiBaise.

The following Committee Member was present in the room: PA Reina and PA Shaff.

ALSO PRESENT
The following Board staff participated in the meeting: Patricia McSorley, Executive Director; Kristina Jensen, Deputy Director; Michelle Robles, Board Operations Manager. Also present: Carrie Smith, Assistant Attorney General ("AAG").

C. CALL TO THE PUBLIC

Sarah Bolander, Amanda Shelley and Melanie Lyon from ASAPA addressed the Committee during the Call to the Public.

D. APPROVAL OF MINUTES

- June 23, 2023 Joint Legislation and Rules Committee Teleconference

  MOTION: PA Shaff moved to approve the June 23, 2023 Joint Legislation and Rules Committee Teleconference.
  SECOND: PA DiBaise.
  The following Committee Members voted in favor of the motion: Dr. Dang, PA DiBaise, PA Reina and PA Shaff. The following Committee Member was absent: Dr. Bennet.
  VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
  MOTION PASSED.

E. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING RULES FOR THE IMPLEMENTATION OF HB2043 AND COLLABORATIVE PRACTICE BY PHYSICIAN ASSISTANTS

Ms. McSorley noted the definition of collaborating physician or entity on page 1 which is regarding designating one or more physicians by name or position, who is responsible for the oversight of the physician assistant. Ms. McSorley also noted the language in section 32 2536 on page 14 which is the nuts and bolts of regarding the documentation and certification for collaborative practice. Ms. McSorley provided the Committee with the rules. The first step is the process would be certification of the physician assistant for collaborative practice. This will be done at the staff level and will provide the

application to the PA, who is in good standing. The PA is going to provide the application with proof of the 8,000 clinical hours within the previous five years. Ms. McSorley read for the record the definition of a "clinical hour". The idea is that the PA will gather the documentation necessary, and we'll have an attestation from a previous employer confirming the hours. If the PA satisfactorily meets all of the requirements for collaborative physician assistant staff will certify them and maintain a list on the Board's website. Ms. McSorley noted that this is the only piece that Board staff will be involved in. The next part goes to the certification for an area of practice, and that's going to be completely dealt with at the practice level. Ms. McSorley noted that the next rule is regarding the requirements for collaborative practice agreement and certification to practice in a specified area. This is being done to comply with the rule regarding what collaborative practice is and that there needs to be a position, name, or position from the entity that is going to be responsible for oversight of the physician assistant. Ms. McSorley noted that oversight and supervision are different. Oversight is to have a mechanism in place should the PA need to collaborate or refer with somebody. Ms. McSorley also noted that if an investigation is required, the Board is going to have to look to the collaborating physician and interview that person, so the Board needs a record of it. The agreement and any addendums would need to be maintained by both the practice and the PA. If a collaborating physician considers certifying a PA for an area practice that is not substantially similar to an area practice for which the PA was previously certified, certification should only take place at the time and there needs to be a record of it. Ms. McSorley stated that the collaborative agreement addresses the need for certification, which is set forth in the statute. Ms. McSorley reiterated that this is all done at the practice level and is through a discussion between the PA and the collaborating physician. There is also language in the rules regarding if the PA requires supervision. Regarding supervision prior to acting in a collaborative manner, the length of supervision shall be determined by the physician accepting responsibility for the training and supervision of the PA. The terms of the supervision shall be documented in the collaboration agreement. Ms. McSorley noted that section J's language is to create a communication chain and to create a mechanism to be able to refer to the collaborator.

PA DiBaise opine that the Board does not need to create the collaborating agreement since the supervising agreement is at the practice level. PA DiBaise opined that these proposed rules are stringent compared to supervision.

Ms. McSorley noted that these collaborating agreements are not required to be submitted to the Board unless there is an investigation.

PA Reina commented that the proposed form is to be used as a universal template. PA Shaff opined that having a template would make the process easier and more uniform. PA Shaff noted that since it is decided and kept at the practice level it is not more restrictive.

PA DiBaise expressed concern that this is codifying more terminology and rules for a collaborative PA that what is required for supervising. PA DiBaise opined that the onus is on the practice and the PA to have everything in order.

PA Reina noted that the bill specifically states you must designate a physician by name or position.

PA DiBaise expressed concern regarding naming a collaborative physician by name when it can just state the position.

Committee members discussed if there is an investigation or a change in practice what that would look like if only a position was listed on the collaborative agreement instead of a physician by name.

Ms. Smith clarified that the statute states "the Board shall adopt rules establishing additional certification, standards, or requirements. Physician or physician assistants who previously completed the 8,000 hours and were seeking employment with a collaborating physician or entity for a position

that is not substantially similar to the practice setting or specialty in which the PA was previously certified.". This requires the Board to establish some rules for when a PA changes practice.

Regarding a change in practice or supervisory agreement, PA DiBaise opined that this should be decided at the practice level.

PA Shaff confirmed that the rule states if they change to a field that is substantially different or not, it is decided at the practice level whether they need to go to a supervisory position until they are able to go to a collaborating position or they can sign off to collaborate in a substantially different role. This is determined between the PA and their practice.

PA DiBaise expressed concern that the draft language reads as if it gets turned into the Board.

PA Reina confirmed that there is no language that states it needs to be turned into the Board. It only needs to be submitted if there is an investigation.

PA Shaff noted that the application and documents for certification get turned into the Board, everything else is at the practice level.

PA DiBaise noted the language in Point B and suggested using the language certify a collaborative "scope of practice" instead of "area of practice".

Ms. McSorley noted that she used the term "certification" to be in line with the statute.

PA Shaff noted that the Board is doing the initial certification. The collaborative agreement is saying this is the area that I'm working in and here are my collaborating physicians. PA Shaff suggested replacing the word "certify" with "state" as it may be more appeasing.

Ms. Smith informed the Committee that it is a policy decision.

Ms. McSorley agreed that certification is a strong word but that is the language in the statute. Ms. McSorley explained that she is trying to get the Committee to agree on the concepts and a process. A professional rule writer will get the language in the right form for public comment and then to turn it into GIRC. Once the Committee agrees on the concepts, Ms. McSorley suggested that a FAQ should be sent out to the community.

Regarding Point B, PA DiBiase opined that only the person who's agreed to have oversight needs to be listed and not have a list of everyone you could potentially work with.

PA Reina commented that the understanding is that one physician or position is needed but multiple can be added. PA Reina noted that this language was proposed by the ASAPA lobbyist.

PA DiBaise requested that staff touch base with ASAPA's lobbyist to clarify the intent of what's stated in Point B.

PA Shaff agreed that the language can be cleaned up but it is just asking for the collaborating physician's information.

PA DiBaise agreed with alternate pathway regarding the 8,000 hours within five year for certification but expressed concern regarding section four that requires the PA to get a signed attestation. PA DiBaise opined that this seems superfluous and inquired what would happen if there is an issue obtaining the attestation.

PA Shaff agreed that point four seems redundant.

PA DiBaise commented that claiming didactic hours may require an attestation but it may not be needed if the PA has the required documentation.

Ms. McSorley stated that the Committee can determine if just documentation of the hours is sufficient or if an attestation is needed as well.

PA DiBaise commented that the attestation can be another form of documentation.

Committee members suggested adding language that an attestation from a previous employer, clinical practice, credentialing department or supervising physician for the 8,000 clinical hours should be added as an option in Section 3 and remove Point 4.

Ms. Smith encouraged the Committee to provide Board staff with the tools necessary to address those who aren't utilizing the process in good faith and complying with the law. There should be some way for Board staff to be authorized to communicate with these prior employers in order to give the Board the investigatory functionality in the instance where there is a concern that the information being presented to the Board is not truthful.

Ms. McSorley commented, in the context of looking at these clinical hours, if staff has a question perhaps the Committee can add some language that staff may contact previous employers to confirm the number of hours.

Committee members agreed that is reasonable.

Ms. McSorley also suggested as an alternative, the attestation from the employer can be primary source and sent directly from the employer to the Board.

PA DiBaise inquired about what would occur if the attestation cannot be obtain due to some catastrophic reason.

Ms. Smith noted that the MD Board has language regarding waiver requests in its application rules and suggested that the Committee can be provided with something translated from that for consideration.

PA DiBaise agreed with having a waiver of some form to address those situations where an attestation cannot be obtained.

PA Reina inquired about language regarding a substantial lapse in employment.

PA Shaff commented that if they have kept their license active do we ask if they have been clinically working.

Ms. McSorley noted that if the PA kept an active license they would be keeping up to date with their CME and would have maintained licensure and education requirements.

PA DiBiase noted that the PA would be evaluated at the practice level.

PA Reina clarified that this is for the initial application.

PA Shaff noted that this is addressed in the language, if the physician assistant can provide proof of 8,000 hours within 10 years of the date of the application.

Ms. McSorley noted that this is a situation or question that can also be added to the FAQs.

PA Reina requested that this topic be added to the full Board's meeting and if needed a specialty meeting can be held.

F. DISCUSSION OF DATES AND TOPICS FOR UPCOMING COMMITTEE MEETING

G. ADJOURNMENT

MOTION: PA DiBaise moved to adjourn the meeting.
SECOND: PA Shaff.
The following Committee Members voted in favor of the motion: Dr. Dang, PA DiBaise, PA Reina and PA Shaff. The following Committee Member was absent: Dr. Bennet.
VOTE: 4-yay, 0-nay, 0-abstain, 0-recuse, 1-absent.
MOTION PASSED.

The meeting adjourned at 6:29 p.m.

Patricia E. McSorley, Executive Director

Arizona Regulatory Board of Physician Assistants
1740 W. Adams St, Suite 4000, Phoenix, AZ 85007
Telephone: 480-551-2700 • Fax: 480-551-2702 • www.azpa.gov

FINAL MINUTES FOR REGULAR SESSION MEETING
Held on Wednesday, August 30, 2023
1740 W. Adams St., Board Room A, Phoenix, AZ 85007

Board Members
Susan Reina, P.A.-C, Chair
John J. Shaff, PA-C, D.F.A.A.P.A., Vice-Chair
Levente G. Batizy, D.O.
David J. Bennett, D.O.
Kendra Clark, P.A.-C
Kevin K. Dang, Pharm D.
Michelle DiBaise, D.H.S.c., P.A.-C., D.F.A.A.P.A.
Shiva K. Y. Gosi, M.D., M.P.H., F.A.A.F.P., C.P.E.
Amanda Graham, P.A.
Beth E. Zoneraich

GENERAL BUSINESS

A. CALL TO ORDER
Chairwoman Reina called the meeting to order at 10:05 a.m.

B. ROLL CALL
The following Board members participated in the meeting: Chair Reina, PA Shaff, Dr. Batizy, Dr. Dang, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich.

