

GAME AND FISH COMMISSION (R-18-0201)

Title 12, Chapter 4, Article 6, Rules of Practice Before the Commission

Amend: R12-4-602; R12-4-603; R12-4-604; R12-4-605; R12-4-606; R12-4-607;
R12-4-609; R12-4-610; R12-4-611

New Section: R12-4-601; R12-4-608

Renumber: R12-4-601; R12-4-602; R12-4-603; R12-4-604; R12-4-605; R12-4-606;
R12-4-607



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – EXPEDITED RULEMAKING

MEETING DATE: February 6, 2018

AGENDA ITEM: F-1

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

FROM: Council Staff

DATE: January 23, 2018

SUBJECT: **GAME AND FISH COMMISSION (R-18-0201)**

Title 12, Chapter 4, Article 6, Rules of Practice Before the Commission

Amend: R12-4-602; R12-4-603; R12-4-604; R12-4-605; R12-4-606;
R12-4-607; R12-4-608; R12-4-609; R12-4-610; R12-4-611

New Section: R12-4-601;

Renumber: R12-4-601; R12-4-602; R12-4-603; R12-4-604; R12-4-605;
R12-4-606; R12-4-607

SUMMARY OF THE RULEMAKING

This expedited rulemaking, from the Arizona Game and Fish Commission (Commission), seeks to amend ten rules and create one new rule in A.A.C. Title 12, Chapter 4, Article 6, related to rules of practice before the Commission. The Commission is implementing the course of action proposed in its 2017 five-year review report on the rules. The Commission states that the rulemaking is intended to align the rules with statute, enable the Game and Fish Department (Department) to provide better customer service, and reduce regulatory and administrative burdens wherever possible.

The Commission indicates that the use of the expedited rulemaking process is justified by A.R.S. § 41-1027(A)(3), as the rulemaking clarifies rule language without changing the effect of the rules, and A.R.S. § 41-1027(A)(5), as the rulemaking reduces or consolidates steps, procedures, or processes in the rules. The Governor's Office provided an exemption from Executive Order 2017-02 on May 1, 2017.

Proposed Action

- Section 601 – *Definitions*: This new rule adds definitions applicable to the article.
- Section 602 (renumbered from 601) – *Petition for Rule or Review of Practice or Policy*: The rule is largely rewritten to make it more concise.

- Section 603 (renumbered from 602) – *Written Comments on Proposed Rules*: Clarifying changes are made.
- Section 604 (renumbered from 603) – *Oral Proceedings Before the Commission*: Clarifying changes are made.
- Section 605 (renumbered from 604) – *Ex Parte Communication*: The rule is largely rewritten to make it more concise.
- Section 606 (renumbered from 605) – *Standards for Revocation, Suspension, or Denial of a License*: The rule is largely rewritten to make it more concise.
- Section 607 (renumbered from 606) – *Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages*: Clarifying changes are made. Subsection (F), allowing the Commission to vote to use the Office of Administrative Hearings to conduct a hearing concerning revocation, suspension, or denial of the right to obtain a license, is added.
- Section 608 (renumbered from 607) – *Rehearing or Review of Commission Decisions*: The rule is modified to more accurately reflect the Commission’s rehearing and review process.
- Section 609 – *Commission Orders*: Clarifying changes are made. In Subsection (A), the Commission will have 14 days to post a public meeting notice prior to a meeting where the Commission will consider a Commission Order, rather than 20 days.
- Section 610 – *Petitions for the Closure of State or Federal Lands to Hunting, Fishing, Trapping, or Operation of Motor Vehicles*: The rule is largely rewritten to make it more concise.
- Section 611 – *Petition for a Hearing Before the Commission When No Remedy is Provided in Statute, Rule, or Policy*: The rule is largely rewritten to make it more concise.

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

Yes. The Commission cites to a number of statutes as authority for the rules, including A.R.S. § 17-231(A)(1), under which the Commission “shall adopt rules and establish services it deems necessary to carry out the provisions and purposes of this title [Title 17, Game and Fish].”

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

No. The rules do not establish a new fee or contain a fee increase.

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

No. The Commission indicates that it has not received any public comments on the rulemaking.

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

No. Only non-substantive technical changes have been made between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited Rulemaking.

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

No. The Commission states that there is no corresponding federal law related to the rules.

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

No. The rules do not require a permit or license.

7. 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?

No. The Commission indicates that it did not rely on any study in its evaluation of, or justification for, the rules.

8. Conclusion

If approved, this expedited rulemaking will become effective immediately upon filing with the Secretary of State. See A.R.S. § 41-1027(H). Council staff recommends approval of the expedited rulemaking.



THE STATE OF ARIZONA
GAME AND FISH DEPARTMENT

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December 1, 2017

Nicole Ong-Colyer, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

**Re: A.A.C. Title 12. Natural Resources, Chapter 4. Game and Fish Commission
Article 6. Rules of Practice Before the Commission**

Dear Ms Ong-Colyer:

The Arizona Game and Fish Commission respectfully submit the accompanying final expedited rule package for inclusion on the Council agenda.

In compliance with R1-6-202(A)(1), the Department provides you with the following information:

- a. The rulemaking record closed on December 1, 2017.
- b. Under A.R.S. § 41-1027, an agency may use the expedited rulemaking process to if the rulemaking does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated and does one or more of the following: (A)(3) clarifies language of a rule without changing its effect; (A)(5) reduces or consolidates steps, procedures, or processes in the rules; or (A)(7) implements, without material change, a course of action that is proposed in a five-year review report approved by the Governor's Regulatory Review Council (G.R.R.C.) pursuant to A.R.S. § 41-1056 within one hundred eighty days of the date that the agency files the Notice of Proposed Expedited Rulemaking with the Secretary of State. The Commission approved the Article 6 Five-year Review Report (5YRR) at the December 2, 2016 Commission Meeting and G.R.R.C. approved the Article 6 5YRR at the March 7, 2017 Council Meeting.
- c. This rulemaking activity is related to the five-year-review report approved by the Council on March 7, 2017.
- d. The preamble discloses a reference to all studies relevant to the rule that the agency reviewed and either did or did not rely on in its evaluation of, or justification for, the rule.

**A.A.C. Title 12. Natural Resources, Chapter 4. Game and Fish Commission
Article 6. Rules of Practice Before the Commission**

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e. Items included in the rulemaking package are as follows:

- Signed cover letter
- Notice of Final Expedited Rulemaking
- Authorizing statute: A.R.S. § 17-231(A)(1)
- Implementing statute: A.R.S. §§ 17-231(B)(1), 17-231(B)(12), 17-231, 17-234, 17-304, 17-314, 17-340, 41-1003, 41-1023, 41-1033, and Title 41, Chapter 6, Article 10
- Definitions of terms contained in statute or other rules and used in the rulemaking

Sincerely,

A handwritten signature in black ink, appearing to read "Ty E. Gray for".

Ty E. Gray
Director

NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION

PREAMBLE

- | | | |
|-----------|---|---------------------------------|
| 1. | <u>Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
| | R12-4-601 | Renumber |
| | R12-4-601 | New Section |
| | R12-4-602 | Renumber |
| | R12-4-602 | Amend |
| | R12-4-603 | Renumber |
| | R12-4-603 | Amend |
| | R12-4-604 | Renumber |
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| | R12-4-606 | Renumber |
| | R12-4-606 | Amend |
| | R12-4-607 | Renumber |
| | R12-4-607 | Amend |
| | R12-4-608 | New Section |
| | R12-4-609 | Amend |
| | R12-4-610 | Amend |
| | R12-4-611 | Amend |
| 2. | <u>Citations to the agency's statutory authority to include the authorizing statute (general) and the implementing statute (specific):</u> | |
| | Authorizing statute: A.R.S. §§ 17-231(A)(1) and 41-1027(A) | |
| | Implementing statute: A.R.S. §§ 17-231(B)(1), 17-231(B)(12), 17-231, 17-234, 17-304, 17-314, 17-340, 41-1003, 41-1023, 41-1033, and Title 41, Chapter 6, Article 10 | |
| 3. | <u>The effective date of the rules:</u> | |
| a. | <u>If the agency selected a date earlier than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):</u> | |
| | The rule is effective immediately upon filing with the Secretary of State's office as authorized under A.R.S. § 41-1027(H), which allows for an immediate effective date upon filing the Notice of Expedited Rulemaking with the Secretary of State's Office. | |

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

Not applicable

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

Notice of Rulemaking Docket Opening: 23 A.A.R. (*to be filled in by the Register Editor*), October 13, 2017

Notice of Proposed Expedited Rulemaking: 23 A.A.R. (*to be filled in by the Register Editor*), October 13, 2017

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

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) 236-7110

E-mail: CCook@azgfd.gov

Please visit the AZGFD website to track the progress of this rule; view the regulatory agenda and all previous Five-year Review Reports; and learn about any other agency rulemaking matters at <https://www.azgfd.com/agency/rulemaking/>.

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

The Arizona Game and Fish Commission proposes to amend its rules following the 2017 five-year rule review of Article 6, Rules of Practice Before the Commission, to enact recommendations developed during the five-year review. The recommended amendments are designed to align the rule with statute, enable the Department to provide better customer service, and reduce regulatory and administrative burdens wherever possible.

Under A.R.S. § 41-1027, an agency may use the expedited rulemaking process if the rulemaking does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated and does one or more of the following: (A)(3) clarifies language of a rule without changing its effect; (A)(5) reduces or consolidates steps, procedures, or processes in the rules; or (A)(7) implements, without material change, a course of action that is proposed in a five-year review report approved by the Governor's Regulatory Review Council (G.R.R.C.) pursuant to A.R.S. § 41-1056 within one hundred eighty days of the date that the agency files the Notice of Proposed Expedited Rulemaking with the Secretary of State. The Commission approved the Article 6 Five-year Review Report (5YRR) at the December 2, 2016 Commission Meeting and G.R.R.C. approved the Article 6 5YRR at the March 7, 2017 Council Meeting.

An exemption from Executive Order 2015-01 was provided for this rulemaking by Hunter Moore, Natural Resource Policy Advisor, Governor's Office, in an email dated May 1, 2017.

R12-4-601. Petition for Rule or Review of Practice or Policy

The objective of the rule is to establish the manner and form in which a person may petition the Commission to adopt, amend, or repeal a rule or review an agency practice or policy. Under A.R.S. § 41-1033, all state agencies are required to establish the manner and form by which a person may petition the agency to request the making of a final rule or the review of an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule. The Commission proposes to adopt a definitions rule and transfer definitions provided within Article 6 rules to R12-4-601, and then renumber rules R12-4-601 through R12-4-607 to increase consistency between Commission rules and ensure conformity with the Arizona Administrative Procedures Act and Secretary of State's rulemaking format and style requirements and standards. The Commission proposes to renumber the rule to R12-4-602. The Commission also proposes to define the terms "business day", "Commission Chair" and "respondent" to clarify the terms referenced within Article 6 to ensure the consistent interpretation of Commission rules. A person is required to submit a petition that meets specific formatting requirements. In an effort to reduce the burden and costs to the regulated public and simplify and enhance the public petition process, the Commission also proposes to amend the rule to require a petitioner to use a form furnished by the Department. The proposed form will reduce the number of non-compliant petitions received by the Department by ensuring all petitions contain the applicable information; this will also reduce the amount of time spent by Department employees on working with petitioners to correct petitions that do not meet the requirements established under rule. This amendment will streamline the process going forward and ensure consistency in all future petitions. In addition, to increase consistency between Commission rules, the Commission proposes to amend the rule to require a person submitting a petition to provide a physical and mailing address (if different from the physical address) and an email address when one is available. The Commission also proposes to increase the amount of time in which the Department must review and accept or return the petition and the time in which the Commission must hear the petition to increase consistency between all Commission petition rules. The Commission proposes to amend the rule to replace the term "Director" with "Department" to reduce regulatory ambiguity. Because the petition process is delegated to appropriate Department staff for evaluation and recommendation of the proposed change, this amendment will make the rule more concise and ensure consistency between Commission rules. In addition, the Commission proposes to amend the rule to remove the statement that a petition shall be retained by the Department for a period of five-years and considered as a comment during the next five-year review process. This requirement is already prescribed under A.R.S. § 41-1056, it is not necessary to include the statement in rule.

R12-4-602. Written Comments on Proposed Rules

The objective of the rule is to establish requirements for written comments submitted to the Department in response to a notice of proposed rulemaking. Under A.R.S. § 41-1029, all state agencies are required to maintain all written petitions, requests, submissions, and comments received by the agency in connection with the rule. The Commission proposes to renumber the rule to R12-4-603. The Department recognizes the requirements specific to comments submitted on behalf of a group or organization are difficult to enforce. The Commission believes this information is necessary to determine the origin of the comment and the extent of its

influence. Often, the person who submits a comment on behalf of a group or organization does not include all of the information required to classify the comment as that of the organization. The Department then attempts to obtain the required information by contacting the person who submitted the comment; this is often a time-consuming process for Department staff. The Commission proposes to amend the rule to clarify how comments submitted on behalf of a group or organization are recorded when the person fails to include all of the required information to reduce the resources spent by Department staff and prevent administrative delay. The Commission also proposes to amend the rule to remove the requirement that a group or organization provide the type of memberships available and number of Arizona residents represented by the group as this information serves no useful purpose and to reduce the burdens and costs to persons regulated by the rule. In addition, the Commission proposes to amend the rule to remove unnecessary verbiage and list requirements specific to comments submitted on behalf of a group or organization to make the rule more concise and reduce regulatory ambiguity.

R12-4-603. Oral Proceedings Before the Commission

The objective of the rule is to establish the Commission's operational process for oral proceedings held before the Commission. Under A.R.S. § 41-1023(F), each agency may make rules for the conduct of oral rulemaking proceedings, and may include provisions calculated to prevent undue repetition in the oral proceedings. The Commission proposes to renumber the rule to R12-4-604. The Commission proposes to amend the rule to repeal the definition of "matter" and "proceeding" as the common-use definition is satisfactory. The Commission proposes to amend the rule to replace references to "Chair" with "Commission Chair" to increase consistency between Commission rules and Department publications. The Commission also proposes to amend the rule to list oral proceeding authorizations and requirements to make the rule more concise. In addition, the Commission proposes to amend the rule to remove "based on the amount of time available" to make the rule more concise. All of these amendments are proposed to reduce or consolidate steps, procedures, or processes in the rule and reduce regulatory ambiguity.

R12-4-604. Ex Parte Communication

The objective of the rule is to establish communication prohibitions during the course of Commission decision processes. The Commission proposes to renumber the rule to R12-4-605. The Commission proposes to amend the rule to repeal the definition of "individual outside the Commission" as the term is no longer referenced in rule. The Commission proposes to amend the rule to transfer the definition of "ex parte communication" to R12-4-601 to ensure conformity with the Arizona Administrative Procedures Act and Secretary of State's rulemaking format and style requirements and standards. Under A.R.S. § 17-340(G), the Commission may use the services of the Office of Administrative Hearings to conduct hearings and make recommendations to the Commission. The Office of Administrative Hearings adheres to the requirements of R2-19-105. Ex Parte Communications, not this rule. Thus, the Commission proposes to remove the reference to "hearing office." The Commission compared its rule to rules governing rehearing or review made by other self-supporting agencies (Arizona Medical Board, State Board of Dental Examiners, Office of Administrative Hearings, and State Board of Accountancy) and, as a result of this comparison, the Commission proposes to amend the rule to remove

language referencing the service of a memorandum and copies of each response and memorandum for each oral response to any ex parte communication received by the Commissioner as these are self-imposed burdens that serve no valid purpose. Because only members of the Commission are truly involved in the decision-making process and all persons are subject to the rule, the Commission proposes to remove redundant language from the rule to make the rule more concise. All of these amendments are proposed to reduce or consolidate steps, procedures, or processes in the rule and reduce regulatory ambiguity.

R12-4-605. Standards for Revocation, Suspension, or Denial of a License

The objective of the rule is to establish standards for the revocation, suspension, or denial of a Department-issued license (this includes hunting and fishing licenses, special licenses issued under Article 4, and fur dealer, guide, license dealer, and taxidermy licenses). The Commission proposes to renumber the rule to R12-4-606. Under A.R.S. § 17-340, the Commission may, after a public hearing, revoke or suspend a license issued to any person under Title 17 and deny that person the right to secure another license to take or possess wildlife. Laws 2006, Second Regular Session, Chapter 238 amended A.R.S. §§ 17-309 and 17-340 to include additional violations that may result in the suspension, revocation, or denial of a Department-issued license and the length of time for suspension, revocation, and denial actions. Under subsection (A), the Commission may hold a revocation hearing for a person convicted of certain violations; under Subsection (B), the Commission may hold a revocation hearing if the Department recommends a revocation, suspension, or denial for a person convicted of other violations. Currently under subsection (A), any person convicted of violating a wildlife law must go through the revocation hearing process. The Commission proposes to amend the rule to only require a revocation hearing upon recommendation of the Department. This change will provide the Department and Commission with greater flexibility in enforcing the rule and will reduce the burdens and costs to persons regulated by the rule. The Commission proposes to amend the rule to increase consistency between Commission rules and statute to reduce regulatory ambiguity. The Commission also proposes to amend the rule to replace references to "supports the following conclusion" with "indicates" to increase consistency between subsections. In addition, the Commission proposes to amend the rule to provide additional clarity by removing redundant language and restructuring the rule to more closely mirror A.R.S. § 17-340.

R12-4-606. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages

The objective of the rule is to establish the proceedings for license revocation, suspension, or denial of Department issued licenses (this includes hunting and fishing licenses, special licenses issued under Article 4, and fur dealer, guide, license dealer, and taxidermy licenses) and the assessment of civil damages. The Commission proposes to renumber the rule to R12-4-607. Under A.R.S. § 17-340, the Commission may, after a public hearing, revoke or suspend a license issued to any person under Title 17 and deny that person the right to secure another license to take or possess wildlife. Under A.R.S. § 17-314, the Commission may bring a civil action in the name of the state against any person unlawfully taking, wounding or killing, or unlawfully in possession of certain wildlife. The Commission proposes to amend the rule to clearly indicate the rule applies only to actions taken under A.R.S. § 17-340 to reduce regulatory ambiguity. The Commission also proposes to

amend the rule to remove redundant language to make the rule more concise and understandable. Laws 2006, Second Regular Session, Chapter 238 amended A.R.S. § 17-340 to include additional time-frames for such suspension, revocation, or denial actions resulting from subsequent violations. As a result, a person's license may be revoked for five years, ten years, or permanently, depending on the number of convictions. In addition, the Commission proposes to amend the rule to reflect amendments made to statute to reduce regulatory ambiguity.

R12-4-607. Rehearing or Review of Commission Decisions

The objective of the rule is to establish the requirements for rehearing or review of a Commission decision. Under A.R.S. § 41-1092.09, a party may file a motion for rehearing or review within thirty days after service of the final administrative decision. A rehearing follows a Commission decision to revoke or suspend a person's license. A review is a Commission hearing on the Department's decision to deny a license to a person. The Commission proposes to renumber the rule to R12-4-608. The Commission proposes to amend the rule to transfer definitions included in this rule to R12-4-601 to ensure conformity with the Arizona Administrative Procedures Act and Secretary of State's rulemaking format and style requirements and standards. On occasion, a person fully intends to file an appeal to a Commission decision with the Maricopa County Superior Court, but unknowingly eliminates that option by failing to file a motion for rehearing or review with the Commission. The Commission proposes to amend the rule to indicate a person who fails to file a timely motion for rehearing or review is prohibited from seeking a judicial review of the Commission's decision to clarify when a rehearing or review is required and reduce regulatory ambiguity. The Commission proposes to remove the requirement that a person filing a motion for rehearing or review attach a supporting memorandum, specifying the grounds for the motion to reduce the burdens and costs to persons regulated by the rule as this information may be gleaned from the motion itself. During this review the Department compared this rule to rules governing rehearing or review made by other self-supporting agencies (Arizona Medical Board, State Board of Dental Examiners, and State Board of Accountancy) and, as a result of this comparison, the Commission proposes to amend the rule to clarify filing time-frames, extend the time in which the Commission may initiate a rehearing or review, and specify the time-frame in which the Commission shall hold the rehearing or review. These changes are made to increase clarity, make the rule more concise, and reduce regulatory uncertainty.

R12-4-609. Commission Orders

The objective of the rule is to establish the public process for the consideration of a Commission Order. Under A.R.S. § 17-234, 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 the opening date. The Commission proposes to amend the rule to reduce the time in which the Department must post a public meeting notice and agenda and provide a draft of the proposed Commission Order from 20 days to 14. Due to leaned processes and technological advances, the Department is able to provide the required information in a shorter amount of time. In addition, an incident involving Tempe Town Lake gave light to the fact that the Commission does not have sufficient authority to issue an Order establishing a special season to allow the take of fish by additional methods on waters where a fish die-off is imminent due to the public

meeting notice time-frame requirement. In addition, to ensure the Commission is able to respond more quickly should a similar situation arise, the Commission proposes to amend the rule to allow the Commission to exempt the Commission and Department from the 14-day time-frame in order to review an order establishing a special season, allowing fish to be taken by additional methods on waters where a fish die-off is imminent to reduce processes in the rule.

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

The objective of the rule is to establish the requirements for submitting a petition for the closure of state or federal lands to hunting, fishing, trapping, or operation of motor vehicles. Under A.R.S. § 17-452, the Commission may, with the concurrence of the land management agency involved and after a public hearing, order such area closed to motor vehicles for not more than five years from the date of such closure, provided that all roads in such area shall remain open unless specifically closed. A person is required to submit a petition that meets specific formatting requirements. In an effort to reduce the burden and costs to the regulated public and simplify and enhance the public petition process, the Commission also proposes to amend the rule to require a petitioner to use a form furnished by the Department. The proposed form will reduce the number of non-compliant petitions received by the Department by ensuring all petitions contain the applicable information; this will also reduce the amount of time spent by Department employees on working with petitioners to correct petitions that do not meet the requirements established under rule. This amendment will streamline the process going forward and ensure consistency in all future petitions. In addition, to increase consistency between Commission rules, the Commission proposes to amend the rule to require a person submitting a petition to provide a physical and mailing address (if different from the physical address) and an email address when one is available. The Commission also proposes to increase the amount of time in which the Department must review and accept or return the petition and the time in which the Commission must hear the petition to increase consistency between all Commission petition rules. In addition, the Commission proposes to amend the rule to replace the term "Director" with "Department" to reduce regulatory ambiguity. Because the petition process is delegated to appropriate Department staff for evaluation and recommendation of the proposed change, this amendment will make the rule more concise and ensure consistency between Commission rules.

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

The objective of the rule is to establish the method and form a person shall use to petition the Arizona Game and Fish Commission when no remedy is provided in statute, rule, or policy. A person is required to submit a petition that meets specific formatting requirements. In an effort to reduce the burden and costs to the regulated public and simplify and enhance the public petition process, the Commission also proposes to amend the rule to require a petitioner to use a form furnished by the Department. The proposed form will reduce the number of non-compliant petitions received by the Department by ensuring all petitions contain the applicable information; this will also reduce the amount of time spent by Department employees on working with

petitioners to correct petitions that do not meet the requirements established under rule. This amendment will streamline the process going forward and ensure consistency in all future petitions. In addition, to increase consistency between Commission rules, the Commission proposes to amend the rule to require a person submitting a petition to provide a physical and mailing address (if different from the physical address) and an email address when one is available. The Commission also proposes to increase the amount of time in which the Department must review and accept or return the petition and the time in which the Commission must hear the petition to increase consistency between all Commission petition rules. In addition, the Commission proposes to amend the rule to replace the term "Director" with "Department" to reduce regulatory ambiguity. Because the petition process is delegated to appropriate Department staff for evaluation and recommendation of the proposed change, this amendment will make the rule more concise and ensure consistency between Commission rules.

- 7. 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.

- 8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rule 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. § 41-1027, the rulemaking is exempt from this requirement; however, the Commission offers the following: The proposed rulemaking implements changes the Department proposed to make as a result of the most recent five-year review of Article 6. The Commission's intent in proposing these amendments is to align the rule with statute, enable the Department to provide better customer-service, and reduce regulatory and administrative burdens wherever possible. The Commission believes the majority of the rulemaking will 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 the regulated community where practical, implementing customer-service-oriented processes, and allowing the Department additional oversight where necessary. 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. In addition to the cost of rulemaking, the Commission anticipates the Department will incur costs to implement the proposed amendments; however, these amendments will not require new full-time employees. Therefore, the Commission has determined that the benefits of the rulemaking outweigh any costs.

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

Minor grammatical and formatting corrections that were made at the request of Governor's Regulatory Review

Council staff.

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

In addition to the publication of the Notice of Proposed Expedited Rulemaking in the *Arizona Administrative Register*, the Department posted the Notice of Proposed Expedited Rulemaking to the Department's website, from September 15 to October 15, 2017, for the purpose of public comment. In addition, on October 15, 2017, the Department emailed information regarding the proposed rulemaking to persons interested in receiving rulemaking notices. The Department also issued a press release regarding the proposed changes included in the Notice of Proposed Expedited Rulemaking and the Department's contact information for persons interested in submitting a comment. The Department did not receive any public or stakeholder comments in response to the proposed expedited rulemaking.

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

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

The rule does not require a general permit.

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

The subject matter covered in the rulemaking are governed by state law rather than any corresponding federal law.

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

The agency has not received an analysis that compares the rule's impact of competitiveness of business in this state to the impact on business in other states.

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

Not applicable

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

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

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

Section

R12-4-601. Definitions

~~R12-4-601.~~ R12-4-602. Petition for Rule or Review of Practice or Policy

~~R12-4-602.~~ R12-4-603. Written Comments on Proposed Rules

~~R12-4-603.~~ R12-4-604. Oral Proceedings Before the Commission

~~R12-4-604.~~ R12-4-605. Ex Parte Communication

~~R12-4-605.~~ R12-4-606. Standards for Revocation, Suspension, or Denial of a License

~~R12-4-606.~~ R12-4-607. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages

~~R12-4-607.~~ R12-4-608. Rehearing or Review of Commission Decisions

~~R12-4-608.~~ Expired

R12-4-609. Commission Orders

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

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

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

R12-4-601. Definitions

The following definitions apply to this Article unless otherwise specified:

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

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

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

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

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

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

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

R12-4-601 R12-4-602. Petition for Rule or Review of Practice or Policy

- A. Any individual, including any organization or agency, requesting that the Commission make, amend, or repeal a rule, shall submit a petition as prescribed under this Section. A person may petition the Commission under A.R.S. § 41-1033 for a:
 - 1. Rulemaking action relating to a Commission rule, including making a new rule or amending or repealing an existing rule; or
 - 2. Review of an existing Department practice or substantive policy statement alleged to constitute a rule.
- B. Any individual, including any organization or agency, requesting that the Commission review an existing Department practice or substantive policy that the petitioner alleges to constitute a rule under A.R.S. § 41-1033, as defined under A.R.S. § 41-1001, shall submit a petition as prescribed under this Section. To act under A.R.S. § 41-1033 and this Section, a person shall submit a petition form to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086. The form is available at any Department office and on the Department's website.
- C. A petitioner shall not address more than only one rule, practice, or substantive policy in the petition.
- D. If the Commission has considered and denied a petition, and a petitioner submits a petition within the next year that addresses the same substantive issue, the petitioner shall provide a written statement that contains any reason not previously considered by the Commission in making a decision.
- E.D. A petitioner shall submit an original and one copy of a the petition form to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086. The Commission shall render a decision on the petition as required under A.R.S. § 41-1033. The petition form is furnished by the Department and is available at any Department office and on the Department's website. A petitioner shall provide all of the following information:
 - 1. Petitioner identification:
 - a. When the petition is submitted by a private person, the person's:

- i. Name;
 - ii. Physical and mailing address, if different from the physical address;
 - iii. Contact telephone number; and
 - iv. Email, when available;
 - b. When the petition is submitted by an organization or private group;
 - i. Name of organization or group;
 - ii. Name and title of the organization's or group's representative;
 - iii. Physical and mailing address, if different from the physical address;
 - iv. Representative's contact telephone number; and
 - v. Email, when available;
 - c. When the petition is submitted by a public agency;
 - i. Name of the public agency;
 - ii. Name and title of the agency's representative;
 - iii. Physical and mailing address if different from the physical address;
 - iv. Representative's contact telephone number; and
 - v. Email, when available;
2. Type of request:
 - a. Adopt, amend, or repeal a rule, or
 - b. Review of a practice or substantive policy statement;
3. When the petition is for rulemaking action:
 - a. Statement of the rulemaking action sought, including the *Arizona Administrative Code* citation of all existing rules, and the specific language of a new rule or rule amendment; and
 - b. Reasons for the rulemaking action, including an explanation of why an existing rule is inadequate, unreasonable, unduly burdensome, or unlawful;
4. When the petition is for a review of an existing practice or substantive policy statement:
 - a. Subject matter of the existing practice or substantive policy statement, and
 - b. Reasons why the existing practice or substantive policy statement constitutes a rule;
5. When the petitioner is a public agency, a summary of issues raised in any public meeting or hearing regarding the petition or any written comments offered by the public.
6. Any other information required by the Department;
7. Petitioner's signature; and
8. Date on which the petition was signed.
- D.E.** In addition to the requirements listed under subsection (D), a person may submit supporting information with a petition, including:
 - 1. Statistical data; and
 - 2. A list of other persons likely to be affected by the rulemaking action or the review, with an explanation of the likely effects.

F. When a petitioner submits a petition that addresses the same substantive issue considered by the Commission within the previous year, the petitioner shall also provide an additional written statement that includes rationale not previously considered by the Commission in making the previous decision.

F.G. Within five working days after a petition is submitted, the Director The Department shall determine whether the petition complies with this Section within fifteen business days after the date on which the petition was received.

1. If the petition complies with this Section the Director:

- a. The Department shall place the petition on a Commission open meeting agenda.
- b. The petitioner may present oral testimony at that open meeting, as established under R12-4-603 R12-4-604.
- c. The Commission shall render a final decision on the petition as prescribed under A.R.S. § 41-1033.

2. If a petition does not comply with subsection (G) through (L) of this Section, the:

- a. The Director shall return a copy of the petition as filed to the petitioner, and indicate
- b. Indicate in writing why the petition does not comply with this Section. The Director shall not place the petition on a Commission agenda. The Department shall maintain the original petition on file for five years and consider the petition as a comment during the five year review process. The petitioner shall be afforded the opportunity to resubmit a corrected petition.

G. Petitions shall be typewritten, computer or word processor printed, or legibly handwritten, and double spaced, on 8 1/2" x 11" paper; or typewritten, computer or word processor printed, or legibly handwritten on a form provided by the Department. The title shall be centered at the top of the first page and appear as "Petition to the Arizona Game and Fish Commission." The petition shall include the items listed in subsections (H) through (L). The items in the petition shall be presented in the order in which they are listed in this Section.

H. The title of Part 1 shall be "Identification of Petitioner." The title shall be centered at the top of the first page of this part. Part 1 shall contain:

1. If the petitioner is a private individual, the name, mailing address, and telephone number of the petitioner;
2. If the petitioner is a private group or organization, the name and address of the group or organization; the name, mailing address, and telephone number of an individual who is designated as the representative or official contact for the petitioner; the total number of individuals, and the number of Arizona residents represented by the petitioner; or the names and addresses of all individuals represented by the petitioner; or
3. If the petitioner is a public agency, the name and address of the agency and the name, title, and telephone number of the agency's representative.

I. The title of Part 2 shall be "Request for Rule" or "Request for Review," as applicable. The title shall be centered at the top of the first page of this part. Part 2 shall contain:

1. If the petition is for a new rule, a statement to this effect, followed by the heading and specific language of the proposed rule;
2. If the request is for amendment of a current rule, a statement to this effect, followed by the Arizona Administrative Code number of the current rule proposed for amendment, the heading of the rule, the

~~specific, clearly readable language of the rule, indicating language to be deleted with strikeouts, and language to be added with underlining;~~

3. ~~If the request is for repeal of a current rule, a statement to this effect, followed by the Arizona Administrative Code number of the rule proposed for repeal and the heading of the rule; or~~
 4. ~~If the request is for review of an existing agency practice or substantive policy statement that the petitioner alleges qualifies as a rule, as defined under A.R.S. § 41-1001, a statement to this effect, followed by the practice or policy number, if any, the practice or policy heading, if any, or a brief description of the practice or policy subject matter.~~
- J.** ~~The title of Part 3 shall be “Reason for the Petition.” The title shall be centered at the top of the first page of this part. Part 3 shall contain:~~
1. ~~The reason the petitioner believes rulemaking or review of a practice or policy is necessary;~~
 2. ~~Any statistical data or other justification supporting rulemaking or review of the practice or policy, with clear reference to any exhibits that are attached to or included with the petition;~~
 3. ~~An identification of any individuals or special interest groups the petitioner believes would be impacted by the rule or a review of the practice or policy, and how they would be impacted; and~~
 4. ~~If the petitioner is a public agency, a summary of issues raised in any public meeting or hearing regarding the petition, or any written comments offered by the public.~~
- K.** ~~The title of Part 4 shall be “Statutory Authority.” The title shall be centered at the top of the first page of this part. In Part 4, the petitioner shall identify any statute that authorizes the Commission to make the rule, if known, or cite A.R.S. § 41-1033 if the petition relates to review of an existing practice or substantive policy statement.~~
- L.** ~~The title of Part 5 shall be “Date and Signature.” The title shall be centered at the top of the first page of this part. Part 5 shall contain:~~
1. ~~An original signature of the representative or official contact, if the petitioner is a private group or organization or private individual named under subsection (H)(1) or (H)(2); or~~
 2. ~~If the petitioner is a public agency, the signature of the agency head or the agency head’s designee; and~~
 3. ~~The month, day, and year that the petition is signed.~~

R12-4-602 R12-4-603. Written Comments on Proposed Rules

- A.** ~~Any Under A.R.S. § 41-1023, an individual a person may submit written statements, arguments, data, and views on the a proposed rules that have been filed with rulemaking published by the Secretary of State under A.R.S. § 41-1022 in the Arizona Administrative Register.~~
- B.** ~~An individual who submits A person submitting a written comments comment to the Commission for consideration in a final decision on the rulemaking may voluntarily provide their name and mailing address. To be placed into the rulemaking record and considered by the Commission for a final decision, the individual submitting the The Commission may only consider written comments shall ensure that they:~~
1. Are received before on or on before the closing close of record date for written comments, as published by

the Secretary of State in the *Arizona Administrative Register*;

2. Indicate if expressed on behalf of a group or organization, whether the views expressed are the official position of the group or organization, the number of individuals represented are represented, types of membership available, and number of Arizona residents in each membership category. Comments that do not include the information required under this subsection will be placed in the rulemaking record as the views of the individual submitting the comments and not the views of any group or organization; and
- 3.2. Are submitted to the employee designated by the Department to receive written comments, as published in the *Arizona Administrative Register* agency contact identified in the Department's notice of proposed rulemaking as published by the Secretary of State in the *Arizona Administrative Register*.
3. In addition, a person submitting a comment submitted on behalf of a group or organization shall include a statement that the comment represents the official position of the group or organization. A comment submitted on behalf of a group or organization that does not contain this statement shall be considered the comment of the person submitting the comment, and not that of the group or organization.

R12-4-603 R12-4-604. Oral Proceedings Before the Commission

- A.** For the purposes of this Section, "matter" or "proceeding" means any contested case, appealable agency action, rule or review petition hearing, rulemaking proceeding, or any public input at a Commission meeting.
- B.A.** The Commission may allow an oral proceeding on any matter on the Commission's agenda. At an oral proceeding, the Commission Chair:
1. The Chair is responsible for conducting the proceeding. If an individual wants to speak, the individual shall first request and be granted permission by the Chair.
 2. Depending on the nature of the proceeding, the Chair may administer an oath to a witness before receiving testimony.
 3. The Chair may order the removal of any individual who is disrupting the proceeding.
 4. Based on the amount of time available, the Chair may limit the number of presentations or the time for testimony regarding a particular issue and shall prohibit irrelevant or immaterial testimony.
1. Is responsible for conducting the proceeding.
2. May administer an oath to a witness before receiving testimony.
3. May order the removal of any person who is disrupting a proceeding.
4. May limit the number of presentations or the time for testimony regarding a particular issue.
- B.** A person desiring to speak at an oral proceeding shall first request permission to speak from the Commission Chair.
- C.C.** Technical rules of evidence do not apply to an oral proceeding, and no informality in any proceeding or in the manner of taking testimony invalidates any order, decision, or rule made by the Commission.
- C.D.** The Commission authorizes the Director to designate a hearing officer for oral proceedings to take public input on proposed rulemaking. The hearing officer has the same authority as the Chair in conducting oral proceedings, as provided in this Section.

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

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

R12-4-604 R12-4-605. Ex Parte Communication

A. For purposes of this Section:

1. "~~Individual outside the Commission~~" means any individual other than a Commissioner, personal aide to a Commissioner, Department employee, consultant of the Commission, or an attorney representing the Commission.
2. "~~Ex parte communication~~" means any oral or written communication with the Commission that is not part of the public record and for which no reasonable prior written notice has been given to all interested parties.

B.A. In any contested case (as defined in A.R.S. § 41-1001) or proceeding or appealable agency action (as defined in A.R.S. § 41-1092) before the Commission, except to the extent required for disposition of ex parte matters as authorized by law or these rules of procedure, the following prohibitions apply to ex parte communication. A party shall not communicate, either directly or indirectly, with a Commissioner about any substantive issue in a pending contested case or appealable agency action, unless:

1. An interested individual outside the Commission shall not make or knowingly cause to be made to any Commissioner, Commission hearing officer, personal aide to a Commissioner, Department employee, or consultant who is or may reasonably be expected to be involved in the decision making process of the proceeding, an ex parte communication relevant to the merits of the proceeding. All parties are present;
2. A Commissioner, Commission hearing officer, personal aide to a Commissioner, Department employee, or consultant who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall not make or knowingly cause to be made to any interested person outside the Commission an ex parte communication relevant to the merits of the proceeding. The communication occurs during the scheduled proceeding, where an absent party failed to appear after proper notice; or
3. It is by written motion with a copy provided to all parties.

C.B. A Commissioner, Commission hearing officer, personal aide to a Commissioner, Department employee, or consultant who is or may be reasonably expected to be involved in the decisional process of the proceeding, who receives, makes, or knowingly causes to be made a an ex parte communication prohibited by subsection (B)(1) or (B)(2) of this Section, shall place on the public record of the proceeding and serve on all interested parties to the proceeding:

1. A copy of each the written communication;
2. A memorandum stating the substance of each summary of the oral communication; and
3. A copy of each response and memorandum stating the substance of each oral The Commissioner's response to any such ex parte communication governed by subsections (C)(1) and (C)(2).

~~D. Upon receipt of a communication made or knowingly caused to be made by a party in violation of this Section, the Commission or its hearing officer, to the extent consistent with equity and fairness, may require the party to show cause why the claim or interest in proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.~~

~~E.C. The provisions of this Section apply from the date that a notice of hearing for a contested case is served, a notice of or an appealable agency action is served, or a request for hearing is filed, whichever comes first, unless the person responsible for the communication has knowledge that a proceeding will be noticed, in which case the prohibitions apply from the date that the individual acquired the knowledge on the parties.~~

R12-4-605 R12-4-606. Standards for Revocation, Suspension, or Denial of a License

A. Under A.R.S. § 17-340, ~~when the Department makes a recommendation to the Commission for license revocation, the~~ Commission shall hold a hearing and may revoke, suspend, or deny any hunting, fishing, or trapping license for ~~an individual who has been a person~~ convicted of any of the following offenses:

1. Killing or wounding a big game animal during a closed season ~~or possessing~~.
2. ~~Possessing~~ a big game animal taken during a closed season. ~~Conviction for possession of a road kill animal or an animal that was engaged in depredation is not considered "possessing during a closed season" for the purposes of this subsection.~~
- 2-3. Destroying, injuring, or molesting livestock, ~~or damaging or destroying personal property, notices or signboards, other improvements, or growing crops~~ while hunting, fishing, or trapping.
4. ~~Damaging or destroying personal property, growing crops, notices or signboards, or other improvements while hunting, fishing, or trapping.~~
5. ~~Bartering, selling, or offering to sell unlawfully taken wildlife or wildlife parts.~~
- 3-6. Careless use of a firearm while hunting, fishing, or trapping that results in the injury or death of any person; ~~if the act of discharging the firearm was deliberate.~~
- 4-7. Applying for or obtaining a license or permit by fraud or misrepresentation in violation of A.R.S. § 17-341.
8. ~~Knowingly allowing another person to use the person's big game tag, except as provided under A.R.S. § 17-332(D).~~
- 5-9. Entering upon a game refuge or other area closed to hunting, trapping or fishing and taking, driving, or attempting to drive wildlife from the area in violation of A.R.S. §§ 17-303 and 17-304.
- 6-10. Unlawfully posting state or federal lands in violation of A.R.S. § 17-304(B).
11. ~~Unlawfully using aircraft to take, assist in taking, harass, chase, drive, locate, or assist in locating wildlife in violation of A.R.S. § 17-340(A)(8).~~

B. ~~Under A.R.S. § 17-340, the Commission shall hold a hearing and may revoke, suspend, or deny any hunting, fishing, or trapping license if the Department recommends revocation, suspension, or denial of the license for an individual convicted of any of the following offenses:~~

- +12. ~~Unlawfully taking or possessing big game, if sufficient evidence, which may or may not have been introduced in the court proceeding, supports any of the following conclusions:~~

- a. The big game was taken without a valid license or permit.
- b. The unlawful taking was willful and deliberate.
- c. The person in unlawful possession aided the unlawful taking or was, or should have been, aware that the taking was unlawful.

2.13. Unlawfully taking or possessing small game or fish, if sufficient evidence, which may or may not have been introduced in the court proceeding, supports any of the following conclusions:

- a. The taking was willful and deliberate.
- b. The possession was in excess of the lawful possession limit plus the daily bag limit.

3.14. Unlawfully taking or possessing wildlife species if sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that the act of taking was willful and deliberate and showed disregard for state wildlife laws.

15. Unlawful take of any bird or the removal of its nest or eggs.

4.16. Littering a public hunting or fishing area while taking wildlife, if sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that an individual littered the area, the amount of litter discarded was unreasonably large, and that the individual convicted made no reasonable effort to dispose of the litter in a lawful manner.

5. Careless use of a firearm while hunting, fishing, or trapping that resulted in injury or death to any person, if the act of discharging the firearm was not deliberate, but sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that the careless use demonstrated wanton disregard for the safety of human life or property.

17. Waste of edible portions of a game species under A.R.S. § 17-309, in violation of A.R.S. § 17-309(A)(5).

6.18. Any violation for which a license can be revoked under A.R.S. § 17-340, if the person has been convicted of a revocable offense within the past three years.

7.19. Violation Any violation of A.R.S. § 17-306 for unlawful possession of wildlife.

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

R12-4-606 R12-4-607. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages

- A. The Director may commence a proceeding for the Commission to revoke, suspend or deny a license under A.R.S. §§ 17-236, 17-238, 17-334, 17-340, 17-362, 17-363, and 17-364, R12-4-105, and R12-4-605. The Director may also commence a proceeding for the Commission to impose a civil damages penalty under A.R.S. § 17-314.
- B. The Commission shall conduct a hearing concerning revocation, suspension, or denial of the right to obtain a license in accordance with the Administrative Procedure Act, A.R.S. Title 41, Chapter 6, Article 10. A In a

proceeding conducted under A.R.S. § 17-340, a respondent shall limit testimony to facts that show why the license should not be revoked or denied. Because the Commission does not have the authority to consider or change the conviction, a respondent is not permitted to raise this issue in the proceeding. The Commission shall permit a respondent to offer testimony or evidence relevant to the Commission's decision to ~~order recovery of impose a civil damages penalty or order a civil action for the recovery of~~ wildlife parts.

- C. If a respondent does not appear for a hearing on the date scheduled, at the time and location noticed, no further opportunity to be heard ~~is shall be~~ provided, unless ~~a~~ a rehearing or review is granted under ~~R12-4-607 R12-4-608~~. If the respondent does not wish to attend the hearing, the respondent may submit written testimony to the Department before the hearing date designated in the Notice of Hearing ~~required by A.R.S. § 17-340(D)~~. The Commission shall ensure that written testimony received at the time of the hearing is read into the record at the hearing.
- D. The Commission shall base its decision on the officer's case report, a summary prepared by the Department, a certified copy of the court record, and any testimony presented at the hearing. ~~With the notice of hearing required by A.R.S. § 17-340(D), the~~ The Department shall supply the respondent with a copy of each document provided to the Commission for use in reaching a decision.
- E. Any party may apply to the Commission for issuance of a subpoena to compel the appearance of any witness or the production of documents at any Commission hearing or deposition. ~~Not later~~ No less than 10 calendar days before the hearing ~~or deposition~~, the party shall file a written application that provides the name and address of the witness, the subject matter of the expected testimony, the documents sought to be produced, and the date, time, and place of the hearing ~~or deposition~~. The Commission ~~chair~~ Chair has the authority to issue the subpoenas.
 1. A party shall have a subpoena served as prescribed in the Arizona Rules of Civil Procedure, Rule 45. An employee of the Department may serve a subpoena at the request of the Commission ~~chair~~ Chair.
 2. A party may request that a subpoena be amended at any time before the deadline provided in this Section for filing the application. The party shall have the amended subpoena served as provided in subsection (E)(1).
- F. The Commission may vote to use the services of the office of administrative hearings to conduct a hearing concerning revocation, suspension, or denial of the right to obtain a license and to make a recommendation to the Commission, which shall review and accept, reject or modify the recommendation and issue its decision in an open meeting. When the Department receives a recommendation from the administrative law judge at least 30 days prior to the next regularly scheduled Commission meeting, the Department shall place the recommendation on the agenda for that meeting. A recommendation from the administrative law judge received after this time shall be considered at the next regularly scheduled open meeting.
- F.G. A license revoked by the Commission is suspended on the date of the hearing and revoked upon issuance of the findings of fact, conclusions of law, and order. If a respondent appeals the Commission's order revoking a license, the license is revoked after all appeals have been ~~completed~~ exhausted. A denial of the right to obtain a license is effective for a period ~~not to exceed five years~~, as determined by the Commission as authorized under

A.R.S. § 17-340, beginning on the date of the hearing.

G.H. A license suspended by the Commission is suspended on the date of the hearing, and suspended upon issuance of the findings of fact, conclusions of law, and order. If a respondent appeals the Commission's order suspending a license, the license is suspended after all appeals have been completed exhausted. Under A.R.S. § 17-340(A),~~a~~ The suspension of a license is effective for a period ~~not to exceed five years~~, as determined by the Commission as authorized under A.R.S. § 17-340, beginning on the date of the hearing.

R12-4-607 R12-4-608. Rehearing or Review of Commission Decisions

A. For purposes of this Section the following terms apply:

1. "Contested case" and "party" are defined as provided in A.R.S. § 41-1001;
2. "Appealable agency action" is defined as provided in A.R.S. § 41-1092(3).

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

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

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

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

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

- E. The Commission may affirm or modify the decision either deny the motion for rehearing or review or grant a rehearing to all or any of the parties on all or part of the issues or review for any of the reasons in listed under subsection (D) (E). The Commission's order modifying a decision or granting a rehearing or review shall specify the grounds for the order, and any rehearing shall cover only those specified matters grounds upon which the rehearing or review was granted.
- F. After giving the party notice and an opportunity to be heard, the Commission may grant a motion for a rehearing or review for a reason not stated in the motion.
- F.G. Not later than 15 calendar days, after a decision Within in time frame for filing the motion for rehearing or review, the Commission may grant a rehearing or review on its own initiative for any reason for which it might the Commission may have granted relief on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Commission may grant a motion for rehearing or review for a reason not stated in the motion.
- H. When the Commission grants a rehearing or review, the Commission shall hold the rehearing or review at its next regularly scheduled meeting or within 90 days of issuance of the order granting the rehearing or review. With the consent of the parties, the Commission may proceed to conduct the rehearing or review in the same meeting in which the Commission granted the rehearing or review.
- G. When a motion for rehearing or review is based upon affidavits, the party shall serve the affidavits with the motion. An opposing party may, within 10 calendar days after service, serve opposing affidavits. The Commission may extend this period for no more than 20 calendar days for good cause shown or by written stipulation of the parties. The Commission has the authority to permit reply affidavits.
- I. The Commission may take additional testimony, amend findings of fact and conclusions of law, and affirm, modify or reverse the original decision.

R12-4-609. Commission Orders

- A. Except as provided in under subsection (B):
1. At least 20 calendar days before a meeting where the Commission will consider a Commission Order, the Department shall ensure that a public meeting notice and agenda for the public meeting is posted in accordance with A.R.S. § 38-431.02. The Department shall also issue a public notice of the recommended Commission Order to print and electronic media at least 20 calendar days before the meeting. At least 14 calendar days before a meeting where the Commission will consider a Commission Order, the Department shall:
 - a. Post a public meeting notice and agenda in accordance with A.R.S. § 38-431.02; and
 - b. Issue a public notice of the recommended Commission Order in print and electronic media.
 2. The Department shall ensure that the public meeting notice and agenda contains the date, time, and location of the Commission meeting where the Commission Order will be considered and a statement that the public may attend and present written comments at or before the meeting. The Department shall ensure the public meeting notice and agenda includes:

- a. The date, time, and location of the Commission meeting where the Commission Order will be considered;
 - b. A statement that the public may attend and present written comments at or before the meeting; and
 - c. A statement that a copy of the proposed Commission Order shall be made available to the public 10 calendar days before the meeting. Copies are available for public inspection on the Department's website and at Department offices in Phoenix, Pinetop, Flagstaff, Kingman, Yuma, Tucson, and Mesa.
3. ~~The Department shall also ensure that the public meeting notice and agenda states that a copy of the proposed Commission Order is available for public inspection at the Department offices in Phoenix, Pinetop, Flagstaff, Kingman, Yuma, Tucson, and Mesa 10 calendar days before the meeting.~~ The Commission may make changes to the recommended Commission Order at the Commission meeting.
- B. The requirements of subsection (A) do not apply to ~~a Commission orders establishing~~ Order that establishes:
- 1. ~~Supplemental hunts~~ A supplemental hunt as prescribed in authorized under R12-4-115, and;
 - 2. ~~Special seasons~~ A special season for individuals that persons who possess a special license tags tag issued under A.R.S. § 17-346 and R12-4-120, and
 - 3. A special season that allows fish to be taken by additional methods on waters where a fish die-off is imminent as established under R12-4-317(C).
- C. The Department shall publish the content of all Commission orders and make them available to the public ~~without~~ free of charge.

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

- A. ~~An individual or agency~~ A person requesting that the Commission consider closing state or federal land to hunting, fishing, or trapping as provided under A.R.S. § 17-304(B) or R12-4-110~~s~~, or closing roads or trails on state lands as provided under R12-4-110, shall submit a petition as prescribed in this Section before the Commission will consider the request.
- B. A ~~petition~~ petitioner shall not address more than one contiguous closure request ~~in a petition~~.
- C. ~~Once the Commission has considered and denied a petition, an individual who subsequently submits~~ A petitioner submitting a petition that addresses the same contiguous closure request ~~previously considered and denied by the Commission shall provide a~~ an additional written statement that ~~contains any reason includes rationale~~ not previously considered by the Commission ~~in making a decision.~~
- D. A petitioner shall submit ~~an original and one copy of~~ the petition form to the Director of the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086, ~~not less than 60 calendar days before a scheduled Commission meeting to be placed on the agenda for that meeting.~~ If the Commission receives a petition after that time it will be considered at the next regularly scheduled open meeting. At any time, the petitioner may withdraw the petition or request delay to a later regularly scheduled open meeting. ~~The petition form is furnished by the Department and is available at any Department office and on the Department's website.~~ The petition form shall contain all of the following information:

1. Petitioner identification:

 - a. When the petitioner is the leaseholder of the area proposed for closure:

 - i. Name of person;
 - ii. Lease number;
 - iii. Physical and mailing address, if different from the physical address;
 - iv. Contact telephone number; and
 - v. Email, when available;
 - b. When the petitioner is anyone other than the leaseholder of the area proposed for closure:

 - i. Name of person;
 - ii. Lease number;
 - iii. Physical and mailing address, if different from the physical address;
 - iv. Contact telephone number;
 - v. Email, when available; and
 - vi. Name of each group or organization or organizations that the petitioner represents; or
 - c. When the petitioner is a public agency:

 - i. Name of person;
 - ii. Name of agency;
 - iii. Petitioner's title;
 - iv. Lease number;
 - v. Agency's physical and mailing address, if different from the physical address;
 - vi. Contact telephone number; and
 - vii. Email, when available;
2. Type of closure requested:

 - a. Hunting,
 - b. Fishing,
 - c. Trapping, or
 - d. Operation of motor vehicles.
3. Reason for petition:

 - a. Each reason why the closure should be considered under R12-4-110, A.R.S. § 17-304(B), or A.R.S. § 17-452(A);
 - b. Any data or other justification supporting the reasons for the closure with clear reference to any exhibits that may be attached to the petition;
 - c. Each person or segment of the public the petitioner believes will be impacted by the closure, including any other valid licensees, lessees, or permittees that will or may be affected, and how they will be impacted, including both positive and negative impacts;
 - d. If the petitioner is a public agency, a summary of issues raised in any public hearing or public meeting regarding the petition and a copy of written comments received by the petitioning agency; and

- e. A proposed alternate access route, under R12-4-110.
 - 4. A concise map identifying the specific location of the proposed closure;
 - 5. Petitioner's signature;
 - 6. Date on which the petition was signed; and
 - 7. Any other information required by the Department.
- E. ~~Within 15 business days after the petition is filed, the Department~~ The ~~Director~~ Department shall determine whether the petition complies with the requirements established under A.R.S. § 17-452, R12-4-110, and this Section within 15 business days after receiving the petition.
- 1. ~~Once the Department determines that If~~ the petition meets these requirements, and ~~if provided~~ the petitioner has not agreed to an alternative solution or withdrawn the petition, the Department, in accordance with the schedule in subsection ~~(D)~~ (F), shall place the petition on the agenda for the Commission's next regularly scheduled open meeting and provide written notice to the petitioner of the meeting date ~~that the Commission will consider the petition.~~
 - 1. ~~The petitioner may present oral testimony in support of the petition at the Commission meeting, in accordance with the provisions established under R12-4-603.~~
 - 2. If a petition does not meet comply with the requirements prescribed under A.R.S. § 17-452, R12-4-110, and this Section, ~~the:~~
 - a. The Department shall return one copy of the petition as filed to the petitioner, and
 - b. Indicate in writing with the reasons why the petition does not comply with this Section meet the requirements, and not place the petition on a Commission agenda.
 - 3. If the Department returns a petition to a petitioner for a reason that cannot be corrected, the Department shall serve on the petitioner a notice of appealable agency action under A.R.S. § 41-1092.03.
- F. When the Department receives a petition not less than 60 calendar days before a regularly scheduled Commission meeting, the Department shall place the petition on the agenda for that meeting. A petition received after this time will be considered at the next regularly scheduled open meeting.
- G. The petitioner may:
- 1. Present oral testimony in support of the petition at the Commission meeting, in accordance with the provisions established under R12-4-604.
 - 2. Withdraw the petition or request a continuance to a later regularly scheduled open meeting at any time.
- F. The petitioner shall submit a petition that:
- 1. ~~Is typewritten, computer or word processor printed, or legibly handwritten, and double spaced, on 8 1/2 x 11" paper;~~
 - 2. ~~Has a concise map that shows the specific location of the proposed closure;~~
 - 3. ~~Has the title "Petition for the Closure of Hunting, Fishing, or Trapping Privileges on Public Land" or "Petition for the Closure of Public Lands to the Operation of Motor Vehicles" at the top of the first page;~~
 - 4. ~~Is in four parts, with titles designating each part as prescribed in this subsection;~~
 - 5. ~~Has a "Part 1" with the title "Identification of Petitioner" and contains the following information, if~~

applicable:

- a. If the petitioner is the leaseholder of the area proposed for closure, the name, lease number, mailing address, and home telephone number of the petitioner;
 - b. If the petitioner is anyone other than the leaseholder, the name, mailing address, and telephone number of the leaseholder; the name, mailing address, and telephone number of the petitioner; and the name of each group or organization or organizations that the petitioner represents; or
 - c. If the petitioner is a public agency, the name and address of the agency and the name, title, and telephone number of the agency's representative regarding the petition.
6. Has a "Part 2" with the title "Request for Closure" and contains all of the following information, if applicable:
 - a. The type of closure requested: either a hunting, fishing, or trapping closure, or closure to the operation of motor vehicles;
 - b. A complete legal description of the area to be closed;
 - c. The name or identifying number of any road and the portion of the road affected by the closure; and
 - d. The dates proposed for the closure:
 - i. If the closure is to the operation of motor vehicles, the actual time period of the closure (up to five years), and whether or not the closure is seasonal; or
 - ii. If the closure is for hunting, fishing, or trapping, whether or not the request is for a permanent closure or for some other period of time.
 7. Has a "Part 3" with the title "Reason for Closure" and contains all of the following information, if applicable:
 - a. Each reason why the closure should be considered under R12-4-110, A.R.S. § 17-304(B), or A.R.S. § 17-452(A);
 - b. Any data or other justification supporting the reasons for the closure with clear reference to any exhibits that may be attached to the petition;
 - c. Each individual or segment of the public the petitioner believes will be impacted by the closure, including any other valid licensees, lessees, or permittees that will or may be affected, and how they will be impacted, including both positive and negative impacts;
 - d. If the petitioner is a public agency, a summary of issues raised in any public hearing or public meeting regarding the petition and a copy of each written comment or document of concurrence authorized under A.R.S. § 17-452(A), received by the petitioning agency; and
 - e. A proposed alternate access route, under R12-4-110.
 8. Has a "Part 4" with the title "Dates and Signatures" and contains the following:
 - a. The original signature of the private party or the official contact named under subsection (F)(5)(a) or (b) of this Section, or, if the petitioner is a public agency, the signature of the agency head or the agency head's designee; and
 - b. The month, day, and year when the petition was signed.

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

- A. ~~If no A person may request a hearing before the Commission when an administrative remedy exists in does not exist under statute, rule, or policy, an aggrieved individual may request a hearing before the Commission by following the provisions of this Section by submitting a petition as prescribed by this Section.~~
- B. ~~Any individual who requests a hearing under this Section shall submit a petition as prescribed in this Section before the request for a hearing will be considered by the Commission.~~
- C. ~~B.~~ A petitioner shall submit ~~an original and one copy of a~~ the petition form to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086. ~~The petition form is furnished by the Department and is available at any Department office and on the Department's website. The petition form shall contain all of the following information:~~
 - 1. Petitioner identification:
 - a. When the petitioner is a private person:
 - i. Name of person;
 - ii. Physical and mailing address, if different from the physical address;
 - iii. Contact telephone number; and
 - iv. Email, when available;
 - b. When the petitioner is a private group or organization:
 - i. Name of the person designated as the contact for the group or organization;
 - ii. Physical and mailing address, if different from the physical address;
 - iv. Contact telephone number;
 - v. Email, when available; or
 - c. When the petitioner is a public agency:
 - i. Name of person,
 - ii. Name of agency,
 - iii. Petitioner's title,
 - iv. Agency's physical and mailing address, if different from the physical address,
 - v. Contact telephone number, and
 - vi. Email, when available;
 - 2. Statement of Facts and Issues:
 - a. Description of issue to be resolved, and
 - b. Any facts relevant to resolving the issue;
 - 3. Specific proposed remedy;
 - 4. Petitioner's signature;
 - 5. Date on which the petition was signed; and
 - 6. Any other information required by the Department.

- D.** The petitioner shall ensure that the petition is typewritten, computer or word processor printed, or legibly handwritten, and double spaced on 8 1/2" x 11" paper. The petitioner shall place the title "Petition for Hearing by the Arizona Game and Fish Commission" at the top of the first page. The petition shall include the items listed in subsections (E) through (H). The petitioner shall present the items in the petition in the order in which they are listed in this Section.
- E.** The petitioner shall ensure that the title of Part 1 is "Identification of Petitioner" and that Part 1 includes the following information, as applicable:
1. If the petitioner is a private person, the name, mailing address, telephone number, and e-mail address (if available) of the petitioner;
 2. If the petitioner is a private group or organization, the name and address of the organization; the name, mailing address, telephone number, and e-mail address (if available) of one person who is designated as the official contact for the group or organization; the number of individuals or members represented by the private group or organization, and the number of these individuals or members who are Arizona residents. If the petitioner prefers, the petitioner may provide the names and addresses of all members; or
 3. If the petitioner is a public agency, the name and address of the agency and the name, title, telephone number, and e-mail address (if available) of the agency's representative.
- F.** The petitioner shall ensure that the title of Part 2 is "Statement of Facts and Issues." Part 2 shall contain a description of the issue to be resolved, and a statement of the facts relevant to resolving the issue.
- G.** The petitioner shall ensure that the title of Part 3 is "Petitioner's Proposed Remedy." Part 3 shall contain a full and detailed explanation of the specific remedy the petitioner is seeking from the Commission.
- H.** The petitioner shall ensure that the title of Part 4 is "Date and Signatures." Part 4 shall contain:
1. The original signature of the private party or the official contact named in the petition, or, if the petitioner is a public agency, the signature of the agency head or the agency head's designee; and
 2. The month, day, and year that the petition is signed.
- I.C.** If a petition does not comply with this Section, the Director Department shall return the petition and indicate why the petition is deficient:
1. Return the petition to the petitioner, and
 2. Indicate in writing why the petition does not comply with this Section.
- J.D.** After the Director Department receives a petition that complies with this Section, the Director Department shall place the petition on the agenda of a regularly scheduled Commission meeting.
- K.E.** If the Commission votes to deny a petition, the Department shall not accept a subsequent petition on the same matter issue, unless the petitioner presents new evidence or reasons for considering the subsequent petition.
- L.F.** This Section does not apply to the following:
1. A matter An action related to a license revocation, suspension, denial, or civil assessment penalty; or
 2. An unsuccessful hunt permit-tag draw application, where there was no that did not involve an error on the part of the Department; or

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

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ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION

R12-4-601. Petition for Rule or Review of Practice or Policy

- A. Any individual, including any organization or agency, requesting that the Commission make, amend, or repeal a rule, shall submit a petition as prescribed under this Section.
- B. Any individual, including any organization or agency, requesting that the Commission review an existing Department practice or substantive policy that the petitioner alleges to constitute a rule under A.R.S. § 41-1033, as defined under A.R.S. § 41-1001, shall submit a petition as prescribed under this Section.
- C. A petitioner shall not address more than one rule, practice, or substantive policy in the petition.
- D. If the Commission has considered and denied a petition, and a petitioner submits a petition within the next year that addresses the same substantive issue, the petitioner shall provide a written statement that contains any reason not previously considered by the Commission in making a decision.
- E. A petitioner shall submit an original and one copy of a petition to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086. The Commission shall render a decision on the petition as required under A.R.S. § 41-1033.
- F. Within five working days after a petition is submitted, the Director shall determine whether the petition complies with this Section.
 - 1. If the petition complies with this Section, the Director shall place the petition on a Commission open meeting agenda. The petitioner may present oral testimony at that meeting, as established under R12-4-603.
 - 2. If a petition does not comply with subsections (G) through (L) of this Section, the Director shall return a copy of the petition as filed to the petitioner and indicate in writing why the petition does not comply with this Section. The Director shall not place the petition on a Commission agenda. The Department shall maintain the original petition on file for five years and consider the petition as a comment during the five-year review process.
- G. Petitions shall be typewritten, computer or word processor printed, or legibly handwritten, and double-spaced, on 8 1/2" x 11" paper; or typewritten, computer or word processor printed, or legibly handwritten on a form provided by the Department. The title shall be centered at the top of the first page and appear as "Petition to the Arizona Game and Fish Commission." The petition shall include the items listed in subsections (H) through (L). The items in the petition shall be presented in the order in which they are listed in this Section.
- H. The title of Part 1 shall be "Identification of Petitioner." The title shall be centered at the top of the first page of this part. Part 1 shall contain:
 - 1. If the petitioner is a private individual, the name, mailing address, and telephone number of the petitioner;
 - 2. If the petitioner is a private group or organization, the name and address of the group or organization; the name, mailing address, and telephone number of an individual who is designated as the representative or official contact for the petitioner; the total number of individuals, and the number of Arizona residents represented by the petitioner; or the names and addresses of all individuals represented by the petitioner; or
 - 3. If the petitioner is a public agency, the name and address of the agency and the name, title, and telephone number of the agency's representative.
- I. The title of Part 2 shall be "Request for Rule" or "Request for Review," as applicable. The title shall be centered at the top of the first page of this part. Part 2 shall contain:
 - 1. If the petition is for a new rule, a statement to this effect, followed by the heading and specific language of the proposed rule;
 - 2. If the request is for amendment of a current rule, a statement to this effect, followed by the *Arizona Administrative Code* number of the current rule proposed for amendment, the heading of the rule, the specific, clearly readable language of the rule, indicating language to be deleted with strikeouts, and language to be added with underlining;
 - 3. If the request is for repeal of a current rule, a statement to this effect, followed by the *Arizona Administrative Code* number of the rule proposed for repeal and the heading of the rule; or
 - 4. If the request is for review of an existing agency practice or substantive policy statement that the petitioner alleges qualifies as a rule, as defined under A.R.S. § 41-1001, a statement to this effect, followed by the practice or policy number, if any, the practice or policy heading, if any, or a brief description of the practice or policy subject matter.
- J. The title of Part 3 shall be "Reason for the Petition." The title shall be centered at the top of the first page of this part. Part 3 shall contain:
 - 1. The reason the petitioner believes rulemaking or review of a practice or policy is necessary;
 - 2. Any statistical data or other justification supporting rulemaking or review of the practice or policy, with clear reference to any exhibits that are attached to or included with the petition;
 - 3. An identification of any individuals or special interest groups the petitioner believes would be impacted by the rule or a review of the practice or policy, and how they would be impacted; and
 - 4. If the petitioner is a public agency, a summary of issues raised in any public meeting or hearing regarding the petition, or any written comments offered by the public.
- K. The title of Part 4 shall be "Statutory Authority." The title shall be centered at the top of the first page of this part. In Part 4, the petitioner shall identify any statute that authorizes the Commission to make the rule, if known, or cite A.R.S. § 41-1033 if the petition relates to review of an existing practice or substantive policy statement.
- L. The title of Part 5 shall be "Date and Signature." The title shall be centered at the top of the first page of this part. Part 5 shall contain:
 - 1. An original signature of the representative or official contact, if the petitioner is a private group or organization or private individual named under subsection (H)(1) or (2); or
 - 2. If the petitioner is a public agency, the signature of the agency head or the agency head's designee; and

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3. The month, day, and year that the petition is signed.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2). Amended by final rulemaking at 16 A.A.R. 1465, effective July 13, 2010 (Supp. 10-3).

R12-4-602. Written Comments on Proposed Rules

Any individual may submit written statements, arguments, data, and views on proposed rules that have been filed with the Secretary of State under A.R.S. § 41-1022. An individual who submits written comments to the Commission may voluntarily provide their name and mailing address. To be placed into the rulemaking record and considered by the Commission for a final decision, the individual submitting the written comments shall ensure that they:

1. Are received before or on the closing date for written comments, as published by the Secretary of State in the Arizona Administrative Register;
2. Indicate, if expressed on behalf of a group or organization, whether the views expressed are the official position of the group or organization, the number of individuals represented are represented, types of membership available, and number of Arizona residents in each membership category; and
3. Are submitted to the employee designated by the Department to receive written comments, as published in the Arizona Administrative Register.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

R12-4-603. Oral Proceedings Before the Commission

- A. For the purposes of this Section, “matter” or “proceeding” means any contested case, appealable agency action, rule or review petition hearing, rulemaking proceeding, or any public input at a Commission meeting.
- B. The Commission may allow an oral proceeding on any matter. At an oral proceeding:
 1. The Chair is responsible for conducting the proceeding. If an individual wants to speak, the individual shall first request and be granted permission by the Chair.
 2. Depending on the nature of the proceeding, the Chair may administer an oath to a witness before receiving testimony.
 3. The Chair may order the removal of any individual who is disrupting the proceeding.
 4. Based on the amount of time available, the Chair may limit the number of presentations or the time for testimony regarding a particular issue and shall prohibit irrelevant or immaterial testimony.
 5. Technical rules of evidence do not apply to an oral proceeding, and no informality in any proceeding or in the manner of taking testimony invalidates any order, decision, or rule made by the Commission.
- C. The Commission authorizes the Director to designate a hearing officer for oral proceedings to take public input on proposed rulemaking. The hearing officer has the same authority as the Chair in conducting oral proceedings, as provided in this Section.
- D. The Commission authorizes the Director to continue a scheduled proceeding to a later Commission meeting. To request a continuance, a petitioner shall:
 1. Deliver the request to the Director no later than 24 hours before the scheduled proceeding;
 2. Demonstrate that the proceeding has not been continued more than twice; and
 3. Demonstrate good cause for the continuance.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

R12-4-604. Ex Parte Communication

- A. For purposes of this Section:
 1. “Individual outside the Commission” means any individual other than a Commissioner, personal aide to a Commissioner, Department employee, consultant of the Commission, or an attorney representing the Commission.
 2. “Ex parte communication” means any oral or written communication with the Commission that is not part of the public record and for which no reasonable prior written notice has been given to all interested parties.
- B. In any contested case (as defined in A.R.S. § 41-1001) or proceeding or appealable agency action (as defined in A.R.S. § 41-1092) before the Commission, except to the extent required for disposition of ex parte matters as authorized by law or these rules of procedure, the following prohibitions apply to ex parte communication:
 1. An interested individual outside the Commission shall not make or knowingly cause to be made to any Commissioner, Commission hearing officer, personal aide to a Commissioner, Department employee, or consultant who is or may reasonably be expected to be involved in the decision-making process of the proceeding, an ex parte communication relevant to the merits of the proceeding;

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2. A Commissioner, Commission hearing officer, personal aide to a Commissioner, Department employee, or consultant who is or may reasonably be expected to be involved in the decisional process of the proceeding, shall not make or knowingly cause to be made to any interested person outside the Commission an ex parte communication relevant to the merits of the proceeding.
- C. A Commissioner, Commission hearing officer, personal aide to a Commissioner, Department employee, or consultant who is or may be reasonably expected to be involved in the decisional process of the proceeding, who receives, makes, or knowingly causes to be made a communication prohibited by subsection (B)(1) or (B)(2) of this Section, shall place on the public record of the proceeding and serve on all interested parties to the proceeding:
 1. A copy of each written communication;
 2. A memorandum stating the substance of each oral communication; and
 3. A copy of each response and memorandum stating the substance of each oral response to any communication governed by subsections (C)(1) and (C)(2).
- D. Upon receipt of a communication made or knowingly caused to be made by a party in violation of this Section, the Commission or its hearing officer, to the extent consistent with equity and fairness, may require the party to show cause why the claim or interest in proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.
- E. The provisions of this Section apply from the date that a notice of hearing for a contested case is served, a notice of appealable agency action is served, or a request for hearing is filed, whichever comes first, unless the person responsible for the communication has knowledge that a proceeding will be noticed, in which case the prohibitions apply from the date that the individual acquired the knowledge.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

R12-4-605. Standards for Revocation, Suspension, or Denial of a License

- A. Under A.R.S. § 17-340, the Commission shall hold a hearing and may revoke, suspend, or deny any hunting, fishing, or trapping license for an individual who has been convicted of any of the following offenses:
 1. Killing or wounding a big game animal during a closed season or possessing a big game animal taken during a closed season. Conviction for possession of a road-kill animal or an animal that was engaged in depredation is not considered "possessing during a closed season" for the purposes of this subsection.
 2. Destroying, injuring, or molesting livestock, or damaging or destroying personal property, notices or signboards, other improvements, or growing crops while hunting, fishing, or trapping.
 3. Careless use of a firearm while hunting, fishing, or trapping that results in the injury or death of any person, if the act of discharging the firearm was deliberate.
 4. Applying for or obtaining a license or permit by fraud or misrepresentation in violation of A.R.S. § 17-341.
 5. Entering upon a game refuge or other area closed to hunting, trapping or fishing and taking, driving, or attempting to drive wildlife from the area in violation of A.R.S. §§ 17-303 and 17-304.
 6. Unlawfully posting state or federal lands in violation of A.R.S. § 17-304(B).
- B. Under A.R.S. § 17-340, the Commission shall hold a hearing and may revoke, suspend, or deny any hunting, fishing, or trapping license if the Department recommends revocation, suspension, or denial of the license for an individual convicted of any of the following offenses:
 1. Unlawfully taking or possessing big game, if sufficient evidence, which may or may not have been introduced in the court proceeding, supports any of the following conclusions:
 - a. The big game was taken without a valid license or permit.
 - b. The unlawful taking was willful and deliberate.
 - c. The person in unlawful possession aided the unlawful taking or was, or should have been, aware that the taking was unlawful.
 2. Unlawfully taking or possessing small game or fish, if sufficient evidence, which may or may not have been introduced in the court proceeding, supports any of the following conclusions:
 - a. The taking was willful and deliberate.
 - b. The possession was in excess of the lawful possession limit plus the daily bag limit.
 3. Unlawfully taking wildlife species if sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that the act of taking was willful and deliberate and showed disregard for state wildlife laws.
 4. Littering a public hunting or fishing area while taking wildlife, if sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that an individual littered the area, the amount of litter discarded was unreasonably large, and that the individual convicted made no reasonable effort to dispose of the litter in a lawful manner.
 5. Careless use of a firearm while hunting, fishing, or trapping that resulted in injury or death to any person, if the act of discharging the firearm was not deliberate, but sufficient evidence, which may or may not have been introduced in the court proceeding, indicates that the careless use demonstrated wanton disregard for the safety of human life or property.
 6. Any violation for which a license can be revoked under A.R.S. § 17-340, if the person has been convicted of a revocable offense within the past three years.
 7. Violation of A.R.S. § 17-306 for unlawful possession of wildlife.
- C. Under A.R.S. §§ 17-238, 17-362, 17-363, 17-364, and 17-340, if the Department has made a recommendation to the Commission for license revocation, the Commission shall hold a hearing and may revoke any fur dealer, guide, taxidermy, or special license (as de-

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fined in R12-4-401) in any case where license revocation is authorized by law.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

R12-4-606. Proceedings for License Revocation, Suspension, or Denial of Right to Obtain a License, and Civil Damages

- A. The Director may commence a proceeding for the Commission to revoke, suspend or deny a license under A.R.S. §§ 17-238, 17-340, 17-362, 17-363, 17-364, R12-4-105, and R12-4-605. The Director may also commence a proceeding for civil damages under A.R.S. § 17-314.
- B. The Commission shall conduct a hearing concerning revocation, suspension, or denial of the right to obtain a license in accordance with the Administrative Procedure Act, A.R.S. Title 41, Chapter 6, Article 10. A respondent shall limit testimony to facts that show why the license should not be revoked or denied. Because the Commission does not have the authority to consider or change the conviction, a respondent is not permitted to raise this issue in the proceeding. The Commission shall permit a respondent to offer testimony or evidence relevant to the Commission's decision to order recovery of civil damages or wildlife parts.
- C. If a respondent does not appear for a hearing on the date scheduled, at the time and location noticed, no further opportunity to be heard is provided, unless rehearing or review is granted under R12-4-607. If the respondent does not wish to attend the hearing, the respondent may submit written testimony to the Department before the hearing date designated in the Notice of Hearing required by A.R.S. § 17-340(D). The Commission shall ensure that written testimony received at the time of the hearing is read into the record at the hearing.
- D. The Commission shall base its decision on the officer's case report, a summary prepared by the Department, a certified copy of the court record, and any testimony presented at the hearing. With the notice of hearing required by A.R.S. § 17-340(D), the Department shall supply the respondent with a copy of each document provided to the Commission for use in reaching a decision.
- E. Any party may apply to the Commission for issuance of a subpoena to compel the appearance of any witness or the production of documents at any hearing or deposition. Not later than 10 calendar days before the hearing or deposition, the party shall file a written application that provides the name and address of the witness, the subject matter of the expected testimony, the documents sought to be produced, and the date, time, and place of the hearing or deposition. The Commission chair has the authority to issue the subpoenas.
 - 1. A party shall have a subpoena served as prescribed in the Arizona Rules of Civil Procedure, Rule 45. An employee of the Department may serve a subpoena at the request of the Commission chair.
 - 2. A party may request that a subpoena be amended at any time before the deadline provided in this Section for filing the application. The party shall have the amended subpoena served as provided in subsection (E)(1).
- F. A license revoked by the Commission is suspended on the date of the hearing and revoked upon issuance of the findings of fact, conclusions of law, and order. If a respondent appeals the Commission's order revoking a license, the license is revoked after all appeals have been completed. A denial of the right to obtain a license is effective for a period not to exceed five years, as determined by the Commission, beginning on the date of the hearing.
- G. A license suspended by the Commission is suspended on the date of the hearing, and suspended upon issuance of the findings of fact, conclusions of law, and order. If a respondent appeals the Commission's order suspending a license, the license is suspended after all appeals have been completed. Under A.R.S. § 17-340(A), a suspension of a license is effective for a period not to exceed five years, as determined by the Commission, beginning on the date of the hearing.

Historical Note

Adopted effective December 22, 1987 (Supp. 87-4). Amended effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

R12-4-607. Rehearing or Review of Commission Decisions

- A. For purposes of this Section the following terms apply:
 - 1. "Contested case" and "party" are defined as provided in A.R.S. § 41-1001;
 - 2. "Appealable agency action" is defined as provided in A.R.S. § 41-1092(3).
- B. Except as provided in subsection (G), any party in a contested case or appealable agency action before the Commission may file a motion for rehearing or review within 30 calendar days after service of the final administrative decision. For purposes of this subsection a decision is served when personally delivered or mailed by certified mail to the party's last known residence or place of business. The party shall attach a supporting memorandum, specifying the grounds for the motion.
- C. A party may amend a motion for rehearing or review at any time before the Commission rules upon the motion. An opposing party has 15 calendar days after service to respond to the motion or the amended motion. The Commission has the authority to require that the parties file written briefs on any issue raised in a motion or response, and allow for oral argument.
- D. The Commission has the authority to grant rehearing or review for any of the following causes materially affecting the moving party's rights:
 - 1. Irregularity in the proceedings of the Commission, or any order or abuse of discretion that deprived the moving party of a fair hearing;
 - 2. Misconduct of the Commission, its staff, an administrative law judge, or the prevailing party;
 - 3. Accident or surprise that could not have been prevented by ordinary prudence;

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4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding; or
 7. That the findings of fact or decision is not justified by the evidence or is contrary to law.
- E.** The Commission may affirm or modify the decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). The Commission's order modifying a decision or granting a rehearing shall specify the grounds for the order, and any rehearing shall cover only those specified matters.
- F.** Not later than 15 calendar days, after a decision, the Commission may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Commission may grant a motion for rehearing or review for a reason not stated in the motion.
- G.** When a motion for rehearing or review is based upon affidavits, the party shall serve the affidavits with the motion. An opposing party may, within 10 calendar days after service, serve opposing affidavits. The Commission may extend this period for no more than 20 calendar days for good cause shown or by written stipulation of the parties. The Commission has the authority to permit reply affidavits.

Historical Note

Adopted effective June 13, 1977 (Supp. 77-3). Former Section R12-4-14 renumbered as Section R12-4-115 without change effective August 13, 1981 (Supp. 81-4). Former Section R12-4-115 renumbered without change as Section R12-4-607 effective December 22, 1987 (Supp. 87-4). Amended effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 10 A.A.R. 2245, effective July 6, 2004 (Supp. 04-2).

R12-4-608. Expired

Historical Note

Adopted effective April 28, 1989 (Supp. 89-2). Amended effective May 27, 1992 (Supp. 92-1). Amended effective November 10, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 211, effective December 14, 1999 (Supp. 99-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 853, effective January 31, 2002 (Supp. 02-1).

R12-4-609. Commission Orders

- A.** Except as provided in subsection (B):
1. At least 20 calendar days before a meeting where the Commission will consider a Commission Order, the Department shall ensure that a public meeting notice and agenda for the public meeting is posted in accordance with A.R.S. § 38-431.02. The Department shall also issue a public notice of the recommended Commission Order to print and electronic media at least 20 calendar days before the meeting.
 2. The Department shall ensure that the public meeting notice and agenda contains the date, time, and location of the Commission meeting where the Commission Order will be considered and a statement that the public may attend and present written comments at or before the meeting.
 3. The Department shall also ensure that the public meeting notice and agenda states that a copy of the proposed Commission Order is available for public inspection at the Department offices in Phoenix, Pinetop, Flagstaff, Kingman, Yuma, Tucson, and Mesa 10 calendar days before the meeting. The Commission may make changes to the recommended Commission Order at the Commission meeting.
- B.** The requirements of subsection (A) do not apply to Commission orders establishing:
1. Supplemental hunts as prescribed in R12-4-115, and
 2. Special seasons for individuals that possess special license tags issued under A.R.S. § 17-346 and R12-4-120.
- C.** The Department shall publish the content of all Commission orders and make them available to the public without charge.

Historical Note

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

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

- A.** An individual or agency requesting that the Commission consider closing state or federal land to hunting, fishing, or trapping as provided under A.R.S. § 17-304(B) or R12-4-110; or closing roads or trails on state lands as provided under R12-4-110, shall submit a petition as prescribed in this Section before the Commission will consider the request.
- B.** A petition shall not address more than one contiguous closure request.
- C.** Once the Commission has considered and denied a petition, an individual who subsequently submits a petition that addresses the same contiguous closure request shall provide a written statement that contains any reason not previously considered by the Commission in making a decision.
- D.** A petitioner shall submit an original and one copy of the petition to the Director of the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086, not less than 60 calendar days before a scheduled Commission meeting to be placed on the agenda for that meeting. If the Commission receives a petition after that time it will be considered at the next regular

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ly-scheduled open meeting. At any time, the petitioner may withdraw the petition or request delay to a later regularly-scheduled open meeting.

- E. Within 15 business days after the petition is filed, the Department shall determine whether the petition complies with the requirements established under A.R.S. § 17-452, R12-4-110, and this Section. Once the Department determines that the petition meets these requirements, and if the petitioner has not agreed to an alternative solution or withdrawn the petition, the Department, in accordance with the schedule in subsection (D), shall place the petition on the agenda for the Commission's next open meeting and provide written notice to the petitioner of the date that the Commission will consider the petition.
1. The petitioner may present oral testimony in support of the petition at the Commission meeting, in accordance with the provisions established under R12-4-603.
 2. If a petition does not meet the requirements prescribed under A.R.S. § 17-452, R12-4-110, and this Section, the Department shall return one copy of the petition as filed to the petitioner with the reasons why the petition does not meet the requirements, and not place the petition on a Commission agenda.
 3. If the Department returns a petition to a petitioner for a reason that cannot be corrected, the Department shall serve on the petitioner a notice of appealable agency action under A.R.S. § 41-1092.03.
- F. The petitioner shall submit a petition that:
1. Is typewritten, computer or word processor printed, or legibly handwritten, and double-spaced, on 8 1/2" x 11" paper;
 2. Has a concise map that shows the specific location of the proposed closure;
 3. Has the title "Petition for the Closure of Hunting, Fishing, or Trapping Privileges on Public Land" or "Petition for the Closure of Public Lands to the Operation of Motor Vehicles" at the top of the first page;
 4. Is in four parts, with titles designating each part as prescribed in this subsection;
 5. Has a "Part 1" with the title "Identification of Petitioner" and contains the following information, if applicable:
 - a. If the petitioner is the leaseholder of the area proposed for closure, the name, lease number, mailing address, and home telephone number of the petitioner;
 - b. If the petitioner is anyone other than the leaseholder, the name, mailing address, and telephone number of the leaseholder; the name, mailing address, and telephone number of the petitioner; and the name of each group or organization or organizations that the petitioner represents; or
 - c. If the petitioner is a public agency, the name and address of the agency and the name, title, and telephone number of the agency's representative regarding the petition.
 6. Has a "Part 2" with the title "Request for Closure" and contains all of the following information, if applicable:
 - a. The type of closure requested: either a hunting, fishing, or trapping closure, or closure to the operation of motor vehicles;
 - b. A complete legal description of the area to be closed;
 - c. The name or identifying number of any road and the portion of the road affected by the closure; and
 - d. The dates proposed for the closure:
 - i. If the closure is to the operation of motor vehicles, the actual time period of the closure (up to five years), and whether or not the closure is seasonal; or
 - ii. If the closure is for hunting, fishing, or trapping, whether or not the request is for a permanent closure or for some other period of time.
 7. Has a "Part 3" with the title "Reason for Closure" and contains all of the following information, if applicable:
 - a. Each reason why the closure should be considered under R12-4-110, A.R.S. § 17-304(B), or A.R.S. § 17-452(A);
 - b. Any data or other justification supporting the reasons for the closure with clear reference to any exhibits that may be attached to the petition;
 - c. Each individual or segment of the public the petitioner believes will be impacted by the closure, including any other valid licensees, lessees, or permittees that will or may be affected, and how they will be impacted, including both positive and negative impacts;
 - d. If the petitioner is a public agency, a summary of issues raised in any public hearing or public meeting regarding the petition and a copy of each written comment or document of concurrence authorized under A.R.S. § 17-452(A), received by the petitioning agency; and
 - e. A proposed alternate access route, under R12-4-110.
 8. Has a "Part 4" with the title "Dates and Signatures" and contains the following:
 - a. The original signature of the private party or the official contact named under subsection (F)(5)(a) or (b) of this Section, or, if the petitioner is a public agency, the signature of the agency head or the agency head's designee; and
 - b. The month, day, and year when the petition was signed.

Historical Note

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

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

- A. If no administrative remedy exists in statute, rule or policy, an aggrieved individual may request a hearing before the Commission by following the provisions of this Section.
- B. Any individual who requests a hearing under this Section shall submit a petition as prescribed in this Section before the request for a hearing will be considered by the Commission.

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- C. A petitioner shall submit an original and one copy of a petition to the Arizona Game and Fish Department, Director's Office, 5000 W. Carefree Highway, Phoenix, AZ 85086.
- D. The petitioner shall ensure that the petition is typewritten, computer or word processor printed, or legibly handwritten, and double-spaced on 8 1/2" x 11" paper. The petitioner shall place the title "Petition for Hearing by the Arizona Game and Fish Commission" at the top of the first page. The petition shall include the items listed in subsections (E) through (H). The petitioner shall present the items in the petition in the order in which they are listed in this Section.
- E. The petitioner shall ensure that the title of Part 1 is "Identification of Petitioner" and that Part 1 includes the following information, as applicable:
 1. If the petitioner is a private person, the name, mailing address, telephone number, and e-mail address (if available) of the petitioner;
 2. If the petitioner is a private group or organization, the name and address of the organization; the name, mailing address, telephone number, and e-mail address (if available) of one person who is designated as the official contact for the group or organization; the number of individuals or members represented by the private group or organization, and the number of these individuals or members who are Arizona residents. If the petitioner prefers, the petitioner may provide the names and addresses of all members; or
 3. If the petitioner is a public agency, the name and address of the agency and the name, title, telephone number, and e-mail address (if available) of the agency's representative.
- F. The petitioner shall ensure that the title of Part 2 is "Statement of Facts and Issues." Part 2 shall contain a description of the issue to be resolved, and a statement of the facts relevant to resolving the issue.
- G. The petitioner shall ensure that the title of Part 3 is "Petitioner's Proposed Remedy." Part 3 shall contain a full and detailed explanation of the specific remedy the petitioner is seeking from the Commission.
- H. The petitioner shall ensure that the title of Part 4 is "Date and Signatures." Part 4 shall contain:
 1. The original signature of the private party or the official contact named in the petition, or, if the petitioner is a public agency, the signature of the agency head or the agency head's designee; and
 2. The month, day, and year that the petition is signed.
- I. If a petition does not comply with this Section, the Director shall return the petition and indicate why the petition is deficient.
- J. After the Director receives a petition that complies with this Section, the Director shall place the petition on the agenda of a regularly scheduled Commission meeting.
- K. If the Commission votes to deny a petition, the Department shall not accept a subsequent petition on the same matter, unless the petitioner presents new evidence or reasons for considering the subsequent petition.
- L. This Section does not apply to the following:
 1. A matter related to a license revocation or civil assessment;
 2. An unsuccessful hunt permit-tag computer draw application, where there was no error on the part of the Department; or
 3. The reinstatement of a bonus point, except as authorized under R12-4-107(M).