The following Board member was absent: Dr. Bennet and PA Clark.

ALSO PRESENT
The following Board staff and Assistant Attorney(s) General were present: Kristina Jensen, Deputy Director; Carrie Smith, Assistant Attorney General ("AAG"); Raquel Rivera, Investigations Manager; Joseph McClain, M.D., Chief Medical Consultant and Michelle Robles, Board Operations Manager.

C. CALL TO THE PUBLIC
Individuals who addressed the Board during the Call to the Public appear beneath the matter(s) referenced.

D. REVIEW, DISCUSSION, AND POSSIBLE ACTION REGARDING EXECUTIVE DIRECTOR'S REPORT
- Discussion Regarding Meeting Calendar for 2024

  Board staff noted that there is limited availability for Board Room A in November 2024 and provided alternative dates for the Board's consideration.

  MOTION: PA Shaff moved to approve the Calendar with the December 4, 2024 date.
  SECOND: PA Graham.
  VOTE: The following Board members voted in favor of the motion: Chair Reina, PA Shaff, Dr. Batizy, Dr. Dang, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich.
  The following Board member was absent: Dr. Bennet and PA Clark.
  VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

MOTION: PA Shaff moved to approve the February 28, 2024, May 29, 2024, and August 28, 2024, meeting dates.
SECOND: Dr. Dang.
VOTE: The following Board members voted in favor of the motion: Chair Reina, PA Shaff, Dr. Batizy, Dr. Dang, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich. The following Board member was absent: Dr. Bennet and PA Clark.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

E. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING CHAIR'S REPORT

No report was given.

F. REVIEW DISCUSSION AND POSSIBLE ACTION REGARDING LEGAL ADVISOR'S REPORT

No report was given.

G. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING RULES FOR THE IMPLEMENTATION OF HB2043 AND COLLABORATIVE PRACTICE BY PHYSICIAN ASSISTANTS

PA Melinda Rawcliffe from ASAPA addressed the Board during the Public Statements portion of the meeting.

Ms. McSorley reported that the JLRC and staff have been working to create a set of proposed rules to meet the requirements of the statute. Rule 1 would address the initial certification process. The Board will maintain a register of certified PAs on the Board's website. Ms. McSorley further explained Rule 2 which would identify the PA's area of practice as determined between the PA and the collaborating physician/entity.

PA Shaff explained that under the proposed rules, once the initial 8000 hours is certified the PA would not have to repeat 8000 hours in another field before being allowed to practice collaboratively, but will require a sign off in the new area by the collaborating physician/entity.

Ms. McSorley noted that a new collaborative agreement will be needed for each new employer, any training or education needed is best identified by the collaborating physician in discussion with the PA. Ms. McSorley confirmed that the liability remains with the PA.

Ms. Zoneraich expressed concern with regulations that would leave the decision-making on training and education at the practice level without additional oversight from the Board. PA Reina noted that the collaborating physician and PA would have to agree and that a collaborating physician/entity would have the option of requiring a supervision agreement until the PA has reached the skill to work collaboratively PA Shaff opined that there is some onus on the next physician who signs off and says it is okay. PA DiBaise noted that there is a credentialling process in hospital settings, so there are checks and balances. Ms. Zoneraich commented that procedures can take place out of the hospital setting and there would be no government or DHS oversight. Ms. Zoneraich opined that the lack of oversight could be a risk to the public. Ms. Zoneraich also expressed concern regarding allowing for teaching hours to count toward certification. PA Reina stated that this is not independent practice and that there is oversight. Dr. Gosi agreed that teaching hours are significantly different than clinical hours and that if a PA is changing to a substantially different area there should be some sort of supervision. PA Reina explained that per the statute if a PA changes to a substantially different area of practice, the need for a supervision agreement can be discussed at the practice level before changing to collaborative practice. PA Shaff opined that there are more checks and balances with this agreement than the current practice.

Ms. McSorley noted that the statute does not specify that the 8000 must be in a specific field but generally requires 8000 hours in clinical practice. The proposed rules contemplate that when the

collaborating PA makes the initial engagement with a collaborating physician, they establish the area that the PA will be practicing in. Ms. McSorley noted the statute language for switching to a substantially different area of practice. She further noted that the drafted rule does contemplate switching areas and there is room for a supervising agreement if the physician opines that the PA is not sufficiently trained in that area.

PA Graham noted that if a physician does not want to collaborate with a PA, they do not have to. Ms. Zoneraich opined that there is a financial incentive to utilize PAs in the office setting, and therefore this gives that physician the ability to have more PAs without the liability. Dr. Dang noted that this current method of collaboration is being used in other states.

Ms. McSorley confirmed that collaborative practice is currently being done in seven states.

Dr. Dang requested that ASAPA provide data on how this is working in those states for the Board's review. Dr. Dang commented that the PA will have to assess their own ability since if they make a mistake, they hold all the liability and can potentially lose their license. Dr. Dang stated that he was in agreement with allowing the PA and physician to use their own clinical judgment.

Ms. McSorley explained that Rule 3 permits multiple collaborative agreements, and each new collaborative physician or entity requires an agreement that recognizes the PA is working under a collaboration agreement with an entity or physician. Rule 5 contemplates broadening the timeframe for accumulating the hours to ten years and that didactic hours can contribute towards the 8000-hour requirement.

Ms. Zoneraich expressed concern regarding the ten-year timeframe as there can be a large gap in practice.

Ms. McSorley reiterated that this goes back to what agreement is used with the physician or entity.

PA Shaff noted that the license has to remain active and that there are provisions in place if a PA lets their license lapse. PA Reina noted that a PA can keep the license active by taking CMEs even if they aren't actively practicing.

H. APPROVAL OF MINUTES

- May 31, 2023 Regular Session Meeting

MOTION: Ms. Zoneraich moved to approve the May 31, 2023 Teleconference meeting.
SECOND: Dr. Batizy.
VOTE: The following Board members voted in favor of the motion: Chair Reina, PA Shaff, Dr. Batizy, Dr. Dang, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich. The following Board members were absent: Dr. Bennet and PA Clark.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

LEGAL MATTERS

I. FORMAL INTERVIEWS

1. PA-22-0024A, CHRISTOPHER M. BERO, P.A., LIC. #5861
   PA Bero was present with counsel Jeffrey McLerran.

   Board staff summarized that the Board is considering this case in which patient LT's left total knee arthroplasty site was diagnosed with an infection approximately 1.5 years after its implantation. SIRC determined that an allegation against PA Bero for failure to non-invasively investigate evidence suggesting the presence of infection was supported and recommended CME hours addressing PA Bero's inconsistent medical records. Board staff summarized the case findings, and noted that the Medical Consultant ("MC") opined that PA Bero deviated from the standard of care by failing to follow-up into bone scan results, though this was ordered for the contralateral knee all sites containing foreign

materials were at risk. T In addition, the MC cited the PA's decision to attempt aspirations three times at a site of foreign body implants, and then fail to submit the one successfully obtained sample, was inconsistent with the standard of care. The failure to obtain and follow-up with abnormal infection markers obtained in an ER visit known to have occurred while the patient's pain increased and function decreased failed to meet the standard of care. Finally, the MC noted that inaccurate and inconsistent documentation would make it difficult for a subsequent provider to know exactly what happened and when, including in-office procedures and laboratory obtained test results.

PA Bero provided an opening statement where he requested that the case be dismissed. PA Bero acknowledged that in hindsight he could have done things differently but believes that in the face of such an atypical presentation the outcome would not have changed. PA Bero informed the Board of LT"s presentations during the follow up visits and addressed the MC's findings. PA Bero stated that he has made efforts to improve his charting and that he no longer uses a scribe. He has also decreased his volume and spends thirty minutes per visit. PA Bero stated that he has already completed the recommended CME for records and wound control.

During questioning, PA Shaff acknowledged that this was a challenging case.

PA Bero acknowledged that the documentation errors are ultimately his fault as he approves what the scribe writes. PA Bero clarified that on the second aspiration the physician was not there but confirmed that he does discusses the cases with his supervising physician every day. PA Bero agreed that in hindsight he should have sent the 5ccs of fluid for testing. PA Bero informed the Board that the first aspiration was inarticulate, the second was superficial and the third was inarticulate and done after the IND. PA Bero explained that a bone scan was ordered for the right knee but once LT complained of left knee pain the right knee was tabled. PA Bero confirmed that there is not always a physician on site and that Friday he was there himself. PA Bero informed the Board of his rationale for prescribing Augmentin. PA Bero explained that he had opined that this was arthrofibrosis being managed long-term and therefore changed the antibiotic after the dry aspiration. The patient did report improvement after the medication change. Infection is always on the differential which is why he attempted the aspiration. PA Bero stated that the subjective findings made this a complicated case.

PA Shaff inquired about the choice made by the Supervising Physician and the phone call to the patient's husband to not proceed with the explant.

Pa Bero stated that he was in the operating room during the debridement and once the decision was made by the Supervising Physician and the patient's husband they closed the patient back up.

PA Shaff commented that this did not change the ultimate outcome but with the exception of timing.

PA Bero agreed that the issue is regarding timing.

In closing, Mr. McLerran stated that PA Bero has taken responsibility for his action and taken the recommended CME. Mr. McLerran stated that this does not warrant discipline and noted that the Medical Board dismissed the case regarding the supervising physician.

In closing, Board staff noted that arthrofibrosis was never documented.

MOTION: PA Shaff moved for a finding of unprofessional conduct in violation of A.R.S. § 32-2501(18)(j) and (p) for reasons as stated by SIRC.
SECOND: Dr. Dang.

VOTE: The following Board members voted in favor of the motion: Chair Reina, PA Shaff, Dr. Batizy, Dr. Dang, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich. The following Board members were absent: Dr. Bennet and PA Clark.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

PA Shaff acknowledged the CME that has been completed by PA Bero.

MOTION: PA Shaff moved to issue an Advisory Letter for failing to check infection markers and consider obtainment of a knee arthrogram to aid in determining the presence and/or extent of the infection or a fistula and inadequate documentation. While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.
SECOND: PA DiBaise.
Ms. Smith explained that this motion is a non-disciplinary outcome versus the Letter of Reprimand recommendation by staff, which is disciplinary.