Historical Note

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

**ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION
STATUTORY AUTHORITY**

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.

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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.

ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION STATUTORY AUTHORITY

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.

17-303. Taking or driving wildlife from closed areas

It is unlawful for any person, except by commission order, to enter upon a game refuge or other area closed to hunting, trapping or fishing and take, drive or attempt to drive wildlife from such areas.

17-304. Prohibition by landowner on hunting; posting; exception

- A. Landowners or lessees of private land who desire to prohibit hunting, fishing or trapping on their lands without their written permission shall post such lands closed to hunting, fishing or trapping using notices or signboards.
- B. State or federal lands including those under lease may not be posted except by consent of the commission.
- C. The notices or signboards shall meet all of the following criteria:
 1. Be not less than eight inches by eleven inches with plainly legible wording in capital and bold-faced lettering at least one inch high.
 2. Contain the words "no hunting", "no trapping" or "no fishing" either as a single phrase or in any combination.
 3. Be conspicuously placed on a structure or post at least four feet above ground level at all points of vehicular access, at all property or fence corners and at intervals of not more than one-quarter mile along the property boundary, except that a post with one hundred square inches or more of orange paint may serve as the interval notices between property or fence corners and points of vehicular access. The orange paint shall be clearly visible and shall cover the entire aboveground surface of the post facing outward and on both lateral sides from the closed area.
- D. The entry of any person for the taking of wildlife shall not be grounds for an action for criminal trespassing pursuant to section 13-1502 unless either:
 1. The land has been posted pursuant to this section and the notices and signboards also contain the words "no trespassing".
 2. The person knowingly remains unlawfully on any real property after a reasonable request to leave by a law enforcement officer acting at the request of the owner, the owner or any other person having lawful control over the property or the person knowingly disregards reasonable notice prohibiting entry to any real property.

17-309. Violations; classification

- A. Unless otherwise prescribed by this title, it is unlawful for a person to:
 1. Violate any provision of this title or any rule adopted pursuant to this title.

**ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION
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2. Take, possess, transport, release, buy, sell or offer or expose for sale wildlife except as expressly permitted by this title.
 3. Destroy, injure or molest livestock, growing crops, personal property, notices or signboards, or other improvements while hunting, trapping or fishing.
 4. Discharge a firearm while taking wildlife within one-fourth mile of an occupied farmhouse or other residence, cabin, lodge or building without permission of the owner or resident.
 5. Take a game bird, game mammal or game fish and knowingly permit an edible portion thereof to go to waste, except as provided in section 17-302.
 6. Take big game, except bear or mountain lion, with the aid of dogs.
 7. Make more than one use of a shipping permit or coupon issued by the commission.
 8. Obtain a license or take wildlife during the period for which the person's license has been revoked or suspended or the person has been denied a license.
 9. Litter hunting and fishing areas while taking wildlife.
 10. Take wildlife during the closed season.
 11. Take wildlife in an area closed to the taking of that wildlife.
 12. Take wildlife with an unlawful device.
 13. Take wildlife by an unlawful method.
 14. Take wildlife in excess of the bag limit.
 15. Possess wildlife in excess of the possession limit.
 16. Possess or transport any wildlife or parts of the wildlife that was unlawfully taken.
 17. Possess or transport the carcass of big game without a valid tag being attached.
 18. Use the edible parts of any game mammal or any part of any game bird or nongame bird as bait.
 19. Possess or transport the carcass or parts of a carcass of any wildlife that cannot be identified as to species and legality.
 20. Take game animals, game birds and game fish with an explosive compound, poison or any other deleterious substances.
 21. Import into this state or export from this state the carcass or parts of a carcass of any wildlife unlawfully taken or possessed.
- B. Unless a different or other penalty or punishment is specifically prescribed, a person who violates any provision of this title, or who violates or fails to comply with a lawful order or rule of the commission, is guilty of a class 2 misdemeanor.
- C. A person who knowingly takes any big game during a closed season or who knowingly possesses, transports or buys any big game that was unlawfully taken during a closed season is guilty of a class 1 misdemeanor.
- D. A person is guilty of a class 6 felony who knowingly:
1. Barter, sells or offers for sale any big game or parts of big game taken unlawfully.
 2. Barter, sells or offers for sale any wildlife or parts of wildlife unlawfully taken during a closed season.

**ARTICLE 6. RULES OF PRACTICE BEFORE THE COMMISSION
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3. Barters, sells or offers for sale any wildlife or parts of wildlife imported or purchased in violation of this title or a lawful rule of the commission.
 4. Assists another person for monetary gain with the unlawful taking of big game.
 5. Takes or possesses wildlife while under permanent revocation under section 17-340, subsection B, paragraph 3.
- E. A peace officer who knowingly fails to enforce a lawful rule of the commission or this title is guilty of a class 2 misdemeanor.

17-314. Civil liability for illegally taking or wounding wildlife; recovery of damages

- A. The commission or any officer charged with enforcement of the laws relating to game and fish, if so directed by the commission, may bring a civil action in the name of the state against any person unlawfully taking, wounding or killing, or unlawfully in possession of, any of the following wildlife, or part thereof, and seek to recover the following minimum sums as damage:

1. For each turkey or javelina.....	\$500.00
2. For each bear, mountain lion, antelope or deer, other than trophy....	\$1,500.00
3. For each elk or eagle, other than trophy or 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 trophy or endangered species animal.....	\$8,000.00
- B. No verdict or judgment recovered by the state in such action shall be for less than the sum fixed in this section. The minimum sum that the commission may seek to recover as damages from a person pursuant to this section may be doubled for a second verdict or judgment and tripled for a third verdict or judgment. The action for damages may be joined with an action for possession, and recovery had for the possession as well as the damages.
- C. The pendency or determination of an action for damages or payment of 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 placed in the wildlife theft prevention fund.

17-316. Interference with rights of hunters; classification; civil action; exceptions

- A. It is a class 2 misdemeanor for a person while in a hunting area to intentionally interfere with, prevent or disrupt the lawful taking of wildlife by:
 1. Harassing, driving or disturbing any wildlife.
 2. Blocking, obstructing or impeding, or attempting to block, obstruct or impede, a person lawfully taking wildlife.
 3. Erecting a barrier without the consent of the landowner or lessee with the intent to deny ingress to or egress from areas where wildlife may be lawfully taken.

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4. Making or attempting to make physical contact, without permission, with a person lawfully taking wildlife.
 5. Engaging in, or attempting to engage in, theft, vandalism or destruction of real or personal property.
 6. Disturbing or altering, or attempting to disturb or alter, the condition or authorized placement of real or personal property intended for use in the lawful taking of wildlife.
 7. Making or attempting to make loud noises or gestures, set out or attempt to set out animal baits, scents or lures or human scent, use any other natural or artificial visual, aural, olfactory or physical stimuli, or engage in or attempt to engage in any other similar action or activity, in order to disturb, alarm, drive, attract or affect the behavior of wildlife or disturb, alarm, disrupt or annoy a person lawfully taking wildlife.
 8. Interjecting oneself into the line of fire of a person lawfully taking wildlife.
- B. It is a class 3 misdemeanor for a person to enter or remain on a designated hunting area on any public or private lands or waters or state lands including state trust lands with the intent to interfere with, prevent or disrupt the lawful taking of wildlife.
- C. The commission or any person properly licensed to take wildlife who is directly affected by a violation of this section may bring an action to restrain conduct declared unlawful in this section and to recover damages.
- D. A peace officer who reasonably believes that a person has violated this section may order the person to desist or to leave the area or arrest such person upon refusal to desist or leave.
- E. The conduct declared unlawful in this section does not:
1. Include any incidental interference arising from lawful activity by public land users, including ranchers, miners or recreationists.
 2. Apply to landowners, permittees, lessees or their agents or contractors engaged in animal husbandry practices or agricultural operations.

17-340. Revocation, suspension and denial of privilege of taking wildlife; notice; violation; classification

- A. On conviction or after adjudication as a delinquent juvenile as defined in section 8-201 and in addition to other penalties prescribed by this title, the commission, after a public hearing, may revoke or suspend a license issued to any person under this title and deny the person the right to secure another license to take or possess wildlife for a period of not to exceed five years for:
1. Unlawful taking, unlawful selling, unlawful offering for sale, unlawful bartering or unlawful possession of wildlife.
 2. Careless use of firearms that has resulted in the injury or death of any person.
 3. Destroying, injuring or molesting livestock, or damaging or destroying growing crops, personal property, notices or signboards, or other improvements while hunting, trapping or fishing.
 4. Littering public hunting or fishing areas while taking wildlife.
 5. Knowingly allowing another person to use the person's big game tag, except as provided by section 17-332, subsection D.
 6. A violation of section 17-303, 17-304, 17-316 or 17-341 or section 17-362, subsection A.

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7. A violation of section 17-309, subsection A, paragraph 5 involving a waste of edible portions other than meat damaged due to the method of taking as follows:
 - (a) Upland game birds, migratory game birds and wild turkey: breast.
 - (b) Deer, elk, pronghorn (antelope), bighorn sheep, bison (buffalo) and peccary (javelina): hind quarters, front quarters and loins.
 - (c) Game fish: fillets of the fish.
 8. A violation of section 17-309, subsection A, paragraph 1 involving any unlawful use of aircraft to take, assist in taking, harass, chase, drive, locate or assist in locating wildlife.
- B. On conviction or after adjudication as a delinquent juvenile and in addition to any other penalties prescribed by this title:
1. For a first conviction or a first adjudication as a delinquent juvenile, for unlawfully taking or wounding wildlife at any time or place, the commission, after a public hearing, may revoke, suspend or deny a person's privilege to take wildlife for a period of up to five years.
 2. For a second conviction or a second adjudication as a delinquent juvenile, for unlawfully taking or wounding wildlife at any time or place, the commission, after a public hearing, may revoke, suspend or deny a person's privilege to take wildlife for a period of up to ten years.
 3. For a third conviction or a third adjudication as a delinquent juvenile, for unlawfully taking or wounding wildlife at any time or place, the commission, after a public hearing, may revoke, suspend or deny a person's privilege to take wildlife permanently.
- C. A person who is assessed civil damages under section 17-314 shall not apply for or obtain a license during the pendency of an action for damages, while measures are pursued to collect damages or prior to the full payment of damages.
- D. On receiving a report from the licensing authority of a state that is a party to the wildlife violator compact, adopted under chapter 5 of this title, that a resident of this state has failed to comply with the terms of a wildlife citation, the commission, after a public hearing, may suspend any license issued under this title to take wildlife until the licensing authority furnishes satisfactory evidence of compliance with the terms of the wildlife citation.
- E. In carrying out this section the director shall notify the licensee, within one hundred eighty days after conviction, to appear and show cause why the license should not be revoked, suspended or denied. The notice may be served personally or by certified mail sent to the address appearing on the license.
- F. The commission shall furnish to license dealers the names and addresses of persons whose licenses have been revoked or suspended, and the periods for which they have been denied the right to secure licenses.
- G. The commission may use the services of the office of administrative hearings to conduct hearings and to make recommendations to the commission pursuant to this section.
- H. Except for a person who takes or possesses wildlife while under permanent revocation, a person who takes wildlife in this state, or attempts to obtain a license to take wildlife, at a time when the person's privilege to do so is suspended, revoked or denied under this section is guilty of a class 1 misdemeanor.

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17-341. Violation; classification

- A. It is unlawful for a person to knowingly purchase, apply for, accept, obtain or use, by fraud or misrepresentation a license, permit, tag or stamp to take wildlife and a license or permit so obtained is void and of no effect from the date of issuance thereof.
- B. Any person who violates this section is guilty of a class 2 misdemeanor.

17-361. Trappers; licensing; restrictions; duties; reports

- A. The holder of a trapping license, may trap predatory, nongame, and fur-bearing mammals under such restrictions as the commission may specify.
- B. All traps shall be plainly identified with the name, address, or registered number of the owner, and such markings of identification shall be filed with the department. All traps in use shall be inspected daily.
- C. It shall be unlawful for a person to disturb the trap of another unless authorized to do so by the owner.
- D. Pursuant to rules and regulations of the commission, each trapping licensee shall, on dates designated by the commission, submit on forms provided by the department, a legible report of the number of each kind of predatory, nongame and fur-bearing mammal taken and the names and addresses of the persons to whom they were shipped or sold or the wildlife management units where the animals were taken.

17-362. Guide license; violations; annual report

- A. A person shall not act as a guide without first satisfying the director of the person's qualifications and without having procured a guide license. A person who is under eighteen years of age shall not be issued a guide license.
- B. If a licensed guide fails to comply with this title or is convicted of violating any provision of this title, in addition to any other penalty prescribed by this title:
 1. For a first offense, the commission, after a public hearing, may revoke or suspend the guide license and deny the person the right to secure another license for a period of up to five years.
 2. For a second offense, the commission, after a public hearing, may revoke or suspend the guide license and deny the person the right to secure another license for a period of up to ten years.
 3. For a third offense, the commission, after a public hearing, may revoke or suspend the guide license and permanently deny the person the right to secure another license.
- C. By January 10 of each year, or at the request of the commission, guides shall report to the department, on forms provided by the department, the name and address of each person guided, the number of days so employed and the number and species of game animals taken. A guide license shall not be issued to any person who has failed to deliver the report to the department for the preceding license year, or until meeting such requirements as the commission may prescribe.

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17-363. License to practice taxidermy

- A. No person shall engage in the business of a taxidermist for hire until such person has procured a license which may be granted to any person at the discretion of the commission.
- B. A taxidermist shall keep a register, and exhibit it upon request of authorized representatives of the game and fish department and the United States fish and wildlife service, of the names and addresses of persons who furnish raw and unmounted specimens, the taker's tag or license number, the date and number of each species of wildlife received, and shall by the tenth day of October, January, April and July, file a legible report in English with the department of such entries except names and addresses on forms provided therefor.

17-364. Fur dealer's license; records; reports

- A. No person shall engage in the business of buying for resale any specimen of predatory, nongame and fur-bearing mammals taken within this state without obtaining a fur dealer's license.
- B. A fur dealer shall keep a record of the date, number and species of all pelts or furs received, the name and addresses of the persons from whom such pelts or furs were received and the names and addresses of the persons to whom such pelts or furs were shipped or sold.
- C. Fur dealers shall by the tenth day of October, January, April and July file a legible report with the department of all such records required by paragraph B on forms provided by the department.

17-452. Restrictions on motor vehicle use; recommendations; agreements; rules

- A. When the commission determines that the operation of motor vehicles within a certain area, except private land, is or may be damaging to wildlife reproduction, wildlife management or wildlife habitat of such area, the commission, with the concurrence of the land management agency involved and after a public hearing, may order such area closed to motor vehicles for not more than five years from the date of such closure, provided that all roads in such area shall remain open unless specifically closed.
- B. The commission may also recommend that particular areas of land be set aside or made available for the use of recreational vehicles.
- C. The commission may enter into agreements with landowners and agencies controlling areas that the commission has made recommendations on pursuant to subsection B. Any such agreement shall stipulate the restrictions, prohibitions and permitted uses of motor vehicles in such area and the duties of the commission and such landowner or agency relating to the enforcement of the terms of such agreement.
- D. The commission shall adopt rules pursuant to title 41, chapter 6 to carry out the provisions of this section.

41-1003. Required rulemaking

Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

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41-1023. Public participation; written statements; oral proceedings

- A. After providing notice of docket openings, an agency may meet informally with any interested party for the purpose of discussing the proposed rulemaking action. The agency may solicit comments, suggested language or other input on the proposed rule. The agency may publish notice of these meetings in the register.
- B. For at least thirty days after publication of the notice of the proposed rulemaking, an agency shall afford persons the opportunity to submit in writing statements, arguments, data and views on the proposed rule, with or without the opportunity to present them orally.
- C. An agency shall schedule an oral proceeding on a proposed rule if, within thirty days after the published notice of proposed rulemaking, a written request for an oral proceeding is submitted to the agency personnel listed pursuant to section 41-1021, subsection B.
- D. An oral proceeding on a proposed rule may not be held earlier than thirty days after notice of its location and time is published in the register. The agency shall determine a location and time for the oral proceeding which affords a reasonable opportunity to persons to participate. The oral proceeding shall be conducted in a manner that allows for adequate discussion of the substance and the form of the proposed rule, and persons may ask questions regarding the proposed rule and present oral argument, data and views on the proposed rule.
- E. The agency, a member of the agency or another presiding officer designated by the agency shall preside at an oral proceeding on a proposed rule. If the agency does not preside, the presiding official shall prepare a memorandum for consideration by the agency summarizing the contents of the presentations made at the oral proceeding. Oral proceedings must be open to the public and recorded by stenographic or other means.
- F. Each agency may make rules for the conduct of oral rulemaking proceedings. Those rules may include provisions calculated to prevent undue repetition in the oral proceedings.

41-1029. Agency rule making record

- A. An agency shall maintain an official rule making record for each rule it proposes by publication in the register of a notice of proposed rulemaking and each final rule filed in the office of the secretary of state. The record and matter incorporated by reference must be available for public inspection.
- B. The agency rule making record shall contain all of the following:
 1. A copy of the notice initially filed in the office of the secretary of state.
 2. Copies of all publications in the register with respect to the rule or the proceeding on which the rule is based.
 3. Copies of any portions of the agency's rule making docket containing entries relating to the rule or the proceeding on which the rule is based.
 4. All written petitions, requests, submissions and comments received by the agency and all other written materials considered or prepared by the agency in connection with the rule or the proceeding on which the rule is based.
 5. Any official transcript of oral presentations made in the proceeding on which the rule is based, or if not transcribed, any tape recording or stenographic record of those presentations, and any memorandum

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- prepared by a presiding official summarizing the contents of those presentations.
- 6. A copy of all materials submitted to the council, including the economic, small business and consumer impact statement and the minutes of the council meeting at which the rule was reviewed.
 - 7. A copy of the final rule and preamble.
 - 8. Information requested regarding the experience, technical competence, specialized knowledge and judgment of an agency if the agency relies on section 41-1024, subsection D in the making of a rule and a request is made.
 - C. On judicial review, the record required by this section constitutes the official agency rule making record with respect to a rule. Except as provided in section 41-1036 or otherwise required by a provision of law, the agency rule making record need not constitute the exclusive basis for agency action on that rule or for judicial review of that rule.

41-1033. Petition for a rule or review of a practice or policy

- A. Any person, in a manner and form prescribed by the agency, may petition an agency requesting the making of a final rule or a review of an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule. The petition shall clearly state the rule, agency practice or substantive policy statement which the person wishes the agency to make or review. Within sixty days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for denial, initiate rulemaking proceedings in accordance with this chapter or, if otherwise lawful, make a rule.
- B. A person may appeal to the council the agency's final decision within thirty days after the agency gives written notice pursuant to subsection A of this section. The appeal shall be limited to whether an existing agency practice or substantive policy statement constitutes a rule. The council chairperson shall place this appeal on the agenda of the council's next meeting if at least three council members make such a request of the council chairperson within two weeks after the filing of the appeal.
- C. If the council receives information indicating that an existing agency practice or substantive policy statement may constitute a rule and at least four council members request the chairperson that the matter be heard in a public meeting:
 1. Within ninety days of receipt of the fourth council member request, the council shall determine if the agency practice or substantive policy statement constitutes a rule.
 2. Within ten days of receipt of the fourth council member request, the council shall notify the agency that the matter has been or will be placed on an agenda.
 3. Within thirty days of receiving notice from the council, the agency shall submit a statement that addresses whether the existing agency practice or substantive policy statement constitutes a rule.
- D. For the purposes of subsection C of this section, the council meeting shall not be held until the expiration of the agency response period prescribed in subsection C, paragraph 3 of this subsection.

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- E. An agency practice or substantive policy statement considered by the council pursuant to this section shall remain in effect while under consideration of the council. If the council ultimately decides the agency practice or statement constitutes a rule, the practice or statement shall be considered void.
- F. A decision by the agency pursuant to this section is not subject to judicial review, except that, in addition to the procedure prescribed in this section or in lieu of the procedure prescribed in this section, a person may seek declaratory relief pursuant to section 41-1034.

41-1092.01. Office of administrative hearings; director; powers and duties; fund

- A. An office of administrative hearings is established.
- B. The governor shall appoint the director pursuant to section 38-211. At a minimum, the director shall have the experience necessary for appointment as an administrative law judge. The director also shall possess supervisory, management and administrative skills, as well as knowledge and experience relating to administrative law.
- C. The director shall:
 1. Serve as the chief administrative law judge of the office.
 2. Make and execute the contracts and other instruments that are necessary to perform the director's duties.
 3. Subject to chapter 4, article 4 of this title, hire employees, including full-time administrative law judges, and contract for special services, including temporary administrative law judges, that are necessary to carry out this article. An administrative law judge employed or contracted by the office shall have graduated from an accredited college of law or shall have at least two years of administrative or managerial experience in the subject matter or agency section the administrative law judge is assigned to in the office.
 4. Make rules that are necessary to carry out this article, including rules governing ex parte communications in contested cases.
 5. Submit a report to the governor, speaker of the house of representatives and president of the senate by November 1 of each year describing the activities and accomplishments of the office. The director's annual report shall include a summary of the extent and effect of agencies' utilization of administrative law judges, court reporters and other personnel in proceedings under this article and recommendations for changes or improvements in the administrative procedure act or any agency's practice or policy with respect to the administrative procedure act.
 6. Secure, compile and maintain all decisions, opinions or reports of administrative law judges issued pursuant to this article and the reference materials and supporting information that may be appropriate.
 7. Develop, implement and maintain a program for the continuing training and education of administrative law judges and agencies in regard to their responsibilities under this article. The program shall require that an administrative law judge receive training in the technical and subject matter areas of the sections to which the administrative law judge is assigned.

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8. Develop, implement and maintain a program of evaluation to aid the director in the evaluation of administrative law judges appointed pursuant to this article that includes comments received from the public.
 9. Annually report the following to the governor, the president of the senate and the speaker of the house of representatives by December 1 for the prior fiscal year:
 - (a) The number of administrative law judge decisions rejected or modified by agency heads.
 - (b) By category, the number and disposition of motions filed pursuant to section 41-1092.07, subsection A to disqualify office administrative law judges for bias, prejudice, personal interest or lack of expertise.
 - (c) By agency, the number and type of violations of section 41-1009.
 10. Schedule hearings pursuant to section 41-1092.05 upon the request of an agency or the filing of a notice of appeal pursuant to section 41-1092.03.
- D. The director shall not require legal representation to appear before an administrative law judge.
- E. Except as provided in subsection F of this section, all state agencies supported by state general fund sources, unless exempted by this article, and the registrar of contractors shall use the services and personnel of the office to conduct administrative hearings. All other agencies shall contract for services and personnel of the office to conduct administrative hearings.
- F. An agency head, board or commission that directly conducts an administrative hearing as an administrative law judge is not required to use the services and personnel of the office for that hearing.
- G. Each state agency, and each political subdivision contracting for office services pursuant to subsection I of this section, shall make its facilities available, as necessary, for use by the office in conducting proceedings pursuant to this article.
- H. The office shall employ full-time administrative law judges to conduct hearings required by this article or other laws as follows:
1. The director shall assign administrative law judges from the office to an agency, on either a temporary or a permanent basis, at supervisory or other levels, to preside over contested cases and appealable agency actions in accordance with the special expertise of the administrative law judge in the subject matter of the agency.
 2. The director shall establish the subject matter and agency sections within the office that are necessary to carry out this article. Each subject matter and agency section shall provide training in the technical and subject matter areas of the section as prescribed in subsection C, paragraph 7 of this section.
- I. If the office cannot furnish an office administrative law judge promptly in response to an agency request, the director may contract with qualified individuals to serve as temporary administrative law judges. These temporary administrative law judges are not employees of this state.
- J. The office may provide administrative law judges on a contract basis to any governmental entity to conduct any hearing not covered by this article. The director may enter into contracts with political subdivisions of this state, and these political subdivisions may contract with the director for the purpose of providing administrative law judges and reporters for administrative proceedings or informal dispute resolution. The contract may define the

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scope of the administrative law judge's duties. Those duties may include the preparation of findings, conclusions, decisions or recommended decisions or a recommendation for action by the political subdivision. For these services, the director shall request payment for services directly from the political subdivision for which the services are performed, and the director may accept payment on either an advance or reimbursable basis.

- K. The office shall apply monies received pursuant to subsections E and J of this section to offset its actual costs for providing personnel and services.

41-1092.02. Appealable agency actions; application of procedural rules; exemption from article

- A. This article applies to all contested cases as defined in section 41-1001 and all appealable agency actions, except contested cases with or appealable agency actions of:
1. The state department of corrections.
 2. The board of executive clemency.
 3. The industrial commission of Arizona.
 4. The Arizona corporation commission.
 5. The Arizona board of regents and institutions under its jurisdiction.
 6. The state personnel board.
 7. The department of juvenile corrections.
 8. The department of transportation.
 9. The department of economic security except as provided in section 46-458.
 10. The department of revenue regarding:
 - (a) Income tax or withholding tax.
 - (b) Any tax issue related to information associated with the reporting of income tax or withholding tax unless the taxpayer requests in writing that this article apply and waives confidentiality under title 42, chapter 2, article 1.
 11. The board of tax appeals.
 12. The state board of equalization.
 13. The state board of education, but only in connection with contested cases and appealable agency actions related to applications for issuance or renewal of a certificate and discipline of certificate holders pursuant to sections 15-203, 15-534, 15-534.01, 15-535, 15-545 and 15-550.
 14. The board of fingerprinting.
 15. The department of child safety except as provided in sections 8-506.01 and 8-811.
- B. Unless waived by all parties, an administrative law judge shall conduct all hearings under this article, and the procedural rules set forth in this article and rules made by the director apply.
- C. Except as provided in subsection A of this section:
1. A contested case heard by the office of administrative hearings regarding taxes administered under title 42 shall be subject to the provisions under section 42-1251.

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2. A final decision of the office of administrative hearings regarding taxes administered under title 42 may be appealed by either party to the director of the department of revenue, or a taxpayer may file and appeal directly to the board of tax appeals pursuant to section 42-1253.
- D. Except as provided in subsections A, B, E, F and G of this section and notwithstanding any other administrative proceeding or judicial review process established in statute or administrative rule, this article applies to all appealable agency actions and to all contested cases.
- E. Except for a contested case or an appealable agency action regarding unclaimed property, sections 41-1092.03, 41-1092.08 and 41-1092.09 do not apply to the department of revenue.
- F. The board of appeals established by section 37-213 is exempt from:
 1. The time frames for hearings and decisions provided in section 41-1092.05, subsection A, section 41-1092.08 and section 41-1092.09.
 2. The requirement in section 41-1092.06, subsection A to hold an informal settlement conference at the appellant's request if the sole subject of an appeal pursuant to section 37-215 is the estimate of value reported in an appraisal of lands or improvements.
- G. Auction protest procedures pursuant to title 37, chapter 2, article 4.1 are exempt from this article.

41-1092.03. Notice of appealable agency action or contested case; hearing; informal settlement conference; applicability

- A. Except as provided in subsection D of this section, an agency shall serve notice of an appealable agency action or contested case pursuant to section 41-1092.04. The notice shall:
 1. Identify the statute or rule that is alleged to have been violated or on which the action is based.
 2. Identify with reasonable particularity the nature of any alleged violation, including, if applicable, the conduct or activity constituting the violation.
 3. Include a description of the party's right to request a hearing on the appealable agency action or contested case.
 4. Include a description of the party's right to request an informal settlement conference pursuant to section 41-1092.06.
- B. A party may obtain a hearing on an appealable agency action or contested case by filing a notice of appeal or request for a hearing with the agency within thirty days after receiving the notice prescribed in subsection A of this section. The notice of appeal or request for a hearing may be filed by a party whose legal rights, duties or privileges were determined by the appealable agency action or contested case. A notice of appeal or request for a hearing also may be filed by a party who will be adversely affected by the appealable agency action or contested case and who exercised any right provided by law to comment on the action being appealed or contested, provided that the grounds for the notice of appeal or request for a hearing are limited to issues raised in that party's comments. The notice of appeal or request for a hearing shall identify the party, the party's address, the agency and the action being appealed or contested and shall contain a concise statement of the reasons for the appeal or request for a hearing. The agency shall notify the office of the appeal or request for a

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hearing and the office shall schedule an appeal or contested case hearing pursuant to section 41-1092.05, except as provided in section 41-1092.01, subsection F.

- C. If good cause is shown an agency head may accept an appeal or request for a hearing that is not filed in a timely manner.
- D. This section does not apply to a contested case if the agency:
 - 1. Initiates the contested case hearing pursuant to law other than this chapter and not in response to a request by another party.
 - 2. Is not required by law, other than this chapter, to provide an opportunity for an administrative hearing before taking action that determines the legal rights, duties or privileges of an applicant for a license.

41-1092.04. Service of documents

Unless otherwise provided in this article, every notice or decision under this article shall be served by personal delivery or certified mail, return receipt requested, or by any other method reasonably calculated to effect actual notice on the agency and every other party to the action to the party's last address of record with the agency. Each party shall inform the agency and the office of any change of address within five days of the change.

41-1092.05. Scheduling of hearings; prehearing conferences

- A. Except as provided in subsections B and C, hearings for:
 - 1. Appealable agency actions shall be held within sixty days after the notice of appeal is filed.
 - 2. Contested cases shall be held within sixty days after the agency's request for a hearing.
- B. Hearings for appealable agency actions or contested cases with self-supporting regulatory boards that meet quarterly or less frequently shall be held at the next meeting of the board after the board receives the written decision of an administrative law judge or the issuance of the notice of hearing, except that:
 - 1. If the decision of the administrative law judge is received or the notice of hearing is issued within thirty days before the board meets, the hearing shall be held at the following meeting of the board.
 - 2. If good cause is shown, the hearing may be held at a later meeting of the board.
- C. The date scheduled for the hearing may be advanced or delayed on the agreement of the parties or on a showing of good cause.
- D. The agency shall prepare and serve a notice of hearing on all parties to the appeal or contested case at least thirty days before the hearing. The notice shall include:
 - 1. A statement of the time, place and nature of the hearing.
 - 2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
 - 3. A reference to the particular sections of the statutes and rules involved.
 - 4. A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. After the initial notice and on application, a more definite and detailed statement shall be furnished.

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- E. Notwithstanding subsection D, a hearing shall be expedited as provided by law or upon a showing of extraordinary circumstances or the possibility of irreparable harm if the parties to the appeal or contested case have actual notice of the hearing date. Any party to the appeal or contested case may file a motion with the director asserting the party's right to an expedited hearing. The right to an expedited hearing shall be listed on any abatement order. The Arizona health care cost containment system administration may file a motion with every member grievance and eligibility appeal that cites federal law and that requests that a hearing be set within thirty days after the motion is filed.
- F. Prehearing conferences may be held to:
 1. Clarify or limit procedural, legal or factual issues.
 2. Consider amendments to any pleadings.
 3. Identify and exchange lists of witnesses and exhibits intended to be introduced at the hearing.
 4. Obtain stipulations or rulings regarding testimony, exhibits, facts or law.
 5. Schedule deadlines, hearing dates and locations if not previously set.
 6. Allow the parties opportunity to discuss settlement.

41-1092.06. Appeals of agency actions and contested cases; informal settlement conferences; applicability

- A. If requested by the appellant of an appealable agency action or the respondent in a contested case, the agency shall hold an informal settlement conference within fifteen days after receiving the request. A request for an informal settlement conference shall be in writing and shall be filed with the agency no later than twenty days before the hearing. If an informal settlement conference is requested, the agency shall notify the office of the request and the outcome of the conference, except as provided in section 41-1092.01, subsection F. The request for an informal settlement conference does not toll the sixty day period in which the administrative hearing is to be held pursuant to section 41-1092.05.
- B. If an informal settlement conference is held, a person with the authority to act on behalf of the agency must represent the agency at the conference. The agency representative shall notify the appellant in writing that statements, either written or oral, made by the appellant at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative hearing. The parties participating in the settlement conference shall waive their right to object to the participation of the agency representative in the final administrative decision.

41-1092.07. Hearings

- A. A party to a contested case or appealable agency action may file a nonperemptory motion with the director to disqualify an office administrative law judge from conducting a hearing for bias, prejudice, personal interest or lack of technical expertise necessary for a hearing.
- B. The parties to a contested case or appealable agency action have the right to be represented by counsel or to proceed without counsel, to submit evidence and to cross-examine witnesses.

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- C. The administrative law judge may issue subpoenas to compel the attendance of witnesses and the production of documents. The subpoenas shall be served and, on application to the superior court, enforced in the manner provided by law for the service and enforcement of subpoenas in civil matters. The administrative law judge may administer oaths and affirmations to witnesses.
- D. All parties shall have the opportunity to respond and present evidence and argument on all relevant issues. All relevant evidence is admissible, but the administrative law judge may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues or by considerations of undue delay, waste of time or needless presentation of cumulative evidence. The administrative law judge shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence to make the cross-examination and presentation effective for ascertaining the truth, avoiding needless consumption of time and protecting witnesses from harassment or undue embarrassment.
- E. All hearings shall be recorded. The administrative law judge shall secure either a court reporter or an electronic means of producing a clear and accurate record of the proceeding at the agency's expense. Any party that requests a transcript of the proceeding shall pay the costs of the transcript to the court reporter or other transcriber.
- F. Unless otherwise provided by law, the following apply:
 - 1. A hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings is grounds for reversing any administrative decision or order if the evidence supporting the decision or order is substantial, reliable and probative.
 - 2. Copies of documentary evidence may be received in the discretion of the administrative law judge. On request, parties shall be given an opportunity to compare the copy with the original.
 - 3. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be used in the evaluation of the evidence.
 - 4. On application of a party or the agency and for use as evidence, the administrative law judge may permit a deposition to be taken, in the manner and on the terms designated by the administrative law judge, of a witness who cannot be subpoenaed or who is unable to attend the hearing. Subpoenas for the production of documents may be ordered by the administrative law judge if the party seeking the discovery demonstrates that the party has reasonable need of the materials being sought. All provisions of law compelling a person under subpoena to testify are applicable. Fees for attendance as a witness shall be the same as for a witness in court, unless otherwise provided by law or agency rule. Notwithstanding section 12-2212, subpoenas, depositions or other discovery shall not be permitted except as provided by this paragraph or subsection C of this section.

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5. Informal disposition may be made by stipulation, agreed settlement, consent order or default.
 6. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.
 7. A final administrative decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
- G. Except as otherwise provided by law:
1. At a hearing on an agency's denial of a license or permit or a denial of an application or request for modification of a license or permit, the applicant has the burden of persuasion.
 2. At a hearing on an agency action to suspend, revoke, terminate or modify on its own initiative material conditions of a license or permit, the agency has the burden of persuasion.
 3. At a hearing on an agency's imposition of fees or penalties or any agency compliance order, the agency has the burden of persuasion.
 4. At a hearing held pursuant to title 41, chapter 23 or 24, the appellant or claimant has the burden of persuasion.
- H. Subsection G of this section does not affect the law governing burden of persuasion in an agency denial of, or refusal to issue, a license renewal.

41-1092.08. Final administrative decisions; review

- A. The administrative law judge of the office shall issue a written decision within twenty days after the hearing is concluded. The written decision shall contain a concise explanation of the reasons supporting the decision. The administrative law judge shall serve a copy of the decision on the agency. Upon request of the agency, the office shall also transmit to the agency the record of the hearing as described in section 12-904, except as provided in section 41-1092.01, subsection F.
- B. Within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or commission, the head of the agency, executive director, board or commission may review the decision and accept, reject or modify it. If the head of the agency, executive director, board or commission declines to review the administrative law judge's decision, the agency shall serve a copy of the decision on all parties. If the head of the agency, executive director, board or commission rejects or modifies the decision the agency head, executive director, board or commission must file with the office, except as provided in section 41-1092.01, subsection F, and serve on all parties a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification.
- C. A board or commission whose members are appointed by the governor may review the decision of the agency head, as provided by law, and make the final administrative decision.
- D. Except as otherwise provided in this subsection, if the head of the agency or a board or commission does not accept, reject or modify the administrative law judge's decision within thirty days after the date the office sends a copy of the administrative law judge's decision to the head of the agency, executive director, board or

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commission, as evidenced by receipt of such action by the office by the thirtieth day the office shall certify the administrative law judge's decision as the final administrative decision. If the board or commission meets monthly or less frequently, if the office sends the administrative law judge's decision at least thirty days before the next meeting of the board or commission and if the board or commission does not accept, reject or modify the administrative law judge's decision at the next meeting of the board or commission, as evidenced by receipt of such action by the office within five days after the meeting the office shall certify the administrative law judge's decision as the final administrative decision.

- E. For the purposes of subsections B and D of this section, a copy of the administrative law judge's decision is sent on personal delivery of the decision or five days after the decision is mailed to the head of the agency, executive director, board or commission.
 - F. The decision of the agency head is the final administrative decision unless either:
 - 1. The agency head, executive director, board or commission does not review the administrative law judge's decision pursuant to subsection B of this section or does not reject or modify the administrative law judge's decision as provided in subsection D of this section, in which case the administrative law judge's decision is the final administrative decision.
 - 2. The decision of the agency head is subject to review pursuant to subsection C of this section.
- G. If a board or commission whose members are appointed by the governor makes the final administrative decision as an administrative law judge or upon review of the decision of the agency head, the decision is not subject to review by the head of the agency.
- H. A party may appeal a final administrative decision pursuant to title 12, chapter 7, article 6, except as provided in section 41-1092.09, subsection B and except that if a party has not requested a hearing upon receipt of a notice of appealable agency action pursuant to section 41-1092.03, the appealable agency action is not subject to judicial review.
- I. This section does not apply to the Arizona peace officer standards and training board established by section 41-1821.

41-1092.09. Rehearing or review

- A. Except as provided in subsection B of this section:
 - 1. A party may file a motion for rehearing or review within thirty days after service of the final administrative decision.
 - 2. The opposing party may file a response to the motion for rehearing within fifteen days after the date the motion for rehearing is filed.
 - 3. After a hearing has been held and a final administrative decision has been entered pursuant to section 41-1092.08, a party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.
- B. A party to an appealable agency action of or contested case with a self-supporting regulatory board shall exhaust the party's administrative remedies by filing a motion for rehearing or review within thirty days after

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the service of the administrative decision that is subject to rehearing or review in order to be eligible for judicial review pursuant to title 12, chapter 7, article 6. The board shall notify the parties in the administrative decision that is subject to rehearing or review that a failure to file a motion for rehearing or review within thirty days after service of the decision has the effect of prohibiting the parties from seeking judicial review of the board's decision.

- C. Service is complete on personal service or five days after the date that the final administrative decision is mailed to the party's last known address.
- D. Except as provided in this subsection, the agency head, executive director, board or commission shall rule on the motion within fifteen days after the response to the motion is filed or, if a response is not filed, within five days of the expiration of the response period. A self-supporting regulatory board shall rule on the motion within fifteen days after the response to the motion is filed or at the board's next meeting after the motion is received, whichever is later.

41-1092.10. Compulsory testimony; privilege against self-incrimination

- A. A person may not refuse to attend and testify or produce evidence sought by an agency in an action, proceeding or investigation instituted by or before the agency on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture unless it constitutes the compelled testimony or the private papers of the person that would be privileged evidence either pursuant to the fifth amendment of the Constitution of the United States or article II, section 10, Constitution of Arizona, and the person claims the privilege before the production of the testimony or papers.
- B. If a person asserts the privilege against self-incrimination and the agency seeks to compel production of the testimony or documents sought, the office or agency as provided in section 41-1092.01, subsection F may issue, with the prior written approval of the attorney general, a written order compelling the testimony or production of documents in proceedings and investigations before the office or agency as provided in section 41-1092.01, subsection F or apply to the appropriate court for such an order in other actions or proceedings.
- C. Evidence produced pursuant to subsection B of this section is not admissible in evidence or usable in any manner in a criminal prosecution, except for perjury, false swearing, tampering with physical evidence or any other offense committed in connection with the appearance made pursuant to this section against the person testifying or the person producing the person's private papers.

41-1092.11. Licenses; renewal; revocation; suspension; annulment; withdrawal

- A. If a licensee makes timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

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B. Revocation, suspension, annulment or withdrawal of any license is not lawful unless, before the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this article. If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the agency may order summary suspension of a license pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

41-1092.12. Private right of action; recovery of costs and fees; definitions

- A. If an agency takes an action against a party that is arbitrary, capricious or not in accordance with law, the action is an appealable agency action if all of the following apply:
 1. Within ten days after the action that is arbitrary, capricious or not in accordance with law, the party notifies the director of the agency in writing of the party's intent to file a claim pursuant to this section. This notice shall include a description of the action the party claims to be arbitrary, capricious or not in accordance with law and reasons why the action is arbitrary, capricious or not in accordance with law.
 2. The agency continues the action that is arbitrary, capricious or not in accordance with law more than ten days after the agency receives the notice.
 3. The action is not excluded from the definition of appealable agency action as defined in section 41-1092.
- B. This section only applies if an administrative remedy or an administrative or a judicial appeal of final agency action is not otherwise provided by law.
- C. If the party prevails, the agency shall pay reasonable costs and fees to the party from any monies appropriated to the agency and available for that purpose or from other operating monies of the agency. If the agency fails or refuses to pay the award within fifteen days after the demand, and if no further review or appeal of the award is pending, the prevailing party may file a claim with the department of administration. The department of administration shall pay the claim within thirty days in the same manner as an uninsured property loss under title 41, chapter 3.1, article 1, except that the agency is responsible for the total amount awarded and shall pay it from its operating monies. If the agency had appropriated monies available for paying the award at the time it failed or refused to pay, the legislature shall reduce the agency's operating appropriation for the following fiscal year by the amount of the award and shall appropriate that amount to the department of administration as reimbursement for the loss.
- D. If the administrative law judge determines that the appealable agency action is frivolous, the administrative law judge may require the party to pay reasonable costs and fees to the agency in responding to the appeal filed before the office of administrative hearings.
- E. For the purposes of this section:
 1. "Action against the party" means any of the following that results in the expenditure of costs and fees:
 - (a) A decision.
 - (b) An inspection.
 - (c) An investigation.
 - (d) The entry of private property.

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2. "Agency" means the department of environmental quality established pursuant to title 49, chapter 1, article 1.
3. "Costs and fees" means reasonable attorney and professional fees.
4. "Party" means an individual, partnership, corporation, association and public or private organization at whom the action was directed and who has expended costs and fees as a result of the action against the party.

ARTICLE 4. LIVE WILDLIFE - DEFINITIONS

17-101. Definitions

- A. In this title, unless the context otherwise requires:
1. "Angling" means the taking of fish by one line and not to exceed two hooks, by one line and one artificial lure, which may have attached more than one hook, or by one line and not to exceed two artificial flies or lures.
 2. "Bag limit" means the maximum limit, in number or amount, of wildlife that may lawfully be taken by any one person 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 does 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 year" means the twelve-month period between January 1 and December 31, inclusive.
 13. "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.
 14. "Open season" means the time during which wildlife may be lawfully taken.
 15. "Possession limit" means the maximum limit, in number or amount of wildlife, which may be possessed at one time by any one person.
 16. "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 stationed in:

ARTICLE 4. DEFINITIONS CONTINUED...

- (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 their 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.
17. "Road" means any maintained right-of-way for public conveyance.
18. "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.
19. "Take" means pursuing, shooting, hunting, fishing, trapping, killing, capturing, snaring or netting wildlife or the placing or using of any net or other device or trap in a manner that may result in the capturing or killing of wildlife.
20. "Taxidermist" means any person who engages for hire in the mounting, refurbishing, maintaining, restoring or preserving of any display specimen.
21. "Traps" or "trapping" means taking wildlife in any manner except with a gun or other implement in hand.
22. "Wild" means, in reference to mammals and birds, those species that are normally found in a state of nature.
23. "Wildlife" means all wild mammals, wild birds and the nests or eggs thereof, reptiles, amphibians, mollusks, crustaceans and fish, including their eggs or spawn.
24. "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 are all fish, amphibians, mollusks, crustaceans and soft-shelled turtles.
 2. Game mammals are deer, elk, bear, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), mountain lion, tree squirrel and cottontail rabbit.
 3. Big game are wild turkey, deer, elk, pronghorn (antelope), bighorn sheep, bison (buffalo), peccary (javelina), bear and mountain lion.
 4. "Trophy" means:
 - (a) A mule deer buck with at least four points on one antler, not including the eye-guard point.
 - (b) A whitetail deer buck with at least three points on one antler, not including the eye-guard point.
 - (c) A bull elk with at least six points on one antler, including the eye-guard point and the brow tine point.
 - (d) A pronghorn (antelope) buck with at least one horn exceeding or equal to fourteen inches in total length.
 - (e) Any bighorn sheep.
 - (f) Any bison (buffalo).
 5. Small game are cottontail rabbits, tree squirrels, upland game birds and migratory game birds.

ARTICLE 4. DEFINITIONS CONTINUED...

6. Fur-bearing animals are muskrats, raccoons, otters, weasels, bobcats, beavers, badgers and ringtail cats.
7. Predatory animals are foxes, skunks, coyotes and bobcats.
8. Nongame animals are all wildlife except game mammals, game birds, fur-bearing animals, predatory animals and aquatic wildlife.
9. Upland game birds are quail, partridge, grouse and pheasants.
10. Migratory game birds are wild waterfowl, including ducks, geese and swans; sandhill cranes; all coots, all gallinules, common snipe, wild doves and bandtail pigeons.
11. Nongame birds are all birds except upland game birds and migratory game birds.
12. Raptors are birds that are members of the order of falconiformes or strigiformes and include falcons, hawks, owls, eagles and other birds that the commission may classify as raptors.
13. Game fish are trout of all species, bass of all species, catfish of all species, sunfish of all species, northern pike, walleye and yellow perch.
14. Nongame fish are all the species of fish except game fish.
15. Trout means all species of the family salmonidae, including grayling.

41-1001. Definitions

In this chapter, unless the context otherwise requires:

1. "Agency" means any board, commission, department, officer or other administrative unit of this state, including the agency head and one or more members of the agency head or agency employees or other persons directly or indirectly purporting to act on behalf or under the authority of the agency head, whether created under the Constitution of Arizona or by enactment of the legislature. Agency does not include the legislature, the courts or the governor. Agency does not include a political subdivision of this state or any of the administrative units of a political subdivision, but does include any board, commission, department, officer or other administrative unit created or appointed by joint or concerted action of an agency and one or more political subdivisions of this state or any of their units. To the extent an administrative unit purports to exercise authority subject to this chapter, an administrative unit otherwise qualifying as an agency must be treated as a separate agency even if the administrative unit is located within or subordinate to another agency.
2. "Audit" means an audit, investigation or inspection pursuant to title 23, chapter 2 or 4.
3. "Code" means the Arizona administrative code.
4. "Committee" means the administrative rules oversight committee.
5. "Contested case" means any proceeding, including rate making, except rate making pursuant to article XV, Constitution of Arizona, price fixing and licensing, in which the legal rights, duties or privileges of a party are required or permitted by law, other than this chapter, to be determined by an agency after an opportunity for an administrative hearing.
6. "Council" means the governor's regulatory review council.
7. "Delegation agreement" means an agreement between an agency and a political subdivision that authorizes the political subdivision to exercise functions, powers or duties conferred on the delegating agency by a provision

ARTICLE 4. DEFINITIONS CONTINUED...

- of law. Delegation agreement does not include intergovernmental agreements entered into pursuant to title 11, chapter 7, article 3.
8. "Emergency rule" means a rule that is made pursuant to section 41-1026.
 9. "Fee" means a charge prescribed by an agency for an inspection or for obtaining a license.
 10. "Final rule" means any rule filed with the secretary of state and made pursuant to an exemption from this chapter in section 41-1005, made pursuant to section 41-1026, approved by the council pursuant to section 41-1052 or 41-1053 or approved by the attorney general pursuant to section 41-1044. For purposes of judicial review, final rule includes expedited rules pursuant to section 41-1027.
 11. "General permit" means 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.
 12. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes.
 13. "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.
 14. "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.
 15. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency.
 16. "Preamble" means:
 - (a) For any rulemaking subject to this chapter, a statement accompanying the rule that includes:
 - (i) Reference to the specific statutory authority for the rule.
 - (ii) The name and address of agency personnel with whom persons may communicate regarding the rule.
 - (iii) An explanation of the rule, including the agency's reasons for initiating the rulemaking.
 - (iv) A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes 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.
 - (v) The economic, small business and consumer impact summary, or in the case of a proposed rule, a preliminary summary and a solicitation of input on the accuracy of the summary.
 - (vi) A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state.
 - (vii) Such other matters as are prescribed by statute and that are applicable to the specific agency or to any specific rule or class of rules.

ARTICLE 4. DEFINITIONS CONTINUED...

- (b) In addition to the information set forth in subdivision (a) of this paragraph, for a proposed rule, the preamble also shall include a list of all previous notices appearing in the register addressing the proposed rule, a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and where, when and how persons may request an oral proceeding on the proposed rule if the notice does not provide for one.
 - (c) In addition to the information set forth in subdivision (a) of this paragraph, for an expedited rule, the preamble also shall include a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and an explanation of why expedited proceedings are justified.
 - (d) For a final rule, except an emergency rule, the preamble also shall include, in addition to the information set forth in subdivision (a), the following information:
 - (i) A list of all previous notices appearing in the register addressing the final rule.
 - (ii) A description of the changes between the proposed rules, including supplemental notices and final rules.
 - (iii) A summary of the comments made regarding the rule and the agency response to them.
 - (iv) A summary of the council's action on the rule.
 - (v) A statement of the rule's effective date.
 - (e) In addition to the information set forth in subdivision (a) of this paragraph, for an emergency rule, the preamble also shall include an explanation of the situation justifying the rule being made as an emergency rule, the date of the attorney general's approval of the rule and a statement of the emergency rule's effective date.
17. "Provision of law" means the whole or a part of the federal or state constitution, or of any federal or state statute, rule of court, executive order or rule of an administrative agency.
18. "Register" means the Arizona administrative register.
19. "Rule" means an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency. Rule includes prescribing fees or the amendment or repeal of a prior rule but does not include intraagency memoranda that are not delegation agreements.
20. "Rulemaking" means the process for formulation and finalization of a rule.
21. "Small business" means a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations.
22. "Substantive policy statement" means a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a court of competent jurisdiction, including, where appropriate, the agency's current practice, procedure or method of action based upon that approach or opinion.

ARTICLE 4. DEFINITIONS CONTINUED...

A substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents which only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties, confidential information or rules made in accordance with this chapter.

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:

“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.

“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.

“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.

“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.

“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.

“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.

ARTICLE 4. DEFINITIONS CONTINUED...

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

“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.

“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.

“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.

“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 antelope” means a male pronghorn antelope.

“Adult bull buffalo” means a male buffalo any age or any buffalo designated by a Department employee during an adult bull buffalo hunt.

“Adult cow buffalo” means a female buffalo any age or any buffalo designated by a Department employee during an adult cow buffalo hunt.

“Bull elk” means an antlered elk.

“Designated” means the gender, age, or species of an animal or the specifically identified animal the Department authorizes to be taken and possessed with a valid tag.

ARTICLE 4. DEFINITIONS CONTINUED...

“Ram” means any male bighorn sheep.

“Rooster” means a male pheasant.

“Yearling buffalo” means any buffalo less than three years of age or any buffalo designated by a Department employee during a yearling buffalo hunt.

GAME AND FISH COMMISSION (R-18-0202)

Title 12, Chapter 4, Article 11, Aquatic Invasive Species

Amend: R12-4-902

Renumber: Article 9; Article 11; R12-4-901; R12-4-902; R12-4-1101; R12-4-1102



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – EXPEDITED RULEMAKING

MEETING DATE: February 6, 2018

AGENDA ITEM: F-2

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

FROM: Council Staff

DATE: January 23, 2018

SUBJECT: **GAME AND FISH COMMISSION (R-18-0202)**

Title 12, Chapter 4, Article 11, Aquatic Invasive Species

Amend: R12-4-901; R12-4-902

Renumber: Article 9; Article 11; R12-4-901; R12-4-902; R12-4-1101;
R12-4-1102

SUMMARY OF THE RULEMAKING

This expedited rulemaking, from the Arizona Game and Fish Commission (Commission), seeks to renumber the two rules in A.A.C. Title 12, Chapter 4, Article 11 related to aquatic invasive species, and to amend one of those rules. The Commission is implementing the course of action proposed in its 2017 five-year review report on the rules. The Commission states that the rulemaking is intended to reduce regulatory ambiguity and improve conciseness.

The Commission indicates that the use of the expedited rulemaking process is justified by A.R.S. § 41-1027(A)(3), as the rulemaking clarifies rule language without changing the effect of the rules. The Governor's Office provided an exemption from Executive Order 2017-02 on May 1, 2017.

Proposed Action

- Section 901 (renumbered from 1101) – *Definitions*: The rule is renumbered without amendment.
- Section 902 (renumbered from 1102) – *Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols*: Clarifying changes are made.

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

Yes. The Commission cites to a number of statutes as authority for the rules, including A.R.S. § 17-231(A)(1), under which the Commission “shall adopt rules and establish services it deems necessary to carry out the provisions and purposes of this title [Title 17, Game and Fish].”

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

No. The rules do not establish a new fee or contain a fee increase.

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

No. The Commission indicates that it has not received any public comments on the rulemaking.

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

No. No changes have been made between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited Rulemaking.

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

No. The Commission states that there is no corresponding federal law related to the rules.

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

No. The rules do not require a permit or license.

7. 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?

No. The Commission indicates that it did not rely on any study in its evaluation of, or justification for, the rules.

8. Conclusion

If approved, this expedited rulemaking will become effective immediately upon filing with the Secretary of State. See A.R.S. § 41-1027(H). Council staff recommends approval of the expedited rulemaking.



THE STATE OF ARIZONA
GAME AND FISH DEPARTMENT

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DEPUTY DIRECTOR

TOM P. FINLEY



December 1, 2017

Nicole Ong-Colyer, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

**Re: A.A.C. Title 12. Natural Resources, Chapter 4. Game and Fish Commission
Article 11. Aquatic Invasive Species**

Dear Ms Ong-Colyer:

The Arizona Game and Fish Commission respectfully submit the accompanying final expedited rule package for inclusion on the Council agenda.

In compliance with R1-6-202(A)(1), the Department provides you with the following information:

- a. The rulemaking record closed on December 1, 2017.
- b. Under A.R.S. § 41-1027, an agency may use the expedited rulemaking process to if the rulemaking does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated and does one or more of the following: (A)(3) clarifies language of a rule without changing its effect; or (A)(7) implements, without material change, a course of action that is proposed in a five-year review report approved by the Governor's Regulatory Review Council (G.R.R.C.) pursuant to A.R.S. § 41-1056 within one hundred eighty days of the date that the agency files the Notice of Proposed Expedited Rulemaking with the Secretary of State. The Commission approved the Article 6 Five-year Review Report (5YRR) at the December 2, 2016 Commission Meeting and G.R.R.C. approved the Article 6 5YRR at the March 7, 2017 Council Meeting.
- c. This rulemaking activity is related to the five-year-review report approved by the Council on March 7, 2017.
- d. The preamble discloses a reference to all studies relevant to the rule that the agency reviewed and either did or did not rely on in its evaluation of, or justification for, the rule.

**A.A.C. Title 12. Natural Resources, Chapter 4. Game and Fish Commission
Article 11. Aquatic Invasive Species**

Page 2

e. Items included in the rulemaking package are as follows:

- Signed cover letter
- Notice of Final Expedited Rulemaking
- Authorizing statute: A.R.S. § 17-231(A)(1)
- Implementing statute: A.R.S. §§ 5-311(A)(5), 17-255.01, 17-255.02, and 17-255.03

Sincerely,



The image shows a handwritten signature in black ink. The signature appears to read "Ty E. Gray for". Below the signature, the name "Ty E. Gray" is printed in a standard font, followed by the title "Director" underneath.

Ty E. Gray
Director

NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION

PREAMBLE

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

Article 11	Renumber
Article 9	Renumber
R12-4-1101	Renumber
R12-4-901	Renumber
R12-4-1102	Renumber
R12-4-902	Renumber
R12-4-902	Amend
- 2. Citations to the agency's statutory authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 17-231(A)(1)
Implementing statute: A.R.S. §§ 17-255.01, 17-255.02, and 17-255.03
- 3. The effective date of the rules:**
 - a. If the agency selected a date earlier than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

The rule is effective immediately upon filing with the Secretary of State's office as authorized under A.R.S. § 41-1027(H), which allows an immediate effective date upon filing the Notice of Expedited Rulemaking with the Secretary of State's Office.
 - b. If the agency selected a date later than the 60 days effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(B):**

Not applicable
- 4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Rulemaking Docket Opening: 23 A.A.R. (*to be filled in by the Register Editor*), October 13, 2017
Notice of Proposed Expedited Rulemaking: 23 A.A.R. (*to be filled in by the Register Editor*), October 13, 2017
- 5. The agency's contact person who can answer questions about the rulemaking:**

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) 236-7110

E-mail: CCook@azgfd.gov

Please visit the AZGFD website to track the progress of this rule; view the regulatory agenda and all previous Five-year Review Reports; and learn about any other agency rulemaking matters at <https://www.azgfd.com/agency/rulemaking/>.

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

The Arizona Game and Fish Commission proposes to amend its rules following the 2017 five-year rule review of Article 11, Aquatic Invasive Species, to enact recommendations developed during the five-year review. The recommended amendments are designed to make the rule more concise and reduce regulatory ambiguity.

Under A.R.S. § 41-1027, an agency may use the expedited rulemaking process if the rulemaking does not increase the cost of regulatory compliance, increase a fee or reduce procedural rights of persons regulated and does one or more of the following: (A)(3) clarifies language of a rule without changing its effect; or (A)(7) implements, without material change, a course of action that is proposed in a five-year review report approved by the Governor's Regulatory Review Council (G.R.R.C.) pursuant to A.R.S. § 41-1056 within one hundred eighty days of the date that the agency files the Notice of Proposed Expedited Rulemaking with the Secretary of State. The Commission approved the Article 6 Five-year Review Report (5YRR) at the December 2, 2016 Commission Meeting and G.R.R.C. approved the Article 6 5YRR at the March 7, 2017 Council Meeting.

An exemption from Executive Order 2015-01 was provided for this rulemaking by Hunter Moore, Natural Resource Policy Advisor, Governor's Office, in an email dated May 1, 2017.

R12-4-1101. 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 11. The Commission proposes to renumber the rule to R12-4-901.

R12-4-1102. Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols

The objective of the rule is to establish the requirements necessary to eradicate, abate, or prevent the transport and spread of aquatic invasive species in and through Arizona. Aquatic invasive species are a threat to Arizona's water and electrical infrastructure and the public's angling and boating recreation. It is critical for anyone who owns or uses watercraft, vehicle, conveyance or equipment on Arizona's waterbodies, to understand the essential nature of the aquatic invasive species containment effort by the Department, other state and federal agencies and political subdivisions. The spread of aquatic invasive species will result in far-reaching impacts that can touch virtually every resident of Arizona. For example, quagga mussels have a negative ecological and environmental impact to Arizona waterways and water delivery systems. These mussels accumulate on underwater surfaces and impair water delivery structures and systems. They clog water intake

and delivery pipes and infest hydropower infrastructure, dams, and water control structures. They adhere to watercraft bottoms, engines, docks, and pilings and can ultimately destroy beaches and alter the functioning of native aquatic ecosystems.

The principle pathway for quagga mussel transfer between watersheds is the overland movement of boats and equipment with attached adult mussels and the movement of water itself containing juvenile mussels in un-drained bilge areas, live wells, internal storage spaces, or conveyances designed to carry water. The initial movement of these mussels to the Colorado River was in all likelihood as a hitchhiker on a boat or equipment item that was moved more than 1,000 miles overland. Aquatic invasive species are currently established in a number of Arizona waterbodies: Lake Pleasant, Lake Havasu, Lake Mead, Lake Mohave, Martinez Lake, Mittry Lake, Topock Marsh, and Lake Powell; water delivery systems: parts of the Central Arizona Project aqueduct and Salt River Project Canal System; and other states and countries: Alabama, Arkansas, California, Colorado, Connecticut, Iowa, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Mississippi, Nebraska, Nevada, New York, Ohio, Oklahoma, Pennsylvania, Texas, Utah, Virginia, Vermont, Wisconsin, West Virginia; and the Provinces of Ontario and Quebec.

Since 2011, in addition to media campaigns (newsletters, billboards, radio and televisions advertisements), the Department's Aquatic Invasive Species Program has performed numerous outreach campaigns and conducted surveys on the boat ramps at various quagga infested waterbodies (e.g., Havasu, Pleasant, and Powell). State-wide surveys indicate a gap between knowledge of required actions and the physical action of pulling a drainage plug when exiting infested waterbodies in Arizona. In 2015, 85% of boaters surveyed verbally by Department personnel said they pull their boat's plug upon exit; however only 67% were physically observed pulling the boat's drain plug upon exiting.

The Commission proposes to renumber the rule from R12-4-1102 to R12-4-902. The Commission has determined there are issues with compliance due to the current boating culture, (similar to requiring the use of seat belts in automobiles) which will require a paradigm shift in common boating practices. Some persons do not believe they need to remove plugs and devices that prevent water from draining; other persons remove the plug or barrier, but then replace it before leaving the waterbody, which makes it difficult for law enforcement to determine whether a person is in compliance with the rule when they are driving away from a waterbody where aquatic invasive species are established or suspected with the plug and/or device in place. To reduce regulatory ambiguity and clearly communicate compliance requirements, the Department proposes to amend the rule to specify a person is required to remove all plugs and devices, except those that are sealed and exist for maintenance purposes only, and any other barriers that prevent water drainage while a watercraft, vehicle, conveyance, or equipment is in transport after leaving any affected waterbody.

- 7. 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.

- 8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rule 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. § 41-1027, the rulemaking is exempt from this requirement; however, the Commission offers the following: The Commission anticipates the proposed amendments will have an insignificant impact on persons regulated by the rule. However, establishing conditions for the overland movement of watercraft, vehicles, conveyances, and equipment is crucial in helping to prevent the accidental spread of aquatic invasive species and the far-reaching financial and ecological impacts that can affect virtually every Arizona resident and water storage, treatment, and delivery provider. The rulemaking will benefit private consumers and public and private entities by addressing a current threat to the state's economy, ecology, and public health and safety. The rulemaking will have little or no financial effect on most watercraft owners and operators. The Commission anticipates increased costs associated with implementing the amended rules due to increased training of enforcement officers. The Commission has determined that the benefits of the rulemaking outweigh any costs.

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

Minor grammatical and formatting corrections that were made at the request of Governor's Regulatory Review Council staff.

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

In addition to the publication of the Notice of Proposed Expedited Rulemaking in the *Arizona Administrative Register*, the Department posted the Notice of Proposed Expedited Rulemaking to the Department's website, from September 15 to October 15, 2017, for the purpose of public comment. In addition, on October 15, 2017, the Department emailed information regarding the proposed rulemaking to persons interested in receiving rulemaking notices. The Department also issued a press release regarding the proposed changes included in the Notice of Proposed Expedited Rulemaking and the Department's contact information for persons interested in submitting a comment. The Department did not receive any public or stakeholder comments in response to the proposed rulemaking.

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

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

The rule does not require a general permit.

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

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the

competitiveness of business in this state to the impact on business in other states:

The agency has not received an analysis that compares the rule's impact of competitiveness of business in this state to the impact on business in other states.

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

Not applicable

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

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

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 449. AQUATIC INVASIVE SPECIES

Section

R12-4-1101. R12-4-901. Definitions

R12-4-1102. R12-4-902. Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols

ARTICLE 449. AQUATIC INVASIVE SPECIES

R12-4-1101. R12-4-901. Definitions

In addition to the definitions provided under A.R.S. §§ 5-301 and 17-255, the following definitions apply to this Article, unless otherwise specified:

"Aquatic invasive species" means those species listed in Director's Order 1.

"Certified agent" means a person who meets Department standards to conduct inspections authorized under A.R.S. § 17-255.01(C)(1).

"Conveyance" means a device designed to carry or transport water. Conveyance includes, but is not limited to, dip buckets, water hauling tanks, and water bladders.

"Equipment" means an item used either in or on water; or to carry water. Equipment includes, but is not limited to, trailers used to launch or retrieve watercraft, rafts, inner tubes, kick boards, anchors and anchor lines, docks, dock cables and floats, buoys, beacons, wading boots, fishing tackle, bait buckets, skin diving and scuba diving equipment, submersibles, pumps, sea planes, and heavy construction equipment used in aquatic environments.

"Operator" means a person who operates or is in actual physical control of a watercraft, vehicle, conveyance or equipment.

"Owner" means a person who claims lawful possession of a watercraft, vehicle, conveyance, or equipment.

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

"Release" means to place, plant, or cause to be placed or planted in waters.

"Transporter" means a person responsible for the overland movement of a watercraft, vehicle, conveyance, or equipment.

"Waters" means surface water of all sources, whether perennial or intermittent, in streams, canyons, ravines, drainage systems, canals, springs, lakes, marshes, reservoirs, ponds, and other bodies or accumulations of natural, artificial, public or private waters situated wholly or partly in or bordering this state.

R12-4-1102. R12-4-902. Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols

A. A person shall not, unless authorized under Article 4:

1. Possess, import, ship, or transport into or within this state an aquatic invasive species, unless authorized by the Director.
2. Sell, purchase, barter, or exchange in this state an aquatic invasive species.
3. Release an aquatic invasive species into waters or into any water treatment facility, water supply or water transportation facility, device or mechanism in this state.

B. Upon removing a watercraft, vehicle, conveyance, or equipment from any waters listed in Director's Order 2 and ~~before leaving that location prior to transport~~, a person shall:

1. Remove all clinging materials such as plants, animals, and mud.
2. Remove ~~any plug or all plugs and other barrier valves or devices that prevents prevent~~ water drainage or, ~~where none exists, take reasonable measures to drain or dry from all compartments or spaces that hold may~~

retain water. Reasonable measures include, but are not limited to, emptying, such as ballast tanks, ballast bags, bilges, application of absorbents, or ventilation and ensure plugs or devices remain removed or open during transport.

3. If no plugs or barriers exist, take reasonable measures to drain or dry all compartments or spaces that may retain water. Reasonable measures include, but are not limited to, emptying bilges, application of absorbents, or ventilation.
- C. Before transporting a watercraft, vehicle, conveyance, or equipment to any waters located within or bordering this state from waters or locations ~~where aquatic invasive species are suspected or known to be present~~, as listed in Director's Order 2, a person shall comply with the mandatory conditions and protocols identified in Director's Order 3 for decontamination of watercraft, vehicles, conveyances, and equipment.
- D. Department employees, certified agents, and Arizona peace officers authorized under A.R.S. § 17-104 may inspect a watercraft, vehicle, conveyance, or equipment for the purposes of determining compliance with A.R.S. Title 17, Chapter 2, Article 3.1 and this Section.
- E. If the presence of an aquatic invasive species is documented or suspected on or in a watercraft, vehicle, conveyance, or equipment, a Department employee or any Arizona peace officer may order a person to decontaminate or cause to be decontaminated such watercraft, vehicle, conveyance, or equipment using the mandatory protocols described in Director's ~~order~~ Order 3.
- F. The following Director's Orders are available at any Department office and online at azgfd.gov:
 1. Director's Order 1 – Listing of Aquatic Invasive Species for Arizona,
 2. Director's Order 2 – Designation of Waters or Locations Where Listed Aquatic Invasive Species are Present, and
 3. Director's Order 3 – Mandatory Conditions on the Movement of Watercraft, Vehicles, Conveyances, or Other Equipment from Listed Waters Where Aquatic Invasive Species are Present.
- G. This Section does not apply to owners and operators exempt under A.R.S. § 17-255.04.

Game and Fish Commission
ARTICLE 11. AQUATIC INVASIVE SPECIES

R12-4-1101. Definitions

In addition to the definitions provided under A.R.S. §§ 5-301 and 17-255, the following definitions apply to this Article, unless otherwise specified:

“Aquatic invasive species” means those species listed in Director’s Order 1.

“Certified agent” means a person who meets Department standards to conduct inspections authorized under A.R.S. § 17-255.01(C)(1).

“Conveyance” means a device designed to carry or transport water. Conveyance includes, but is not limited to, dip buckets, water hauling tanks, and water bladders.

“Equipment” means an item used either in or on water; or to carry water. Equipment includes, but is not limited to, trailers used to launch or retrieve watercraft, rafts, inner tubes, kick boards, anchors and anchor lines, docks, dock cables and floats, buoys, beacons, wading boots, fishing tackle, bait buckets, skin diving and scuba diving equipment, submersibles, pumps, sea planes, and heavy construction equipment used in aquatic environments.

“Operator” means a person who operates or is in actual physical control of a watercraft, vehicle, conveyance or equipment.

“Owner” means a person who claims lawful possession of a watercraft, vehicle, conveyance, or equipment.

“Person” has the same meaning as defined under A.R.S. § 1-215.

“Release” means to place, plant, or cause to be placed or planted in waters.

“Transporter” means a person responsible for the overland movement of a watercraft, vehicle, conveyance, or equipment.

“Waters” means surface water of all sources, whether perennial or intermittent, in streams, canyons, ravines, drainage systems, canals, springs, lakes, marshes, reservoirs, ponds, and other bodies or accumulations of natural, artificial, public or private waters situated wholly or partly in or bordering this state.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 196, effective January 10, 2012 (Supp. 12-1).

R12-4-1102. Aquatic Invasive Species; Prohibitions; Inspection, Decontamination Protocols

- A. A person shall not, unless authorized under Article 4:
 1. Possess, import, ship, or transport into or within this state an aquatic invasive species, unless authorized by the Director.
 2. Sell, purchase, barter, or exchange in this state an aquatic invasive species.
 3. Release an aquatic invasive species into waters or into any water treatment facility, water supply or water transportation facility, device or mechanism in this state.
- B. Upon removing a watercraft, vehicle, conveyance, or equipment from any waters listed in Director’s Order 2 and before leaving that location, a person shall:
 1. Remove all clinging materials such as plants, animals, and mud.
 2. Remove any plug or other barrier that prevents water drainage or, where none exists, take reasonable measures to drain or dry all compartments or spaces that hold water. Reasonable measures include, but are not limited to, emptying bilges, application of absorbents, or ventilation.
- C. Before transporting a watercraft, vehicle, conveyance, or equipment to any waters located within or bordering this state from waters or locations where aquatic invasive species are suspected or known to be present, as listed in Director’s Order 2, a person shall comply with the mandatory conditions and protocols identified in Director’s Order 3 for decontamination of watercraft, vehicles, conveyances, and equipment.
- D. Department employees, certified agents, and Arizona peace officers authorized under A.R.S. § 17-104 may inspect a watercraft, vehicle, conveyance, or equipment for the purposes of determining compliance with A.R.S. Title 17, Chapter 2, Article 3.1 and this Section.
- E. If the presence of an aquatic invasive species is documented or suspected on or in a watercraft, vehicle, conveyance, or equipment, a Department employee or any Arizona peace officer may order the person to decontaminate or cause to be decontaminated such watercraft, vehicles, conveyances, and equipment using the mandatory protocols described in Director’s Order 3.
- F. The following Director’s Orders are available at any Department office and online at azgfd.gov:
 1. Director’s Order 1 – Listing of Aquatic Invasive Species for Arizona;
 2. Director’s Order 2 – Designation of Waters or Locations Where Listed Aquatic Invasive Species are Present; and
 3. Director’s Order 3 – Mandatory Conditions on the Movement of Watercraft, Vehicles, Conveyances, or Other Equipment from Listed Waters Where Aquatic Invasive Species are Present.
- G. This Section does not apply to owners and operators exempt under A.R.S. § 17-255.04.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 196, effective January 10, 2012 (Supp. 12-1).

STATUTORY AUTHORITY FOR ARTICLE 11 RULEMAKING

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 which may be used in taking wildlife.
4. Be responsible for the enforcement of laws for the protection of wildlife.
5. Prescribe grades, qualifications and salary schedules for department employees.
6. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.
7. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.
8. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties which relate to adopting and carrying out policies of the department and control of its financial affairs.
9. 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.
10. 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.

STATUTORY AUTHORITY FOR ARTICLE 11 RULEMAKING

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 which, 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, 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.
- 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

STATUTORY AUTHORITY FOR ARTICLE 11 RULEMAKING

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.

17-255. 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.

17-255.01. Aquatic invasive species program; powers

- A. The director may establish and maintain an aquatic invasive species program.
- B. The director may issue orders:
1. Establishing a list of aquatic invasive species for this state.
 2. Establishing a list of waters or locations where aquatic invasive species are present and take steps that are necessary to eradicate, abate or prevent the spread of aquatic invasive species within or from those bodies of water.
 3. Establishing mandatory conditions as provided in subsection C of this section on the movement of watercraft, vehicles, conveyances or other equipment from waters or locations where aquatic invasive species are present to other waters.
- C. If the presence of an aquatic invasive species is suspected or documented in this state, the director or an authorized employee or agent of the department may take one or more of the following actions to abate or eliminate the species:

STATUTORY AUTHORITY FOR ARTICLE 11 RULEMAKING

1. Authorize and establish lawful inspections of watercraft, vehicles, conveyances and other equipment to locate the aquatic invasive species.
 2. Order any person with an aquatic invasive species in or on the person's watercraft, vehicle, conveyance or other equipment to decontaminate the watercraft, vehicle, conveyance or equipment in a manner prescribed by rule. Notwithstanding paragraph 3 of this subsection, mandatory on-site decontamination shall not be required at a location where an on-site cleaning station charges a fee.
 3. Require any person with a watercraft, vehicle, conveyance or other equipment in waters or locations where an aquatic invasive species is present to decontaminate the property before moving it to any other waters in this state or any other location in this state where aquatic invasive species could thrive.
- D.** An order issued under subsection B or C of 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.

17-255.02. 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.

17-255.03. Violations; civil penalties; classification; cost recovery

- A.** Except as otherwise provided by this section, a person who violates this article is subject to a civil penalty of not more than five hundred dollars.
- B.** A person who knowingly violates section 17-255.02, paragraph 2 or 4 is guilty of a class 2 misdemeanor. In addition, the commission, or any officer charged with enforcing this article if directed by the commission, may bring a civil action in the name of this state to recover damages and

STATUTORY AUTHORITY FOR ARTICLE 11 RULEMAKING

costs against a person who violates section 17-255.02, paragraph 2 or 4. Damages and costs recovered pursuant to this subsection shall be deposited in the game and fish fund.

- C. The court shall order a person found in violation of section 17-255.01, subsection C, paragraph 2 to pay to this state all costs not exceeding fifty dollars incurred by this state to decontaminate any watercraft, vehicle, conveyance or other equipment on which aquatic invasive species were present. Monies paid pursuant to this subsection shall be deposited in the game and fish fund.
- D. This section applies regardless of whether the director establishes an aquatic invasive species program pursuant to section 17-255.01.

17-255.04. Applicability; no private right of action

- A. This article does not apply to the owner or operator of:
 - 1. Any system of canals, laterals or pipes, any related or ancillary facilities, fixed equipment and structures related to the delivery of water and any discharges from the system.
 - 2. Any water treatment or distribution facility system, any related or ancillary facilities, fixed equipment and structures and any discharges from the system.
 - 3. Any drainage, wastewater collection, treatment or disposal facility system, any related or ancillary facilities, fixed equipment and structures and any discharges from the system.
 - 4. A public or private aquarium and education or research institution holding a permit pursuant to section 17-238 or 17-306.
 - 5. Any stock ponds or livestock water facilities or distribution facilities, including fixed equipment and structures related to the delivery of water and any discharges from the system.
- B. The director may consult with the entities listed in subsection A of this section to assist in the implementation of this article.
- C. This article does not create any express or implied private right of action and may be enforced only by this state.

DEPARTMENT OF HEALTH SERVICES (R-18-0206)

Title 9, Chapter 8, Article 3, Public Toilet Facilities

Amend: Article 3; R9-8-301; R9-8-302; R9-8-304

New Section: R9-8-303

Repeal: R9-8-306; R9-8-307



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – EXPEDITED RULEMAKING

MEETING DATE: February 6, 2018

AGENDA ITEM: F-3

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

FROM: Council Staff

DATE: January 23, 2018

SUBJECT: **DEPARTMENT OF HEALTH SERVICES (R-18-0206)**

Title 9, Chapter 8, Article 3, Public Toilet Facilities

Amend: Article 3; R9-8-301; R9-8-302; R9-8-304

New Section: R9-8-303

Repeal: R9-8-306; R9-8-307

SUMMARY OF THE RULEMAKING

This expedited rulemaking, from the Arizona Department of Health Services (Department), seeks to amend three rules, repeal two rules, and create one new rule in A.A.C. Title 9, Chapter 8, Article 3, related to portable toilets.

The Department indicates that the use of the expedited rulemaking process is justified by A.R.S. § 41-1027(A)(7), as the rulemaking implements the course of action proposed in a five-year review report approved by the Council on September 6, 2017. The Governor's Office provided an exemption from Executive Order 2017-02 on August 4, 2017.

Proposed Action

- *Article 3:* The heading is changed from “Public Toilet Facilities” to “Portable Toilets.”
- *Section 301 – Definitions:* Definitions are modified to reflect updates to the other rules.
- *Section 302 – General Requirements:* The rule is rewritten to clarify that a violation of the requirements in Section 303 constitutes a public nuisance under A.R.S. § 36-601.
- *Section 303 – Public Portable Toilet Requirements:* This new rule clarifies the requirements that responsible persons for portable toilets must adhere to.
- *Section 304 – Inspections:* The rule is rewritten to clarify that a regulatory authority may conduct inspections, pursuant to A.R.S. § 41-1009, if a complaint is received.
- *Section 306 – Special Events:* The rule is being repealed.

- Section 307 – *Disposal of Sewage and Refuse*: The rule is being repealed.

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

Yes. The Department cites to both general and specific statutory authority, including A.R.S. § 36-136(A)(7), which requires the Department to “[p]repare sanitary and public health rules.”

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

No. The rules do not establish a new fee or contain a fee increase.

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

No. The Department indicates that it has not received any public comments on the rulemaking.

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

No. One typographical error was corrected between the Notice of Proposed Expedited Rulemaking and the Notice of Final Expedited Rulemaking.

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

No. The Department states that there is no corresponding federal law related to the rules.

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

No. The rules do not require a permit or license.

7. 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?

No. The Department indicates that it did not rely on any study in its evaluation of, or justification for, the rules.

8. Conclusion

If approved, this expedited rulemaking will become effective immediately upon filing with the Secretary of State. See A.R.S. § 41-1027(H). Council staff recommends approval of the expedited rulemaking.



December 20, 2017

Nicole O. Colyer, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: 9 A.A.C. 8, Article 3 Department of Health Services – Food, Recreation, and Institutional Sanitation

Dear Ms. Colyer:

Enclosed is the administrative rule identified above which I am submitting, as the Designee of the Director of the Department of Health Services, for approval by the Governor's Regulatory Review Council (Council) under A.R.S. §§ 41-1027 and 41-1052.

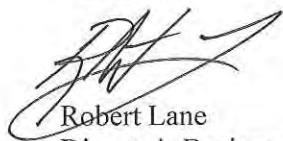
The following information is provided for your use in reviewing the enclosed rule package pursuant to A.R.S. § 41-1052 and A.A.C. R1-6-202:

1. The close of record:
The close of record was December 19, 2017. Submission of the rule is within the 120 days allowed for Final Expedited Rulemaking.
2. Explanation of how the expedited rule meets the criteria in A.R.S. § 41-1027(A):
The rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. In addition, the rulemaking implements, without material change, a course of action that was proposed in a five-year review report approved by the Council pursuant to section A.R.S. § 41-1056.
3. Whether the rulemaking relates to a five-year-review report and, if applicable, the date the report was approved by the Council:
The rulemaking for 9 A.A.C. 8, Article 3 relates to a five-year-review report approved by the Council on September 6, 2017.
4. A list of all items enclosed:
 - a. Notice of Final Expedited Rulemaking, including the Preamble, Table of Contents, and text of the rule
 - b. Statutory authority
 - c. Current rule

The Department is requesting that the rules be heard at the Council meeting on March 6, 2018.

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

Sincerely,



Robert Lane
Director's Designee

RL:tk

Enclosures

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director

NOTICE OF FINAL EXPEDITED RULEMAKING
TITLE 9. HEALTH SERVICES
CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATION, AND INSTITUTIONAL SANITATION
PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| Article 3 | Amend |
| R9-8-301 | Amend |
| R9-8-302 | Amend |
| R9-8-303 | New Section |
| R9-8-304 | Amend |
| R9-8-306 | Repeal |
| R9-8-307 | Repeal |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
- Authorizing statutes: A.R.S. §§ 36-104(1)(b)(i), 36-136(A)(7) and 36-136(G)
Implementing statutes: A.R.S. §§ 36-136(A)(6), 36-601, 36-602, and 36-603
- 3. The effective date of the rules:**
The rules are effective the day the Notice of Final Expedited Rulemaking is filed with the Office of the Secretary of State.
- 4. Citations to all related notices published in the Register that pertain to the record of the Notice of Final Expedited Rulemaking:**
Docket Opening: 23 A.A.R. 3363, December 8, 2017
Notice of Proposed Expedited Rulemaking: 23 A.A.R. 3356, December 8, 2017
- 5. The agency's contact person who can answer questions about the rulemaking:**
Name: Eric Thomas, Chief
Address: Arizona Department of Health Services
Division of Public Health Services, Public Health Preparedness,
Office of Environmental Health
150 N. 18th Ave., Suite 140
Phoenix, AZ 85007-3248
Telephone: (602) 364-3142
Fax: (602) 364-3146

E-mail: Eric.Thomas@azdhs.gov
or
Name: Robert Lane, 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: Robert.Lane@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:

The five-year-review report (Report) for 9 A.A.C. 8, Article 3, was approved by the Governor's Regulatory Review Council on September 6, 2017. The Report identified that the rules are not consistent with the statutory change under Laws 2001, Ch. 19, §1, effective August 9, 2001. Laws 2001, Ch. 19, §1 removed the Arizona Department of Health Services' (Department) authority to regulate sanitary conditions for public and semipublic buildings. The Report also identified that the rules contain citations to A.A.C. Title 18 rules that have been recodified or repealed, as well as definitions that are unnecessary or outdated. As reported, the Department plans to amend the rules to comply with Laws 2001, Ch. 19 § 1; update or delete A.A.C. Title 18 citations; and amend, add, or delete definitions to make the rules more specific to portable toilets used for special events. Amending these rules as identified in the Report meets the criteria for expedited rulemaking. The changes identified will not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of a regulated person as prescribed in A.R.S. § 41-1027(A). The rulemaking further meets the criteria for expedited rulemaking by implementing a course of action proposed in a five-year-review report, prescribed in A.R.S. § 41-1027(A)(7). The Department believes amending these rules will eliminate confusion and reduce regulatory burden.

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

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

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

Not applicable

9. The agency is exempt from the requirements under ARS 41-1055(G) to prepare and file an economic, small business, and consumer impact statement under ARS 41-1055(D)(2).

The agency is excluded from providing an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2).

10. A description of any changes between the proposed expedited rulemaking and the final expedited rulemaking.

Between the proposed expedited rulemaking and the final expedited rulemaking, no changes were made to the expedited rulemaking.

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

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

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

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:

The rule does not require the issuance of a permit.

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

Federal law does not apply to the rule.

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

No such analysis was submitted.

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

Not applicable

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

The rule was not previously made as an emergency rule.

- 15. The full text of the rule follows:**

TITLE 9. HEALTH SERVICES
CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATION, AND INSTITUTIONAL SANITATION

ARTICLE 3. PUBLIC TOILETS FACILITIES PORTABLE TOILETS

Section

- R9-8-301. Definitions
- R9-8-302. Persons Responsible General Requirements
- R9-8-303. Public Portable Toilet Requirements
- R9-8-304. Constructing and Maintaining a Portable Toilet Inspections
- R9-8-306. Special Events Repealed
- R9-8-307. Disposal of Sewage and Refuse Repealed

ARTICLE 3. PUBLIC TOILET FACILITIES PORTABLE TOILETS

R9-8-301. Definitions

In this Article:

1. “Bathroom” means a restroom that contains a shower or bathtub.
1. “Clean” means free of dirt, litter, and the remains of something that has broken or torn into pieces.
2. “Department” means the Department of Health Services.
2. “Complaint” means information indicating the need for inspection due to possible violations of this Article.
3. “Director” means the Director of the Department of Health Services.
3. “Durable” means capable of withstanding expected use and remaining easily cleanable.
4. “Flooded” means a sanitary fixture that is overflowing sewage or filled with sewage to the point of overflowing.
4. “Food establishment” means an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption.
5. “Lavatory” means a sink or basin for cleansing hands.
5. “Human excreta” means fecal and urinary discharges and includes any waste that contains this material.
6. “Leakproof” means designed and constructed to prevent a substance from escaping.
7. “Non-absorbent” means incapable of being penetrated by liquid, such as a material coated or treated with rubber, plastic, or other sealing surface.
6. “Person” means a governmental agency, individual, organization, association, partnership, business, corporation, or company.
7. “Plumbing system” means sanitary fixtures, pipes, and related parts assembled to carry water into a structure and or carry sewage out of a structure.
8. “Portable hand-wash station” means a transportable sink or basin with a faucet for cleaning hands that supplies water and is:
 - a. Not connected to a sewage collection system,
 - b. Connected to a leakproof tank to receive and store waste water, and
 - c. Located in a public place.
8. “Portable toilet” means a transportable toilet connected to a leakproof tank to receive and store sewage temporarily.

9. “Portable toilet enclosure” means a structure that is capable of being moved and that houses a public portable toilet.
9. “Potable” means water obtained from a source or distribution system that complies with the requirements of the Department of Environmental Quality as provided in 18 A.A.C. 4.
10. “Putrescible waste” means a solid or semisolid waste material that is likely to decompose, decay, spoil, rot, or provide food for insects, rodents, birds, or other pests.
10. “Public nuisance” means activities or conditions that may be subject to A.R.S. § 36-601.
11. “Public place” means all or any portion of an area, land, or structure that is open to or may be accessed by any individual.
12. “Public portable toilet” means a toilet seat and toilet, or toilet seat, toilet, and urinal that is:
- a. Not connected to a sewage collection system,
 - b. Connected to a leakproof tank to receive and store sewage temporarily,
 - c. Located in a public place, and
 - d. Housed in a portable toilet enclosure.
13. “Public restroom” means a structure or room that:
- a. Is not connected to living or sleeping quarters;
 - b. Contains a lavatory and water closet or a lavatory, water closet, and urinal connected to a sewage collection system; and
 - c. Is located in a public place.
- 11.14. “Refuse” means putrescible and nonputrescible solid and semisolid waste, including trash, garbage, or rubbish the same as in A.A.C. R18-13-302.
15. “Regular basis” means at recurring, fixed, or uniform intervals.
16. “Regulatory authority” means:
- a. The Arizona Department of Health Services; or
 - b. One of the following entities as specified in A.R.S. § 36-136(E):
 - i. A local health department;
 - ii. A county environmental department; or
 - iii. A public health services district.
17. “Responsible person” means an individual, partnership, corporation, association, governmental subdivision, state agency, or a public or private organization of any character that owns or manages the direct use of a public portable toilet within the state.