Ms. Zoneraich opined that there should have been sooner intervention and asking for assistance. The lack to obtain help led to this patient suffering for longer. Dr. Batizy opined that the Supervising Physician was involved in the care and that the Board must look at the role of the supervising physician and the PA. Dr. Batizy spoke in favor of the motion.
VOTE: The following Board members voted in favor of the motion: Chair Reina, PA Shaff, Dr. Batizy, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich. The following Board member voted against the motion: Dr. Dang. The following Board members were absent: Dr. Bennett and PA Clark.
VOTE: 7-yay, 1-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

CONSENT AGENDA

J. CASES RECOMMENDED FOR DISMISSA

MOTION: PA Shaff moved to dismiss in item numbers 1 and 2.
SECOND: Ms. Zoneraich.
VOTE: The following Board members voted in favor of the motion: Chair Reina, PA Shaff, Dr. Batizy, Dr. Dang, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich. The following Board members were absent: Dr. Bennet and PA Clark.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

1. PA-22-0059A, CHRISTOPHER J. COSTELLO, P.A., LIC. #7505

   RESOLUTION: Dismissed.

2. PA-22-0043A, DEVON J. AUTH, P.A., LIC. #5342
   M.B. addressed the Board during the Call to Public Statements portion of the meeting.

   RESOLUTION: Dismissed.

K. CASES RECOMMENDED FOR ADVISORY LETTERS

MOTION: PA Shaff moved to issue an Advisory Letter in item numbers 1-4.
SECOND: PA DiBaise.
VOTE: The following Board members voted in favor of the motion: Chair Reina, PA Shaff, Dr. Batizy, Dr. Dang, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich. The following Board member was absent: Dr. Bennet and PA Clark.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

1. PA-22-0047A, MARIO R. MUNOZ, P.A., LIC. #3490

RESOLUTION: Advisory Letter for failing to report felony and misdemeanor charges within ten days as required by statute. While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.

2. PA-22-0060A, CHAD N. SIEVERS, P.A., LIC. #7233

RESOLUTION: Advisory Letter for action taken by the Montana Board. While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.

3. PA-23-0026A, ASHLEY N. CIALLELLA, P.A., LIC. #7475

RESOLUTION: Advisory Letter for performing health care tasks without an appropriate delegation agreement and for failing to timely update addresses on file with the Board. While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.

4. PA-23-0063A, MARIANNE CONTRERAS, P.A., LIC. #4274

RESOLUTION: Advisory Letter for practicing with an expired license. While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.

L. CASES RECOMMENDED FOR ADVISORY LETTERS WITH NON-DISCIPLINARY CONTINUING MEDICAL EDUCATION ORDER

1. PA-22-0092A, PA-22-0086A, PA-22-0062A, MARK R. SCOTT, P.A., LIC. #2319

MOTION: PA Shaff moved to issue an Advisory Letter and Order for Non-Disciplinary CME for inadequate documentation. While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee. Within six months, complete no less than 10 hours of Board staff pre-approved Category I CME in an intensive, in-person course regarding medical recordkeeping. The CME hours shall be in addition to the hours required for license renewal.
SECOND: Dr. Batizy.
VOTE: The following Board members voted in favor of the motion: Chair Reina, PA Shaff, Dr. Batizy, Dr. Dang, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich. The following Board members were absent: Dr. Bennet and PA Clark.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

M. PROPOSED CONSENT AGREEMENTS (Disciplinary)

1. PA-21-0078A, PA-21-0055A, PA-22-0049A, PA-22-0068A, SCOTT J. WOFFINDEN, P.A., LIC. #4966

MOTION: PA Shaff moved to accept the proposed consent agreement for a Decree of Censure.
SECOND: Ms. DiBaise.
VOTE: The following Board members voted in favor of the motion: Chair Reina, PA Shaff, Dr. Batizy, Dr. Dang, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich. The following Board members were absent: Dr. Bennet and PA Clark.

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

N. LICENSE APPLICATIONS

i. APPROVE OR DENY LICENSE APPLICATION

1. PA-23-0060A, ELIZABETH N. ADY, P.A., LIC. #N/A

MOTION: PA Shaff moved to grant the license.
SECOND: Dr. Dang.
VOTE: The following Board members voted in favor of the motion: Chair Reina, PA Shaff, Dr. Batizy, Dr. Dang, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich. The following Board members were absent: Dr. Bennet and PA Clark.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

OTHER BUSINESS

O. ADJOURNMENT

MOTION: PA Shaff moved for the Board to adjourn.
SECOND: PA Graham.
VOTE: The following Board members voted in favor of the motion: Chair Reina, PA Shaff, Dr. Batizy, Dr. Dang, PA DiBaise, Dr. Gosi, PA Graham and PA Zoneraich. The following Board members were absent: Dr. Bennet and PA Clark.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

The Board meeting adjourned at: 11:44 am

Patricia E. McSorley, Executive Director

Arizona Regulatory Board of Physician Assistants
1740 W. Adams St, Suite 4000, Phoenix, AZ 85007
Telephone: 480-551-2700 • Fax: 480-551-2705 • www.azpa.gov

DRAFT MINUTES FOR MEETING OF JOINT LEGISLATION AND RULES COMMITTEE TELECONFERENCE MEETING Held on Monday, October 2, 2023 1740 W. Adams St., Board Room 4100, Phoenix, AZ 85007

Committee Members
Susan Reina, P.A.-C., Chair
David J. Bennett, D.O.
Kevin K. Dang, Pharm D.
Michelle DiBaise, D.H.S.c., P.A.-C., D.F.A.A.P.A.
John J. Shaff, PA-C, DFAAPA

A. CALL TO ORDER
Chairwoman Reina called the meeting to order a 5:01 p.m.

B. ROLL CALL
The following Committee Members participated via Zoom: Chair Reina, Dr. Bennett, Dr. Dang, PA DiBaise and PA Shaff.

ALSO PRESENT
The following Board staff participated in the meeting: Patricia McSorley, Executive Director; Kristina Jensen, Deputy Director; Michelle Robles, Board Operations Manager. Also present: Carrie Smith, Assistant Attorney General ("AAG").

C. CALL TO THE PUBLIC
Sarah Bolander, Amanda Shelley and Melanie Lyon from ASAPA addressed the Committee during the Call to the Public.

D. APPROVAL OF MINUTES
- August 17, 2023 Joint Legislation and Rules Committee Teleconference

MOTION: PA Shaff moved to approve the August 17, 2023 Joint Legislation and Rules Committee Teleconference.
SECOND: Dr. Bennett
The following Committee Members voted in favor of the motion: Chair Reina, Dr. Bennett, Dr. Dang, PA DiBaise and PA Shaff.
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

E. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING RULES FOR THE IMPLEMENTATION OF HB2043 AND COLLABORATIVE PRACTICE BY PHYSICIAN ASSISTANTS
Ms. McSorley noted that the Rules will be sent to a rule writer to get the format GRRC ready. Ms. McSorley informed the Committee that one of the changes is in Rule 1 paragraph 5, which added language that addresses physician assistants who have been actively practicing for 5 years and that 2000 clinical hours must be within three years. The change in Rule 2 is regarding what happens when the collaborating physician assistant substantially changes their practice would require a one year supervision agreement.

PA Shaff disagreed with the one-year supervision agreement requirement and opined that it should be decided at the practice level. PA DiBaise agreed that it should be at the practice level and questioned the logistics of who decides what is substantially different. PA Shaff noted that when a PA changes practices they are still required to inform the Board. PA Reina inquired about how the Board would differentiate what is substantially different.

Ms. Smith explained that the statute does not require the Board to make the determination, and the current language of the rule would leave that for, the PA and the collaborating physician to make.

Dr. Bennett reiterated that the Board is not a certification board. Dr. Dang inquired where this requirement came from.

Ms. McSorley clarified that this is not mirroring other states as each state is different. The certification is an Arizona distinction and the one-year supervision requirement was a suggestion for the Committee to consider as it is still going to be handled at the practice level.

Ms. Smith noted that the language of the statute leaves room for the board to make an interpretation.

PA Reina expressed concern that some PAs may interpret this as independent practice but stated that she does not want to create roadblocks on what a trained PA can do. PA DiBaise opined that if the Board is not determining what is substantially different then imposing an arbitrary one-year supervisory agreement, it seems complicated since it will be handled at the practice site anyway. PA Reina noted that it is the Board's mission to protect the public. PA Shaff reiterated that if the Board included this language, they would need to create rules and regulations on what is substantially different. PA Shaff opined that the language should remain as is without the one-year supervisory requirement. PA DiBaise agreed that the previous language was less cumbersome. The Committee agreed to keep the previous August 17th draft version of Rule 2; without the supervisory agreement.

Regarding Rule 1 Paragraph 5, PA Reina stated that this is mostly going to affect the educators. This change is that within the last 3 years have at least 2000 hours of clinical hours.

Ms. Smith clarified that this would also affect the PAs who have been practicing for over five years and who haven't reached the 8000 hours in the last five years.

Committee members agreed with the change and current draft of Rule 1. Committee members opined that 2000 hours is attainable in a three-year period for PAs working in education.

PA DiBaise noted a correction regarding the didactic hours in the FAQs and noted that the statement of the waiver is missing.

Ms. McSorley noted number 9 of the FAQs for the Committee's review; the medical services that may be provided by a collaborative PA includes "delegating and assigning therapeutic and diagnostic measures to and supervising licensed or unlicensed personnel."

PA Reina noted that the PA is held to a higher liability as a collaborative PA.

Ms. Smith noted that this bill does have changes from the regular PA's perspective and an update will be given to the full Board at the November meeting. Ms. Smith explained that this does adjust some of the supervising physician and PA relationship. Prescribing authority has to be described in the supervision agreement now and the agreement no longer needs to be updated annually.

PA Shaff suggested including the changes to the supervisory agreement in the FAQs.

Ms. Smith suggested having a separate FAQ page for supervisory agreements to prevent confusion.

Ms. McSorley confirmed that after today these drafts will go to the rule writer but suggested that they go to the full board for approval first.

Committee members agreed to send the rules to the full Board for approval.

Ms. Smith noted that there is a timeframe for public feedback on how the rules are working.

F. DISCUSSION OF DATES AND TOPICS FOR UPCOMING COMMITTEE MEETING

G. ADJOURNMENT

MOTION: PA DiBaise moved to adjourn the meeting.
SECOND: Dr. Bennett.
The following Committee Members voted in favor of the motion: Chair Reina, Dr. Bennett, Dr. Dang, PA DiBaise and PA Shaff.
VOTE: 5-yay, 0-nay, 0-abstain, 0-recuse, 0-absent.
MOTION PASSED.

The meeting adjourned at 5:42 p.m.

Patricia E. McSorley, Executive Director

Arizona Regulatory Board of Physician Assistants
1740 W. Adams St, Suite 4000, Phoenix, AZ 85007
Telephone: 480-551-2700 • Fax: 480-551-2702 • www.azpa.gov

FINAL MINUTES FOR REGULAR SESSION MEETING
Held on Wednesday, November 29, 2023
1740 W. Adams St., Board Room A, Phoenix, AZ 85007

Board Members
Susan Reina, P.A.-C, Chair
John J. Shaff, PA-C, D.F.A.A.P.A., Vice-Chair
Levente G. Batizy, D.O.
David J. Bennett, D.O.
Kendra Clark, P.A.-C
Kevin K. Dang, Pharm D.
Michelle DiBaise, D.H.S.c., P.A.-C., D.F.A.A.P.A.
Shiva K. Y. Gosi, M.D., M.P.H., F.A.A.F.P., C.P.E.
Amanda Graham, P.A.
Beth E. Zoneraich

GENERAL BUSINESS

A. CALL TO ORDER
Chairwoman Reina called the meeting to order at 10:04 a.m.

B. ROLL CALL
The following Board members participated in the meeting: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham.

The following Board members were absent: Dr. Gosi and Ms. Zoneraich.

ALSO PRESENT
The following Board staff and Assistant Attorney(s) General were present: Patricia McSorley, Executive Director; Kristina Jensen, Deputy Director; Carrie Smith, Assistant Attorney General ("AAG"); Raquel Rivera, Investigations Manager; Joseph McClain, M.D., Chief Medical Consultant and Michelle Robles, Board Operations Manager.

C. CALL TO THE PUBLIC
Individuals who addressed the Board during the Call to the Public appear beneath the matter(s) referenced.

D. REVIEW, DISCUSSION, AND POSSIBLE ACTION REGARDING EXECUTIVE DIRECTOR'S REPORT
No report given.

E. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING CHAIR'S REPORT
No report given.

F. REVIEW DISCUSSION AND POSSIBLE ACTION REGARDING LEGAL ADVISOR'S REPORT
- 2023 Legislative Advice Memorandum

  Ms. Smith provided a 2023 legislative update for review. All statutes went into effect on October 30, 2023 and most are administrative. Ms. Smith informed the Board of the

changes in HB204, regarding the definition for supervising physician agreements and noted that it goes into effect on December 31, 2023. Starting January 1, 2024, agreements should be amended to be in line with the statute change.

G. REVIEW, DISCUSSION AND POSSIBLE ACTION REGARDING RULES FOR THE IMPLEMENTATION OF HB2043 AND COLLABORATIVE PRACTICE BY PHYSICIAN ASSISTANTS

Ms. Kaitlin Bezuyan, Ms. Melinda Rawcliffe from ASAPA and Dr. Valerie Miranda addressed the Board during the Call to the Public portion of the meeting.

Ms. McSorley informed the Board that one modification is to include the definition of good standing. A PA cannot have a pending investigation, current investigation, or disciplinary action. The collaborative agreement is an agreement between the PA and the employer or collaborating physician. The PA would apply to the Board and submit the hours for certification. Board staff will determine if those hours meet the requirement. The Board will certify the PA to be able to work as a collaborative PA but it is at the practice level to determine the scope of practice and needs to be set forth in the individualized agreement. If changing from one specialty to another the collaborating physician will determine at the practice level if additional training is needed and will have the option to have a supervisory agreement in place. Ms. McSorley noted that given all the changes, a FAQ for the collaborative practice and supervised practice will be posted to the Board's website.

PA Shaff noted that if a physician has worked 8000 hours it is approximately equivalent to four years of full-time practice.

Ms. McSorley confirmed that she will also provide the FAQs through an email blast.

MOTION: PA Shaff moved to approve the rules for the implementation of HB2043 and the amendments.
SECOND: PA Clark.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

H. APPROVAL OF MINUTES

- August 30, 2023 Regular Session Meeting

MOTION: Dr. Batizy moved to approve the August 30, 2023 Regular Session meeting.
SECOND: PA Clark.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

LEGAL MATTERS

I. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION ON THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION

Possible action includes, but is not limited to, adopting Findings of Fact, Conclusions of Law and Order.

Pursuant to A.R.S. § 41-1092.08(i), the Board may meet and confer for purposes of modifying the recommended decision, including the Findings Of Fact, Conclusions Of Law and Recommended Order set forth in the ALJ's recommended decision issued in case no. 23A-8510-PAB involving Wagner Gervais, PA and in case no. 23A-8463-PAB involving Herold Pierre-Louis, PA.

1. PA-21-0101A, WAGNER GERVAIS, P.A., LIC. #8510

PA Gervais was not present. Counsel Michael Goldberg participated virtually on behalf of the PA. AAG Elizabeth Campbell was present on behalf of the State and AAG Diane DeDea was present as the Board's Independent Legal Advisor.

Ms. Campbell stated that there is a recommended decision by the Administrative Law Judge (ALJ) for Revocation. Ms. Campbell requested an amendment in Findings of Fact 6 for clarity and completeness regarding the description of unprofessional conduct as alleged in the complaint and notice of hearing. Ms. Campbell also requested that the Board amend the ALJ's Conclusion of Law. Principally, the Board should interpret the statute to require that an applicant establish residency as a condition for granting the license under the Universal Recognition pathway. Ms. Campbell noted that the PA had the option to apply for licensure through the traditional licensure pathway under the Board statutes if he had not established residency. Ms. Campbell requested that the Board adopt the ALJ's recommended order for Revocation with the requested modifications and to include the Board's costs for the hearing, which is permitted by the Board's statutes.

Mr. Goldberg provided an opening statement to the Board. Mr. Goldberg stated that the statute does not say an applicant has to establish residency before they apply. Mr. Goldberg stated that this case is going to go for review and the court can determine what the statute means. Mr. Goldberg requested that the Order go up on appeal the way it is. Mr. Goldberg opined the process has not been followed the way it should be. Mr. Goldberg opined that revocation is not appropriate and noted that the ALJ finding a deficiency in the statute shows that it is not clear. Mr. Goldberg opined that it is the job of the legislature not the Board to determine the intent of the statute. Mr. Goldberg requested the board not revoke the license and that the order go on appeal.

Ms. Campbell noted that there are two issues, first the ALJ found taht PA Gervais lied to the Board and second, PA Gervais did not establish residency in Arizona. The State does not preclude applicants that aren't Arizona residents from getting licensed in Arizona. Applicants who chose not to become an Arizona resident can use the traditional pathway for licensure. Ms. Campell informed the Board that it has the authority to accept, reject, or modify any aspect of the ALJ's recommendation by statute. Ms. Campbell requested that the Board amend the portion of the ALJ's recommended conclusions of law regarding PA Gervais having to establish residency in Arizona as a condition for obtaining a licensure under the Universal Recognition pathway.

MOTION: PA Shaff moved to adopt the attached proposed Findings of Fact including the modifications requested by the State and initiate the meet and confer process.
SECOND: Dr. Dang.
PA Shaff inquired if the PA can withdraw his application and go through the initial application process at this point.

Ms. DeDea confirmed that that is not an option at this point.

MOTION: Dr. Bennet moved for the Board to enter into Executive Session to obtain legal advice pursuant to A.R.S. § 38-431.03(A)(3).
SECOND: Dr. Bennett.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

The Board entered into Executive Session at 11:02 a.m.
The Board returned to Open Session at 11:29 a.m.
No legal action was taken by the Board during Executive Session.

VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

MOTION: PA Shaff moved to adopt the attached proposed Conclusions of Law modifying the ALJ's Recommended Decision as requested by the State and initiate the meet and confer process.
SECOND: PA Clark.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

MOTION: PA Shaff moved to adopt the ALJ recommendation for revocation. The Respondent shall be assessed the costs of the formal hearing incurred by the Board of $1436.80.
SECOND: PA Clark.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

During the Meet and confer process

Ms. Campbell, on behalf of the State, encouraged the Board to accept the modifications as requested.

Mr. Goldberg objected to the modifications as the process today was not the correct one. Mr. Goldberg opined that the Board does not have the authority to modify the ALJ's order and that if the statute needs to be interpreted it shall be done by the legislature.

MOTION: PA Shaff moved to adopt the attached proposed Findings of Fact, Conclusions of Law and Order, which incorporates the requested amendments.
SECOND: Dr. Batizy.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

2. PA-21-0099A, HEROLD PIERRE-LOUIS, P.A., LIC. #8463
PA Pierre-Louis was not present. Counsel Michael Goldberg participated virtually on behalf of the PA. AAG Elizabeth Campbell was present on behalf of the State and AAG Diane DeDea was present as the Board's Independent Legal Advisor.

AAG Campbell informed the Board that the arguments that the Respondent makes are the same as the previous case. PA Pierre-Louis' council claims that there is prejudice, however this is not true. PA Pierre-Louis' council was provided a copy of the State's position on ALJ's recommended decision and was given an opportunity to respond and did so. Ms. Campbell requested a minor amendment in Finding of Fact 8 to protect the PA's privacy by removing his New York home address. Ms. Campbell also requested a minor amended to the Conclusions of Law paragraph 11 for clarity of the estabblished violation. In the recommended order Ms. Campbell requested that the Board accept the recommended order for revocation and to include the costs of the hearing.

Mr. Goldberg requested that the Board not adopt the ALJ's recommended discipline as the statute is not clear on what must happen prior to accepting employment. The PA listed a real address and testified that he didn't stay there but thought that met the statutory requirement. PA Pierre-Louis is in a residency program and the revocation will devastate that path. PA Pierre-Louis has no disciplinary actions on his healthcare records to indicate a revocation is warranted. Mr. Goldberg opined that revocation is not a proportionate discipline.