12. “Restroom” means a structure or room containing a lavatory and toilet, or lavatory, toilet, and urinal, available to a guest or customer of a business or governmental agency, and unconnected to dwelling or sleeping quarters.
18. “Sanitary” means free from filth, bacteria, viruses, mold, and fungi.
13. “Sanitary fixture” means a bathtub, floor drain, lavatory, shower, toilet, or urinal connected to a plumbing system.
- 14.19. “Sewage” means the liquid waste contained in a sanitary fixture or sanitary fixture drain pipe or any liquid containing putrescible particles, feces, or urine the waste from a toilet, urinal, sink, and portable hand-wash station.
20. “Sewage collection system” has the same meaning as in A.A.C. R18-9-101.
21. “Sewage storage tank” means a receptacle for the collection and holding of the waste from a portable toilet.
15. “Special event” means a group of 100 or more individuals gathered together in lawful assembly for 4 or more hours in an outdoor area that does not have restroom or bathroom facilities.
22. “Toilet” means a water-flushed, chemical-flushed, or no-flush bowl for the disposal of human excreta.
23. “Toilet seat” means a detachable, split or U-shaped seat made of non-absorbent material hinged to the top of a toilet and used for sitting.
- 16.24. “Urinal” means an a water-flushed, chemical-flushed, or no-flush upright basin used by males for urination only.
25. “Vent pipe” means a hollow cylinder of metal, plastic, or other material that allows gas to escape from a sewage storage tank.
26. “Water closet” means the same as in A.R.S. § 45-311.

R9-8-302. Persons Responsible General Requirements

An owner of a bathroom, restroom, or portable toilet, or a person who administers a special event, shall comply with the provisions of this Article.

- A. A responsible person or the responsible person’s designee shall comply with the requirements in this Article and with federal and state laws and rules and local codes and ordinances governing public portable toilets.
- B. A violation of this Article shall constitute a public nuisance under A.R.S. § 36-601.

R9-8-303. Public Portable Toilet Requirements

A. A responsible person or the responsible person's designee shall ensure that:

1. A public portable toilet:
 - a. Is clean;
 - b. Is sanitary;
 - c. Is maintained to avoid odors and insect or vermin infestation;
 - d. Has a non-absorbent, durable, smooth, leakproof, and rustproof floor, wall, ceiling, and door materials;
 - e. Has a vent pipe connected to a sewage storage tank that:
 - i. Is wide enough in diameter to prevent the build up of gasses, and
 - ii. Extends upwards from the sewage storage tank through the roof of the portable toilet enclosure;
 - f. Has a supply of toilet paper that is replenished before running out; and
 - g. Has a self-closing door and privacy latch on the door;
2. Except as provided in subsection (B), one public portable toilet is deployed for the first 100 individuals using or expected to use public portable toilet facilities and one additional public portable toilet is deployed for each additional 100 individuals;
3. Each public portable toilet's sewage storage tank is pumped out on a regular basis to keep the public portable toilet operating as designed;
4. Facilities for washing or sanitizing hands are provided as follows:
 - a. Except as provided in subsection (B), working portable hand-wash stations are deployed at a minimum rate of one per 10 public portable toilets;
 - b. Soap, water, and single use towels are continuously provided at each portable hand-wash station; and
 - c. Where conditions make the use of soap and water impractical, the regulatory authority may allow sanitizing gel in place of soap and water; and
5. Public portable toilets are located a minimum of 100 feet from any food establishment.

B. A responsible person or the responsible person's designee shall ensure that sewage, human excreta, and refuse produced in a public portable toilet:

1. Does not create a public nuisance; and
2. Is disposed of according to 18 A.A.C. 13, Article 3 or 18 A.A.C. 13, Article 11.

C. The regulatory authority may adjust the number of public portable toilets required in subsection (A)(2) and portable hand-wash stations required in (A)(5)(a) provided based on the estimated number of users, the duration of use, and the availability of public restrooms within 200 feet of the public portable toilet.

R9-8-304. Constructing and Maintaining a Portable Toilet Inspections

A portable toilet shall be built and maintained to include:

1. A sewage storage tank, toilet seat, toilet, and urinal made of durable, smooth, leakproof, and rustproof materials;
2. Waterproof and durable floor, wall, ceiling, and door materials;
3. A vent pipe 3 inches in diameter connected to the sewage storage tank and extending 6 inches above the roof of the toilet enclosure; and
4. A constant supply of toilet paper from a toilet paper dispenser.

- A.** If a regulatory authority receives a complaint regarding a public portable toilet, the regulatory authority may conduct an inspection.
- B.** If a regulatory authority conducts an inspection, the regulatory authority's inspector shall conduct the inspection according to A.R.S. § 41-1009.

R9-8-306. Special Events Repealed

- A.** Portable toilets and refuse containers shall be deployed at a special event as follows:
1. One portable toilet for the first 100 people, and one portable toilet for each additional 100 people, or portion thereof;
 2. One refuse container for the first 100 people, and one refuse container for each additional 100 people, or portion thereof; and
 3. Within 200 feet of the special event place.
- B.** Sewage and refuse generated at a special event shall be collected and disposed of under R9-8-307(A), (B), (C), and (E).

R9-8-307. Disposal of Sewage and Refuse Repealed

- A.** The collection, storage, and treatment of sewage and refuse shall comply with the requirements of the Department of Environmental Quality under:
1. 18 A.A.C. 8, Article 6, and 18 A.A.C. 9, Articles 7 and 8, for sewage; and
 2. 18 A.A.C. 8, Article 5, for refuse.
- B.** A disposable refuse bag shall be used to store refuse generated at a special event. A full refuse bag shall be tied closed before disposal in accordance with subsection (A).
- C.** A refuse container in a bathroom or restroom, or at a special event, shall be free of accumulations of putrescible waste.

- D. ~~A bathroom or restroom exclusively for female use, or a combination male and female use restroom shall be provided with a refuse container with a matching lid.~~
- E. ~~An overflowing refuse container in a bathroom or restroom, or at a special event, is prohibited.~~

ARTICLE 3. PUBLIC TOILET FACILITIES

R9-8-301. Definitions

In this Article:

1. "Bathroom" means a restroom that contains a shower or bathtub.
2. "Department" means the Department of Health Services.
3. "Director" means the Director of the Department of Health Services.
4. "Flooded" means a sanitary fixture that is overflowing sewage or filled with sewage to the point of overflowing.
5. "Lavatory" means a sink or basin for cleansing hands.
6. "Person" means a governmental agency, individual, organization, association, partnership, business, corporation, or company.
7. "Plumbing system" means sanitary fixtures, pipes, and related parts assembled to carry water into a structure and carry sewage out of a structure.
8. "Portable toilet" means a transportable toilet connected to a leakproof tank to receive and store sewage temporarily.
9. "Potable" means water obtained from a source or distribution system that complies with the requirements of the Department of Environmental Quality as provided in 18 A.A.C. 4.
10. "Putrescible waste" means a solid or semisolid waste material that is likely to decompose, decay, spoil, rot, or provide food for insects, rodents, birds, or other pests.
11. "Refuse" means putrescible and nonputrescible solid and semisolid waste, including trash, garbage, or rubbish.
12. "Restroom" means a structure or room containing a lavatory and toilet, or lavatory, toilet, and urinal, available to a guest or customer of a business or governmental agency, and unconnected to dwelling or sleeping quarters.
13. "Sanitary fixture" means a bathtub, floor drain, lavatory, shower, toilet, or urinal connected to a plumbing system.
14. "Sewage" means the liquid waste contained in a sanitary fixture or sanitary fixture drain pipe or any liquid containing putrescible particles, feces, or urine.
15. "Special event" means a group of 100 or more individuals gathered together in lawful assembly for four or more hours in an outdoor area that does not have restroom or bathroom facilities.
16. "Urinal" means an upright basin used by males for urination only.

R9-8-302. Persons Responsible

An owner of a bathroom, restroom, or portable toilet, or a person who administers a special event, shall comply with the provisions of this Article.

ARTICLE 3. PUBLIC TOILET FACILITIES

R9-8-304. Constructing and Maintaining a Portable Toilet

A portable toilet shall be built and maintained to include:

1. A sewage storage tank, toilet seat, toilet, and urinal made of durable, smooth, leakproof, and rustproof materials;
2. Waterproof and durable floor, wall, ceiling, and door materials;
3. A vent pipe 3 inches in diameter connected to the sewage storage tank and extending 6 inches above the roof of the toilet enclosure; and
4. A constant supply of toilet paper from a toilet paper dispenser.

R9-8-306. Special Events

A. Portable toilets and refuse containers shall be deployed at a special event as follows:

1. One portable toilet for the first 100 people, and one portable toilet for each additional 100 people, or portion thereof;
2. One refuse container for the first 100 people, and one refuse container for each additional 100 people, or portion thereof; and
3. Within 200 feet of the special event place.

B. Sewage and refuse generated at a special event shall be collected and disposed of under R9-8-307(A), (B), (C), and (E).

R9-8-307. Disposal of Sewage and Refuse

A. The collection, storage, and treatment of sewage and refuse shall comply with the requirements of the Department of Environmental Quality under:

1. 18 A.A.C. 8, Article 6, and 18 A.A.C. 9, Articles 7 and 8, for sewage; and
2. 18 A.A.C. 8, Article 5, for refuse.

B. A disposable refuse bag shall be used to store refuse generated at a special event. A full refuse bag shall be tied closed before disposal in accordance with subsection (A).

C. A refuse container in a bathroom or restroom, or at a special event, shall be free of accumulations of putrescible waste.

D. A bathroom or restroom exclusively for female use, or a combination male-and-female use restroom shall be provided with a refuse container with a matching lid.

E. An overflowing refuse container in a bathroom or restroom, or at a special event, is prohibited.

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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 utilized by the department.
 - (b) Public health support services, which shall include at a minimum:
 - (i) Consumer health protection programs 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) Physically disabled children's 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 and regulations 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 the 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 the 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.

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7. Make contracts and incur obligations within the general scope of the department's activities and operations subject to the availability of funds.
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 utilization 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 for use by professional firefighters and certified emergency medical technicians as part of their basic and continuing training requirement.
19. 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.
20. 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.
21. 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.
22. 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.
23. 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

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paragraph. Grant monies received pursuant to this paragraph are no lapsing and do not revert to the state general fund at the close of the fiscal year.

24. Identify successful methamphetamine prevention programs in other states that may be implemented in this state.

25. 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.

36-132. Department of health services; functions; contracts

A. The department shall, in addition to other powers and duties vested in it by law:

1. Protect the health of the people of the state.

2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.

3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of the state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with the provisions of chapter 3 of this title, and sections 36-693, 36-694 and 39-122.

4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.

5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education

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of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.

6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of school children, including special fields such as the prevention of blindness and conservation of sight and hearing.
9. Encourage and aid in the coordination of local programs concerning nutrition of the people of the state.
10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.
11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.
12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection H, paragraph 10.
13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.
14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug and cosmetic act of 1938 (52 Stat. 1040; 21 United States Code sections 1 through 905).
15. Recruit and train personnel for state, local and district health departments.
16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.
17. License and regulate health care institutions according to chapter 4 of this title.
18. Issue or direct the issuance of licenses and permits required by law.
19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:
 - (a) Screening in early pregnancy for detecting high risk conditions.
 - (b) Comprehensive prenatal health care.
 - (c) Maternity, delivery and postpartum care.

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(d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.

(e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for the developmentally disabled. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

36-136. Powers and duties of director; compensation of personnel; rules; definition

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the

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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

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

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

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

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

I. The director, by rule, shall:

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

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

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

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

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

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

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

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- (d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
- (e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.
- (f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.
- (g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.
- (h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.
5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.
6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.
7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and

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vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but

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this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section, "fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-601. Public nuisances dangerous to public health

A. The following conditions are specifically declared public nuisances dangerous to the public health:

1. Any condition or place in populous areas that constitutes a breeding place for flies, rodents, mosquitoes and other insects that are capable of carrying and transmitting disease-causing organisms to any person or persons or any condition or place that constitutes a feral colony of honeybees that is not currently maintained by a beekeeper and that poses a health or safety hazard to the public.

2. Any spoiled or contaminated food or drink intended for human consumption.

3. Any restaurant, food market, bakery or other place of business or any vehicle where food is prepared, packed, processed, stored, transported, sold or served to the public that is not constantly maintained in a sanitary condition.

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4. Any place, condition or building that is controlled or operated by any governmental agency and that is not maintained in a sanitary condition.
 5. All sewage, human excreta, wastewater, garbage or other organic wastes deposited, stored, discharged or exposed so as to be a potential instrument or medium in the transmission of disease to or between any person or persons.
 6. Any vehicle or container that is used in the transportation of garbage, human excreta or other organic material and that is defective and allows leakage or spillage of contents.
 7. The presence of ectoparasites such as bedbugs, lice, mites and others in any place where sleeping accommodations are offered to the public.
 8. The maintenance of any overflowing septic tank or cesspool, the contents of which may be accessible to flies.
 9. The pollution or contamination of any domestic waters.
 10. The use of the so-called common drinking cup used for drinking purposes by more than one person. This paragraph does not apply to receptacles properly washed and sanitized after each service.
 11. The presence of common towels for use of the public in any public or semipublic place unless properly washed and sanitized following each use.
 12. Buildings or any parts of buildings that are in a filthy condition and that may endanger the health of persons living in the vicinity.
 13. Spitting or urinating on sidewalks, or floors or walls of a public building or buildings used for public assemblage, or a building used for manufacturing or industrial purposes, or on the floors or platforms or any part of a railroad or other public conveyance.
 14. The use of the contents of privies, cesspools or septic tanks or the use of sewage or sewage plant effluents for fertilizing or irrigation purposes for crops or gardens except by specific approval of the department of health services or the department of environmental quality.
 15. The maintenance of public assemblage or places of assemblage without providing adequate sanitary facilities. Open surface privies are adequate sanitary facilities if they are outside populous areas and meet reasonable health requirements.
 16. Hotels, tourist courts and other lodging establishments that are not kept in a clean and sanitary condition or for which suitable and adequate toilet facilities are not provided.
 17. The storage, collection, transportation, disposal and reclamation of garbage, trash, rubbish, manure and other objectionable wastes other than as provided and authorized by law.
 18. Water, other than that used by irrigation, industrial or similar systems for nonpotable purposes, that is sold to the public, distributed to the public or used in production, processing, storing, handling, servicing or transportation of food and drink and that is unwholesome, poisonous or contains deleterious or foreign substances or filth or disease causing substances or organisms.
 19. The emission of mercaptan in a concentration level that causes endangerment to the health or safety of any considerable number of persons of a neighborhood or community.
 20. The operation of an environmental laboratory in violation of chapter 4.3, article 1 of this title.
- B. If the director has reasonable cause to believe from information furnished to the director or from investigation made by the director that any person is maintaining a nuisance or engaging in any practice contrary to the health laws of this state, the director shall promptly serve on that person by certified mail a cease and desist order requiring the person, on receipt of the order, promptly to cease and desist from that act. Within fifteen days after receipt of the order, the person to whom it is directed may request the

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director to hold a hearing. The director, as soon as practicable, shall hold a hearing, and if the director determines the order is reasonable and just and that the practice engaged in is contrary to the health laws of this state, the director shall order the person to comply with the cease and desist order.

C. If a person fails or refuses to comply with the order of the director, or if a person to whom the order is directed does not request a hearing and fails or refuses to comply with the cease and desist order served by mail under subsection B, the director may file an action in the superior court in the county in which a violation occurred, restraining and enjoining the person from engaging in further acts. The court shall proceed as in other actions for injunctions.

D. Notwithstanding subsection A, paragraph 19, the emission of mercaptan as a by-product of a pesticide is not a nuisance if applied according to state and federal restrictions.

E. Notwithstanding subsection A, paragraph 3, a restaurant that uses sawdust on the floors of its dining areas is not in violation of this section or local health department sanitary rules if the restaurant replaces the sawdust each day with clean sawdust and complies with applicable standards for fire safety.

36-602. Abatement of nuisances, sources of filth and causes of sickness; civil penalty; property assessment; procedure

A. Notwithstanding any other provision of this title, when a nuisance, source of filth or cause of sickness exists on private property, the county board of health, the local health department, the county environmental department or the public health service district shall order the owner or occupant to remove it within twenty-four hours at the expense of the owner or occupant. The order may be delivered to the owner or occupant personally, or left at the owner or occupant's usual place of abode or served on the owner or occupant in the same manner as provided for service of process under the Arizona rules of civil procedure. If the order is not complied with, the board or department may impose a civil penalty pursuant to section 36-183.04 and shall cause the nuisance, source of filth or cause of sickness to be removed, and expenses of removal shall be paid by the owner, occupant or other person who caused the nuisance, source of filth or cause of sickness.

B. A city or county may prescribe by sanitary ordinance or regulation a procedure for making the actual cost of this removal or abatement, including the actual costs of any additional inspection and other incidental costs in connection with the removal or abatement, an assessment on the lots and tracts of land on which the nuisance, source of filth or cause of sickness was abated or removed, subject to the following:

1. Any such ordinance or regulation shall include a provision for appeal of the assessment to the governing body or the board of supervisors or its designee.
2. The assessment, from the date of its recording in the office of the county recorder in the county where the lot or tract of land is located, is a lien on the lot or tract of land until paid.
3. Any assessment recorded is prior and superior to all other liens, obligations or other encumbrances, except liens for general taxes and prior recorded mortgages.
4. The city or county may bring an action to enforce the lien in the superior court in the county in which the property is located at any time after the recording of the assessment, but failure to enforce the lien by this action does not affect its validity. The recorded assessment is *prima facie* evidence of the truth of all matters recited in the assessment and of the regularity of all proceedings before the recording of the assessment.

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5. A prior assessment for the purposes provided in this section is not a bar to a subsequent assessment or assessments for these purposes, and any number of liens on the same lot or tract of land may be enforced in the same action.
6. An assessment or lien recorded pursuant to this section does not limit, restrict or otherwise affect the authority of a city or county to undertake any additional enforcement action that is authorized by law, including applicable ordinances or regulations.
7. The ordinance or regulation shall provide notice to all lienholders.

36-603. Right to enter premises for inspection or abatement

When a county board of health or a local health department deems it necessary to enter a building or structure within its jurisdiction for the purpose of examining, destroying, removing or preventing a nuisance, source of filth or cause of sickness and is refused entrance, any member of the board or officer of the department may make a complaint under oath to a justice of the peace. The justice of the peace shall issue a warrant directing the sheriff or other peace officer accompanied by and under the direction of at least one member of the board or department to destroy, remove or prevent, between the hours of sunrise and sunset, such nuisance, source of filth or cause of sickness.

CRIMINAL JUSTICE COMMISSION (R-18-0203)

Title 10, Chapter 4, Article 1, Crime Victim Compensation Program; Article 2, Crime Victim Assistance Program

Amend: R10-4-101; R10-4-102; R10-4-103; R10-4-104; R10-4-106; R10-4-107;
R10-4-108; R10-4-109; R10-4-110; R10-4-201; R10-4-202; R10-4-203;
R10-4-204



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – REGULAR RULEMAKING

MEETING DATE: February 6, 2018

AGENDA ITEM: F-4

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

FROM: Council Staff

DATE: January 23, 2018

SUBJECT: **ARIZONA CRIMINAL JUSTICE COMMISSION (R-18-0203)**

Title 10, Chapter 4, Article 1, Crime Victim Compensation Program; Article 2, Crime Victim Assistance Program

Amend: R10-4-101; R10-4-102; R10-4-103; R10-4-104; R10-4-106;
R10-4-107; R10-4-108; R10-4-109; R10-4-110; R10-4-201;
R10-4-202; R10-4-203; R10-4-204

SUMMARY OF THE RULEMAKING

In 1982, the Arizona State Legislature created the Crime Victim Compensation and Assistance Fund under A.R.S. § 41-2407 and directed the Criminal Justice Commission (Commission) to administer the fund. The Commission created the Crime Victim Compensation Program and the Crime Victim Assistance program to award funds to public and private agencies for distribution to victims of criminally injurious conduct. The Commission staff provides grant monitoring, reporting, and program oversight and conducts financial and program reviews of agencies that receive crime victim funding.

This rulemaking seeks to amend 12 rules in A.A.C. Title 10, Chapter 4, Articles 1 and 2, related to Crime Victim Compensation and Assistance programs. Stakeholder feedback has indicated that current rules need to be amended to be more effective in achieving their objectives. The Commission is removing “international terrorism” from the rules because international terrorism is a federal crime and all federal crimes are included under the definition of “criminally injurious conduct.”

The current rules related to Crime Victim Compensation program contain unnecessary restrictions on how the program is administered at the state and county level. Moreover, the rules are unclear about the additional resources available to victims of crime, and at what stage certain claimant eligibility decisions must be made. The proposed amendments address transportation costs and work loss benefits for victims.

The current Crime Victim Assistance program rules contain unnecessary restrictions on what types of victim service program activities shall be funded by the grant program. The rules include burdensome matching funds requirement on funded projects and application requirements on non-profit agencies. The overly burdensome requirements limit access to grant funding for applicant agencies. The proposed amendments eliminate some of these burdens.

The rules were last amended in February 2013. The Commission received an exception from the moratorium on May 11, 2017.

Proposed Action

- **R10-4-101 – Definitions:** The term, “International terrorism,” is being removed and other terms are amended to reflect the removal. The definition of “Fund” is updated to include all state, federal, and jurisdiction financial resources.
- **R10-4-102 – Administration of the Fund:** Subsection (H) is being removed, which requires an operational unit to submit a quarterly, written report to the Commission. Subsection (I) is added to require an operational unit to pay approved compensation program benefit expenses using benefit category cost rate schedules approved by the Commission. Clarifying changes are also being made.
- **R10-4-103 – Statewide Operation:** Clarifying change is being made.
- **R10-4-104 – Operational Unit Requirements:** Subsection (B)(2)(e) is updated to eliminate the requirement to submit a written, quarterly report. References to “international terrorism” are removed.
- **R10-4-106 – Prerequisites for a Compensation Award:** Subsection (A)(3)(c) is modified to disallow compensation program eligibility for claimants who are victimized while incarcerated prior to sentencing or disposition. In addition, the amendments disallow compensation program eligibility for claimants discovered to have an active warrant in Arizona. Clarifying changes are also being made.
- **R10-4-107 – Submitting a Claim:** References to “international terrorism” are being removed. Subsection (E)(3) is added to require a claimant to submit any documentation required by the operation unit to fully investigate claimant eligibility and all expense requests.
- **R10-4-108 – Compensation Award Criteria:** Subsection (D) is modified to increase the transportation costs reimbursement to claimants from \$1,500 to \$2,000, as well as change loss of support calculation requirements to allow for a lump-sum payment. In addition, subsection (L) is being removed to no longer provide a timeline for when an operational unit may close an inactive claim. Clarifying changes are also being made.
- **R10-4-109 – Hearing; Request for Rehearing:** Clarifying changes are being made.
- **R10-4-110 – State-level Claim Review:** Clarifying change is being made.
- **R10-4-201 – Definitions:** The term, “Substantial financial support from other sources” is being removed. “Financial support from other sources” is being redefined to mean that at least one-fifth (previously one-fourth) of the budget for a victim assistance program is from sources other than the Fund.
- **R10-4-202 – Administration of the Fund:** Clarifying changes are being made.

- **R10-4-203 – Grant Eligibility Requirements:** The requirement, in subsection (A), that a governmental agency or private nonprofit organization must be approved by a prosecuting attorney’s office or law enforcement to receive a grant from the Commission is being removed. The additional requirements that were imposed on programs that have existed for less than 3 years are being eliminated. Clarifying changes are also being made.
- **R10-4-204 – Services:** The phrase “petty cash” is being replaced by financial assistance. Statutory references are updated and clarifying changes are being made.

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

Yes. The Commission cites to A.R.S. § 41-2405(A)(8) as general authority for the rules, under which the Commission has the authority to adopt rules for “the purpose of allocating fund monies as provided in sections...41-2407 that are consistent with the purposes set forth in those sections and that promote effective and efficient use of the monies.”

As for specific authority, the Commission cites to A.R.S. § 41-2407, which establishes the victim compensation and assistance fund, as well as requires the Commission to administer the fund.

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

No. The rules do not establish a new fee or contain a fee increase.

3. Summary of the agency’s economic impact analysis:

In this rulemaking, the Commission is proposing to adopt rules that will increase the crime victim compensation benefits available for transportation costs and work loss costs. The rulemaking will also increase the clarity of the rules that administer crime victim compensation benefits. In fiscal year 2017, 1,395 victim compensation claims totaling over \$3.3 million were paid.

The Commission is also proposing to adopt rules that will eliminate unnecessary restrictions on the types of programs that are eligible for grants through the victim assistance program. The new rules will also reduce the required matching funds from fifty percent to twenty percent. Victim assistance grants totaled \$308,731 in fiscal year 2017.

4. 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?

Yes. The Commission concludes that this rulemaking does not impose significant costs on any stakeholder. Recipients of crime victim compensation benefits will benefit from increased compensation. Providers of services and recipients of services through the crime victim assistance program will benefit from increased access to funding. The benefits outweigh the costs.

5. What are the economic impacts on stakeholders?

Key stakeholders are the Commission and the claimants of victim compensation benefits.

The Commission does not anticipate that it will incur any significant costs as a result of this rulemaking. The Commission is updating these rules to improve the outcomes of these programs.

Individuals who apply for benefits through the victim compensation program will benefit because they will be eligible for higher benefit compensation for lost work and transportation. Individuals who receive services from organizations that utilize victim assistance grants will benefit from increased service capacity.

These rules do not impact businesses directly.

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

Yes. The Commission received stakeholder feedback prior to initiating the rulemaking process. A summary of the comments, received at three public feedback meetings, is attached to the Notice of Final Rulemaking. However, no written comments have been received on the proposed rules and no one attended the oral proceeding held on December 7, 2017.

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

No. The Commission indicates that only minor technical changes were made between the proposed and the final rules on Council staff's request.

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

No. The Commission indicates that the rules are not more stringent than federal law. The Victims Compensation and Assistance Act (VOCA) of 1984 establishes the Federal Crime Victims Fund. Arizona receives funding for its Crime Victim Compensation program and Crime Victim Assistance program under VOCA because it meets the necessary criteria.

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

No. The rules do not require a permit or license.

10. 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?

No. The Commission did not review or rely on any study relevant to the rules.

11. Conclusion

The Commission requests the usual 60-day delayed effective date for the rules. Council staff recommends approval of the rulemaking.



Arizona Criminal Justice Commission

Chairperson
SEAN DUGGAN, Chief
Chandler Police Department

Vice-Chairperson
SHEILA POLK
Yavapai County Attorney

MARK BRNOVICH
Attorney General

JOE R. BRUGMAN, Chief
Safford Police Department

DAVID K. BYERS, Director
Administrative Office of the Courts

KELLY "KC" CLARK
Navajo County Sheriff

DAVE COLE
Former Judge

BARBARA LAWALL
Pima County Attorney

FRANK MILSTEAD, Director
Agency of Public Safety

BILL MONTGOMERY
Maricopa County Attorney

MARK NAPIER
Pima County Sheriff

PAUL PENZONE
Maricopa County Sheriff

CHARLES RYAN, Director
Agency of Corrections

DAVID SANDERS
Pima County Chief Probation Officer

DANIEL SHARP, Chief
Oro Valley Police Department

HESTON SILBERT
Law Enforcement Leader

C.T. WRIGHT, Chairperson
Board of Executive Clemency

CHARLES RYAN, Director
Agency of Corrections

VACANT
County Supervisor

VACANT
Mayor

VACANT
Law Enforcement Leader

Executive Director
Andrew T. LeFevre

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December 11, 2017

Ms. Nicole Ong Colyer, Chair
The Governor's Regulatory Review Council
100 N. 15th Ave., #305
Phoenix, AZ 85007

**Re: A.A.C. Title 10. Law
Chapter 4. Arizona Criminal Justice Commission**

Dear Ms. Ong Colyer:

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

1. Close of record date: The rulemaking record was closed on December 7, 2017, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).
2. Definitions of terms contained in statutes or other rules: No definitions contained in statute or rule relate to this rulemaking.
3. Relation of the rulemaking to a five-year-review report: This rulemaking does not relate to a five-year-review report.
4. New fee or fee increase: This rulemaking neither establishes a new fee nor increases an existing fee.
5. Immediate effective date: An immediate effective date is not requested.
6. Material incorporated by reference: No materials are incorporated by reference.
7. Certification regarding studies: I certify that the preamble accurately discloses that the Commission neither reviewed nor relied on a study relevant to this rulemaking in its evaluation of or justification for the rulemaking. The rulemaking does not rely on scientific principles or methods.
8. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.
9. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used: None of the rules in this rulemaking requires a permit.

Our mission is to continuously address, improve, sustain and enhance public safety in the State of Arizona through the coordination, cohesiveness, and effectiveness of the Criminal Justice System

10. Whether 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 Victims Compensation and Assistance Act of 1984 as amended by The Justice for All Act of 2004 and the Violence against Women and Department of Justice Reauthorization Act of 2005 create crime victim compensation and crime victim assistance programs. These programs provide funds to the states for use in implementing state programs. A state does not receive funding unless the state meets certain minimal criteria. Arizona receives funds under these acts.

11. Whether a person submitted an analysis that compares the rule's impact on business competitiveness in this state to the impact on businesses in other states: No analysis was submitted.

12. List of documents enclosed:

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

Sincerely,



Andrew T. LeFevre
Executive Director

**NOTICE OF FINAL RULEMAKING
TITLE 10. LAW
CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION
PREAMBLE**

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R10-4-101	Amend
R10-4-102	Amend
R10-4-103	Amend
R10-4-104	Amend
R10-4-106	Amend
R10-4-107	Amend
R10-4-108	Amend
R10-4-109	Amend
R10-4-110	Amend
R10-4-201	Amend
R10-4-202	Amend
R10-4-203	Amend
R10-4-204	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. § 41-2405(A)(8)

Implementing statute: A.R.S. § 41-2407

3. The effective date for the rules:

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

Not applicable.

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

Not applicable

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

Notice of Rulemaking Docket Opening: 23 A.A.R. 1640, June 16, 2017

Notice of Proposed Rulemaking: 23 A.A.R. 2793, October 13, 2017

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

Name: Larry Grubbs, Program Manager
Address: Arizona Criminal Justice Commission
1110 W. Washington St., Ste. 230
Phoenix, AZ 85007
Telephone: (602) 364-1154
Fax: (602) 364-1175
E-mail: lgrubbs@azcjc.gov
Web site: www.azcjc.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 current rules were made in a rulemaking that went into effect in February 2013. Experience using the rules and feedback from stakeholders indicate that changes are needed to make the rules more effective in achieving their goals. This rulemaking makes the necessary changes.

The current victim compensation program rules include unnecessary restrictions on how the program is administered at the state and county level. The rules lack clarity regarding the availability of additional resources to compensate victims of crime, and at what point certain claimant eligibility decisions must be made. Experience using the current rules has indicated additional need in the areas of transportation costs and work loss benefits for victims.

The current crime victim assistance program rules include unnecessary restrictions on what types of victim service program activities shall be funded by the grant program. The rules place an overly burdensome matching-funds requirement on funded projects, and place additional unnecessary application requirements on non-profit agencies. These requirements under the current rules have resulted in limiting access to grant funding for applicant agencies.

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:

None

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

Not applicable

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

The amount of funds available to provide compensation awards or assistance to crime victims is not increased as a result of this rulemaking. However, the total amount that can be claimed for various compensation benefit expenses is increased. Availability of compensation benefits to certain eligible individuals has also expanded. The following changes may have some economic impact:

- Adding fee expenses as an eligible expense under transportation costs;
- Simplifying work loss benefit calculation to a single weekly maximum;
- Allowing the Commission to approve payment rate schedules for program benefit cost categories; and
- Increasing transportation cost maximum amount to \$2,000.

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

Only clarifying and technical changes, none of which are substantial under the standards set forth in A.R.S. § 41-1025, have been made between the proposed rulemaking and the final rulemaking. Changes made include the following:

- (R10-4-104.B.2.h) Replaced the word “and” ending the clause
- (R10-4-107.D.2.g) Removed “or act of international terrorism”
- (R10-4-107.D.5.a) Removed “or act of international terrorism”
- (R10-4-107.D.7.d) Removed “or act of international terrorism”
- (R10-4-110.A) Added “calendar” to “30 days”
- (R10-4-110.C) Added “calendar” to “30 days”
- (R10-4-204.B.1) Replaced “salaried” with “paid”

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

The agency received no public or stakeholder comments about the rulemaking during the public comment period or at the public hearing held on December 7, 2017.

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

None

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

The rules do not require issuance of a regulatory permit, license or agency authorization.

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

The Federal Crime Victims Fund (the Fund) was established by the Victims of Crime Act (VOCA) of 1984. The Fund is financed by fines and penalties paid by convicted federal offenders. The Fund provides grant funding to the states for use in implementing state victim assistance and victim compensation programs. A state does not receive funding unless the state meets certain minimal criteria. Arizona receives funds under this act.

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

No analysis was submitted.

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

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 as an emergency rule.

15. The full text of the rules follows:

TITLE 10. LAW
CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION
ARTICLE 1. CRIME VICTIM COMPENSATION PROGRAM

- R10-4-101.** Definitions
- R10-4-102.** Administration of the Fund
- R10-4-103.** Statewide Operation
- R10-4-104.** Operational Unit Requirements
- R10-4-106.** Prerequisites for a Compensation Award
- R10-4-107.** Submitting a Claim
- R10-4-108.** Compensation Award Criteria
- R10-4-109.** Hearing; Request for Rehearing
- R10-4-110.** State-level Claim Review

ARTICLE 2. CRIME VICTIM ASSISTANCE PROGRAM

- R10-4-201.** Definitions
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ARTICLE 1. CRIME VICTIM COMPENSATION PROGRAM

R10-4-101. Definitions

In this Article:

1. “Board” means the Crime Victim Compensation Board of an operational unit.
2. “Claim” means an application for compensation submitted under this Article.
3. “Claimant” means a natural person who files a claim.
4. “Collateral source” means a source of compensation for economic loss that a claimant received or is accessible to and obtainable by the claimant or that is payable to or on behalf of the victim. Collateral source includes the following sources of compensation:
 - a. The perpetrator or a third party responsible for the perpetrator’s actions;
 - b. The United States government or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states, unless:
 - i. The law providing for the compensation makes the compensation excess or secondary to benefits under this Article, or
 - ii. The compensation is made with federal funds granted under 42 U.S.C. 10602;
 - c. Social Security, Medicare, or Arizona Health Care Cost Containment System payments;

- d. State-required, insurance for a temporary, non-occupational disability;
 - e. Worker's compensation insurance;
 - f. Wage continuation program of any employer;
 - g. Insurance proceeds payable to cover a specific compensable cost due to criminally injurious conduct ~~or an act of international terrorism~~;
 - h. A contract providing for prepaid hospital and other health care services or disability benefits; and
 - i. A gift, devise, or bequest to cover a specific compensable cost.
5. "Commission" means the Arizona Criminal Justice Commission, as established by A.R.S. § 41-2404.
6. "Compensable cost" means an economic loss for which a compensation award is allowed under this Article.
7. "Compensation award" means a payment made to a claimant under the standards at R10-4-108.
8. "Crime scene cleanup expense" means the reasonable and customary cost for:
- a. Removing or attempting to remove bodily fluids, dirt, stains, and other debris that result from criminally injurious conduct ~~or act of international terrorism~~ occurring within a residence or the surrounding curtilage;
 - b. Repairing or replacing exterior doors, locks, or windows damaged as a direct result of criminally injurious conduct ~~or act of international terrorism~~ occurring within a residence or the surrounding curtilage.
9. "Criminally injurious conduct" means conduct that:
- a. Constitutes a crime as defined by state or federal law regardless of whether the perpetrator of the conduct is apprehended, charged, or convicted;
 - b. Poses a substantial threat of physical injury, mental distress, or death; and
 - c. Is punishable by fine, imprisonment, or death, or would be punishable but the perpetrator of the conduct lacked the capacity to commit the crime under applicable laws.
10. "Derivative victim" means:
- a. The spouse, child, parent, stepparent, stepchild, sibling, grandparent, grandchild, or guardian of a victim who died as a result of criminally injurious conduct ~~or an act of international terrorism~~;
 - b. A child born to a victim after the victim's death;
 - c. A person living in the household of a victim who died as a result of criminally injurious conduct ~~or act of international terrorism~~, in a relationship determined by the Board to be substantially similar to a relationship listed in subsection (10)(a);
 - d. A member of the victim's family who witnessed the criminally injurious conduct ~~or act of international terrorism~~ or who discovered the scene of the criminally injurious conduct ~~or act of international terrorism~~;
 - e. A natural person who is not related to the victim but who witnessed the criminally injurious conduct ~~or act of international terrorism~~ or discovered the scene of the criminally injurious conduct ~~or act of international terrorism~~; or
 - f. A natural person whose own mental health counseling and care or presence during the victim's mental health counseling and care is required recommended for the successful treatment of the victim.
11. "Durable medical equipment" means an appliance, apparatus, device, or product that:
- a. Is medically necessary to treat an injury or condition resulting from criminally injurious conduct ~~or an act of international terrorism~~;

- b. Improves the function of an injured body part or delays deterioration of a patient's physical condition;
 - c. Is primarily and customarily used to serve a medical purpose rather than primarily for transportation, comfort, or convenience; and
 - d. Provides the medically appropriate level of performance and quality for the medical injury or condition present.
12. "Economic loss" means financial detriment resulting from medical expense, mental health counseling and care expense, crime scene cleanup expense, funeral expense, or work loss.
13. "Fund" means ~~the Victim Compensation and Assistance Fund established by A.R.S. § 41-2407 all State, Federal, and jurisdiction financial resources dedicated to the compensation program through statute, this chapter, or federal grant award.~~
14. "Funeral expense" means a reasonable and customary cost, such as those listed on the Statement of Funeral Goods and Services Selected required under A.A.C. R4-12-307, incurred as a direct result of a victim's funeral, cremation, Native American ceremony, or burial.
15. "Good cause" means a reason that the Board determines is substantial enough to afford a legal excuse.
16. "Inactive claim" means a claim for which no compensation award is made for 12 consecutive months.
17. "Incident of criminally injurious conduct" means all criminal actions that are related to or dependent upon each other regardless of the time involved in perpetrating the actions, number of persons perpetrating the actions, or the number of crimes with which the perpetrator is or could be charged.
18. ~~"International terrorism" has the meaning prescribed in 18 U.S.C. 2331.~~
19. ~~18.~~ "Jurisdiction" means any county in this state.
20. ~~19.~~ "Medical expense" means a reasonable and customary cost for medical care provided to a victim due to a physical injury, mental health condition, or medical condition that is a direct result of criminally injurious conduct ~~or an act of international terrorism~~.
21. ~~20.~~ "Mental distress" means a substantial disorder of emotional processes, thought, or cognition that impairs judgment, behavior, or ability to cope with the ordinary demands of life.
22. ~~21.~~ "Mental health counseling and care expense" means a reasonable and customary cost to assess, diagnose, and treat a victim's or derivative victim's mental distress resulting from criminally injurious conduct ~~or an act of international terrorism~~.
23. ~~22.~~ "Minimum wage standard" means the uniform minimum wage payable in Arizona under federal or state law, whichever is greater.
24. ~~23.~~ "Operational unit" means a public or private agency authorized by the Commission to receive, evaluate, and present to the Board a claim.
25. ~~24.~~ "Program" means the Crime Victim Compensation Program.
26. ~~25.~~ "Proximate cause" means an event sufficiently related to criminally injurious conduct ~~or act of international terrorism~~ to be held the cause of the criminally injurious conduct ~~or act of international terrorism~~.
27. ~~26.~~ "Reasonable and customary" means the normal charge within a specific geographic area for a specific service by a provider of a particular level of experience or expertise.
28. ~~27.~~ "Resident" means a natural person who is domiciled in Arizona or is in Arizona for other than a temporary or transitory purpose.

29. 28. “Subrogation” means the substitution of the state or an operational unit in place of a claimant to enforce a lawful claim against a collateral source to recover any part of a compensation award made to the claimant using funds of the state or operational unit.
30. 29. “Total and permanent disability” means a physical or mental condition that the Board finds is a proximate result of criminally injurious conduct ~~or act of international terrorism~~ and:
- a. Produces a significant and sustained reduction in the victim’s former mental or physical abilities dramatically altering the victim’s ability to interact with others and carry on normal functions of life;
 - b. Lessens the victim’s ability to work to a material degree; or
 - c. Causes a physical or neurophysical impairment from which no fundamental or marked improvement in the victim’s crime-related condition can reasonably be expected.
31. 30. “Transportation costs” means a travel expense that may be reimbursed to a claimant as follows:
- a. Mileage, calculated at the rate established by:
 - i. The operational unit, or
 - ii. The state if the operational unit has not established a mileage rate;
 - b. Fare ~~or fee~~ expenses; and
 - c. Vehicle rental at the cost specified in the rental agreement.
32. 31. “Victim” means a natural person who suffers a physical injury or medical condition, mental distress, or death as a direct result of:
- a. Criminally injurious conduct,
 - b. ~~An act of international terrorism,~~
 - c. ~~The person’s good faith effort to prevent criminally injurious conduct or an act of international terrorism, or~~
 - d. ~~The person’s good faith effort to apprehend a person suspected of engaging in criminally injurious conduct or an act of international terrorism.~~
33. 32. “Work loss” means a reduction in income from:
- a. Work that a victim or derivative victim would have performed if the victim had not been a victim; and
 - b. Social Security or Supplemental Security Income that a victim would have received or from which a derivative victim would have benefitted if the victim had not been killed.

R10-4-102. Administration of the Fund

- A. The Commission shall ~~deposit include~~ in the Fund all funds ~~received under A.R.S. § 12-116.01 and any other funds~~ received for compensating a claimant under this Chapter.
- B. The Commission shall designate one operational unit for a jurisdiction or jurisdictions to receive an allocation from the Fund each state fiscal year.
- C. The Commission shall distribute a portion of the Fund to each operational unit for expenditure by the Board. The Commission shall distribute the funds using ~~a~~ an allocation formula ~~that approved by~~ the Commission, ~~determines annually using:~~
 1. ~~A base amount for each operational unit,~~
 2. ~~An analysis of the prior year’s claim activity,~~

3. ~~The share of population of each jurisdiction, and~~
 4. ~~The share of crime of each jurisdiction.~~
- D. The Commission shall reserve the lesser of \$50,000 or 10 percent of the Fund to be used in the event of an unforeseen increase of victimization that causes an operational unit for a particular jurisdiction to lack the funds needed to provide compensation.
- E. If there is an unforeseen increase in victimization in a particular jurisdiction, the Commission shall designate an additional operational unit to accept claims from that jurisdiction or make a compensation award based on the criteria established by R10-4-108.
- F. If, at the end of a fiscal year, an operational unit has unexpended funds received from the Commission, the operational unit shall return the funds to the Commission within 90 days after the end of the fiscal year. The Commission shall deposit the returned funds in the Fund for use in the next fiscal year.
- G. Funds collected by an operational unit through subrogation or restitution may be retained by the operational unit to the extent authorized by the Commission and shall be used to pay compensation awards based on the criteria established by R10-4-108.
- H. ~~An operational unit that receives additional funds for victim compensation shall submit a quarterly, written report to the Commission. The operational unit shall include in the report the amount of additional funds received and distributed to compensate victims or claimants. The Commission shall use the information in the written report to apply for federal matching funds. If matching funds are received, the Commission shall forward the matching funds to the appropriate operational unit.~~
- I. H. An operational unit shall use funds to pay administrative costs only to the extent authorized by the Commission.
- I. An operational unit shall pay approved compensation program benefit expenses using benefit category cost rate schedules approved by the Commission. If the Commission has not approved a cost rate schedule for a benefit category, or if an eligible benefit cost is not covered by the approved rate schedule, the operational unit may negotiate a reasonable and customary cost with the service provider for the approved benefit expense.

R10-4-103. Statewide Operation

For any jurisdiction not served by an operational unit, the Commission shall operate a program in accordance with this Article, designate another operational unit as described in R10-4-104, or provide for a program by contract.

R10-4-104. Operational Unit Requirements

- A. To be designated by the Commission as an operational unit for a jurisdiction, a public or private agency shall submit to the Commission a written request for designation.
- B. The Commission shall designate a public or private agency as the operational unit for a jurisdiction or jurisdictions:
 1. Only if the public or private agency agrees not to:
 - a. Use Commission funds or federal funds to supplant funds otherwise available to compensate a victim or claimant;
 - b. Make a distinction between a resident and a non-resident in evaluating a claim; and

- c. Make a distinction in evaluating a claim relating to a federal crime that occurs in Arizona and one relating to a state crime; and
- 2. Only if the public or private agency agrees to:
 - a. Forward to the Board a claim relating to an incident of criminally injurious conduct ~~or an act of international terrorism~~ occurring in the public or private agency's jurisdiction or jurisdictions;
 - b. Forward to the Board a claim made by or on behalf of a resident of the public or private agency's jurisdiction or jurisdictions who is a victim or derivative victim of an incident of criminally injurious conduct ~~or an act of international terrorism~~ occurring in another state, the District of Columbia, Puerto Rico, or any other possession or territory of the United States that does not have a crime victim compensation program that meets the requirements of 42 U.S.C. 10602(b);
 - c. Forward to the Board a claim made by or on behalf of a resident of the public or private agency's jurisdiction or jurisdictions who is a victim or derivative victim of an incident of criminally injurious conduct ~~or an act of international terrorism~~ occurring outside of the United States in an area without a an accessible crime compensation program;
 - d. Notify the Commission of any change in the public or private agency's program procedures or program policies before the change takes effect and if the change is material, obtain written approval from the Commission before instituting the change;
 - e. Submit ~~a written quarterly financial and program activity reports~~ to the Commission, ~~on a form provided in a format required by the Commission, and at a frequency established annually by the Commission; and provide detailed information regarding the expenditure of funds received from the Commission and those required as a match for funds received from the Commission;~~
 - f. Provide an application form to a claimant;
 - g. Comply with all civil rights requirements;
 - h. Ensure that each claim is investigated and substantiated before forwarding the claim to the Board for a compensation award; and
 - i. Monitor a compensation award to ensure that amounts paid are consistent with this Article.
- C. If more than one agency requests to be designated by the Commission as an operational unit for a jurisdiction, the Commission shall designate the agency that it determines is better able to evaluate claims and manage the expenditure of public funds. The Commission shall give preference to a public agency if both a public and private agency request designation.

R10-4-106. Prerequisites for a Compensation Award

- A. The Board shall make a compensation award only if it determines that:

- 1. Criminally injurious conduct ~~or an act of international terrorism~~:
 - a. Occurred in Arizona; or
 - b. Occurred outside of Arizona in an area without a an accessible crime compensation program and affected a resident;

2. The criminally injurious conduct ~~or act of international terrorism~~ directly resulted in the victim's physical injury, mental distress, medical condition, or death;
 3. The victim of the criminally injurious conduct ~~or act of international terrorism~~ or a person who submits a claim regarding criminally injurious conduct ~~or an act of international terrorism~~ was not:
 - a. The perpetrator, an accomplice of the perpetrator, or a person who encouraged or in any way participated in or facilitated the criminally injurious conduct ~~or act of international terrorism~~ that ~~directly resulted in the victim's physical injury, mental distress, medical condition, or death~~ is the subject of the claim;
 - b. ~~Serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough at the time of the criminally injurious conductor act of international terrorism that directly resulted in the victim's physical injury, mental distress, medical condition, or death; At the time of the criminally injurious conduct that is the subject of the claim:~~
 - i. Serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough; or
 - ii. Incarcerated in any detention facility awaiting criminal sentencing or disposition.
 - c. ~~Escaped from serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough at the time of the criminally injurious conductor act of international terrorism that directly resulted in the victim's physical injury, mental distress, medical condition, or death; At the time of claim submission to the operational unit for a jurisdiction:~~
 - i. Escaped from serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough;
 - d. ii. Convicted of a federal crime and delinquent in paying a fine, monetary penalty, or restitution imposed for the offense if the U.S. Attorney General and the Director of the Administrative Office of the U.S. Courts have issued a written determination that the entities administering federal victim compensation programs have access to an accurate and efficient criminal debt payment tracking system; or
 - e. iii. Convicted of a state crime and delinquent in paying a fine, monetary penalty, or restitution imposed for the crime if the delinquency is identified by the Arizona Administrative Office of the Courts or the Clerk of the Superior Court.
 - d. Wanted in Arizona on an active warrant, if warrant status is discovered anytime following submission of the claim.
 4. The criminally injurious conduct ~~or act of international terrorism~~ was reported to an appropriate law enforcement authority within 72 hours after its discovery;
 5. The victim, derivative victim, or claimant cooperated with law enforcement agencies;
 6. The victim, derivative victim, or claimant incurred economic loss as a direct result of the criminally injurious conduct ~~or act of international terrorism~~ that is not compensable by a collateral source; and
 7. A claim, as described in R10-4-107, was submitted to the operational unit within two years after discovery of the criminally injurious conduct ~~or act of international terrorism~~.
- B.** The Board shall extend the time limits under subsections (A)(4) and (A)(7) if the Board determines there is good cause for a delay.

- C. If a victim died as a result of criminally injurious conduct ~~or act of international terrorism~~, the requirement requirements under subsection (A)(3)(e) subsections (A)(3)(c)(ii), (A)(3)(c)(iii), and (A)(3)(d) ~~is~~ are waived for the deceased victim. Expenses incurred by the deceased victim and eligible claimants may be covered.
- D. If the Board determines that a compensation award does not solely benefit a claimant who is delinquent under subsection (A)(3)(e) subsections (A)(3)(c)(ii) and (A)(3)(c)(iii), the requirement requirements under subsection (A)(3)(e) subsections (A)(3)(c)(ii) and (A)(3)(c)(iii) may be waived for:
 1. A claimant who is the parent or legal guardian of a minor victim of criminally injurious conduct ~~or an act of international terrorism~~; or
 2. A compensation award for expenses under R10-4-108(C)(3).

R10-4-107. Submitting a Claim

- A. If the prerequisites in R10-4-106 are met, a natural person is eligible to submit a claim if the person is:
 1. A victim;
 2. A derivative victim;
 3. A person authorized to act on behalf of a victim or a deceased victim's dependent; or
 4. A person who assumed an obligation for or paid an expense directly related to a victim's economic loss.
- B. If a person is eligible under subsection (A) to submit a claim regarding more than one incident of criminally injurious conduct ~~or act of international terrorism~~, the person shall submit a separate claim regarding each incident of criminally injurious conduct ~~or act of international terrorism~~.
- C. If more than one person is eligible under subsection (A) to submit a claim regarding an incident of criminally injurious conduct ~~or act of international terrorism~~, each person shall submit a separate claim.
- D. To apply for a compensation award, a person who is eligible under subsection (A) shall submit a claim, using a form that is available from the Commission, to the operational unit for the jurisdiction in which the incident of criminally injurious conduct occurred or to the operational unit for the jurisdiction in which a victim lives if the incident of criminally injurious conduct ~~is an act of international terrorism or~~ occurred in an area without a an accessible victim compensation program. The claimant shall provide the following:
 1. About the victim:
 - a. Full name,
 - b. Residential address,
 - c. Gender,
 - d. Date of birth,
 - e. Residential and work telephone numbers,
 - f. Statement of whether the victim is deceased,
 - g. Ethnicity,
 - h. Statement of whether the victim is a resident, and
 - i. Statement of whether the victim is disabled;
 2. About the claimant if the claimant is not the victim:
 - a. Full name;

- b. Residential address;
 - c. Gender;
 - d. Date of birth;
 - e. Residential and work telephone numbers;
 - f. Relationship to the victim; and
 - g. If there are multiple victims or derivative victims of an incident of criminally injurious conduct~~or act of international terrorism~~, the name, residential address, and date of birth of each, and for derivative victims, the relationship to the victim;
3. About the crime:
- a. Type of crime;
 - b. Statement of whether the crime was related to domestic violence;
 - c. Statement of whether the crime was a federal crime;
 - d. Date on which crime was committed;
 - e. Date on which crime was reported to law enforcement authorities;
 - f. Name of law enforcement agency to which the crime was reported;
 - g. Name of law enforcement officer to whom the crime was reported;
 - h. Law enforcement report number;
 - i. Location of crime;
 - j. Name of perpetrator, if known; and
 - k. Brief description of the crime and resulting injuries;
4. About a civil lawsuit:
- a. Statement of whether the claimant has or will file a civil lawsuit related to the crime; and
 - b. If the answer to subsection (D)(4)(a) is yes, the name, address, and telephone number of the claimant's attorney;
5. About benefits from collateral sources:
- a. List of the benefits the claimant has received since the incident of criminally injurious conduct~~or act of international terrorism~~ or is entitled to receive; and
 - b. For each benefit identified:
 - i. Type of benefit,
 - ii. Contact address and telephone number; and
 - iii. Claimant's identification or policy number;
6. About the economic loss for which compensation is requested:
- a. Medical expenses. A statement of whether the claim includes medical expenses and if so, the name, address, telephone number, account number, and date of service for each provider;
 - b. Mental health counseling and care expenses. A statement of whether the claim includes mental health counseling and care expenses and if so, the name, address, telephone number, account number, and date of service for each provider;
 - c. Work loss expenses. A statement of whether the claim includes work loss expenses and if so, the date on which the claimant was first unable to work, date on which the claimant returned to work, total time lost from work,

- hourly rate of pay, number of hours worked each week, number of hours worked each day, name, address, and telephone number of employer, and name of supervisor;
- d. Funeral expenses. A statement of whether the claim includes funeral expenses and if so, the name, address, and telephone number of the provider and the amount paid; and
 - e. Crime scene cleanup expenses. A statement of whether the claim includes crime scene cleanup expenses and if so, the name, address, and telephone number of the provider and the amount paid;
 - f. Transportation costs. A statement of whether the claim includes transportation costs and if so, the reason for travel as listed under R10-4-108(C)(6) and if mileage is claimed, the date and mileage of each trip; and
7. The claimant's dated signature:
 - a. Certifying that the claimant is eligible to submit a claim and that the information provided is true and correct to the best of the claimant's knowledge;
 - b. Subrogating to the state and operational unit the claimant's right to receive benefits from a collateral source;
 - c. Authorizing the release of confidential information necessary to administer the claim; and
 - d. Authorizing the release to the Program of protected health information that relates to care provided as a result of the criminally injurious conductor ~~act of international terrorism~~ and is necessary to verify the claim.
- E.** A claimant shall attach submit the following in addition to the claim form submitted under subsection (D):
1. A copy of all bills, contracts, receipts, and insurance statements relating to each expense claimed under subsection (D)(6); and
 2. If work loss expenses are claimed, a signed statement on official letterhead:
 - a. From the claimant's employer verifying the information provided under subsection (D)(6)(c); and
 - b. If applicable, from the physician or mental health care provider indicating the claimant:
 - i. Was unable to work as a result of being a victim or derivative victim, the length of time the claimant was unable to work, and the date on which the claimant was or will be able to return to work; or
 - ii. Is totally and permanently disabled.
 3. Any documentation required by the operational unit to fully investigate and substantiate claimant eligibility and all claim expense requests.

R10-4-108. Compensation Award Criteria

- A.** The Board shall meet at least every 60 days to decide, based on the findings made by the operational unit, the eligibility of the claimant, whether to make a compensation award, and if so, the terms and amount of the any compensation award. The Board shall make a decision within 60 days after the operational unit receives a complete and actionable claim under R10-4-107 unless good cause for delay exists. The Board shall inform the claimant in writing within 10 business days of the Board's decision.
- B.** The Board shall not make a compensation award unless it determines that the prerequisites in R10-4-106 are met.
- C.** The Board shall make a compensation award only for the following:
1. Reasonable and customary medical expenses due to the victim's physical injury, medical condition, mental health condition, or death.
 - a. The Board shall include the following as a medical expense:

- i. Repair of damage to a victim's prosthetic device, eyeglasses or other corrective lenses, or a dental device; and
 - ii. Durable medical equipment required for treatment of the victim.
 - b. The Board shall not include as a medical expense ~~a charge for a private room in a hospital, clinic, convalescent home, nursing care facility, or other institution that provides medical services unless the Board determines that the private room is medically necessary;~~
 - i. A charge for a private room in a hospital, clinic, convalescent home, nursing care facility, or other institution that provides medical services unless the Board determines that the private room is medically necessary; and
 - ii. Any drug, substance, or chemical included under Schedule I of the Federal Controlled Substances Act 21 U.S.C. §812(c).
2. Reasonable and customary work loss expenses for:
 - a. A victim whose ability to work is reduced due to physical injury, mental distress, or medical condition resulting from the criminally injurious conduct ~~or act of international terrorism;~~
 - b. ~~A victim or derivative victim to make a medical or mental health counseling and care visit or attend a court proceeding directly related to the criminally injurious conduct or act of international terrorism;~~
 - b. A victim or derivative victim to:
 - i. Make a medical or mental health counseling and care visit; or
 - ii. Attend a criminal court proceeding, clemency hearing, parole hearing, or execution directly related to the criminally injurious conduct.
 - c. A derivative victim listed in R10-4-101(10)(a) through (c) if the Board determines the death resulted in a loss of support from the victim to the derivative victim;
 - d. ~~A parent or guardian of a minor victim to transport or accompany the minor victim to a medical or mental health counseling and care visit or court proceeding directly related to the criminally injurious conduct or act of international terrorism;~~
 - d. A parent or guardian of a minor victim to transport or accompany the minor victim to:
 - i. A medical or mental health counseling and care visit; or
 - ii. A criminal court proceeding, clemency hearing, parole hearing, or execution directly related to the criminally injurious conduct.
 - e. A derivative victim to make funeral arrangements ~~for a deceased victim~~, or tend to the affairs of a deceased victim ~~if the derivative victim made the funeral arrangements or tended to the affairs of the deceased victim;~~ or
 - f. A family member or guardian or a person living in the victim's household in a relationship similar to those listed in R10-4-101(10)(a) to provide non-skilled nursing care for the victim that is ~~required~~ medically necessary as a result of the criminally injurious conduct ~~or act of international terrorism;~~
 3. Reasonable and customary funeral expenses. ~~Expenses~~ Personal attendee expenses for clothing, travel, lodging, food, or per diem to attend a victim's funeral, Native American ceremony, or burial are not reasonable and customary funeral expenses and shall not be included in a claim for a compensation award;

4. Reasonable and customary mental health counseling and care expenses due to a victim's or derivative victim's mental distress resulting from the criminally injurious conduct ~~or act of international terrorism~~ if:
 - a. The mental health counseling and care is provided by an individual who:
 - i. Is licensed for independent practice by the Board of Behavioral Health Examiners,
 - ii. Is a behavioral health professional as defined at A.A.C. R9-20-101, or
 - iii. ~~Is a behavioral health technician as defined at A.A.C. R9-20-101 and employed by an agency licensed by the Department of Health Services, or~~
 - iv. iii. Is authorized to perform mental health counseling and care by the laws of a federally recognized tribe; and
 - b. The mental health counseling and care expenses do not include a charge for a private room in a hospital, clinic, convalescent home, nursing care facility, or any other institution that provides medical services unless the Board determines that the private room is medically necessary;
5. Reasonable and customary crime scene cleanup expenses due to a victim's homicide, aggravated assault, or sexual assault; and
6. Reasonable and customary transportation costs related to:
 - a. Obtaining medical care as defined in subsection (C)(1),
 - b. Obtaining mental health counseling and care as defined in subsection (C)(4),
 - c. ~~Attending A victim or derivative victim attending a criminal court proceeding, clemency hearing, parole hearing, or execution directly related to the incident of criminally injurious conduct or act of international terrorism that is the subject of the claim,~~
 - d. The victim obtaining a medical forensic examination or participating in a medical forensic interview, and
 - e. Responding to a substantiated threat to the safety or well-being of the victim or a derivative victim listed in R10-4-101(10)(d).

D. The Board shall not make a compensation award to a claimant that exceeds:

1. Twenty-five thousand dollars for all economic loss submitted under a claim as a result of an incident of criminally injurious conduct ~~or act of international terrorism~~;
2. The amount available to the operational unit and not committed to other compensation awards at the time the Board makes the compensation award determination;
3. For medical expenses for a victim, the maximum amount specified in subsections (D)(1) and (D)(2).

4. ~~3.~~For work loss expenses:

- a. Work loss expenses under subsections (C)(2)(a), ~~and (C)(2)(e)~~ (C)(2)(b), (C)(2)(d), (C)(2)(e), and (C)(2)(f), are limited to an amount per calendar week equal to 40 hours at the current minimum wage and the maximum amount specified in subsections (D)(1) and (D)(2),
- b. ~~Work loss expenses under subsections (C)(2)(b) and (C)(2)(d) are limited to an amount per calendar month equal to 40 hours at the current minimum wage and the maximum amount specified in subsections (D)(1) and (D)(2), Loss of support under subsection (C)(2)(c) may be awarded to the maximum allowed under subsections (D)(1) and (D)(2) in a lump sum or periodic payments;~~

- e. ~~Work loss expenses under subsection (C)(2)(e) are limited to an amount equal to 24 hours at the current minimum wage, and~~
- d. ~~Work loss expenses under subsection (C)(2)(f) are limited to an amount equal to 160 hours at the current minimum wage;~~

5. 4. For mental health counseling and care expenses, \$5,000 per victim or derivative victim;

6. 5. For funeral expenses, \$10,000;

7. 6. For crime scene cleanup expenses, \$2,000 for cleanup provided by a professional service, of which \$500 may be for crime scene cleanup not provided by a professional service to include only repair or cleanup material costs for one-time use items; and

8. 7. For transportation costs, ~~\$1,500~~ \$2,000 per victim or derivative victim paid as reimbursement of actual transportation expenses.

E. If the Board determines a victim is totally and permanently disabled, the Board may expedite a compensation award for the victim. The Board shall determine the amount of the expedited compensation award to the maximum allowed under subsection (D) and determine whether to provide the amount awarded in a lump sum or periodic payments.

F. The Board shall deny or reduce a compensation award to a claimant if:

1. The victim or claimant has recouped or is eligible to recoup the economic loss from ~~a~~ an obtainable and accessible collateral source, including ~~except if the Board determines that use of a collateral source, excluding~~ benefits from a federal or federally financed program, ~~to pay for mental health counseling and care expenses is not in the best interest of the victim or derivative victim, the Board shall not deny or reduce a compensation award for the mental health counseling and care expenses;~~
2. The Board determines that the victim or claimant earned income from substitute work or unreasonably failed to perform available substitute work; or
3. The Board determines that the ~~victim's physical injury, medical condition, mental distress, or death~~ incident of criminally injurious conduct that is the subject of the claim was due in substantial part to the victim's:
 - a. Negligence,
 - b. Intentional unlawful conduct that was the proximate cause of the incident of criminally injurious conduct ~~or act of international terrorism~~, or
 - c. Conduct intended to provoke or aggravate that was the proximate cause of the incident of criminally injurious conduct ~~or act of international terrorism~~.

G. The Board shall deny or reduce a compensation award under subsection (F)(3) in proportion to the degree to which the Board determines the victim is responsible for the ~~victim's physical injury, medical condition, mental distress, or death~~ incident of criminally injurious conduct that is the subject of the claim.

H. The Board shall deny a compensation award to a claimant if:

1. The Board determines that the victim or claimant did not cooperate fully with the appropriate law enforcement agency and the failure to cooperate fully was not due to a substantial ~~health~~ medical, mental health, or safety risk. The Board shall use the following criteria to determine whether failure to cooperate fully with law enforcement warrants that a claim be denied:

- a. The victim or claimant failed to assist in the prosecution of a person who engaged in the criminally injurious conduct ~~or act of international terrorism~~ or failed to appear as a witness for the prosecution;
 - b. The victim or claimant delayed assisting in the prosecution of a suspect and as a result, the suspect of the criminally injurious conduct ~~or act of international terrorism~~ escaped prosecution or the prosecution of the suspect was negatively affected; or
 - c. A law enforcement authority indicates to the Board that the victim or claimant delayed giving information pertaining to the criminally injurious conduct ~~or act of international terrorism~~, failed to appear when requested without good cause, gave false or misleading information, or attempted to avoid law enforcement authorities; ~~or~~.
2. The Board determines that the victim or claimant knowingly made a false or misleading statement on the claim or in writing on supporting documents submitted to the Board or operational unit.
- I.** If there are insufficient funds to make a compensation award, the Board may;
1. Deny the claim,
 2. Make a partial award and reconsider the claim later during the fiscal year, or
 3. Extend the claim into a subsequent fiscal year.
- J.** The Board shall not make a compensation award to pay attorney's fees incurred by a victim or claimant.
- K.** The operational unit, in its discretion, may pay a compensation award directly to a claimant or to a provider.
- L.** ~~The operational unit may close an inactive claim:~~
1. ~~Five years after the claim is submitted for an adult victim or derivative victim except in a homicide case;~~
 2. ~~Ten years after the claim is submitted for a minor victim or derivative victim except in a homicide case; and~~
 3. ~~Fifteen years after the claim is submitted for a homicide victim or derivative victim.~~

R10-4-109. Hearing; Request for Rehearing

- A. If the prerequisites in R10-4-106 are met, the Board shall conduct a hearing regarding a claim submitted under this Article.
- B. The Board shall provide a claimant with at least 10 business days' notice of a hearing or rehearing.
- C. The Board shall provide written notice of its decision to the claimant within 10 business days after a hearing or rehearing.
- D. The Board shall serve notice of a compensation-award denial or reduction by personal delivery or certified mail to the last known residence or place of business of the person being served. Service is complete upon personal delivery or five days after mailing by certified mail.
- E. The ~~Board~~ operational unit may request a rehearing of a decision ~~by the Board~~ at any time and for any reason under this Article.
- F. A claimant who is aggrieved by a decision of the Board made at a hearing may request a rehearing of the decision within 30 days after the Board serves notice of the decision. A claimant shall request a rehearing in writing and specify the grounds for the request.
- G. A claimant may amend a request for a rehearing of a Board decision at any time before it is ruled on by the Board.

- H.** The Board may require additional written explanation of an issue raised in a request for rehearing of a Board decision and may provide for oral argument.
- I.** The Board shall grant a rehearing for any of the following reasons materially affecting a claimant's rights:
 - 1. Irregularity in the proceedings of the Board or its operational unit or any order or abuse of discretion that deprived the claimant of a fair Board decision;
 - 2. Misconduct of the Board, the operational unit, or staff of the operational unit;
 - 3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original Board meeting;
 - 4. Error in the admission or rejection of evidence or other error of law occurring at the Board meeting; and
 - 5. The decision is not justified by the evidence or is contrary to law.
- J.** When a rehearing is granted, the Board shall ensure that the rehearing covers only the matters specified under subsection (I) that materially affect a claimant's rights.
- K.** The Board may affirm or modify a decision on all or part of the issues for any of the reasons listed in subsection (I). An order modifying a decision shall specify with particularity the grounds for the order.

R10-4-110. State-level Claim Review

- A.** A claimant who is aggrieved by a decision of a Board made at a rehearing under R10-4-109 may request a state-level claim review of the decision within 30 calendar days after the Board serves notice of the decision. The claimant shall request a state-level claim review in writing, specify the grounds for the request, and submit the request directly to the Commission.
- B.** The State Claim Review Panel shall serve as the decision-making body for state-level claim reviews. The State Claim Review Panel shall consist of the following members:
 - 1. The Arizona Criminal Justice Commission Crime Victim Services Program Manager,
 - 2. A representative of the Office of the Attorney General, and
 - 3. A Board chair from an operational unit that is not the operational unit that originally heard the claim being reviewed.
- C.** The State Claim Review Panel shall meet as needed to hear claimant requests for a state-level claim review. The State Claim Review Panel shall complete a state-level claim review within 30 calendar days after receiving the written request required under subsection (A).
- D.** A claimant may amend a request for a state-level claim review of a Board decision at any time before it is ruled on by the State Claim Review Panel.
- E.** When a state-level claim review is granted, the State Claim Review Panel shall ensure that the review:
 - 1. Considers only evidence previously presented to the Board, and
 - 2. Decides only whether the Board's decision was consistent with the standards in this Article.
- F.** The State Claim Review Panel may affirm or overturn a decision made by a Board.
- G.** A decision by the State Claim Review Panel is final. If the Panel overturns a decision made by a Board related to:
 - 1. Eligibility, the operational unit where the claim originated shall proceed with any further action related to the claim; or

2. An economic loss, the operational unit where the claim originated shall pay the economic loss using compensation funds available to the operational unit.
- H.** The State Claim Review Panel shall provide written notice of the Panel's decision to the claimant and the operational unit that originally heard the claim within 10 business days after the state-level claim review.

ARTICLE 2. CRIME VICTIM ASSISTANCE PROGRAM

R10-4-201. Definitions

In this Article:

1. "Commission" means the Arizona Criminal Justice Commission, established by A.R.S. § 41-2404.
2. "Crime" means conduct, completed or preparatory, committed in Arizona that is a misdemeanor or felony under state law regardless of whether the perpetrator of the conduct is convicted. Conduct arising out of owning, maintaining, or operating a motor vehicle, aircraft, or water vehicle is not a crime unless the person engaged in the conduct acts intentionally, knowingly, recklessly, or with criminal negligence, to cause physical injury, threat of physical injury, or death.
3. "Financial support from other sources" means that at least ~~one fourth one-fifth~~ of the budget for a victim assistance program is from sources, including in-kind contributions, other than the Fund.
4. "Fund" means the Victim Compensation and Assistance Fund established by A.R.S. § 41-2407.
5. "Immediate family" means spouse, child, stepchild, parent, stepparent, sibling, stepbrother, stepsister, grandparent, grandchild, or guardian.
6. "In-kind contribution" means a non-cash ~~donation source of program support~~ to which a cash value can be given.
7. "Subrogation" means the substitution of the state or a victim assistance program in the place of a victim to enforce a lawful claim against a third party to recover the cost of services to the victim paid for with financial support from the Fund or other sources.
8. ~~"Substantial financial support from other sources" means that at least half of the financial support to a victim assistance program is from sources, not including in-kind contributions, other than the Fund.~~
9. 8. "Victim" means a natural person against whom a crime is perpetrated and the victim's immediate family.

R10-4-202. Administration of the Fund

- A. The Commission shall deposit in the Fund all funds received ~~under A.R.S. § 31-467.06(B) and 31-411(F) and any other funds received for victim assistance under this Chapter.~~
- B. The Commission shall make distributions from the Fund through a competitive grant process that complies with A.R.S. § 41-2701 et seq. and ensures statewide distribution when possible and effective and efficient use of the funds.
- C. At least six weeks before an application for a grant from the Fund is due, the Commission shall make a grant application form and instructions available on its web site, which is www.azcjc.gov.

- D. To apply for a grant from the Fund, an authorized official of a public agency or private nonprofit organization that operates a program that meets the standards in R10-4-203 shall complete and submit to the Commission the application form referenced in subsection (C).
- E. The Commission's grant period coincides with the state's fiscal year. If funds received from the Commission are unexpended at the end of the grant period, the public agency or private nonprofit organization that received the funds shall return them to the Commission within 30 days after receiving a written request from the Commission. The Commission shall redeposit the unexpended funds in the Fund for use in the next fiscal year.

R10-4-203. Grant Eligibility Requirements

- ~~A. A non criminal justice governmental agency or private nonprofit organization may apply for and receive a grant from the Commission only if the non criminal justice governmental agency or private nonprofit organization is approved by a prosecuting attorney's office or law enforcement agency.~~
- B. A.** A public agency or private nonprofit organization ~~qualified under subsection (A)~~ may apply for and receive a grant from the Commission if, in addition to the other requirements in this Section, the public agency or private nonprofit organization operates a program project that:

 1. Provides services described in R10-4-204 to benefitting victims or addressing victimization;
 2. Does not use Commission funds or federal funds to supplant funds otherwise available to the program project for victim assistance;
 3. Uses volunteers effectively and efficiently to provide ~~victim~~ services;
 4. Promotes coordinated public and private efforts to assist victims or address victimization within the community served;
 5. ~~Assists a victim in seeking available victim compensation benefits Increases awareness of, and facilitates access to, available victim compensation benefits; and~~
 6. Complies with all applicable civil rights laws.
- C. B.** To receive a grant from the Commission, a public agency or private nonprofit organization that operates a program ~~that has existed for at least three years~~ project shall demonstrate to the Commission that the program project:

 1. Has ~~substantial financial support from a source other than the Fund~~ financial support from other sources; and
 2. Has a history of providing effective services ~~to victims in accordance with section (A)~~. The Commission shall determine whether the program's victim project's services are effective based on:
 - a. ~~The length of time the program has provided victim services Evidence-based outcomes demonstrating project services are benefiting victims or addressing victimization~~, and
 - b. Whether data indicate program results are achieved in a cost-effective manner.
- D.** To receive a grant from the Commission, a public agency or private nonprofit organization that operates a program ~~that has existed for fewer than three years~~ shall demonstrate to the Commission that the program:

 1. ~~Has financial support from a source other than the Fund; and~~
 2. ~~Is designed to meet a currently unmet need for a specific victim service.~~
- E. C.** To receive a grant from the Commission, a public agency or private nonprofit organization shall agree to:

1. Submit to the Commission quarterly financial reports, on a form provided by the Commission, at a frequency established by the Commission, containing detailed expenditures of funds received from the Commission and matching funds;
2. Submit an annual report Report project activity to the Commission, on a form provided by the Commission, at a frequency established annually by the Commission, and provide the following information:
 - a. Number of victims served during the reporting period, by type of crime;
 - b. Type of services provided;
 - c. Number of times each service was provided;
 - d. Ethnic background, age, and sex of each victim served;
 - e. Type of assistance provided to victims in obtaining victim compensation;
 - f. Number of times each type of assistance was provided; and
 - g. A narrative assessment of the impact of Commission funds on the program.

R10-4-204. Services

- A. A public agency or private nonprofit organization that receives a grant from the Commission shall ensure that the funds are used to provide only the following victim services or services addressing victimization:
 1. Crisis intervention services to meet the urgent emotional or physical needs of a victim. Crisis intervention services may include a 24 hour hotline for counseling or referrals for a victim;
 2. Emergency services including such as:
 - a. Temporary shelter or relocation for a victim who cannot safely remain in current lodgings;
 - b. Petty cash Emergency financial assistance for immediate needs related to transportation, food, shelter, and other necessities; and
 - c. Temporary repairs such as to doors, locks, and windows damaged as a result of a crime to prevent the home or apartment from being re-burglarized immediately further victimization;
 3. Support services, including such as:
 - a. Counseling Assistance dealing with the effects of victimization;
 - b. Assistance dealing with other social services and criminal justice agencies;
 - c. Assistance in replacing, or obtaining the return of property kept as evidence;
 - d. Assistance in dealing with the victim's landlord or employer; and
 - e. Referral to other sources of assistance as needed;
 4. Court-related services, including such as:
 - a. Direct services or petty cash financial assistance that helps a victim participate in criminal justice proceedings, including transportation to court, such as child care, meals, and parking expenses; and
 - b. Advocate services including such as escorting a victim to criminal justice-related interviews, court proceedings, and assistance in accessing temporary protection services; and
 5. Notification services, including notifying a victim: such as those found in A.R.S Title 13, Chapter 40, Crime Victims' Rights.
 - a. Of significant developments in the investigation or adjudication of the case;

- b. That a court proceeding, for which the victim has been subpoenaed, has been canceled or rescheduled; and
 - c. Of the final disposition of the case.
- B. A public agency or private nonprofit organization that receives a grant from the Commission may use the funds to provide:
 1. ~~Training~~ Provide training for ~~salaried paid~~ or volunteer staff of ~~criminal justice, social services, mental health, or related agencies, agencies~~ who provide ~~direct~~ services to directly benefitting victims; and
 2. ~~Printing and distributing brochures or similar announcements~~ Produce educational or outreach materials describing the ~~direct~~ services available, how to obtain program assistance, and volunteer opportunities; and
 3. Provide training or services focused on preventing initial victimization or further victimization connected to violent crime.
- C. A public agency or private nonprofit organization that receives a grant from the Commission shall ensure that funds are not used for the following:
 1. ~~Crime~~ Broad crime prevention efforts, other than those aimed at providing specific ~~emergency help after an individual is victimized~~ services addressing victimization;
 2. General public relations programs;
 3. Advocacy for a particular legislative or administrative reform;
 4. General criminal justice agency improvement; or
 5. A ~~program project~~ in which victims are not the primary beneficiaries, or a project not directly addressing victimization;
 6. ~~Management training or training for persons who do not provide direct services to a victim~~; or
 7. ~~Victim Compensation provided under this Chapter.~~



Arizona Criminal Justice Commission

SUMMARY OF SUGGESTED RULE CHANGES BY SOURCE

Public Feedback Meeting, Flagstaff, 3/8/2017

Victim Compensation Program

- Allow compensation program eligibility for family members related to a suicide death
- Clarify the eligibility of food as an allowable funeral expense included as part of a traditional Native American funeral ceremony (CHANGED)
- Include lodging to attend a victim's funeral as an eligible funeral expense
- Expand crime scene cleanup eligibility to include cleanup of a vehicle
- Clarify that transportation related fees are an allowable transportation expense (CHANGED)
- Include medical treatment for service animals injured during the crime as an allowable program expense

Victim Assistance Program

- NONE

Public Feedback Meeting, Tucson, 3/28/2017

Victim Compensation Program

- Expand definition of derivative victim to include all non-offending family members of minor victims
- Add tutoring costs or educational vouchers as an eligible expense for minor victims who miss school due to the victimization
- Include the replacement of clothing taken as evidence as an eligible compensation program expense
- Allow counseling for derivative victims without tying eligibility to the needs of the victim
- Remove consideration of contributory conduct as a reason to reduce or deny a compensation award for victims of homicide

- Include lodging to attend a court hearing related to the victimization as an eligible program expense
- Increase emergency award maximum for funeral expenses

Victim Assistance Program

- Include prevention (CHANGED) and perpetrator treatment activities as eligible grant project activity costs

Public Feedback Meeting, Phoenix, 4/8/2017

Victim Compensation Program

- Include the replacement of clothing taken as evidence as an eligible compensation program expense for victims of sexual assault
- Include as an eligible work loss or transportation cost, expenses to attend post-conviction criminal hearings, clemency hearings, or executions (CHANGED)
- Clarify that the good cause exception to the two year claim filing deadline can apply to victims identifying program eligible needs post-conviction
- Increase emergency award maximum for funeral expenses

Victim Assistance Program

- NONE

Compensation Program Feedback from County Compensation Board Members

- Allow boards to waive the required use of any collateral source available to a claimant for an eligible compensation program expense if good cause exists
- Include the replacement of clothing taken as evidence as an eligible compensation program expense
- Include the replacement of some furniture items as an eligible crime scene cleanup expense
- Provide additional benefits (financial counseling, emergency financial assistance) to elderly victims of fraud or financial crimes
- Increase the weekly calculated payout rate for work loss
- Allow derivative victims access to work loss benefits due to mental distress
- Allow prescription costs for mental health treatment related to the victimization as a medical expense for derivative victims

- Increase the transportation cost benefit maximum (CHANGED)
- Add victimizations related to domestic violence to the existing list of victimization types eligible for crime scene cleanup benefits
- Exclude consideration of contributory conduct for all minor victims or victims of sexual assault

Compensation Program Feedback from County Compensation Program Staff

- Allow counseling for derivative victims without tying eligibility to the needs of the victim
- Add the cost of changing locks for safety risks as an eligible crime scene cleanup expense for domestic violence victims
- Allow transportation and work loss benefits to parent/guardian of a minor victim who is hospitalized
- Allow loss of support benefits to victims where the offender was the primary or sole source of financial support to the victim
- Provide work loss benefits to victims who have lost their employment as a direct result of the victimization
- Increase the transportation cost benefit maximum (CHANGED)
- Increase the work loss hourly benefit calculation rate
- Add victim relocation costs as an eligible benefit category
- Simplify the victim compensation program application requirements
- Increase the number of work loss hours allowed for bereavement (CHANGED)
- Increase the 60 day deadline for county boards to make a decision on claimant eligibility or program expense eligibility
- Change loss of support calculation requirements to allow for a lump-sum payment (CHANGED)
- Expand crime scene cleanup to include arson as an eligible victimization type
- Add as an eligible program expense category, coverage of sexual assault and strangulation forensic exam costs
- Exclude consideration of contributory conduct for all minor victims
- Add home modification for medical needs directly resulting from the victimization as an eligible compensation program expense

- Establish a rate schedule for the payment of compensation medical benefit expenses (CHANGED)
- Increase notification timeframe for operational unit to inform claimant of board decision (CHANGED)
- Extend limited medical and counseling benefits to victims receiving a forensic exam without reporting the victimization to law enforcement
- Eliminate the deadline requiring that a claim be received by the operational unit within two years of the victimization unless the board determines good cause exists for delay
- Limit availability of transportation cost benefits to victims or derivative victims (CHANGED)
- Reassign some of the claim and expense decision-making responsibility from operational unit boards to operational unit staff
- Remove consideration of contributory conduct as a reason to reduce or deny a compensation award for victims of homicide
- Allow compensation program eligibility for family members related to a suicide death
- Remove or increase the maximum work-loss benefit to attend court (CHANGED)
- Add vehicle repair as an eligible transportation cost when the victim's only source of transportation is damaged during the victimization
- Add vehicle modification/retrofit and driver training as a medical expense for victims
- Disallow compensation program eligibility for claimants discovered to have an active warrant in Arizona (CHANGED)
- Allow travel, lodging, and meals as an eligible program expense when related to attending a funeral, court, medical treatment, or mental health treatment
- Exclude as a medical expense all requests for medical marijuana (CHANGED)
- Remove requirement that transportation costs are paid as a reimbursement of expenses
- Restrict ongoing prescriptions as a medical expense
- Disallow compensation program eligibility for claimants who are victimized while incarcerated prior to sentencing or disposition (CHANGED)
- Disallow program eligibility for claimants who are delinquent in paying child support
- Disallow compensation program eligibility for claimants with a criminal history
- Change from boards for each operational unit, to regional boards

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 10. LAW

CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION

PREAMBLE

1. Identification of the proposed rulemaking:

The current rules regarding the crime victim assistance and crime victim compensation programs were made in a rulemaking that went into effect in February 2012. Experience using the rules and feedback from stakeholders indicate that changes are needed to make the rules more effective in achieving program goals. This rulemaking includes the necessary changes.

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

The current victim compensation program rules include unnecessary restrictions on how the program is administered at the state and county level. The rules lack clarity regarding the availability of additional resources to compensate victims of crime, and at what point certain claimant eligibility decisions must be made. Experience using the current rules has indicated additional need in the areas of transportation costs and work loss benefits for victims.

The current crime victim assistance program rules include unnecessary restrictions on what types of victim service program activities shall be funded by the grant program. The rules place an overly burdensome matching-funds requirement on funded projects, and place additional unnecessary application requirements on non-profit agencies. These requirements under the current rules have resulted in limiting access to grant funding for applicant agencies.

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:

Until the rulemaking takes effect, none of the important changes, which are designed to benefit crime victims directly or through grant funded projects, will occur.

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

With new rules in place for the victim compensation program benefit maximums will be increased in the areas of transportation costs and work loss. Increases in both these

areas facilitate access to medical and mental health appointments for victims, and encourage victim participation in court and post-conviction hearings related to the victimization.

Changes to the crime victim assistance grant program rules will reduce the amount of matching funds required from grantees from fifty percent to twenty percent for all funded projects. This amount is comparable to match requirements under other state funded victim service grant programs. Victim service project eligibility will be expanded to include training and prevention activities. Expansion of the program into these areas fills a gap in state grant funding for training and prevention projects. Application requirements currently required of non-profit agencies only will be eliminated, facilitating equal access to a possible grant award for all eligible agency types.

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

The victim compensation program and the victim assistance grant program receive funding from both federal and state fund sources. State funding comes from revenue deposited into the Crime Victim Compensation and Assistance Fund (See A.R.S. § 41-2407). State revenue sources include a surcharge on penalties provided by law (See A.R.S. § 12-116.01), various supervision fees charged to individuals on parole or community supervision (See A.R.S. § 31-411(E), 31-418, and 31-467.06), unclaimed victim restitution (See A.R.S. § 44-313(C)) and a percentage of some financial settlements received by the Attorney General's Office (See A.R.S. § 13-4311N.3.c). Federal funding for the victim compensation program comes from the Victims of Crime Act (VOCA) of 1984 as amended. The amount of funds available to provide compensation awards to crime victims or fund victim assistance grant projects is not increased beyond available revenue as a result of this rulemaking.

The following changes related to the victim compensation program may have some economic impact:

- Include all work loss subsections, except for loss of support, under the maximum amount per calendar week of 40 hours at the current minimum wage (R10-4- 108.D.4.a)
- Increase transportation cost maximum from \$1,500 to \$2,000 per victim or derivative victim (R10-4-108.D.8)

- Allow the Commission to approve payment rate schedules for program benefit cost categories; maintain operational unit ability to negotiate benefit costs if an approved rate schedule does not exist (R10-4-102.I)
- Clarify that compensation programs outside of Arizona must be accessible to a victim as another source of financial recovery (R10-4-104.B.2.c) (R10-4-106.A.1.b) (R10-4-107.D)

The following changes related to the victim assistance grant program may have some economic impact:

- Reduce the amount of matching funds required from agencies receiving victim assistance grant funds
- Expand funded project eligibility to include crime victim service training activities and violent crime prevention activities (R10-4-204.B)

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Larry Grubbs, Program Manager
 Address: Arizona Criminal Justice Commission
 1110 W. Washington St., Ste. 230
 Phoenix, AZ 85007
 Telephone: (602) 364-1154
 Fax: (602) 364-1175
 E-mail: lgrubbs@azcjcc.gov
 Web site: www.azcjcc.gov

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 10. LAW

CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION

1. Identification of the proposed rulemaking:

The current rules regarding the crime victim assistance and crime victim compensation programs were made in a rulemaking that went into effect in February 2012. Experience using the rules and feedback from stakeholders indicate that changes are needed to make the rules more effective in achieving program goals. This rulemaking includes the necessary changes.

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

The current victim compensation program rules include unnecessary restrictions on how the program is administered at the state and county level. The rules lack clarity regarding the availability of additional resources to compensate victims of crime, and at what point certain claimant eligibility decisions must be made. Experience using the current rules has indicated additional need in the areas of transportation costs and work loss benefits for victims.

The current crime victim assistance program rules include unnecessary restrictions on what types of victim service program activities shall be funded by the grant program.

The rules place an overly burdensome matching-funds requirement on funded projects, and place additional unnecessary application requirements on non-profit agencies. These requirements under the current rules have resulted in limiting access to grant funding for applicant agencies.

e. 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:

Until the rulemaking takes effect, none of the important changes, which are designed to benefit crime victims directly or through grant funded projects, will occur.

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

With new rules in place for the victim compensation program benefit maximums will be increased in the areas of transportation costs and work loss. Increases in both these areas facilitate access to medical and mental health appointments for victims, and encourage victim participation in court and post-conviction hearings related to the victimization.

Changes to the crime victim assistance grant program rules will reduce the amount of matching funds required from grantees from fifty percent to twenty percent for all funded projects. This amount is comparable to match requirements under other state funded victim service grant programs. Victim service project eligibility will be expanded to include training and prevention activities. Expansion of the program into these areas fills a gap in state grant funding for training and prevention projects. Application requirements currently required of non-profit agencies only will be eliminated, facilitating equal access to a possible grant award for all eligible agency types.

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

Crime victims will be the primary beneficiaries of the rule changes. Victims will be impacted both directly through victim compensation program benefit payments, and indirectly through compensation payments and victim assistance grant awards to agencies and businesses serving victims of crime. During FY 2017, over \$3.3 million in victim compensation benefit payments were made on 1,395 compensation claims. Victim assistance grant awards for the same fiscal year totaled \$308,731. These costs, and any increases resulting from the rulemaking, are borne exclusively by the Commission through dedicated program fund sources.

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:

The Commission is the only state agency directly affected by the rulemaking. The Commission incurred the cost of completing the rulemaking and will incur the cost of implementing the rules. The Commission has estimated that there should be no change in cost, or at most a minimal cost increase (less than \$50,000 annually), to implement the rule changes. The rulemaking does not directly impact state revenue to support the victim compensation program or the victim assistance grant program. The Commission has determined no new full-time employees are needed to implement and enforce the rules.

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

No political subdivision of the state is directly affected by the implementation and enforcement of the proposed rulemaking. Each county prosecutor is designated annually by the Commission as an operational unit for the victim compensation program; investigating and substantiating compensation claims and supervising the decision-making compensation Board for that county. There is no anticipated change in costs for victim compensation program operational units as a result of the rulemaking.

- c. The probable costs and benefits to businesses directly affected by the proposed rulemaking:
No businesses are directly affected by the rulemaking.
4. A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking:

The Commission believes the rulemaking will have no direct impact on private or public employment.