AAG Campbell stated that Revocation is appropriate in this case as PA Pierre-Louis does not meet the requirements of the license he was given. If he was not an Arizona resident he could have pursued licensure through the traditional pathway. Under the Universal Recognition pathway, Arizona residency is required for licensure. Ms. Campbell noted that the other issue in this case is the PA's honesty; nothing that truthfulness is a cornerstone to the Board's ability to regulate a licensee.

MOTION: PA Shaff moved to adopt the attached proposed Findings of Fact including the modifications requested by the State and initiate the meet and confer process.
SECOND: PA Clark.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

MOTION: PA Shaff moved to adopt the attached proposed Conclusions of Law modifying the ALJ's Recommended Decision as requested by the State and initiate the meet and confer process.
SECOND: PA Clark.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

MOTION: PA Shaff moved to adopt the ALJ recommendation for revocation. The Respondent shall be assessed the costs incurred by the Board of $1,778.30.
SECOND: PA Clark.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

Meet and confer process:

AAG Campbell requested that the Board accept the ALJ's recommendation with the proposed modifications by the state.

Mr. Goldberg did not object to the change to the findings of fact, but objected to modifications to the COL.

MOTION: PA Shaff moved to adopt the attached proposed Findings of Fact, Conclusions of Law and Order, which incorporates the requested amendments.
SECOND: PA Clark.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.

MOTION PASSED.

J. FORMAL INTERVIEWS

1. PA-22-0083A, VINCENT J. TAPIA, P.A., LIC. #2400
   PA Tapia was present without counsel.

   Board staff summarized that the Board received a notice from the Pharmacy Board that PA Tapia was non-compliant with the mandatory use requirements for the Arizona Controlled Substance Prescription Monitoring Program ("CSPMP"). Board staff reviewed a CSPMP repot for PA Tapia from October 2021 to October 2022 and selected 5 patients for review. Board staff reviewed PA Tapia's prescribing in these cases. SIRC discussed the case and observed PA Tapia's report that he had only utilized the CSPMP as an extra tool and used it as he felt necessary, which SIRC found concerning considering because the patients were being prescribed multiple controlled substances over long periods of time. SIRC observed that recent CSPMP data has confirmed that after the investigation, PA Tapia appears to be consistently utilizing the CSPMP. SIRC recommended returning the case to investigation to obtain an MC review of the 5 patients. A Medical Consultant ("MC") determined that PA Tapia deviated from the standard of care by failing to utilize the CSPMP, by prescribing high doses of opioids without documentation of referrals to a pain specialist, for concurrent prescribing of benzodiazepines, opioids, and muscle relaxants, inadequate monitoring, and inadequate documentation. PA Tapia responded that he has made the CSPMP system a daily part of his regimen in screening patients receiving controlled substances. SIRC discussed the case and remained concerned regarding the deviations identified. SIRC observed that the MC also identified irregular use of controlled substance agreements as well as a lack of documentation related to medication changes, alternatives attempted, or the patient responses to treatment. SIRC stated that based on the concerning and repetitive deviations identified, this case rises to the level of discipline and requires education and remediation.

   In an opening statement, PA Tapia stated that he understands the requirements of the CSPMP report and has been more diligent in querying the CSPMP. PA Tapia informed the Board that his goal is to provide his patients adequate care and improve quality of life. PA Tapis explained that he does not want to criminalize his patients for taking opioids or narcotic medications.

   During questioning, PA Tapia stated that he does not have special training in pain management but has completed continuing medical education (CME) in pain management. PA Tapia explained that the electronic filing system (EMR) he utilizes does not have CSPMP software incorporated but he is in the process of adding it. PA Tapia mentioned that he did not refuse to use the CSPMP report but referred to it as a tool. PA Tapia clarified for the Board that his medical practice is an internal medicine practice and estimated about 30 percent of the patients are on narcotic medications. PA Tapia also clarified that the patients seen by him are not strictly his but the whole practice, which means all providers have seen these patients depending on availability. PA Tapia noted that the availability and wait time for appointments to see a pain management specialist can be daunting. PA Tapia stated that there is no protocol in place for urine drug screens but informed the Board that after going through this process, his practice is now implementing more protocols. PA Tapia confirmed that there have been no bad patient outcomes.

   PA Shaff commented that PA Tapia's practice does a fair amount of pain management and noted it is the PA's obligation to have appropriate protocols in place. PA Shaff further noted that some of these protocols regarding UDS, monitoring or drug amount have not been implemented yet and it is the Board's job is to protect the public. Dr. Dang commented that pharmacists question patients who come into the pharmacy with multiple prescriptions for narcotics because of drug interactions and it is for their protection, not

for criminalization of the patient. PA Graham commented that although there is a lack of pain specialist availability, referrals should be made when appropriate.

PA Tapia informed the Board that since becoming aware of the CSPMP requirement he does not query every patient due to time constraints but for about 99 percent of his patients.

Chair Reina commented that changes need to be made in the office's policies and procedures to protect the public as mistakes can take a life.

During deliberations, Dr. Dang opined that PA Tapia clearly violated the state law requiring to the CSPMP.

MOTION: Dr. Dang moved for a finding of unprofessional conduct in violation of A.R.S. §§ 32-2501(18)(a) for a violation of A.R.S. § 36-2606(F),(j), and (p)).
SECOND: PA Shaff.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

MOTION: Dr. Dang moved for a draft Findings of Fact, Conclusions of Law and Order for Two Year Probation. Within six months, PA Tapia shall complete no less than 10 hours of Board staff pre-approved Category I CME in an intensive, in-person course regarding medical recordkeeping, and complete no less than the 15 hour of Board staff pre-approved Category I CME in an intensive, in-person course regarding controlled substance prescribing. The CME hours shall be in addition to the hours required for license renewal. Within thirty days of completing the Board ordered CME, PA Tapia shall enter into a contract with a Board approved monitoring company to perform periodic chart reviews, at the physician assistant's expense. After two consecutive favorable chart reviews, PA Tapia may petition the Board to terminate the Probation. PA Tapia shall not request early termination of Probation without having completed the chart review process. The Probation shall not terminate except upon affirmative request of the physician assistant and approval by the Board.
SECOND: Dr. Clark.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

2. PA-20-0006A, MICHAEL M. ABRAHAM, P.A., LIC. #5934
PA Abraham was present with counsel Flynn Carey.

Board staff summarized that this case was initiated on January 31, 2020, after receipt of a non-compliance report from PA Abraham's PHP Monitor who reported that PA Abraham had presented to work impaired. PA Abraham subsequently failed to check into the testing website, and he notified the relapse prevention group facilitator that he would not attend that Friday's meeting. The PHP Monitor found that PA Abraham was not safe to practice until he obtained a comprehensive evaluation. After meeting with the PHP Contractor on January 31, 2020, PA Abraham was arrested and charged with DUI which he failed to timely report. Effective February 4, 2020, PA Abraham entered into an Interim Consent Agreement for Practice Restriction. Shortly thereafter, PA Abraham surrendered his DEA registration and his pharmacist license with the AZ Pharmacy Board. By November 14, 2022, PA Abraham had completed treatment and started IOP along with private PHP Monitoring. On December 2, 2022, PA Abraham requested that Board staff lift his restriction. The PHP Monitor found that PA Abraham was safe to return to practice

medicine if he enters into 5 years of PHP monitoring and complete workplace evaluations for the first 3-6 months of practice with chart review by his supervisor. Effective April 25, 2023, PA Abraham entered into an Interim Consent Agreement for PHP Participation with an Amended Interim Practice Restriction prohibiting him from prescribing or having access to controlled substances in the workplace. This mirrored his Decree of Censure with restriction from case MD-18-0038A. Board staff considered whether PA Abraham's relapse in this case should be considered as his third strike. PA Abraham has not yet completed one PHP Agreement with this Board. PA Abraham has requested that his final agreement not include the practice restriction prohibiting him from prescribing controlled substances. The Board's PHP Monitor is supportive of PA Abraham's return to the practice of medicine without the restriction on controlled substances.

Mr. Carey provided an opening statement to the Boar where he stated that they do note disagree with monitoring but requested that PA Abraham be allowed to have prescribing privileges. Mr. Carey noted that Dr. Sucher opined that PA Abraham is safe to practice and prescribe controlled substances. Mr. Carey noted that he will be monitored by his employer and the Board. Mr. Carey stated that the Board allowing him to prescribe would be the first step to clearing an obstacle for PA Abraham as he would still need to obtain a DEA license. Mr. Carey requested that the Board allow PA Abraham to prescribe to seek a DEA license.

PA Abraham provided an opening statement to the Board and requested that he be allowed the opportunity to prescribe controlled substances again. PA Abraham stated that he has learned a great deal from his addiction and hopes to give back to his community. PA Abraham informed the Board that he is 16 months sober and informed the Board of the activities he continues to partake in that are key to his recovery. PA Abraham agreed that monitoring is one of those key activities. PA Abraham requested that he be allowed to prescribe controlled substances and work in addiction medicine to help those with this disease.

During questioning, PA Abraham informed the Board that he works at Scottsdale Recovery and works under one Supervising Physician. He does not hold hospital privileges. PA Abahram explained that his Supervising Physician is the director of Scottsdale Recovery and at Banner hospital and in the event of a patient undergoing detoxing, it can delay care to wait for his Supervising Physician to prescribe the control substance. PA Abraham stated that he also sees patients in an outpatient setting. There are controlled substances locked in the fridge at the practice which he does not have access to. PA Abraham confirmed that his Supervising Physician is aware that he may not be able to prescribe controlled substances for a period of 5 years depending on the outcome of the formal interview. PA Abraham acknowledged that a relapse can result in an interim summary suspension of his license. PA Abraham explained that he struggled with tapering off Suboxone in the past due to withdrawal and his obsession to use. PA Abraham informed the Board that he is confident that his obsession has been removed and that he would not relapse on Suboxone. PA Abraham informed the Board of his reasoning use of Kratom and that he wasn’t familiar with the drug and dosage. PA Abraham explained that he wasn’t working as a pharmacist in 2017 and voluntary surrendered his pharmacy license.

PA Shaff noted the third strike policy and that there is a possibility of losing his license in the event of a relapse. PA Shaff expressed concern regarding removing guardrails when there is a possibility of relapse.