5. The probable impact of the rulemaking on small businesses:
 - a. Identification of the small business subject to the rulemaking:
The rulemaking will have no direct impact on businesses, regardless of size.
 - b. Administrative and other costs required for compliance with the rulemaking:
The rulemaking will result in no additional administrative expenses.
 - c. Description of methods that may be used to reduce the impact on small businesses:
Because the rulemaking has no direct impact on businesses, regardless of size, there are no methods for reducing the impact of the rulemaking on businesses.
 - d. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:
Private persons who are crime victims will have the benefits and costs from this rulemaking described above. No other private persons or consumers are directly affected by the rulemaking.
6. Probable effects on state revenues:
There is nothing to indicate the rulemaking will have any effect on state revenues.

7. Less intrusive or less costly alternative methods considered:
No one is required to participate in the programs. Everyone who participates does so voluntarily because they have decided that the benefits outweigh the costs. There are no less intrusive or less costly alternative methods that will protect the integrity of the

programs and ensure that Fund monies are distributed only to those who are crime victims.

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:

Proposed expansion of crime victim compensation benefits in the areas of transportation costs and work loss, are based on benefit utilization and expenditure data collected from county operational units quarterly. This data directly reflects increased benefit need and indicates demand that can be met with financial resources currently available to the compensation program. The same county level data was used to identify the need to possibly establish benefit payment rate schedules to ensure benefit expenses are reasonable and treated uniformly statewide.

Proposed changes to the victim assistance grant program rely on statewide victim service funding data. This data was reviewed to determine how the victim assistance program may be able to fill any funding gaps in victim services that are currently not being covered by any other state or federally funded victim service grant program. This resulted in proposed grant eligibility for victimization prevention projects and expansion of funding for training projects for victim service providers.

TITLE 10. LAW**CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION**

(Authority: A.R.S. §§ 41-1308 and 41-1309)

ARTICLE 1. CRIME VICTIM COMPENSATION PROGRAM

(Authority: A.R.S. §§ 41-2407 and 41-2402)

Article 1, consisting of Sections R10-4-101 through R10-4-111, adopted effective December 31, 1986.

Section

- R10-4-101. Definitions
 R10-4-102. Administration of the Fund
 R10-4-103. Statewide Operation
 R10-4-104. Operational Unit Requirements
 R10-4-105. Crime Victim Compensation Board
 R10-4-106. Prerequisites for a Compensation Award
 R10-4-107. Submitting a Claim
 R10-4-108. Compensation Award Criteria
 R10-4-109. Hearing; Request for Rehearing
 R10-4-110. State-level Claim Review
 R10-4-111. Emergency Compensation Award

ARTICLE 2. CRIME VICTIM ASSISTANCE PROGRAM

(Authority: A.R.S. §§ 41-2408 and 41-2402)

Article 2, consisting of Sections R10-4-201 through R10-4-207, adopted effective December 22, 1986.

Section

- R10-4-201. Definitions
 R10-4-202. Administration of the Fund
 R10-4-203. Grant Eligibility Requirements
 R10-4-204. Services
 R10-4-205. Renumbered
 R10-4-206. Renumbered
 R10-4-207. Repealed

ARTICLE 3. CRIMINAL JUSTICE ENHANCEMENT FUND*Article 3, consisting of R10-4-301 through R10-4-305, made by final rulemaking at 17 A.A.R. 1469, effective September 10, 2011 (Supp. 11-3).**Article 3, consisting of R10-4-301 through R10-4-305, adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1).**Article 3, consisting of R10-4-301 through R10-4-305, repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4).**Article 3, consisting of Sections R10-4-301 through R10-4-305, adopted effective September 11, 1986.*

Section

- R10-4-301. Definitions
 R10-4-302. Contact Information Required
 R10-4-303. Fund Guidelines Required
 R10-4-304. Records Required
 R10-4-305. Complaints

ARTICLE 4. DRUG AND GANG ENFORCEMENT ACCOUNT GRANTS*Article 4 consisting of Sections R10-4-401 through R10-4-404 adopted as permanent rules effective July 18, 1988.**Article 4 consisting of Sections R10-4-401 through R10-4-404 adopted as an emergency effective February 22, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired.*

Section

- R10-4-401. Definitions
 R10-4-402. General Information Regarding Grants
 R10-4-403. Grant Application
 R10-4-404. Application Evaluation; Standards for Award
 R10-4-405. Request for Modification of Recommended Allocation Plan
 R10-4-406. Required Reports

ARTICLE 5. FULL-SERVICE FORENSIC CRIME LABORATORY ACCOUNT*Article 5, consisting of Sections R10-4-501 through R10-4-504, made by final rulemaking at 7 A.A.R. 2217, effective May 11, 2001 (Supp. 01-2).*

Section

- R10-4-501. Definitions
 R10-4-502. Grant Solicitation Process
 R10-4-503. Grant Application Evaluation; Decision of the Commission
 R10-4-504. Reports

ARTICLE 1. CRIME VICTIM COMPENSATION PROGRAM**R10-4-101. Definitions**

In this Article:

1. "Board" means the Crime Victim Compensation Board of an operational unit.
2. "Claim" means an application for compensation submitted under this Article.
3. "Claimant" means a natural person who files a claim.
4. "Collateral source" means a source of compensation for economic loss that a claimant received or is accessible to and obtainable by the claimant or that is payable to or on behalf of the victim. Collateral source includes the following sources of compensation:
 - a. The perpetrator or a third party responsible for the perpetrator's actions;
 - b. The United States government or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states, unless:
 - i. The law providing for the compensation makes the compensation excess or secondary to benefits under this Article, or
 - ii. The compensation is made with federal funds granted under 42 U.S.C. 10602;
 - c. Social Security, Medicare, or Arizona Health Care Cost Containment System payments;
 - d. State-required, insurance for a temporary, non-occupational disability;
 - e. Worker's compensation insurance;
 - f. Wage continuation program of any employer;
 - g. Insurance proceeds payable to cover a specific compensable cost due to criminally injurious conduct or an act of international terrorism;
 - h. A contract providing for prepaid hospital and other health care services or disability benefits; and

- i. A gift, devise, or bequest to cover a specific compensable cost.
5. "Commission" means the Arizona Criminal Justice Commission, as established by A.R.S. § 41-2404.
6. "Compensable cost" means an economic loss for which a compensation award is allowed under this Article.
7. "Compensation award" means a payment made to a claimant under the standards at R10-4-108.
8. "Crime scene cleanup expense" means the reasonable and customary cost for:
 - a. Removing or attempting to remove bodily fluids, dirt, stains, and other debris that result from criminally injurious conduct or act of international terrorism occurring within a residence or the surrounding curtilage;
 - b. Repairing or replacing exterior doors, locks, or windows damaged as a direct result of criminally injurious conduct or act of international terrorism occurring within a residence or the surrounding curtilage.
9. "Criminally injurious conduct" means conduct that:
 - a. Constitutes a crime as defined by state or federal law regardless of whether the perpetrator of the conduct is apprehended, charged, or convicted;
 - b. Poses a substantial threat of physical injury, mental distress, or death; and
 - c. Is punishable by fine, imprisonment, or death, or would be punishable but the perpetrator of the conduct lacked the capacity to commit the crime under applicable laws.
10. "Derivative victim" means:
 - a. The spouse, child, parent, stepparent, stepchild, sibling, grandparent, grandchild, or guardian of a victim who died as a result of criminally injurious conduct or an act of international terrorism;
 - b. A child born to a victim after the victim's death;
 - c. A person living in the household of a victim who died as a result of criminally injurious conduct or act of international terrorism, in a relationship determined by the Board to be substantially similar to a relationship listed in subsection (10)(a);
 - d. A member of the victim's family who witnessed the criminally injurious conduct or act of international terrorism or who discovered the scene of the criminally injurious conduct or act of international terrorism;
 - e. A natural person who is not related to the victim but who witnessed the criminally injurious conduct or act of international terrorism or discovered the scene of the criminally injurious conduct or act of international terrorism; or
 - f. A natural person whose own mental health counseling and care or presence during the victim's mental health counseling and care is required for the successful treatment of the victim.
11. "Durable medical equipment" means an appliance, apparatus, device, or product that:
 - a. Is medically necessary to treat an injury or condition resulting from criminally injurious conduct or an act of international terrorism;
 - b. Improves the function of an injured body part or delays deterioration of a patient's physical condition;
 - c. Is primarily and customarily used to serve a medical purpose rather than primarily for transportation, comfort, or convenience; and
12. "Economic loss" means financial detriment resulting from medical expense, mental health counseling and care expense, crime scene cleanup expense, funeral expense, or work loss.
13. "Fund" means the Victim Compensation and Assistance Fund established by A.R.S. § 41-2407.
14. "Funeral expense" means a reasonable and customary cost, such as those listed on the Statement of Funeral Goods and Services Selected required under A.A.C. R4-12-307, incurred as a direct result of a victim's funeral, cremation, Native American ceremony, or burial.
15. "Good cause" means a reason that the Board determines is substantial enough to afford a legal excuse.
16. "Inactive claim" means a claim for which no compensation award is made for 12 consecutive months.
17. "Incident of criminally injurious conduct" means all criminal actions that are related to or dependent upon each other regardless of the time involved in perpetrating the actions, number of persons perpetrating the actions, or the number of crimes with which the perpetrator is or could be charged.
18. "International terrorism" has the meaning prescribed in 18 U.S.C. 2331.
19. "Jurisdiction" means any county in this state.
20. "Medical expense" means a reasonable and customary cost for medical care provided to a victim due to a physical injury or medical condition that is a direct result of criminally injurious conduct or an act of international terrorism.
21. "Mental distress" means a substantial disorder of emotional processes, thought, or cognition that impairs judgment, behavior, or ability to cope with the ordinary demands of life.
22. "Mental health counseling and care expense" means a reasonable and customary cost to assess, diagnose, and treat a victim's or derivative victim's mental distress resulting from criminally injurious conduct or an act of international terrorism.
23. "Minimum wage standard" means the uniform minimum wage payable in Arizona under federal or state law, whichever is greater.
24. "Operational unit" means a public or private agency authorized by the Commission to receive, evaluate, and present to the Board a claim.
25. "Program" means the Crime Victim Compensation Program.
26. "Proximate cause" means an event sufficiently related to criminally injurious conduct or act of international terrorism to be held the cause of the criminally injurious conduct or act of international terrorism.
27. "Reasonable and customary" means the normal charge within a specific geographic area for a specific service by a provider of a particular level of experience or expertise.
28. "Resident" means a natural person who is domiciled in Arizona or is in Arizona for other than a temporary or transitory purpose.
29. "Subrogation" means the substitution of the state or an operational unit in place of a claimant to enforce a lawful claim against a collateral source to recover any part of a compensation award made to the claimant using funds of the state or operational unit.
30. "Total and permanent disability" means a physical or mental condition that the Board finds is a proximate

- result of criminally injurious conduct or act of international terrorism and:
- a. Produces a significant and sustained reduction in the victim's former mental or physical abilities dramatically altering the victim's ability to interact with others and carry on normal functions of life;
 - b. Lessens the victim's ability to work to a material degree; or
 - c. Causes a physical or neurophysical impairment from which no fundamental or marked improvement in the victim's crime-related condition can reasonably be expected.
31. "Transportation costs" means a travel expense that may be reimbursed to a claimant as follows:
- a. Mileage, calculated at the rate established by:
 - i. The operational unit, or
 - ii. The state if the operational unit has not established a mileage rate;
 - b. Fare expenses; and
 - c. Vehicle rental at the cost specified in the rental agreement.
32. "Victim" means a natural person who suffers a physical injury or medical condition, mental distress, or death as a direct result of:
- a. Criminally injurious conduct,
 - b. An act of international terrorism,
 - c. The person's good faith effort to prevent criminally injurious conduct or an act of international terrorism, or
 - d. The person's good faith effort to apprehend a person suspected of engaging in criminally injurious conduct or an act of international terrorism.
33. "Work loss" means a reduction in income from:
- a. Work that a victim or derivative victim would have performed if the victim had not been a victim; and
 - b. Social Security or Supplemental Security Income that a victim would have received or from which a derivative victim would have benefitted if the victim had not been killed.

Historical Note

Adopted effective December 31, 1986 (Supp. 86-6). Section repealed; new Section R10-4-101 renumbered from R10-4-103 and amended by final rulemaking at 6 A.A.R. 4727, effective November 20, 2000 (Supp. 00-4).

Amended by final rulemaking at 13 A.A.R. 4124, effective January 5, 2008 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 3309, effective February 3, 2013 (Supp. 12-4).

R10-4-102. Administration of the Fund

- A. The Commission shall deposit in the Fund all funds received under A.R.S. § 12-116.01 and any other funds received for compensating a claimant.
- B. The Commission shall designate one operational unit for a jurisdiction or jurisdictions to receive an allocation from the Fund each state fiscal year.
- C. The Commission shall distribute a portion of the Fund to each operational unit for expenditure by the Board. The Commission shall distribute the funds using a formula that the Commission determines annually using:
 1. A base amount for each operational unit,
 2. An analysis of the prior year's claim activity,
 3. The share of population of each jurisdiction, and
 4. The share of crime of each jurisdiction.
- D. The Commission shall reserve the lesser of \$50,000 or 10 percent of the Fund to be used in the event of an unforeseen

increase of victimization that causes an operational unit for a particular jurisdiction to lack the funds needed to provide compensation.

- E. If there is an unforeseen increase in victimization in a particular jurisdiction, the Commission shall designate an additional operational unit to accept claims from that jurisdiction or make a compensation award based on the criteria established by R10-4-108.
- F. If, at the end of a fiscal year, an operational unit has unexpended funds received from the Commission, the operational unit shall return the funds to the Commission within 90 days after the end of the fiscal year. The Commission shall deposit the returned funds in the Fund for use in the next fiscal year.
- G. Funds collected by an operational unit through subrogation or restitution may be retained by the operational unit to the extent authorized by the Commission and shall be used to pay compensation awards based on the criteria established by R10-4-108.
- H. An operational unit that receives additional funds for victim compensation shall submit a quarterly, written report to the Commission. The operational unit shall include in the report the amount of additional funds received and distributed to compensate victims or claimants. The Commission shall use the information in the written report to apply for federal matching funds. If matching funds are received, the Commission shall forward the matching funds to the appropriate operational unit.
- I. An operational unit shall use funds to pay administrative costs only to the extent authorized by the Commission.

Historical Note

Adopted effective December 31, 1986 (Supp. 86-6). Amended effective October 28, 1994 (Supp. 94-4). Section repealed; new Section R10-4-102 renumbered from R10-4-104 and amended by final rulemaking at 6 A.A.R. 4727, effective November 20, 2000 (Supp. 00-4). Amended by final rulemaking at 13 A.A.R. 4124, effective January 5, 2008 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 3309, effective February 3, 2013 (Supp. 12-4).

R10-4-103. Statewide Operation

For any jurisdiction not served by an operational unit, the Commission shall operate a program in accordance with this Article or provide for a program by contract.

Historical Note

Adopted effective December 31, 1986 (Supp. 86-6). Amended effective October 28, 1994 (Supp. 94-4). Amended effective June 12, 1997 (Supp. 97-2). Former Section R10-4-103 renumbered to R10-4-101; new Section R10-4-103 renumbered from R10-4-105 and amended by final rulemaking at 6 A.A.R. 4727, effective November 20, 2000 (Supp. 00-4). Amended by final rulemaking at 13 A.A.R. 4124, effective January 5, 2008 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 3309, effective February 3, 2013 (Supp. 12-4).

R10-4-104. Operational Unit Requirements

- A. To be designated by the Commission as an operational unit for a jurisdiction, a public or private agency shall submit to the Commission a written request for designation.
- B. The Commission shall designate a public or private agency as the operational unit for a jurisdiction or jurisdictions:
 1. Only if the public or private agency agrees not to:
 - a. Use Commission funds or federal funds to supplant funds otherwise available to compensate a victim or claimant;

- b. Make a distinction between a resident and a non-resident in evaluating a claim; and
- c. Make a distinction in evaluating a claim relating to a federal crime that occurs in Arizona and one relating to a state crime; and
- 2. Only if the public or private agency agrees to:
 - a. Forward to the Board a claim relating to an incident of criminally injurious conduct or an act of international terrorism occurring in the public or private agency's jurisdiction or jurisdictions;
 - b. Forward to the Board a claim made by or on behalf of a resident of the public or private agency's jurisdiction or jurisdictions who is a victim or derivative victim of an incident of criminally injurious conduct or an act of international terrorism occurring in another state, the District of Columbia, Puerto Rico, or any other possession or territory of the United States that does not have a crime victim compensation program that meets the requirements of 42 U.S.C. 10602(b);
 - c. Forward to the Board a claim made by or on behalf of a resident of the public or private agency's jurisdiction or jurisdictions who is a victim or derivative victim of an incident of criminally injurious conduct or an act of international terrorism occurring outside of the United States in an area without a crime compensation program;
 - d. Notify the Commission of any change in the public or private agency's program procedures before the change takes effect and if the change is material, obtain written approval from the Commission before instituting the change;
 - e. Submit a written quarterly financial report to the Commission, on a form provided by the Commission, and provide detailed information regarding the expenditure of funds received from the Commission and those required as a match for funds received from the Commission;
 - f. Provide an application form to a claimant;
 - g. Comply with all civil rights requirements;
 - h. Ensure that each claim is investigated and substantiated before forwarding the claim to the Board for a compensation award; and
 - i. Monitor a compensation award to ensure that amounts paid are consistent with this Article.
- C. If more than one agency requests to be designated by the Commission as an operational unit for a jurisdiction, the Commission shall designate the agency that it determines is better able to evaluate claims and manage the expenditure of public funds. The Commission shall give preference to a public agency if both a public and private agency request designation.

Historical Note

Adopted effective December 31, 1986 (Supp. 86-6).

Amended effective October 28, 1994 (Supp. 94-4).

Amended effective June 12, 1997 (Supp. 97-2). Former Section R10-4-104 renumbered to R10-4-102; new Section R10-4-104 renumbered from R10-4-106 and amended by final rulemaking at 6 A.A.R. 4727, effective November 20, 2000 (Supp. 00-4). Amended by final rulemaking at 13 A.A.R. 4124, effective January 5, 2008 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 3309, effective February 3, 2013 (Supp. 12-4).

R10-4-105. Crime Victim Compensation Board

- A. Each operational unit shall establish a Crime Victim Compensation Board that consists of an odd number of members with

at least three members. Members of the Board shall not receive compensation for their services but are eligible for travel reimbursement under A.R.S. § 38-621.

- B. Board members serve a three-year term and are eligible for reappointment.
- C. When a Board is first established, approximately one-third of the members shall be appointed for a three-year term, one-third for a two-year term, and one-third for a one-year term. If a Board member is unable to complete the term of the Board member's appointment, the Commission Chairman shall appoint a new Board member for the unexpired term only.
- D. When a Board is first established and when a new member is appointed to an existing Board, the Commission Chairman shall choose the individual to be appointed from a list submitted by the operational unit.
- E. A majority of the Board membership constitutes a quorum that may transact the business of the Board.
- F. The Board shall elect from its membership a chairman and other necessary officers to serve terms determined by the Board.
- G. The Board shall make a compensation award according to this Article and perform other acts necessary for operation of the program.
- H. As required by A.R.S. Title 38, Chapter 3, Article 8, a Board member shall not participate in making any decision regarding a claim or compensation award if the Board member or a relative of the Board member, as defined at A.R.S. § 38-502, has a substantial interest in the decision.
- I. An employee of an operational unit shall not serve as a Board member.
- J. A newly appointed Board member shall meet all training requirements established by the Commission for new Board members within six months of the Board member's date of appointment.
- K. A Board member who is reappointed shall meet all training requirements established by the Commission for reappointed Board members within six months of the Board member's date of reappointment.
- L. A Board member shall not miss more than one-third of Board meetings in a year due to unexcused absence.

Historical Note

Adopted effective December 31, 1986 (Supp. 86-6). Former Section R10-4-105 renumbered to R10-4-103; new

Section R10-4-105 renumbered from R10-4-107 and amended by final rulemaking at 6 A.A.R. 4727, effective November 20, 2000 (Supp. 00-4). Amended by final rulemaking at 13 A.A.R. 4124, effective January 5, 2008 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 3309, effective February 3, 2013 (Supp. 12-4).

R10-4-106. Prerequisites for a Compensation Award

- A. The Board shall make a compensation award only if it determines that:
 - 1. Criminally injurious conduct or an act of international terrorism:
 - a. Occurred in Arizona; or
 - b. Occurred outside of Arizona in an area without a crime compensation program and affected a resident;
 - 2. The criminally injurious conduct or act of international terrorism directly resulted in the victim's physical injury, mental distress, medical condition, or death;
 - 3. The victim of the criminally injurious conduct or act of international terrorism or a person who submits a claim regarding criminally injurious conduct or an act of international terrorism was not:

- a. The perpetrator, an accomplice of the perpetrator, or a person who encouraged or in any way participated in or facilitated the criminally injurious conduct or act of international terrorism that directly resulted in the victim's physical injury, mental distress, medical condition, or death;
 - b. Serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough at the time of the criminally injurious conduct or act of international terrorism that directly resulted in the victim's physical injury, mental distress, medical condition, or death;
 - c. Escaped from serving a sentence of imprisonment in any detention facility, home arrest program, or work furlough at the time of the criminally injurious conduct or act of international terrorism that directly resulted in the victim's physical injury, mental distress, medical condition, or death;
 - d. Convicted of a federal crime and delinquent in paying a fine, monetary penalty, or restitution imposed for the offense if the U.S. Attorney General and the Director of the Administrative Office of the U.S. Courts have issued a written determination that the entities administering federal victim compensation programs have access to an accurate and efficient criminal debt payment tracking system; or
 - e. Convicted of a state crime and delinquent in paying a fine, monetary penalty, or restitution imposed for the crime if the delinquency is identified by the Arizona Administrative Office of the Courts or the Clerk of the Superior Court.
4. The criminally injurious conduct or act of international terrorism was reported to an appropriate law enforcement authority within 72 hours after its discovery;
5. The victim, derivative victim, or claimant cooperated with law enforcement agencies;
6. The victim, derivative victim, or claimant incurred economic loss as a direct result of the criminally injurious conduct or act of international terrorism that is not compensable by a collateral source; and
7. A claim, as described in R10-4-107, was submitted to the operational unit within two years after discovery of the criminally injurious conduct or act of international terrorism.
- B. The Board shall extend the time limits under subsections (A)(4) and (A)(7) if the Board determines there is good cause for a delay.
- C. If a victim died as a result of criminally injurious conduct or act of international terrorism, the requirement under subsection (A)(3)(e) is waived for the deceased victim. Expenses incurred by the deceased victim and eligible claimants may be covered.
- D. If the Board determines that a compensation award does not solely benefit a claimant who is delinquent under subsection (A)(3)(e), the requirement under subsection (A)(3)(e) may be waived for:
1. A claimant who is the parent or legal guardian of a minor victim of criminally injurious conduct or an act of international terrorism, or
 2. A compensation award for expenses under R10-4-108(C)(3).

Historical Note

Adopted effective December 31, 1986 (Supp. 86-6).
Amended effective December 12, 1990 (Supp. 90-4).
Amended effective October 28, 1994 (Supp. 94-4).
Amended effective June 12, 1997 (Supp. 97-2). Former

Section R10-4-106 renumbered to R10-4-104; new Section R10-4-106 renumbered from R10-4-108 and amended by final rulemaking at 6 A.A.R. 4727, effective November 20, 2000 (Supp. 00-4). Former R10-4-106 renumbered to R10-4-108; new R10-4-106 made by final rulemaking at 13 A.A.R. 4124, effective January 5, 2008 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 3309, effective February 3, 2013 (Supp. 12-4).

R10-4-107. Submitting a Claim

- A. If the prerequisites in R10-4-106 are met, a natural person is eligible to submit a claim if the person is:
 1. A victim;
 2. A derivative victim;
 3. A person authorized to act on behalf of a victim or a deceased victim's dependent; or
 4. A person who assumed an obligation for or paid an expense directly related to a victim's economic loss.
- B. If a person is eligible under subsection (A) to submit a claim regarding more than one incident of criminally injurious conduct or act of international terrorism, the person shall submit a separate claim regarding each incident of criminally injurious conduct or act of international terrorism.
- C. If more than one person is eligible under subsection (A) to submit a claim regarding an incident of criminally injurious conduct or act of international terrorism, each person shall submit a separate claim.
- D. To apply for a compensation award, a person who is eligible under subsection (A) shall submit a claim, using a form that is available from the Commission, to the operational unit for the jurisdiction in which the incident of criminally injurious conduct occurred or to the operational unit for the jurisdiction in which a victim lives if the incident of criminally injurious conduct is an act of international terrorism or occurred in an area without a victim compensation program. The claimant shall provide the following:
 1. About the victim:
 - a. Full name,
 - b. Residential address,
 - c. Gender,
 - d. Date of birth,
 - e. Residential and work telephone numbers,
 - f. Statement of whether the victim is deceased,
 - g. Ethnicity,
 - h. Statement of whether the victim is a resident, and
 - i. Statement of whether the victim is disabled;
 2. About the claimant if the claimant is not the victim:
 - a. Full name;
 - b. Residential address;
 - c. Gender;
 - d. Date of birth;
 - e. Residential and work telephone numbers;
 - f. Relationship to the victim; and
 - g. If there are multiple victims or derivative victims of an incident of criminally injurious conduct or act of international terrorism, the name, residential address, and date of birth of each, and for derivative victims, the relationship to the victim;
 3. About the crime:
 - a. Type of crime;
 - b. Statement of whether the crime was related to domestic violence;
 - c. Statement of whether the crime was a federal crime;
 - d. Date on which crime was committed;
 - e. Date on which crime was reported to law enforcement authorities;

- f. Name of law enforcement agency to which the crime was reported;
 - g. Name of law enforcement officer to whom the crime was reported;
 - h. Law enforcement report number;
 - i. Location of crime;
 - j. Name of perpetrator, if known; and
 - k. Brief description of the crime and resulting injuries;
4. About a civil lawsuit:
- a. Statement of whether the claimant has or will file a civil lawsuit related to the crime; and
 - b. If the answer to subsection (D)(4)(a) is yes, the name, address, and telephone number of the claimant's attorney;
5. About benefits from collateral sources:
- a. List of the benefits the claimant has received since the incident of criminally injurious conduct or act of international terrorism or is entitled to receive; and
 - b. For each benefit identified:
 - i. Type of benefit,
 - ii. Contact address and telephone number; and
 - iii. Claimant's identification or policy number;
6. About the economic loss for which compensation is requested:
- a. Medical expenses. A statement of whether the claim includes medical expenses and if so, the name, address, telephone number, account number, and date of service for each provider;
 - b. Mental health counseling and care expenses. A statement of whether the claim includes mental health counseling and care expenses and if so, the name, address, telephone number, account number, and date of service for each provider;
 - c. Work loss expenses. A statement of whether the claim includes work loss expenses and if so, the date on which the claimant was first unable to work, date on which the claimant returned to work, total time lost from work, hourly rate of pay, number of hours worked each week, number of hours worked each day, name, address, and telephone number of employer, and name of supervisor;
 - d. Funeral expenses. A statement of whether the claim includes funeral expenses and if so, the name, address, and telephone number of the provider and the amount paid; and
 - e. Crime scene cleanup expenses. A statement of whether the claim includes crime scene cleanup expenses and if so, the name, address, and telephone number of the provider and the amount paid;
 - f. Transportation costs. A statement of whether the claim includes transportation costs and if so, the reason for travel as listed under R10-4-108(C)(6) and if mileage is claimed, the date and mileage of each trip; and
7. The claimant's dated signature:
- a. Certifying that the claimant is eligible to submit a claim and that the information provided is true and correct to the best of the claimant's knowledge;
 - b. Subrogating to the state and operational unit the claimant's right to receive benefits from a collateral source;
 - c. Authorizing the release of confidential information necessary to administer the claim; and
 - d. Authorizing the release to the Program of protected health information that relates to care provided as a result of the criminally injurious conduct or act of international terrorism and is necessary to verify the claim.
- E. A claimant shall attach the following to the claim form submitted under subsection (D):
- 1. A copy of all bills, contracts, receipts, and insurance statements relating to each expense claimed under subsection (D)(6); and
 - 2. If work loss expenses are claimed, a signed statement on official letterhead:
 - a. From the claimant's employer verifying the information provided under subsection (D)(6)(c); and
 - b. If applicable, from the physician or mental health care provider indicating the claimant:
 - i. Was unable to work as a result of being a victim or derivative victim, the length of time the claimant was unable to work, and the date on which the claimant was or will be able to return to work; or
 - ii. Is totally and permanently disabled.

Historical Note

Adopted effective December 31, 1986 (Supp. 86-6). Amended effective October 28, 1994 (Supp. 94-4). Former Section R10-4-107 renumbered to R10-4-105; new Section R10-4-107 renumbered from R10-4-109 and amended by final rulemaking at 6 A.A.R. 4727, effective November 20, 2000 (Supp. 00-4). Former R10-4-107 renumbered to R10-4-109; new R10-4-107 made by final rulemaking at 13 A.A.R. 4124, effective January 5, 2008 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 3309, effective February 3, 2013 (Supp. 12-4).

R10-4-108. Compensation Award Criteria

- A. The Board shall meet at least every 60 days to decide, based on the findings made by the operational unit, whether to make a compensation award and if so, the terms and amount of the compensation award. The Board shall make a decision within 60 days after the operational unit receives a claim under R10-4-107 unless good cause exists. The Board shall inform the claimant in writing within 10 days of the Board's decision.
- B. The Board shall not make a compensation award unless it determines that the prerequisites in R10-4-106 are met.
- C. The Board shall make a compensation award only for the following:
 - 1. Reasonable and customary medical expenses due to the victim's physical injury, medical condition, or death:
 - a. The Board shall include the following as a medical expense:
 - i. Repair of damage to a prosthetic device, eyeglasses or other corrective lenses, or a dental device; and
 - ii. Durable medical equipment.
 - b. The Board shall not include as a medical expense a charge for a private room in a hospital, clinic, convalescent home, nursing care facility, or other institution that provides medical services unless the Board determines that the private room is medically necessary;
 - 2. Reasonable and customary work loss expenses for:
 - a. A victim whose ability to work is reduced due to physical injury, mental distress, or medical condition resulting from the criminally injurious conduct or act of international terrorism;
 - b. A victim or derivative victim to make a medical or mental health counseling and care visit or attend a court proceeding directly related to the criminally injurious conduct or act of international terrorism;

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- c. A derivative victim listed in R10-4-101(10)(a) through (c) if the Board determines the death resulted in a loss of support from the victim to the derivative victim;
 - d. A parent or guardian of a minor victim to transport or accompany the minor victim to a medical or mental health counseling and care visit or court proceeding directly related to the criminally injurious conduct or act of international terrorism;
 - e. A derivative victim to make funeral arrangements or tend to the affairs of a deceased victim if the derivative victim made the funeral arrangements or tended to the affairs of the deceased victim; or
 - f. A family member or guardian or a person living in the victim's household in a relationship similar to those listed in R10-4-101(10)(a) to provide non-skilled nursing care for the victim that is required as a result of the criminally injurious conduct or act of international terrorism;
3. Reasonable and customary funeral expenses. Expenses for clothing, travel, lodging, food, or per diem to attend a victim's funeral, Native American ceremony, or burial are not reasonable and customary funeral expenses and shall not be included in a claim for a compensation award;
4. Reasonable and customary mental health counseling and care expenses due to a victim's or derivative victim's mental distress resulting from the criminally injurious conduct or act of international terrorism if:
- a. The mental health counseling and care is provided by an individual who:
 - i. Is licensed for independent practice by the Board of Behavioral Health Examiners,
 - ii. Is a behavioral health professional as defined at A.A.C. R9-20-101,
 - iii. Is a behavioral health technician as defined at A.A.C. R9-20-101 and employed by an agency licensed by the Department of Health Services, or
 - iv. Is authorized to perform mental health counseling and care by the laws of a federally recognized tribe; and
 - b. The mental health counseling and care expenses do not include a charge for a private room in a hospital, clinic, convalescent home, nursing care facility, or any other institution that provides medical services unless the Board determines that the private room is medically necessary;
5. Reasonable and customary crime scene cleanup expenses due to a victim's homicide, aggravated assault, or sexual assault; and
6. Reasonable and customary transportation costs related to:
- a. Obtaining medical care as defined in subsection (C)(1),
 - b. Obtaining mental health counseling and care as defined in subsection (C)(4),
 - c. Attending a court proceeding directly related to the incident of criminally injurious conduct or act of international terrorism that is the subject of the claim,
 - d. The victim obtaining a medical forensic examination or participating in a medical forensic interview, and
 - e. Responding to a substantiated threat to the safety or well-being of the victim or a derivative victim listed in R10-4-101(10)(d).
- D. The Board shall not make a compensation award to a claimant that exceeds:
- 1. Twenty-five thousand dollars for all economic loss submitted under a claim as a result of an incident of criminally injurious conduct or act of international terrorism;
 - 2. The amount available to the operational unit and not committed to other compensation awards at the time the Board makes the compensation award determination;
 - 3. For work loss expenses:
 - a. Work loss expenses under subsections (C)(2)(a) and (C)(2)(c) are limited to an amount per calendar week equal to 40 hours at the current minimum wage and the maximum amount specified in subsections (D)(1) and (D)(2),
 - b. Work loss expenses under subsections (C)(2)(b) and (C)(2)(d) are limited to an amount per calendar month equal to 40 hours at the current minimum wage and the maximum amount specified in subsections (D)(1) and (D)(2),
 - c. Work loss expenses under subsection (C)(2)(e) are limited to an amount equal to 24 hours at the current minimum wage, and
 - d. Work loss expenses under subsection (C)(2)(f) are limited to an amount equal to 160 hours at the current minimum wage;
 - 4. For mental health counseling and care expenses, \$5,000 per victim or derivative victim;
 - 5. For funeral expenses, \$10,000;
 - 6. For crime scene cleanup expenses, \$2,000 for cleanup provided by a professional service, of which \$500 may be for crime scene cleanup not provided by a professional service to include only repair or cleanup material costs for one-time use items; and
 - 7. For transportation costs, \$1,500 paid as reimbursement of actual transportation expenses.
- E. If the Board determines a victim is totally and permanently disabled, the Board may expedite a compensation award for the victim. The Board shall determine the amount of the expedited compensation award to the maximum allowed under subsection (D) and determine whether to provide the amount awarded in a lump sum or periodic payments.
- F. The Board shall deny or reduce a compensation award to a claimant if:
- 1. The victim or claimant has recouped or is eligible to recoup the economic loss from a collateral source except if the Board determines that use of a collateral source, excluding benefits from a federal or federally financed program, to pay for mental health counseling and care expenses is not in the best interest of the victim or derivative victim, the Board shall not deny or reduce a compensation award for the mental health counseling and care expenses;
 - 2. The Board determines that the victim or claimant earned income from substitute work or unreasonably failed to perform available substitute work; or
 - 3. The Board determines that the victim's physical injury, medical condition, mental distress, or death was due in substantial part to the victim's:
 - a. Negligence,
 - b. Intentional unlawful conduct that was the proximate cause of the incident of criminally injurious conduct or act of international terrorism, or
 - c. Conduct intended to provoke or aggravate that was the proximate cause of the incident of criminally injurious conduct or act of international terrorism.
- G. The Board shall deny or reduce a compensation award under subsection (F)(3) in proportion to the degree to which the

- Board determines the victim is responsible for the victim's physical injury, medical condition, mental distress, or death.
- H. The Board shall deny a compensation award to a claimant if:
1. The Board determines that the victim or claimant did not cooperate fully with the appropriate law enforcement agency and the failure to cooperate fully was not due to a substantial health or safety risk. The Board shall use the following criteria to determine whether failure to cooperate fully with law enforcement warrants that a claim be denied:
 - a. The victim or claimant failed to assist in the prosecution of a person who engaged in the criminally injurious conduct or act of international terrorism or failed to appear as a witness for the prosecution;
 - b. The victim or claimant delayed assisting in the prosecution of a suspect and as a result, the suspect of the criminally injurious conduct or act of international terrorism escaped prosecution or the prosecution of the suspect was negatively affected; or
 - c. A law enforcement authority indicates to the Board that the victim or claimant delayed giving information pertaining to the criminally injurious conduct or act of international terrorism, failed to appear when requested without good cause, gave false or misleading information, or attempted to avoid law enforcement authorities; or
 2. The Board determines that the victim or claimant knowingly made a false or misleading statement on the claim or in writing on supporting documents submitted to the Board or operational unit.
- I. If there are insufficient funds to make a compensation award, the Board may:
1. Deny the claim,
 2. Make a partial award and reconsider the claim later during the fiscal year, or
 3. Extend the claim into a subsequent fiscal year.
- J. The Board shall not make a compensation award to pay attorney's fees incurred by a victim or claimant.
- K. The operational unit, in its discretion, may pay a compensation award directly to a claimant or to a provider.
- L. The operational unit may close an inactive claim:
1. Five years after the claim is submitted for an adult victim or derivative victim except in a homicide case;
 2. Ten years after the claim is submitted for a minor victim or derivative victim except in a homicide case; and
 3. Fifteen years after the claim is submitted for a homicide victim or derivative victim.

Historical Note

Adopted effective December 31, 1986 (Supp. 86-6).
 Amended effective October 28, 1994 (Supp. 94-4).
 Amended effective June 12, 1997 (Supp. 97-2). Former Section R10-4-108 renumbered to R10-4-106; new Section R10-4-108 renumbered from R10-4-110 and amended by final rulemaking at 6 A.A.R. 4727, effective November 20, 2000 (Supp. 00-4). Former R10-4-108 renumbered to R10-4-110; new R10-4-108 renumbered from R10-4-106 and amended by final rulemaking at 13 A.A.R. 4124, effective January 5, 2008 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 3309, effective February 3, 2013 (Supp. 12-4).

R10-4-109. Hearing; Request for Rehearing

- A. If the prerequisites in R10-4-106 are met, the Board shall conduct a hearing regarding a claim submitted under this Article.
- B. The Board shall provide a claimant with at least 10 days' notice of a hearing or rehearing.

- C. The Board shall provide written notice of its decision to the claimant within 10 days after a hearing or rehearing.
- D. The Board shall serve notice of a compensation-award denial or reduction by personal delivery or certified mail to the last known residence or place of business of the person being served. Service is complete upon personal delivery or five days after mailing by certified mail.
- E. The Board may request a rehearing of a decision at any time and for any reason under this Article.
- F. A claimant who is aggrieved by a decision of the Board made at a hearing may request a rehearing of the decision within 30 days after the Board serves notice of the decision. A claimant shall request a rehearing in writing and specify the grounds for the request.
- G. A claimant may amend a request for a rehearing of a Board decision at any time before it is ruled on by the Board.
- H. The Board may require additional written explanation of an issue raised in a request for rehearing of a Board decision and may provide for oral argument.
- I. The Board shall grant a rehearing for any of the following reasons materially affecting a claimant's rights:
1. Irregularity in the proceedings of the Board or its operational unit or any order or abuse of discretion that deprived the claimant of a fair Board decision;
 2. Misconduct of the Board, the operational unit, or staff of the operational unit;
 3. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the original Board meeting;
 4. Error in the admission or rejection of evidence or other error of law occurring at the Board meeting; and
 5. The decision is not justified by the evidence or is contrary to law.
- J. When a rehearing is granted, the Board shall ensure that the rehearing covers only the matters specified under subsection (I) that materially affect a claimant's rights.
- K. The Board may affirm or modify a decision on all or part of the issues for any of the reasons listed in subsection (I). An order modifying a decision shall specify with particularity the grounds for the order.

Historical Note

Adopted effective December 31, 1986 (Supp. 86-6). Amended effective October 28, 1994 (Supp. 94-4). Former Section R10-4-109 renumbered to R10-4-107 by final rulemaking at 6 A.A.R. 4727, effective November 20, 2000 (Supp. 00-4). Section R10-4-109 renumbered from R10-4-107 and amended by final rulemaking at 13 A.A.R. 4124, effective January 5, 2008 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 3309, effective February 3, 2013 (Supp. 12-4).

R10-4-110. State-level Claim Review

- A. A claimant who is aggrieved by a decision of a Board made at a rehearing under R10-4-109 may request a state-level claim review of the decision within 30 days after the Board serves notice of the decision. The claimant shall request a state-level claim review in writing, specify the grounds for the request, and submit the request directly to the Commission.
- B. The State Claim Review Panel shall serve as the decision-making body for state-level claim reviews. The State Claim Review Panel shall consist of the following members:
1. The Arizona Criminal Justice Commission Crime Victim Services Program Manager,
 2. A representative of the Office of the Attorney General, and

3. A Board chair from an operational unit that is not the operational unit that originally heard the claim being reviewed.
- C. The State Claim Review Panel shall meet as needed to hear claimant requests for a state-level claim review. The State Claim Review Panel shall complete a state-level claim review within 30 days after receiving the written request required under subsection (A).
- D. A claimant may amend a request for a state-level claim review of a Board decision at any time before it is ruled on by the State Claim Review Panel.
- E. When a state-level claim review is granted, the State Claim Review Panel shall ensure that the review:
1. Considers only evidence previously presented to the Board, and
 2. Decides only whether the Board's decision was consistent with the standards in this Article.
- F. The State Claim Review Panel may affirm or overturn a decision made by a Board.
- G. A decision by the State Claim Review Panel is final. If the Panel overturns a decision made by a Board related to:
1. Eligibility, the operational unit where the claim originated shall proceed with any further action related to the claim; or
 2. An economic loss, the operational unit where the claim originated shall pay the economic loss using compensation funds available to the operational unit.
- H. The State Claim Review Panel shall provide written notice of the Panel's decision to the claimant and the operational unit that originally heard the claim within 10 days after the state-level claim review.

Historical Note

Adopted effective December 31, 1986 (Supp. 86-6). Amended effective October 28, 1994 (Supp. 94-4). Former Section R10-4-110 renumbered to R10-4-108 by final rulemaking at 6 A.A.R. 4727, effective November 20, 2000 (Supp. 00-4). Section R10-4-110 renumbered from R10-4-108 and amended by final rulemaking at 13 A.A.R. 4124, effective January 5, 2008 (Supp. 07-4). Section R10-4-110 renumbered to R10-4-111; new Section R10-4-110 made by final rulemaking at 18 A.A.R. 3309, effective February 3, 2013 (Supp. 12-4).

R10-4-111. Emergency Compensation Award

- A. After receiving a claim submitted under R10-4-107, an operational unit may grant one emergency compensation award for a claim if the operational unit determines there is a reasonable likelihood that:
1. The person to whom the emergency compensation award is made is or will be an eligible claimant, and
 2. Serious hardship will result to the person if an immediate compensation award is not made.
- B. An operational unit that makes an emergency compensation award shall ensure that the emergency compensation award does not exceed \$1,000.
- C. If the Board decides under R10-4-108 to make a compensation award to the claimant, the Board shall ensure that the amount of the emergency compensation award is deducted from the final compensation award made to the claimant.

Historical Note

Adopted effective December 31, 1986 (Supp. 86-6). Amended effective October 28, 1994 (Supp. 94-4). Section repealed by final rulemaking at 6 A.A.R. 4727, effective November 20, 2000 (Supp. 00-4). New Section R10-4-111 renumbered from R10-4-110 and amended by final

rulemaking at 18 A.A.R. 3309, effective February 3, 2013 (Supp. 12-4).