PA Abraham stated that he is grateful that he can still practice and that 100 percent of his charts are being reviewed by his supervising physician. PA Abraham explained that he is requesting the ability to prescribe controlled substances to best treat his patients. PA Abraham further explained that a Supervising Physician is not always onsite and therefore he needs to be able to have prescribing abilities. PA Abraham stated that his supervising physician is willing to sign off on all his charts.

In closing, PA Abraham stated that he is thankful to continue practicing and is confident in his ability to stay in recovery.

MOTION: Dr. DiBaise moved for a finding of unprofessional conduct in violation of A.R.S. §§ 32-2501(18)(a) for a violation of A.R.S. § 32-3208(A), (d), (j), (q) and (ee).
SECOND: PA Shaff.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

MOTION: Dr. DiBaise moved for a draft Findings of Fact, Conclusions of Law and Order for a Decree of Censure with Minimum Five-Year Probation with terms and conditions consistent with his Interim Order. PA Abraham shall enter into a Practice Restriction prohibiting him from prescribing controlled substances or having access to them in the workplace and limiting his performance of health care tasks to a group setting during the time of probation. In addition, the Supervising Physician shall submit quarterly reports confirming PA Abraham's compliance with the workplace restriction. PA Abraham shall not request early termination of Probation. The Probation shall not terminate except upon affirmative request of the physician assistant and approval by the Board. PA Abraham's request for termination shall be accompanied by recommendation from his PHP Contractor stating that monitoring is no longer required.
SECOND: PA Shaff.
PA Graham spoke in favor of allowing PA Abraham to prescribe control substances. PA Clark agreed with granting that option with the understanding that the DEA process is still forthcoming. PA DiBaise spoke in favor of allowing prescribing but not access to the locked drugs on the practice's premises.

Mr. Carey noted that the DEA would not grant a license with a restriction.

Board staff stated that how the order is written now the Board would get quarterly reports from his supervising physician. If the restriction is removed, the Board can still request quarterly reports from the supervising physician and the Board can change the recommendations to monitor his prescribing. Board staff further clarified that at this point PA Abraham has not met the third strike policy and SIRC included the third strike language as the Board telling the PA this is your last chance.

PA Smith clarified that counsel's request is to allow PA Abraham to obtain a DEA license and to do so he cannot be prohibited from prescribing medications. As board staff stated there are other ways to monitor the PA in lieu of restriction.

Dr. Batizy opined that the restriction is a moot point; if the PA relapses and meets the third strike policy he will lose his license.
VOTE: The following Board members voted against the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Grahm. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 0-yay, 8-nay, 0-abstain, 0-recuse, 2-absent.
MOTION FAILED.

MOTION: Dr. DiBaise moved for a draft Findings of Fact, Conclusions of Law and Order for a Decree of Censure with Minimum Five-Year Probation with terms and conditions consistent with his Interim Order. PA Abraham's Supervising Physician shall perform routine reviews of PA Abraham's care and treatment of his patients to evaluate his controlled substance prescribing. PA Abraham shall cause his Supervising Physician to provide quarterly reports to the Board or at any time the Supervising Physician has concerns regarding PA Abraham's prescribing of controlled substances. PA Abraham shall not request early termination of

Probation. The Probation shall not terminate except upon affirmative request of the physician assistant and approval by the Board. PA Abraham's request for termination shall be accompanied by a recommendation from his PHP Contractor stating that monitoring is no longer required.
SECOND: PA Shaff.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

CONSENT AGENDA

K. CASES RECOMMENDED FOR ADVISORY LETTERS

1. PA-22-0085A, RISE CURIEL, P.A., LIC. #6994
   PA Curiel and counsel Steve Perlmutter addressed the Board during the Call to Public statements portion of the meeting.

   MOTION: PA Shaff moved to issue an Advisory Letter for prescribing a medication without an established physician patient relationship and for acting outside the scope of his delegation agreement. While the licensee has demonstrated substantial compliance through rehabilitation or remediation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee.
   SECOND: Dr. Dang.
   PA Shaff agreed that the PA acted in good faith, provided good care and had excellent notes however, it was against statute and was not a delegated task or within the scope of practice. Dr. Dang opined that to dismiss would set a bad precedence. PA Clark stated that the spirit of the law is not the same as the letter of the law and the PA must follow the statute.
   VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
   VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
   MOTION PASSED.

2. PA-22-0072A, ELIZABETH G. ABBOTT, P.A., LIC. #7732

   MOTION: PA Shaff moved to issue an Advisory Letter for failing to timely report a misdemeanor charge. While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.
   SECOND: Dr. Dang.
   VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
   VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
   MOTION PASSED.

L. CASES RECOMMENDED FOR ADVISORY LETTERS WITH NON-DISCIPLINARY CONTINUING MEDICAL EDUCATION ORDER

1. PA-21-0114A, ERIC E. COLE, P.A., LIC. #3789

   MOTION: PA Shaff moved to issue an Advisory Letter and Order for Non-Disciplinary CME for prescribing high dose opioids without clinical justification, inadequate monitoring of patients prescribed controlled substances, and inadequate documentation. While there is insufficient evidence to support

disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee. Within six months, complete no less than 15 hours of Board staff pre-approved Category I CME in an intensive, in-person course regarding controlled substance prescribing; and complete no less than 10 hours of Board staff pre-approved Category I CME in an intensive, in-person course regarding medical recordkeeping. The CME hours shall be in addition to the hours required for license renewal.
SECOND: PA Graham.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

M. REVIEW OF EXECUTIVE DIRECTOR DISMISSALS

1. PA-23-0014A, BAHMAN NAJI-TALAKAR, P.A., LIC. #2738

MOTION: PA Shaff moved to uphold the dismissal.
SECOND: Dr. Batizy.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

N. LICENSE APPLICATIONS

i. APPROVE OR DENY LICENSE APPLICATION

1. PA-23-0087A, JORDAN W. SCHENK, P.A., LIC. #N/A

MOTION: PA Clark moved to grant the license.
SECOND: Dr. Bennett.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

O. ADJOURNMENT

MOTION: PA Shaff moved for adjournment.
SECOND: PA Clark.
VOTE: The following Board members voted in favor of the motion: PA Reina, PA Shaff, Dr. Batizy, Dr. Bennett, PA Clark, Dr. Dang, Dr. DiBaise and PA Graham. The following Board members were absent: Dr. Gosi and Ms. Zoneraich.
VOTE: 8-yay, 0-nay, 0-abstain, 0-recuse, 2-absent.
MOTION PASSED.

The Board meeting adjourned at: 11:22 am

Patricia E. McSorley

Patricia E. McSorley, Executive Director

Katie Hobbs
Governor

Arizona Regulatory Board of Physician Assistants
1740 W. Adams, Suite 4000 • Phoenix, Arizona 85007
Telephone: 480-551-2700 • Toll Free: 877-255-2212 • Fax: 480-551-2704
Website: www.azpa.gov

Susan Reina, PA-C
Chair

February 16, 2024

Honorable Representative Selina Bliss
Arizona House of Representatives
1700 W. Washington, Ste. H
Phoenix, AZ 85007

RE: Rulemaking regarding Physician Assistants

Dear Representative Bliss,

Thank you for reaching out regarding this important issue. In creating the rules for collaborative practice, multiple meetings of the Arizona Regulatory Board of Physician Assistants (ARBoPA) were held, some were attended by stakeholders, and HB 2043, was carefully reviewed to ensure that the words of the statute directed the formation of the rules. ARBoPA is aware that many PAs are frustrated with the bill as they believe they were being given the statutory right to practice independently, and that they would be free of any financial burden associated with "supervision." However, HB2043 is clear that even under the collaborative model, a certain level of oversight is still mandated, and the collaborating physician assistant must collaborate, consult and refer to appropriate health care professionals based on the physician assistant's education, experience and competencies.

The rules created by ARBoPA were designed to be consistent with this statutory requirement for oversight and to ensure that the collaborative practice would be implemented to meet the stated requirements of the bill, and to protect the public, particularly when a collaborative physician assistant might be embarking on a practice that "is not substantially similar to the practice setting or specialty in which the physician assistant was previously certified."

A.R.S. § 32-2501 requires a collaborating entity to designate "one or more physicians by name or position who is responsible for oversight of the physician assistant:

> 6. "Collaborating physician or entity" means a physician, physician group practice, physician private practice or licensed health care institution that employs or collaborates with a physician assistant who has at least eight thousand hours of clinical practice as certified by the board pursuant to section 32-2536 and does not require a supervision agreement **and that designates one or more physicians by name or position who is responsible for the oversight of the physician assistant.**

A.R.S. § 32-2531(B) requires collaboration between a collaborating physician assistant as set forth in their practice setting's policies:

> B. Pursuant to the requirements of this chapter and the standard of care, a physician assistant who has at least eight thousand hours of clinical practice certified by the board pursuant to section 32-2536 is not required to practice pursuant to a supervision agreement **but shall continue to collaborate with, consult with or refer to the appropriate health care professional as indicated by the patient's condition and by the physician assistant's education, experience and competencies. The level of collaboration required by this subsection is determined by the policies of the practice setting at which the physician assistant is employed, including a physician employer, physician group practice or health care institution.**

Lastly, A.R.S. § 32-2536(B) required ARBoPA to adopt rules to ensure that collaborating physician assistants continue to be safe when they move to new areas of practice:

B. The board shall adopt rules establishing additional certification standards or requirements for physician assistants who previously completed eight thousand clinical practice hours certified by the board and who are seeking employment with a collaborating physician or entity for a position that is not substantially similar to the practice setting or specialty in which the physician assistant was previously certified. The certification standards or requirements shall ensure appropriate training and oversight, including a supervision agreement if warranted, for the physician assistant's new practice setting or specialty.

ARBoPA approached the implementation of HB2043 with the goal of identifying the least restrictive manner in which to enforce the provisions of the bill. To that end, the rules adopted by ARBoPA leave the authority at the practice level for ensuring that the collaborating physician assistant practices in accordance with A.R.S. § 32-2531(B) as well as ensuring that collaborating physician assistants who move into new areas of practice are properly educated and trained to practice safely. It should be noted that during the deliberations regarding the new rules, the Board considered and rejected requirements to have the policies submitted to the Agency, and for the Agency to affirmatively regulate the training and education requirements of A.R.S. § 32-2536(B).

Thus, the requirement for a collaborating physician or entity to maintain policies regarding the collaborating physician assistant is already in statute. The language of R4-17-402 simply ensures that those policies are in writing and sufficiently clear so that all parties involved can understand the degree of collaboration required by the entity for the physician assistant. Additionally, the rules are designed to meet the Agency's obligation under the statute to ensure that collaborating physician assistants remain competent to practice when they change practice areas.

It should be noted that as part of every investigation of a PA, a supervision or collaboration agreement is requested, which provides the Board with written documentation supporting the identity of the supervising/collaborating physician. Without this requirement, the Board would have no ability to confirm the identity of the reported physician supervising or collaborating with the PA. Since PA's cannot practice independently, the supervising/collaborating physician is required to provide a response related to the complaint and their supervision/collaboration of the PA. Therefore, the requirement for written policies assists the Board to meet its obligation to investigate and regulate unsafe practice, which is the primary duty of ARBoPA. *See* A.R.S. § 32-2504(A)(1) (stating that the Board shall, "As its primary duty, protect the public from unlawful, incompetent, unqualified, impaired or unprofessional physician assistants.)

I hope that this letter has answered the concerns that you have raised. The goal of the rules is to create a process that is clear, and to provide the least amount of administrative barriers by shifting much of the oversight away from the Board to the practice level, but still protects the public.

I am happy to engage in any further discussion if that would be helpful.

Respectfully,

Patricia E. McSorley
Executive Director

Gmail

Pat Mcsorley <patricia.mcsorley@azmd.gov>

APPROVAL REQUEST FOR RULES RE:COLLABORATVE PRACTICE BY PHYSICIAN ASSISTANTS

14 messages

Pat Mcsorley <patricia.mcsorley@azmd.gov> Fri, Dec 15, 2023 at 11:58 AM
To: Zaida Dedolph <zdedolph@az.gov>

Zaida,

I have attached the rules for collaborative practice for physician assistants, PAs, as allowed by the statute, A.R.S.32-2551(B), Section 1, in HB 2043 which I have also included for you, along with the FAQs. The Arizona Regulatory Board of Physician Assistants have met at least four times to consider the rules, and to find a balance to create rules that protect the public and do not place unreasonable barriers for PAs to practice at the top of their scope.

The statute provides for exempt rulemaking, however, the approval of the Governor's Office is necessary to proceed with the filing of the rules. The statute became effective on December 31,2023. The Arizona State Association of Physician Assistants (ASAPA) is aware of the rules and has provided input. While they are disappointed that the statute does not provide for independent practice, the rules have been crafted to allow the collaborating physician and the certified physician assistant to come to agreement at the practice level.

The effective date is December 31,2023, so I respectfully ask that you review the rules at your earliest convenience. If you have any questions, I am available to respond.

Many thanks.
Pat

--

Patricia McSorley

Executive Director

Arizona Medical Board

Arizona Regulatory Board of

Physician Assistants

3 attachments

Notice of Final Exempt Rulemaking (3).doc
53K

Approved by Gov HB 2043 (3).pdf
103K

PA FAQS COLLABORATIVE PRACTICE.pdf
200K

Pat Mcsorley <patricia.mcsorley@azmd.gov> Mon, Dec 18, 2023 at 10:11 AM
To: Zaida Dedolph <zdedolph@az.gov>

Hi Zaida,

Gmail

Pat Mcsorley <patricia.mcsorley@azmd.gov>

APPROVAL REQUEST FOR RULES RE:COLLABORATVE PRACTICE BY PHYSICIAN ASSISTANTS

Pat Mcsorley <patricia.mcsorley@azmd.gov> Mon, Dec 18, 2023 at 10:11 AM
To: Zaida Dedolph <zdedolph@az.gov>

Hi Zaida,
I am resending the rulemaking that needs to be filed before we can provided with the application which is due to commence Jan 1.
Thanks
Pat
[Quoted text hidden]

3 attachments

Notice of Final Exempt Rulemaking (3).doc
53K

Approved by Gov HB 2043 (3).pdf
103K

PA FAQS COLLABORATIVE PRACTICE.pdf
200K

I am resending the rulemaking that needs to be filed before we can provided with the application which is due to commence Jan 1.
Thanks
Pat
[Quoted text hidden]

3 attachments

Notice of Final Exempt Rulemaking (3).doc
53K

Approved by Gov HB 2043 (3).pdf
103K

PA FAQS COLLABORATIVE PRACTICE.pdf
200K

Zaida Dedolph <zdedolph@az.gov> Tue, Dec 19, 2023 at 12:30 PM
To: Pat Mcsorley <patricia.mcsorley@azmd.gov>

Hi Pat, please proceed with submission to GRRC.

OFFICE OF THE GOVERNOR
KATIE HOBBS

Zaida Dedolph Piecoro
She/Her/Hers (what's this?)
Health Policy Advisor
Office of Governor Katie Hobbs
zdedolph@az.gov
Cell: 602.525.9956

1700 W Washington St.
Phoenix, AZ 85007
https://azgovernor.gov
[Quoted text hidden]

Pat Mcsorley <patricia.mcsorley@azmd.gov> Tue, Dec 19, 2023 at 12:30 PM
To: Zaida Dedolph <zdedolph@az.gov>

Thank you!
Pat
[Quoted text hidden]

Pat Mcsorley <patricia.mcsorley@azmd.gov> Tue, Dec 19, 2023 at 12:33 PM
To: "jeanne@arizonarulesllc.com" <jeanne@arizonarulesllc.com>

Jeanne,

I have received approval from the Governor's Office to move ahead with the rulemaking for physician assistant collaborative practice. What needs to happen next?
[Quoted text hidden]

3 attachments

Notice of Final Exempt Rulemaking (3).doc
53K

Approved by Gov HB 2043 (3).pdf
103K

Gmail

Pat Mcsorley <patricia.mcsorley@azmd.gov>

APPROVAL REQUEST FOR RULES RE:COLLABORATVE PRACTICE BY PHYSICIAN ASSISTANTS

Zaida Dedolph <zdedolph@az.gov> Tue, Dec 19, 2023 at 12:30 PM
To: Pat Mcsorley <patricia.mcsorley@azmd.gov>

Hi Pat, please proceed with submission to GRRC.

OFFICE OF THE GOVERNOR
KATIE HOBBS

Zaida Dedolph Piecoro
She/Her/Hers (what's this?)
Health Policy Advisor
Office of Governor Katie Hobbs
zdedolph@az.gov
Cell: 602.525.9956

1700 W Washington St.
Phoenix, AZ 85007
https://azgovernor.gov
[Quoted text hidden]

SUNRISE REPORT

PROPOSED ESTABLISHMENT OF THE OPTIMAL TEAM PRACTICE MODEL IN THE PHYSICIAN ASSITANT PRACTICE ACT AND ITS IMPACT ON THE CURRENT USE OF FLUROSCOPY BY PHYSICIAN ASSISTANTS

Submitted by:

November 1, 2021

THE ARIZONA STATE ASSOCIATION OF PHYSICIAN ASSISTANTS

November 1, 2021

The Honorable Karen Fann
The Honorable Rusty Bowers
Arizona Legislature
1700 West Washington
Phoenix, Arizona 85007

RE: Sunrise Application for Optimal Team Practice within the Physician Assistants Practice Act

Dear President Fann and Speaker Bowers:

Out of an abundance of caution, on behalf of the Arizona State Association of Physician Assistants, this Sunrise Application is being submitted in support of the proposed modernization of the Physician Assistants Practice Act through the proposed enactment of the Optimal Team Practice model.

Briefly, Optimal Team Practice occurs when physician assistants, physicians and other healthcare professionals work together to provide quality care without burdensome administrative constraints. While Optimal Team Practice does not eliminate oversight, the practice model allows physician assistants to maximize their education, training and experience within the limitation of the clinical setting in which they practice.

Under existing Arizona statutes, a physician assistant is required to secure a delegation agreement from a specific supervising physician to practice in Arizona. In contrast, under Optimal Team Practice, qualified physician assistants with a minimum of 4,000 hours of clinical practice experience may work within the constraints established by the clinical setting in which they practice, as opposed to being tethered to a specific supervising physician.

It is critical to appreciate that Optimal Team Practice does not eliminate the current oversight of a physician assistant, nor does the practice model allow for independent practice. Nevertheless, Optimal Team Practice replaces the current administrative burdens with a more efficient oversight mechanism that reflects the present relationship between healthcare professionals in a clinical setting.

Under the existing Practice Act, the scope of practice for a licensed physician assistant is determined by each physician assistant's education, training and experience and is limited by provisions contained in the delegation agreement established by the supervising physician. Physician assistants provide medical services within the scope of their delegation agreement, which requires an annual update.

Similarly, under the proposed Optimal Team Practice model, the limitations on what medical services a physician assistant can provide will be determined by their respective education, training and experience as well as the limitations established by the clinical setting in which they practice.

Accordingly, based on the above overview of Optimal Team Practice, the Arizona State Association of Physician Assistants respectfully asserts that there is no increase in the scope of practice that results from the proposed legislation, as physician assistants will continue to be subject to regulatory oversight and limitations on their scope of work in a manner consistent with their respective education, training and experiences and within the limitations established by the clinical setting in which they practice.

On a narrow focus, the proposed legislation does contain clarifying provisions relating to a qualified physician assistant's ability to perform fluoroscopy. Under existing statutes, physician assistants provide fluoroscopic guided procedures under the authority of the delegation agreement.

The proposed Optimal Team Practice legislation contains specific training requirements for physician assistants to provide fluoroscopy within the constraints of the clinical practice setting. We believe adding a specific training requirement enhances the current standard in which a qualified physician assistant provides fluoroscopic guided procedures to patients. In essence, the specific training requirements are intended to enhance public safety and do not suggest that this is an increase in the scope of practice.

A similar discussion about specific training requirements for physician assistants providing fluoroscopy occurred in 2016 between the Arizona Medical Association and the Arizona State Association of Physician Assistants. Ultimately, at the time, the Arizona Regulatory Board of Physician Assistants opted to maintain the current practice of requiring the delegation agreement, as opposed to specific training requirements.

From the perspective of the Arizona State Association of Physician Assistants, under the proposed Optimal Team Practice legislation there is no increase in the scope of practice of a physician assistant providing fluoroscopic guided procedures, as qualified physician assistants are presently providing such services under existing Arizona law. Nevertheless, as expressed above, the attached Sunrise Application is being submitted out of the abundance of caution in order to meet any procedural challenges during the legislative discussion on Optimal Team Practice.

Thank you in advance for your consideration.

Sincerely,

Sarah Bolander, PA-C
President, Arizona State Association of Physician Assistants

The Arizona State Association of Physician Assistants (ASAPA) is seeking a clarification in the statutes that regulate physician assistants regarding fluoroscopy to ensure there are no interruptions in patient care should Optimal Team Practice be enacted in Arizona. From the perspective of ASAPA, there is no increase in the scope of practice of a physician assistant from that clarification; however, we are submitting the attached Sunrise Application out of an abundance of caution and in order to proactively address any procedural challenges during the legislative discussion on Optimal Team Practice.

1. **Why an increased scope of practice is beneficial, including the extent to which health care consumers need and will benefit from safe, quality care from practitioners with this scope of practice.**

   Physician assistants (PAs) practice in nearly all specialties of medicine, providing safe and efficient health care to patients across Arizona. Physician assistants practice has been well received by the public and is an established part of the health care team, with collaboration between supervising physicians and physician assistants expanding access to care.

   As part of a health care team, physician assistants practice in major radiology departments, performing health care tasks delegated by supervising physicians, often radiologists. As part of these health care tasks, fluoroscopic guided procedures performed by physician assistants extend the care of both interventional and diagnostic radiologists. In addition to radiology, physician assistants also practice in other clinical settings that commonly employ radiology as a part of patient care, including but not limited to general surgery, subsurgical specialties, emergency medicine, and orthopedics.

   Physician assistants have been performing diagnostic and interventional procedures that use ionizing radiation since the early days of the profession. Under existing law, fluoroscopy is currently within a physician assistant's scope of practice if they have the proper training, experience, and education and the procedure has been delegated to the physician assistant as part of their delegation agreement.

   In addition, ARS 30-672, which regulates ionizing radiation, states physician assistants, along with other occupations, are governed by their own licensing acts and the Arizona Department of Health Services cannot require them to obtain any other license to use a diagnostic x-ray machine.

   This sunrise application seeks to ensure there is no disruption in patient care related to fluoroscopy should Optimal Team Practice be enacted in Arizona.

2. **Whether those health professionals seeking an increased scope of practice currently have or will be required to have didactic and clinical education from accredited professional schools or training from recognized programs that prepare them to perform the proposed scope of practice, and details on what that education or training includes for that proposed scope of practice.**

   Under existing Arizona statutes, a physician assistant is required to secure a delegation agreement from a specific supervising physician to practice in Arizona. In contrast, under Optimal Team Practice, qualified physician assistants with a minimum of 4,000 hours of clinical practice experience may work within the constraints established by the clinical setting in which they practice, as opposed to being tethered to a specific supervising physician.

As part of the Optimal Team Practice legislation that ASAPA is pursuing, a Physician Assistant with over 4,000 hours of practice under a delegation agreement (renamed collaboration agreement) documented to the Arizona Regulatory Board of Physician Assistants, will be required to collaborate with, consult with or refer to the appropriate member of the health care team as indicated by the patient's condition and as indicated by the physician assistant's education, experience and competencies. The level of collaboration required will be determined by their practice setting, not the collaboration agreement.

To ensure adequate training, ASAPA is seeking to require that a physician assistant has at least 16 hours of documented training in radiation safety to operate a fluoroscopy machine.

3. **Whether the subject matter of the proposed increased scope of practice is currently tested by nationally recognized and accepted examinations for applicants for professional licensure and the details of the examination relating to the increased scope of practice.**

Physician assistants are educated at the master's degree level. There are more than 277 physician assistant programs in the country and admission is highly competitive, requiring a bachelor's degree and completion of courses in basic and behavioral sciences as prerequisites. Incoming physician assistant students bring with them an average of more than 3,000 hours of direct patient contact experience, having worked as paramedics, athletic trainers, or medical assistants, for example. Physician assistant programs are approximately 27 months (three academic years) and include classroom instruction and more than 2,000 hours of clinical rotations. Specifically:

Prerequisites:

- Bachelor's degree with courses in basic and behavioral sciences (typically 2 years of coursework in these areas)
    - Majority of programs have the following prerequisites: chemistry, physiology, anatomy, microbiology, biology
- Clinical experience (average is 3,000 hours of direct patient contact experience)
    - Common types of experience: medical assistant, EMT, paramedic, medic/medical corpsman, Peace Corps volunteer, lab assistant/phlebotomist, R.N., emergency room technician, surgical tech, CNA
- Standardized tests: varies, about half of programs require the GRE, few require the MCAT, few have no requirement, few are starting to adopt the PA-CAT

Program length: The typical length is 27 continuous months (equivalent to approximately 3 academic years), but ranges from 24-36 months

Curriculum:

Didactic phase: Basic medical sciences (anatomy, physiology, etc.), pharmacology, physical diagnosis, behavioral sciences, medical ethics, clinical medicine

On average, PA students take:

- 75 hrs pharmacology
- 175 hrs behavioral sciences
- 400 hrs basic sciences
- 580 hrs clinical medicine

Clinical phase: rotations in medical and surgical disciplines (family medicine, internal medicine, general surgery, pediatrics, OB/GYN, emergency medicine, psychiatry)

On average, by graduation PA students will have completed at least 2,000 hours of supervised clinical practice

Degree awarded: Master's degree (entry-level and terminal degree for profession)

Practice Requirements

- Pass the Physician Assistant National Certifying Examination (PANCE) developed by the National Commission on Certification of Physician Assistants
    - To maintain certification, physician assistants must log 100 hours of continuing education (50 hours must be category 1) every 2 years and pass the Physician Assistant National Recertification Exam (PANRE) every 10 years
- Obtain a license issued by the applicable state regulatory jurisdiction, in the case of Arizona, the Arizona Regulatory Board of Physician Assistants

4. **The extent to which the proposed increased scope of practice will impact the practice of those who are currently licensed in this state or the entry into practice of those individuals who have relocated from other states with substantially equivalent requirements for registration, certification, or licensure as this state.**

The proposal will not have a negative impact on those currently licensed as physician assistants. The goal of this change is to ensure that physician assistants who currently practice fluoroscopy will have the ability to continue doing so should the Optimal Team Practice model be enacted in Arizona.

For individuals that relocate to Arizona, it will be dependent on the scope of practice that they had in the jurisdiction they practiced in. If the individual has the education/experience and can document that to the Arizona Regulatory Board of Physician Assistants, they will still be able to practice fluoroscopy, assuming their delegation agreement (collaboration agreement) or practice setting allows for that. If they do not have the education/experience, they will be able to gain that education/experience in Arizona assuming their delegation agreement (collaboration agreement) or practice setting allows for fluoroscopy.

5. **The extent to which implementing the proposed increased scope of practice may result in savings or a cost to this state and to the public.**

There will not be a cost to the state or the public since physician assistants already perform fluoroscopy.

There will be a continued cost savings to the state by having a physician assistant available to perform fluoroscopy for AHCCCS members.

6. **The relevant health profession licensure laws, if any, in this or other states.**

   Physician assistants are regulated in every state throughout the U.S. From an Arizona perspective, the current Physician Assistant Practice Act is contained in Title 32, Chapter 25

7. **Recommendations, if any, from the applicable regulatory entity or entities, from the department of health services and from accredited educational or training programs.**

   None.

ARIZONA MEDICAL ASSOCIATION

WILLIAM C. THOMPSON IV, MD, FASA
PRESIDENT

LIBBY DE BIE, CAE
CHIEF EXECUTIVE OFFICER

April 5, 2024

Patricia McSorley
Executive Director, Arizona Medical Board
1740 W. Adams St, Suite 4000
Phoenix, Arizona 85007

Dear Ms. McSorley:

On behalf of the Arizona Medical Association (ArMA) and our nearly 4,000 physician members across the state, I commend the work of the Arizona Regulatory Board of Physician Assistants (ARBoPA) in writing rules to guide the implementation of HB2043 (physician assistants; supervision; collaboration), which was signed into law in 2023.

It is our understanding that the Arizona State Association of Physician Assistants (ASAPA) has expressed concern and requested the Governor's Regulatory Review Council (GRRC) review the rulemaking regarding the implementation of the law, specifically the requirement for documentation of relationships between Physician Assistants (PA) and Physicians.

ASAPA's request is disappointing in light of ArMA's extensive, collaborative discussions with the organization leading up to and during the 2023 Legislative Session. During our meetings, ASAPA members' stated goal was to update the PAs' practice act, creating an environment that would allow PAs, physicians, and other healthcare professionals to work together to provide quality care without certain administrative constraints.

ArMA worked alongside ASAPA to this end, as PAs are highly-valued members of the healthcare team and there was a feasible solution to reach their stated goal while maintaining patient safety. Both entities agreed that allowing those who have completed 8,000 hours of practice to enter into a collaborative practice agreement, thereby gaining a well-deserved degree of flexibility in practice, is a safe and appropriate process. However, at no point during our negotiations did ASAPA frame the discussion as an attempt to secure independent practice.

In fact, the term "independent practice" was not mentioned as a stated goal once in the committee testimony from ASAPA representatives. Further, the ASAPA Sunrise Report filed on November 1, 2021, and signed by ASAPA President Sarah Bolander, PA-C, stated:

> It is critical to appreciate that Optimal Team Practice does not eliminate the current oversight of a physician assistant, nor does the practice model allow for independent practice. Nevertheless, Optimal Team Practice replaces the current administrative burdens with a more efficient oversight mechanism that reflects the present relationship between healthcare professionals in a clinical setting.

ARIZONA MEDICAL ASSOCIATION

WILLIAM C. THOMPSON IV, MD, FASA
PRESIDENT

LIBBY DE BIE, CAE
CHIEF EXECUTIVE OFFICER

To call HB2043 “independent practice” or an “untethering of the relationship between a physician and PA” is intellectually dishonest and an inaccurate characterization of the legislation’s intent, which received strong public support from the ASAPA throughout the legislative process.
The rules produced by the ARBoPA accurately reflect the nature of the bill’s stakeholder process as well as the public testimony. ArMA strongly urges GRRC to approve the rules so Arizona’s healthcare community can begin implementation of the new statute.

Sincerely,

Amanda Sheinson

Amanda Sheinson
Director of Government Relations

info@AZmed.org
AZmed.org
@AZmedicine
@ArizonaMedicine
@ArizonaMedicine

2401 W. PEORIA AVE. SUITE 315 PHOENIX, AZ 602.347.6900