ARTICLE 2. CRIME VICTIM ASSISTANCE PROGRAM

R10-4-201. Definitions

In this Article:

1. "Commission" means the Arizona Criminal Justice Commission, established by A.R.S. § 41-2404.
2. "Crime" means conduct, completed or preparatory, committed in Arizona, that is a misdemeanor or felony under state law regardless of whether the perpetrator of the conduct is convicted. Conduct arising out of owning, maintaining, or operating a motor vehicle, aircraft, or water vehicle is not a crime unless the person engaged in the conduct acts intentionally, knowingly, recklessly, or with criminal negligence, to cause physical injury, threat of physical injury, or death.
3. "Financial support from other sources" means that at least one-fourth of the budget for a victim assistance program is from sources, including in-kind contributions, other than the Fund.
4. "Fund" means the Victim Compensation and Assistance Fund established by A.R.S. § 41-2407.
5. "Immediate family" means spouse, child, stepchild, parent, stepparent, sibling, stepbrother, stepsister, grandparent, grandchild, or guardian.
6. "In-kind contribution" means a non-cash donation to which a cash value can be given.
7. "Subrogation" means the substitution of the state or a victim assistance program in the place of a victim to enforce a lawful claim against a third party to recover the cost of services to the victim paid for with financial support from the Fund or other sources.
8. "Substantial financial support from other sources" means that at least half of the financial support to a victim assistance program is from sources, not including in-kind contributions, other than the Fund.
9. "Victim" means a natural person against whom a crime is perpetrated and the victim's immediate family.

Historical Note

Adopted effective December 22, 1986 (Supp. 86-6). Section repealed; new Section R10-4-201 renumbered from R10-4-203 and amended by final rulemaking at 6 A.A.R. 4660, effective November 20, 2000 (Supp. 00-4). Amended by final rulemaking at 13 A.A.R. 4124, effective January 5, 2008 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 3309, effective February 3, 2013 (Supp. 12-4).

R10-4-202. Administration of the Fund

- A. The Commission shall deposit in the Fund all funds received under A.R.S. §§ 31-467.06(B) and 31-411(F) and any other funds received for victim assistance.
- B. The Commission shall make distributions from the Fund through a competitive grant process that complies with A.R.S. § 41-2701 et seq. and ensures statewide distribution and effective and efficient use of the funds.
- C. At least six weeks before an application for a grant from the Fund is due, the Commission shall make a grant application form and instructions available on its web site, which is www.azcjcc.gov.
- D. To apply for a grant from the Fund, an authorized official of a public agency or private nonprofit organization that operates a program that meets the standards in R10-4-203 shall complete and submit to the Commission the application form referenced in subsection (C).

- E. The Commission's grant period coincides with the state's fiscal year. If funds received from the Commission are unexpended at the end of the grant period, the public agency or private nonprofit organization that received the funds shall return them to the Commission within 30 days after receiving a written request from the Commission. The Commission shall redeposit the unexpended funds in the Fund for use in the next fiscal year.

Historical Note

Adopted effective December 22, 1986 (Supp. 86-6). Amended effective October 28, 1994 (Supp. 94-4). Section repealed; new Section R10-4-202 renumbered from R10-4-204 and amended by final rulemaking at 6 A.A.R. 4660, effective November 20, 2000 (Supp. 00-4). Amended by final rulemaking at 13 A.A.R. 4124, effective January 5, 2008 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 3309, effective February 3, 2013 (Supp. 12-4).

R10-4-203. Grant Eligibility Requirements

- A. A non-criminal justice governmental agency or private nonprofit organization may apply for and receive a grant from the Commission only if the non-criminal justice governmental agency or private nonprofit organization is approved by a prosecuting attorney's office or law enforcement agency.
- B. A public agency or private nonprofit organization qualified under subsection (A) may apply for and receive a grant from the Commission if, in addition to the other requirements in this Section, the public agency or private nonprofit organization operates a program that:
1. Provides services described in R10-4-204 to victims;
 2. Does not use Commission funds or federal funds to supplement funds otherwise available to the program for victim assistance;
 3. Uses volunteers effectively and efficiently to provide victim services;
 4. Promotes coordinated public and private efforts to assist victims within the community served;
 5. Assists a victim in seeking available victim compensation benefits; and
 6. Complies with all applicable civil rights laws.
- C. To receive a grant from the Commission, a public agency or private nonprofit organization that operates a program that has existed for at least three years shall demonstrate to the Commission that the program:
1. Has substantial financial support from a source other than the Fund; and
 2. Has a history of providing effective services to victims. The Commission shall determine whether the program's victim services are effective based on:
 - a. The length of time the program has provided victim services, and
 - b. Whether data indicate program results are achieved in a cost-effective manner.
- D. To receive a grant from the Commission, a public agency or private nonprofit organization that operates a program that has existed for fewer than three years shall demonstrate to the Commission that the program:
1. Has financial support from a source other than the Fund; and
 2. Is designed to meet a currently unmet need for a specific victim service.
- E. To receive a grant from the Commission, a public agency or private nonprofit organization shall agree to:
1. Submit to the Commission quarterly financial reports, on a form provided by the Commission, containing detailed

- expenditures of funds received from the Commission and matching funds;
2. Submit an annual report to the Commission, on a form provided by the Commission, and provide the following information:
 - a. Number of victims served during the reporting period, by type of crime;
 - b. Type of services provided;
 - c. Number of times each service was provided;
 - d. Ethnic background, age, and sex of each victim served;
 - e. Type of assistance provided to victims in obtaining victim compensation;
 - f. Number of times each type of assistance was provided; and
 - g. A narrative assessment of the impact of Commission funds on the program.

Historical Note

Adopted effective December 22, 1986 (Supp. 86-6). Amended effective October 28, 1994 (Supp. 94-4). Former Section R10-4-203 renumbered to R10-4-201; new Section R10-4-203 renumbered from R10-4-205 and amended by final rulemaking at 6 A.A.R. 4660, effective November 20, 2000 (Supp. 00-4). Amended by final rulemaking at 13 A.A.R. 4124, effective January 5, 2008 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 3309, effective February 3, 2013 (Supp. 12-4).

R10-4-204. Services

- A. A public agency or private nonprofit organization that receives a grant from the Commission shall ensure that the funds are used to provide only the following victim services:
1. Crisis intervention services to meet the urgent emotional or physical needs of a victim. Crisis intervention services may include a 24-hour hotline for counseling or referrals for a victim;
 2. Emergency services including:
 - a. Temporary shelter for a victim who cannot safely remain in current lodgings;
 - b. Petty cash for immediate needs related to transportation, food, shelter, and other necessities; and
 - c. Temporary repairs such as locks and windows damaged as a result of a crime to prevent the home or apartment from being re-burglarized immediately;
 3. Support services, including:
 - a. Counseling dealing with the effects of victimization;
 - b. Assistance dealing with other social services and criminal justice agencies;
 - c. Assistance in obtaining the return of property kept as evidence;
 - d. Assistance in dealing with the victim's landlord or employer; and
 - e. Referral to other sources of assistance as needed;
 4. Court-related services, including:
 - a. Direct services or petty cash that helps a victim participate in criminal justice proceedings, including transportation to court, child care, meals, and parking expenses; and
 - b. Advocate services including escorting a victim to criminal justice-related interviews, court proceedings, and assistance in accessing temporary protection services; and
 5. Notification services, including notifying a victim:
 - a. Of significant developments in the investigation or adjudication of the case;

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- b. That a court proceeding, for which the victim has been subpoenaed, has been canceled or rescheduled; and
 - c. Of the final disposition of the case.
- B. A public agency or private nonprofit organization that receives a grant from the Commission may use the funds to provide:
 - 1. Training for salaried or volunteer staff of criminal justice, social services, mental health, or related agencies, who provide direct services to victims; and
 - 2. Printing and distributing brochures or similar announcements describing the direct services available, how to obtain program assistance, and volunteer opportunities.
- C. A public agency or private nonprofit organization that receives a grant from the Commission shall ensure that funds are not used for the following:
 - 1. Crime prevention efforts, other than those aimed at providing specific emergency help after an individual is victimized;
 - 2. General public relations programs;
 - 3. Advocacy for a particular legislative or administrative reform;
 - 4. General criminal justice agency improvement;
 - 5. A program in which victims are not the primary beneficiaries;
 - 6. Management training or training for persons who do not provide direct services to a victim; or
 - 7. Victim Compensation provided under this Chapter.

Historical Note

Adopted effective December 22, 1986 (Supp. 86-6). Amended effective October 28, 1994 (Supp. 94-4). Former Section R10-4-204 renumbered to R10-4-202; new Section R10-4-204 renumbered from R10-4-206 and amended by final rulemaking at 6 A.A.R. 4660, effective November 20, 2000 (Supp. 00-4). Amended by final rulemaking at 13 A.A.R. 4124, effective January 5, 2008 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 3309, effective February 3, 2013 (Supp. 12-4).

R10-4-205. Renumbered**Historical Note**

Adopted effective December 22, 1986 (Supp. 86-6). Amended effective October 28, 1994 (Supp. 94-4). Former Section R10-4-205 renumbered to R10-4-203 by final rulemaking at 6 A.A.R. 4660, effective November 20, 2000 (Supp. 00-4).

R10-4-206. Renumbered**Historical Note**

Adopted effective December 22, 1986 (Supp. 86-6). Amended effective October 28, 1994 (Supp. 94-4). Former Section R10-4-206 renumbered to R10-4-204 by final rulemaking at 6 A.A.R. 4660, effective November 20, 2000 (Supp. 00-4).

R10-4-207. Repealed**Historical Note**

Adopted effective December 22, 1986 (Supp. 86-6). Amended effective October 28, 1994 (Supp. 94-4). Section repealed by final rulemaking at 6 A.A.R. 4660, effective November 20, 2000 (Supp. 00-4).

ARTICLE 3. CRIMINAL JUSTICE ENHANCEMENT FUND**R10-4-301. Definitions**

In this Article:

1. "Commission" means the Arizona Criminal Justice Commission.
2. "Contact" means the individual representative of a recipient or the Arizona Sheriffs' Association, on behalf of the various county sheriffs' offices, who communicates with the Commission regarding the Fund.
3. "Enhance" or "enhancing," as used in A.R.S. § 41-2401(D), means to supplement rather than replace monies from other sources.
4. "Fund" means the Criminal Justice Enhancement Fund established by A.R.S. § 41-2401(A).
5. "Head" means:
 - a. The Director of the Arizona Department of Public Safety,
 - b. The Arizona Attorney General,
 - c. The Director of the Administrative Office of the Courts, and
 - d. The sheriff of each Arizona county.
6. "Recipient" means the Arizona Department of Public Safety, Arizona Department of Law, the Supreme Court, and each Arizona county sheriff's office.

Historical Note

Adopted effective September 11, 1986 (Supp. 86-5). R10-4-301 repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4). Adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1). New Section made by final rulemaking at 17 A.A.R. 1469, effective September 10, 2011 (Supp. 11-3).

R10-4-302. Contact Information Required

- A. Within 60 days after this Article takes effect, each Head and the President of the Arizona Sheriffs' Association shall submit to the Commission the name, address, telephone and fax numbers, and e-mail of the contact.
- B. If any of the information submitted under subsection (A) changes, the Head or the President of the Arizona Sheriffs' Association shall provide immediate notice of the change to the Commission.

Historical Note

Adopted effective September 11, 1986 (Supp. 86-5). R10-4-302 repealed by summary action with an interim effective date of November 28, 1997; filed in the Office of the Secretary of State November 3, 1997 (Supp. 97-4). Adopted summary rules filed March 16, 1998; interim effective date of November 28, 1997, now the permanent effective date (Supp. 98-1). New Section made by final rulemaking at 17 A.A.R. 1469, effective September 10, 2011 (Supp. 11-3).

R10-4-303. Fund Guidelines Required

- A. Within 60 days after this Article takes effect, the contact within the Arizona Department of Public Safety, Arizona Department of Law, and the Administrative Office of the Courts shall submit to the Commission the recipient's guidelines regarding the following:
 1. The procedure for handling Fund monies until they are allocated for expenditure,
 2. The procedure used to allocate Fund monies,
 3. The procedure used to ensure that Fund monies are expended as specified in A.R.S. § 41-2401(D), and
 4. The procedure used to assess the impact of the Fund monies on enhancing criminal justice in the manner specified in A.R.S. § 41-2401(D).

41-2405. Arizona criminal justice commission: powers and duties: staff

A. The Arizona criminal justice commission shall:

1. Monitor the progress and implementation of new and continuing criminal justice legislation.
2. Facilitate research among criminal justice agencies and maintain criminal justice system information.
3. Facilitate coordinated statewide efforts to improve criminal justice information and data sharing.
4. Prepare for the governor a biennial criminal justice system review report. The report shall contain:
 - (a) An analysis of all criminal justice programs created by the legislature in the preceding two years.
 - (b) An analysis of the effectiveness of the criminal code, with a discussion of any problems and recommendations for revisions if deemed necessary.
 - (c) A study of the level of activity in the several areas of the criminal justice system, with recommendations for redistribution of criminal justice revenues if deemed necessary.
 - (d) An overall review of the entire criminal justice system, including crime prevention, criminal apprehension, prosecution, court administration and incarceration at the state and local levels as well as funding needs for the system.
 - (e) Recommendations for constitutional, statutory and administrative revisions that are necessary to develop and maintain a cohesive and effective criminal justice system.
5. Provide supplemental reports on criminal justice issues of special timeliness.
6. In coordination with other governmental agencies, gather information on programs that are designed to effectuate community crime prevention and education using citizen participation and on programs for alcohol and drug abuse prevention, education and treatment and disseminate that information to the public, political subdivisions, law enforcement agencies and the legislature.
7. Make recommendations to the legislature and the governor regarding the purposes and formula for allocation of fund monies as provided in section 41-2401, subsection D and section 41-2402 through the biennial agency budget request.
8. Adopt rules for the purpose of allocating fund monies as provided in sections 41-2401, 41-2402 and 41-2407 that are consistent with the purposes set forth in those sections and that promote effective and efficient use of the monies.
9. Make reports to the governor and the legislature as they require.
10. Oversee the research, analyses, studies, reports and publication of crime and criminal justice statistics prepared by the Arizona statistical analysis center, which is an operating section of the Arizona criminal justice commission.

11. Prepare an annual report on law enforcement activities in this state that are funded by the drug and gang enforcement fund or the criminal justice enhancement fund and that relate to illicit drugs and drug related gang activity. The report shall be submitted by October 31 of each year to the governor, the president of the senate and the speaker of the house of representatives and a copy shall be submitted to the secretary of state. The report shall include:

- (a) The name and a description of each law enforcement program dealing with illegal drug activity or street gang activity, or both.
- (b) The objective and goals of each program.
- (c) The source and amount of monies received by each program.
- (d) The name of the agency or entity that administers each program.
- (e) The effectiveness of each program.

12. Compile and disseminate information on best practices for cold case investigations, including effective victim communication procedures. For the purposes of this paragraph, "cold case" means a homicide or a felony sexual offense that remains unsolved for one year or more after being reported to a law enforcement agency and that has no viable and unexplored investigatory leads.

B. The Arizona criminal justice commission, as necessary to perform its functions, may:

- 1. Request any state or local criminal justice agency to submit any necessary information.
- 2. Form subcommittees, make studies, conduct inquiries and hold hearings.
- 3. Subject to chapter 4, article 4 of this title, employ consultants for special projects and such staff as deemed necessary or advisable to carry out this section.
- 4. Delegate its duties to carry out this section, including:
 - (a) The authority to enter into contracts and agreements on behalf of the commission.
 - (b) Subject to chapter 4, article 4 and, as applicable, articles 5 and 6 of this title, the authority to appoint, hire, terminate and discipline all personnel of the commission, including consultants.
- 5. Establish joint research and information facilities with governmental and private agencies.
- 6. Accept and expend public and private grants of monies, gifts and contributions and expend, distribute or allocate monies appropriated to the commission for the purpose of enhancing efforts to investigate or prosecute and adjudicate any crime and to implement this chapter.

41-2407. Victim compensation and assistance fund; subrogation; prohibited debt collection activity; definition

A. The victim compensation and assistance fund is established. The Arizona criminal justice commission shall administer the fund. The victim compensation and assistance fund shall consist of monies collected pursuant to section 12-116.01 and distributed pursuant to section 41-2401, subsection D, paragraph 14, monies collected pursuant to section 31-411, subsection E and sections 13-4311, 31-418, 31-467.06 and 41-1674, unclaimed victim restitution monies pursuant to sections 22-116 and 44-313 and monies available from any other source.

B. Subject to legislative appropriation, the Arizona criminal justice commission shall allocate monies in the victim compensation and assistance fund to public and private agencies for the purpose of establishing, maintaining and supporting programs that compensate and assist victims of crime.

C. The allocation of monies pursuant to this section shall be made in accordance with rules adopted by the Arizona criminal justice commission pursuant to section 41-2405, subsection A, paragraph 8. The rules shall provide that persons who suffered personal injury or death that resulted from an attempt to aid a public safety officer in the prevention of a crime or the apprehension of a criminal may be eligible for compensation.

D. This state and the applicable operational unit or qualified program, as defined in the victim compensation program rules, are subrogated to the rights of an individual who receives monies from the victim compensation and assistance fund to recover or receive monies or benefits from a third party, to the extent of the amount of monies the individual receives from the fund.

E. A licensed health care provider who agrees to the victim compensation program rules may receive program monies for providing health and medical services to a victim or claimant. A licensed health care provider who accepts the full allowable payment for those services from a victim compensation program funded pursuant to this section is deemed to have accepted the payment as the full payment for those services. The licensed health care provider may not collect or attempt to collect any payment for the same health and medical services from the victim or claimant, except that if a victim compensation program funded pursuant to this section is unable to pay the full allowable payment to a licensed health care provider because of a lack of available monies or for any other reason, the licensed health care provider may collect the unpaid balance for the services from the victim or claimant or from a third-party payor, and the total amount billed or requested by the licensed health care provider may not exceed the full allowable payment that the licensed health care provider agreed to accept from the victim compensation program for the services.

F. If a licensed health care provider receives notice that a person has filed a claim with a victim compensation program funded by this section, the licensed health care provider is prohibited from any debt collection activity for any monies owed by the person that are included in the filed claim until an award is made on the claim or until a determination is made that the claim is noncompensable. For the purposes of this subsection, "debt collection activity" includes repeatedly telephoning or writing to the claimant and threatening to either turn the matter over to a debt collection agency or to an attorney for collection, enforcement or filing of any other debt collection process. Debt collection activity does not include routine billing or inquiries about the status of the claim.

G. For the purposes of this section, "licensed health care provider" means a person or institution that is licensed or certified by this state to provide health care services, medical services, nursing

services, emergency medical services and ambulance services that are regulated pursuant to title 36, chapter 21.1, article 2 or other health-related services.

DEPARTMENT OF GAMING (R-18-0205)

Title 19, Chapter 2, Article 6, State Boxing Administration

Amend: Article 6; R19-2-601; R19-2-602; R19-2-603; R19-2-604; R19-2-605; R19-2-606

New Section: Part A; R19-2-A601; R19-2-A602; Part B; R19-2-B601; R19-2-B602; R19-2-B603; R19-2-B604; R19-2-B605; R19-2-B606; R19-2-B607; R19-2-B608; R19-2-B609; Part C; R19-2-C601; R19-2-C602; R19-2-C603; R19-2-C604; R19-2-C605; R19-2-C606; R19-2-C607; R19-2-C608; R19-2-C609; Part D; R19-2-D601; R19-2-D602; R19-2-D603; R19-2-D604; R19-2-D605; R19-2-D606; R19-2-D607; Table 1; Table 2

Renumber: R19-2-601; R19-2-602; R19-2-603; R19-2-604; R19-2-605; R19-2-606



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – REGULAR RULEMAKING

MEETING DATE: February 6, 2018

AGENDA ITEM: F-5

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

FROM: Council Staff

DATE: January 23, 2018

SUBJECT: **DEPARTMENT OF GAMING (R-18-0205)**

Title 19, Chapter 2, Article 6, State Boxing Administration

Amend: Article 6; R19-2-601; R19-2-602; R19-2-603; R19-2-604; R19-2-605; R19-2-606

New Section: Part A; R19-2-A601; R19-2-A602; Part B; R19-2-B601; R19-2-B602; R19-2-B603; R19-2-B604; R19-2-B605; R19-2-B606; R19-2-B607; R19-2-B608; R19-2-B609; Part C; R19-2-C601; R19-2-C602; R19-2-C603; R19-2-C604; R19-2-C605; R19-2-C606; R19-2-C607; R19-2-C608; R19-2-C609; Part D; R19-2-D601; R19-2-D602; R19-2-D603; R19-2-D604; R19-2-D605; R19-2-D606; R19-2-D607; Table 1; Table 2

Renumber: R19-2-601; R19-2-602; R19-2-603; R19-2-604; R19-2-605; R19-2-606

SUMMARY OF THE RULEMAKING

This rulemaking, from the Department of Gaming (Department), seeks to amend six rules and create 27 new rules and two new tables in A.A.C. Title 19, Chapter 2, Article 6, related to the Boxing and Mixed Martial Arts (MMA) Commission (Commission). The Governor's Office provided an exemption from Executive Order 2017-02 on April 3, 2017.

The Commission was previously housed within the Department of Racing. When the Department of Racing was consolidated into the Department of Gaming in 2015, the Commission became part of the Racing Division inside the Department of Gaming. The Department notes that the Commission is responsible for regulating boxing, MMA, kickboxing, Muay Thai, and Toughman sports by licensing participants in such sports, issuing permits to promoters for unarmed combat sports events, and governing the conduct of those sports.

The Department is consolidating the regulation of all forms of unarmed combat by recodifying all of the Commission's rules into Title 19. Rules currently in Title 4 are repealed in a separate rulemaking. The Department has provided the following list to show the approximate relocation of the Title 4 rules into Title 19:

Old Numbering Scheme	New Numbering Scheme
Article 1	Article 6, Part D
R4-3-101	R19-2-D602(A)
R4-3-102	R19-2-D602(B)
R4-3-103	R19-2-D601(V) and Table 2
R4-3-104	R19-2-D602(C)
R4-3-105	R19-2-D601(C)
R4-3-201	R19-2-D601(I)(1)
R4-3-202	R19-2-D601(I)
R4-3-203	R19-2-D601(J)
R4-3-301	R19-2-D602(E)
R4-3-302	R19-2-D602(F)
R4-3-303	R19-2-D602(G)
R4-3-304	R19-2-D601(L)
R4-3-305	R19-2-D601(P)
R4-3-306	R19-2-D602(H)
R4-3-307	R19-2-D601(O)
R4-3-308	R19-2-D602(I)
R4-3-309	R19-2-D601(R)(1)
R4-3-310	R19-2-D601(D)
Article 4	Article 6, Part C
R4-3-401	R19-2-C604
R4-3-402	R19-2-D601(G)
R4-3-403	R19-2-D601(B)
R4-3-404	R19-2-B603
R4-3-405	R19-2-B601
R4-3-406	R19-2-B609
R4-3-407	R19-2-B605
R4-3-408	R19-2-B606
R4-3-409	R19-2-B602
R4-3-410	R19-2-B604
R4-3-411	R19-2-C605
R4-3-412	R19-2-C601
R4-3-412.01	R19-2-C602
R4-3-413	R19-2-C603
R4-3-414	R19-2-C608

In addition to changing the location of the rules, the Department indicates that the rules are being amended to govern issues and unarmed combat disciplines that were not previously addressed by the Commission's rules. All but one of the rules in Title 4 have not been amended since their adoption in 1981, and the rules in Title 19 have not been significantly amended since

2001. The Department believes that the Commission's existing rules are antiquated and have gaps with regard to the regulation of industry licensees. The Department notes that A.R.S. § 5-225 requires the Commission to adopt rules that are consistent with the MMA unified rules adopted by the New Jersey state athletic control board. However, MMA is currently regulated under a substantive policy statement adopted by the Commission, rather than the Commission's rules. In addition, there are no existing rules regulating kickboxing, Muay Thai and Toughman sports.

Proposed Action

The following is a general summary of the Department's proposed actions. Due to the length of the rulemaking, Council staff has chosen to highlight provisions which may be of particular interest to the Council. Staff encourages all individuals who may be interested in the rulemaking to read the Department's Notice of Final Rulemaking in full.

Part A, General Administration

- Section A601 – *Definitions and Interpretation Guidance*: Definitions are modified to reflect changes to the other rules in the article.
- Section A602 – *Delegation by and Reports to the Commission*: Subsection (B), requiring the Commission's Executive Director to regularly inform the Commission regarding those matters which have been delegated to the Executive Director by the Commission, is added.

Part B, Events

- Section B601 – *Notice and Approval of Events; Publicity*:
 - Under subsection (A), promoters are prohibited from requesting event dates solely for the purpose of preempting the organization of an event by others on or near the scheduled event date or for any other anti-competitive reason.
 - Under subsection (C), the Commission cannot approve an event scheduled to take place within 72 hours before a previously approved event in the same county, unless the second promoter compensates the first promoter, or the Commission has determined that special circumstances exist.
 - Under subsection (H), the event permit fee required by Section C603 must be submitted with an event application. The failure of a promoter to notify the Commission of a cancellation at least 30 calendar days before the date of the event results in the forfeiture of the permit fee and may subject the promoter to disciplinary action, unless the promoter is able to schedule another date that is acceptable to the Commission.
 - Subsection (J), related to events for charitable purposes, is added.
 - Subsection (L), stating that the Executive Director may defer the approval of a specific event to the Commission if approval of events has been generally delegated to the Executive Director, is added.
- Section B602 – *State Championships*: Clarifying changes are made to the rule, which sets forth requirements for contests to be approved as state championships.

- Section B603 – *Duty of Matchmakers*: Subsection (D), requiring matchmakers to verify that all matched fighters, trainers, seconds, or other persons involved in a proposed match are licensed in accordance with these rules, is added. Clarifying changes are also made.
- Section B604 – *Insurance for Contestants*: The rule is amended to cite to statutory requirements for proof of insurance.
- Section B605 – *Selection and Payment of Officials*:
 - Subsection (A) provides that any referees, judges, timekeepers, ringside physicians, and inspectors are to be finally selected by the Commission and notice of the selections are to be provided to the promoter or matchmaker 36 to 48 hours prior to the scheduled event. The Executive Director is to ensure that all officials receive compensation from the promoter immediately after the last scheduled bout in accordance with the Commission’s fee schedule.
 - Subsection (B) allows a promoter or matchmaker to protest the assignment of officials, if done in writing, upon specific grounds, at least 24 hours prior to the start of the scheduled event.
 - Subsection (D), allowing a promoter to be disciplined if rules of selection of officials and participants are not followed for an event, is added.
- Section B606 – *Commission Seating at Events*: As designated by the Executive Director, a promoter is required to provide a table and front row or contiguous ringside seating for Commission members, the Executive Director, and those officials assigned to work the event, including the judges, timekeepers, ringside physicians, or other staff. The rule clarifies existing requirements.
- Section B607 – *Ticket Manifest, Collection, Accounting*:
 - Provisions related to admission fees and electronic ticket manifests are added to subsection (A).
 - Additional requirements related to complimentary tickets are added to subsection (C).
- Section B608 – *Annual Bond, Event Bond, Claims*: Clarifying changes are made to the rule, which sets forth bonding requirements.
- Section B609 – *Payment of Contestants*: Clarifying changes are made to the rule, which sets requirements for the manner and timing of payment to contestants.

Part C, Licensing and Discipline

- Section C601 – *Licensing, General Requirements*:
 - Under Subsection (D), prior to issuing a license, the Commission or its staff may require an applicant to provide independent proof of the applicant’s true identity, fingerprints, and other material information requested on the license application or otherwise required by the Commission.
 - Under Subsection (G), an applicant must demonstrate, to the satisfaction of the Commission, an understanding of the Commission’s drug testing program.
- Section C602 – *Licensing Time-Frames*: Clarifying changes are made to the rule, which explains the Commission’s licensing time-frames.
- Section C603 – *License Fees*: Please see Section 2 of this memorandum for details on proposed modifications to the Commission’s fees.¹

¹ Also see Appendix A and Appendix B to the Notice of Final Rulemaking for comparisons of Arizona’s fees to other states.

- Section C604 – *Licensing Requirements Related to Ability and Fitness*: The rule clarifies the Commission’s requirements related to the age and physical condition of combatants applying for licensure, and to drug testing and anti-doping.
- Section C605 – *Grounds for Disciplinary Action; Penalties*: Clarifying changes are made to the rule, which sets forth the grounds for disciplinary action that may be levied by the Commission against licensees or individuals associated with unarmed combat in the state.
- Section C606 – *Effect of Discipline*:
 - Subsection (C) lists areas of an event that a person whose license has been suspended or revoked is barred from.
 - Subsection (D) allows ejection of a person who violates the rule, and for the price paid for their ticket to be forfeited. Thereafter, the person is barred entirely from all premises used for events during the contest or exhibition.
- Section C607 – *Civil Penalties*: Subsection (C), providing that failure to pay a civil penalty of any kind will result in license suspension until the penalty is paid, is added.
- Section C608 – *Appeal, Rehearing or Review of Decision*: Clarifying changes are made to the rule, which sets forth the procedures for appeal, rehearing, or review of a Commission decision. Subsection (M), providing that the final result of an unarmed combat bout shall not be overturned or modified by the Commission unless there is substantial evidence of a scorecard error, fraud, or collusion affecting the result.
- Section C609 – *Registration of Amateur Sanctioning Organizations: Requirements; Application; Fees; Revocation, Suspension or Setting Conditions*: The rule sets forth registration requirements for amateur sanctioning organizations that are required to be approved under A.R.S. § 5-222(A)(4).

Part D, Unarmed Combat Rules, provides rules of competition for combat disciplines regulated by the Commission. Section D601 sets forth general provisions applicable to all regulated unarmed combat disciplines. Section D602 contains rules specific to boxing. Section D603 contains rules specific to MMA. Section D604 contains rules specific to kickboxing. Section D605 contains rules specific to Muay Thai. Section D606 contains rules specific to Toughman. Section D607 provides that exhibitions are subject to a \$1000 fee, are allowed if approved by both the Commission and the Executive Director, and are subject to all requirements of A.R.S. Title 5, Chapter 2, Article 2 and these rules adopted thereunder. Table 1 lists the Commission’s licensing time-frames. Table 2 lists requirements related to bandages in various combat disciplines.

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

Yes. The Department cites to a number of statutes providing authority for the rulemaking, including A.R.S. § 5-224(C), under which the Commission “may adopt and issue rules pursuant to [T]itle 41, [C]hapter 6 to carry out the purposes of this chapter [Title 5, Chapter 2, Boxing and Sparring].”

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

- Fees for individual promoters are being **increased from \$200 to \$400**.
- Fees for promoters who are corporations, partnerships, or other business entities will **remain at \$400**.
- Fees for matchmakers are being **increased from \$100 to \$125**.
- Fees for managers are being **increased from \$50 to \$100**.
- Fees for inspectors, judges, referees, timekeepers, announcers, and ringside physicians are being **increased from \$25 to \$30**.
- Fees for cutmen, professional combatants, trainers, and seconds will **remain at \$25**.
- Fees for amateur combatants are being **reduced from \$20 to \$10**.
- Fees for event permit requests are changing as follows:
 - For non-live televised events at a venue seating 5000 persons or less: **Increasing from \$500 to \$750**.
 - For non-live televised events at a venue seating more than 5000 persons: **Increasing from \$1000 to \$1500**.
 - For events streamed live for a charge on Facebook or other equivalent Internet broadcast: **Increasing from \$1000 to \$1500**.
 - For live televised events on cable or satellite television: **Increasing from \$1000 to \$1500**.
 - For live televised events on cable or satellite television that include a recognized world title bout: **Increasing from \$1500 to \$2000**.
 - For live pay-per-view events on cable or satellite television: **Increasing from \$2000 to \$4000**.
- Additionally, there is likely to be an increase in the cost of medical exams of combatant licensees due to concussion baseline and review testing.

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

Substantive changes in this rulemaking include specific rules that clarify the unarmed combat rules and licensing for Boxing, Mixed Martial Arts, Kickboxing, Muay Thai, and Toughman competitions. License fees will also be increased in order for the Commission to reduce the subsidy that it receives from the Department's Racing Division.

4. 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 concludes that this rulemaking will require modest increases in fees for licensees. The fee increase will be offset by reductions in the subsidy that the Commission receives from the Racing Division. This rulemaking also implements additional safety protocols for unarmed combatants. The Commission concludes that the benefits outweigh the costs.

5. What are the economic impacts on stakeholders?

Key stakeholders are the Commission, the Department, individuals licensed by the Commission, and businesses licensed by the Commission.

The Commission will benefit from this rulemaking by generating roughly an additional \$10,020 in annual revenue. This additional revenue will not significantly impact the total budget of the Commission, but it will reduce the subsidy that the Commission receives from the Racing Division. The Commission will also benefit from having its rules located in the same title as the rest of the Department's rules.

The Department will benefit from this rulemaking by reducing the subsidy that the Racing Division provides to the Commission. The Department will also benefit by having the Commission's rules located in the same title as the Department's other rules.

Most individuals who are licensed by the Commission will see small fee increases for licenses. This will negatively impact licensees; however, licensees are not currently paying fees that fully fund the Commission. Reducing the subsidy that the Commission receives will help show the true costs of the services provided by the Commission.

Businesses that are licensed by the Commission will be impacted in the same manner as individuals listed above.

Unarmed combatants will benefit from the increased safety protocols included in this rulemaking. The Commission notes that the total fee increases will be roughly \$18,295. If the additional safety measures prevent one brain injury to an unarmed combatant, then the aggregate benefits greatly exceed the additional fees. Amateur unarmed combatants will also see fee reductions as part of this rulemaking.

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

Yes. A summary of the public comments received, along with the Department's responses, can be found on pages 11-29 of the Notice of Final Rulemaking.² Staff believes that the Department has adequately addressed the comments on the proposed rules.

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

No. Only clarifying and technical changes have been made between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking, most at the request of Council staff.

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

No. The Department indicates that the Commission's rules are compliant with, and not more stringent than, the federal Professional Boxing Safety Act.

² Copies of written public comments have been included as an attachment to the Notice of Final Rulemaking.

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

Yes. A.R.S. § 41-1037 requires agencies to use a general permit instead of individual licenses, unless certain conditions apply. The Department indicates that there are three exceptions to the requirement that apply to the Commission's rules:

- That the issuance of an alternative type of permit, license or authorization is specifically authorized by state statute;
- That the issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements; and
- That the issuance of a general permit would result in additional regulatory requirements or costs being placed on the permit applicant.

10. 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?

No. The Department indicates that it did not rely on any study in its evaluation of, or justification for, the rulemaking.

11. Conclusion

If approved, the rules will become effective immediately upon filing with the Secretary of State. The Department requests this immediate effective date under A.R.S. § 41-1032(A)(1) to generally protect public peace, health and safety, and to specifically protect the health and safety of unarmed combatants. Council staff recommends approval of the rulemaking.



ARIZONA DEPARTMENT OF GAMING

TRIBAL GAMING • RACING • BOXING & MIXED MARTIAL ARTS

Douglas A. Ducey
Governor

Daniel H. Bergin
Director

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December 15, 2017

VIA MAIL AND EMAIL

Chairwoman Michelle Ong Colyer
Governor's Regulatory Review Council
100 North 15 Avenue, Suite 402
Phoenix, Arizona 85007
Email: nicole.ong@azdoa.gov

RE: Final Rulemaking on A.A.C. Title 19, Chapter 2, Article 6

Dear Chairwoman,

Pursuant to A.R.S. § 41-1051, *et seq.*, and A.A.C. R1-6-201, the Department of Gaming, on behalf of the Arizona Boxing and Mixed Martial Arts Commission (the “Commission”) requests approval of the Notice of Final Rulemaking regarding A.A.C. Title 19, Chapter 2, Article 6 (the “Title 19 Rules”), governing the Commission and unarmed combat sports.

The following items are in response to the items required by A.A.C. R1-6-201(A) and (B):

- a. The close of record date for the rulemaking on the Title 19 Rules was November 29, 2017.
- b. The rulemaking regarding the Title 19 Rules relates to a five-year-review report on Title 4, Chapter 3, Articles 1 through 4 (the “Title 4 Rules”), which was approved on December 5, 2017.
- c. The amended Title 19 Rules establish two new \$1000 fees under A.R.S. §§ 5-222(A)(4), 5-225(D), 5-227, and 5-230, for (i) the licensing of amateur Muay Thai sanctioning bodies; and (ii) the event fee for promotions of exhibitions.
- d. The amended Title 19 Rules contain the following licensing and event fee increases:
 - (i) An increase of \$200 to \$400 for an individual promoter license;
 - (ii) An increase from \$100 to \$125 for a matchmaker license;
 - (iii) An increase from \$50 to \$100 for a manager license;
 - (iv) An increase from \$25 to \$30 for licenses of inspectors, judges, referees, timekeepers, announcers and ringside physicians;

- (v) The event fee for non-live televised events with attendance of less than 5000 persons will increase from \$500 to \$750;
 - (vi) The event fee for non-live televised events with attendance with more than 5000 persons, events that are streamed live on Internet broadcasts, or events that are live televised events, will increase from \$1000 to \$1500;
 - (vii) The event fee for events that are live televised events on cable or satellite television that include a recognized world title bout will increase from \$1500 to \$2000;
 - (viii) The event fee for events that are live pay-per-view events will increase from \$2000 to \$4000.
- e. The Commission is requesting that the amended Title 19 Rules be immediately effective upon filing of the rules with the secretary of state and the time and date of filing is affixed by the secretary of state to the rule document as provided in A.R.S. § 41-1031, to generally protect public peace, health and safety, and to specifically protect the health and safety of unarmed combatants under A.R.S. § 41-1032.
 - f. The Commission certifies that the Preamble to the Final Notice of Rulemaking will attest that there was no study relevant to the Title 19 Rules that the Commission studied or relied on in evaluating or justifying the rulemaking.
 - g. The Commission certifies that no additional full-time employees will be necessary to implement or enforce the amended Title 19 Rules.
 - h. The following documents are enclosed:
 - (i) The Notice of Final Rulemaking, including the preamble, table of contents for the rulemaking, and text of each rule.
 - (ii) The economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055.
 - (iii) The written comments received by the Commission concerning the proposed rule, and a CD Rom disk containing the oral comments received by the Commission at the hearing set to receive such comments.
 - (iv) The general and specific statutes authorizing the rule, including relevant statutory definitions.
 - i. The following documents do not exist or are not applicable:
 - (i) Analysis submitted to the agency regarding the rulemaking's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states, as requested by R1-6-201(A)(5);
 - (ii) Material incorporated by reference in the rulemaking, as requested by R1-6-201(B)(1);

- (iii) Terms defined by a statute or rule other than the general and specific statutes authorizing the rulemaking, as requested by R1-6-201(B)(3);
- (iv) Unchanged existing rules, as requested by R1-6-201(B)(4).

Please let me know if you require any other information. Thank you for your time and consideration.

Sincerely,

Daniel Bergin
Director
Arizona Department of Gaming

NOTICE OF FINAL RULEMAKING

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

CHAPTER 2. ARIZONA RACING COMMISSION

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
Article 6	Amend
R19-2-601	Renumber
R19-2-601	Amend
R19-2-602	Renumber
R19-2-602	Amend
R19-2-603	Renumber
R19-2-603	Amend
R19-2-604	Renumber
R19-2-604	Amend
R19-2-605	Renumber
R19-2-605	Amend
R19-2-606	Renumber
R19-2-606	Amend
Part A	New Section
R19-2-A601	New Section
R19-2-A602	New Section
Part B	New Section
R19-2-B601	New Section

R19-2-B602	New Section
R19-2-B603	New Section
R19-2-B604	New Section
R19-2-B605	New Section
R19-2-B606	New Section
R19-2-B607	New Section
R19-2-B608	New Section
R19-2-B609	New Section
Part C	New Section
R19-2-C601	New Section
R19-2-C602	New Section
R19-2-C603	New Section
R19-2-C604	New Section
R19-2-C605	New Section
R19-2-C606	New Section
R19-2-C607	New Section
R19-2-C608	New Section
R19-2-C609	New Section
Part D	New Section
R19-2-D601	New Section
R19-2-D602	New Section
R19-2-D603	New Section
R19-2-D604	New Section

R19-2-D605	New Section
R19-2-D606	New Section
R19-2-D607	New Section
Table 1	New Section
Table 2	New Section

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

Authorizing statutes:	A.R.S. § 5-104(R), 5-224(C)
Implementing statutes:	A.R.S. §§ 5-221, 5-222, 5-225, 5-227, 5-228, 5-229, 5-230, 5-231, 5-232, 5-233, 5-235.01, 5-236, 5-237, 5-238, 5-239, 5-240

3. The effective date of the rules:

The rules should be immediately effective on _____ (*to be filled in by editor*), upon filing of the rules with the secretary of state and the time and date of filing is affixed by the secretary of state to the rule document as provided in A.R.S. § 41-1031. Under A.R.S. § 41-1032(A)(1), the immediate effective date is necessary to generally protect public peace, health and safety, and to specifically protect the health and safety of unarmed combatants.

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 rules:

Notice of Rulemaking Docket Opening: 23 A.A.R. 2954, October 20, 2017

Notice of Proposed Rulemaking: 23 A.A.R. 2998, October 27, 2017

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

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

The Arizona Boxing and Mixed Martial Arts Commission (the “Commission”) was placed under the aegis of the Racing Department by Laws 2002, Chapter 328. The Arizona Department of Racing was then put under the jurisdiction of the Arizona Department of Gaming as the Racing Division by Laws 2015, Chapter 19. The Commission's rules have not yet been amended to reflect the statutory changes that were enacted to place the Commission under the Arizona Department of Gaming, Racing Division.

In addition, the Commission's rules are split between two titles of the Administrative Code, with some provisions under Title 19 and other provisions under Title 4. There is no current logic that justifies the division of Commission rules between two sections of the Administrative Code. Furthermore, the current rules suffer gaps and lack of clarity with regard to the regulation of industry licensees. It is necessary to regulate

every aspect of the sport of unarmed combat to avoid fraud and abuse, and to protect the health and safety of unarmed combatants and the public. The Commission is hampered in carrying out its mission under the current rules.

The existing rules are antiquated. The last time that rules in Title 19 have been significantly amended was 2001. Most of the rules in Title 4 were adopted in 1981 and have not been changed since then.

The Commission is tasked by A.R.S. §§ 5-221 to 5-240 with regulating boxing, mixed martial arts ("MMA"), kickboxing, Muay Thai and Toughman sports, but the existing rules only regulate boxing and provide some general concepts regarding promotions and collection of revenue. Yet each discipline of unarmed combat sports has its own unique rules. For example, A.R.S. § 5-225(C) requires the Commission to adopt rules that are consistent with the MMA unified rules adopted by the New Jersey state athletic control board under New Jersey administrative code title 13, chapter 46, subchapter 24A" (the "New Jersey Rules"). Those MMA rules have not yet been adopted by the Commission by formal rule-making. Instead a substantive policy statement was adopted to regulate MMA. There are no current Arizona rules regulating MMA, kickboxing, Muay Thai and Toughman sports, and the current boxing rules and administrative rules are inadequate to regulate the industry as a whole.

The lack of rules related to the conduct of each unarmed combat sport threatens the health and safety of unarmed combatants and the public at large. In addition, there are inadequate rules governing the use of drugs or prohibited substances, and no rules governing concussion testing.

The amended rules relied on various authorities on unarmed combat rules and regulations. The amended rules borrowed heavily from the Nevada rules, which are as comprehensive as those needed in Arizona. New Jersey Rules are incorporated if they relate to MMA, as required by statute; and other samples of official rules have been studied and adapted to meet Arizona's needs in each discipline. More complete rules related to the administration of the Commission have been added. Antiquated, redundant, or confusing rules have been deleted, consolidated, and/or clarified.

An exception from the rulemaking moratorium outlined in Executive Order 2017-02 was approved by the Governor's Office on April 3, 2017.

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 rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

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

Not applicable

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

Summary of the identification of the rulemaking.

The rules in A.A.C. Title 19, Chapter 2, State Boxing Administration, Article 6 (the "Title 19 Rules"), and A.A.C. Title 4, Chapter 3, Articles 1 through 4 (the "Title 4 Rules"), prescribe procedures relating to the regulation of the sport of boxing in Arizona. The rules do not regulate other disciplines of unarmed combat, although the statutes require the Commission to regulate those sports. The rulemaking clarifies existing language and procedures with regard to boxing and also codifies regulations for other unarmed combat sports. Additional provisions have been added to ensure safety of participants in the sports of unarmed combat, such as anti-doping regulations and concussion testing protocols. The rulemaking addresses areas of regulation that were not covered by the current rules, and makes changes that conform to amended statutory requirements, such as adoption of rules consistent with the New Jersey rules. This rulemaking does not change the Commission's authority under the statutes.

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

There is no specific licensee conduct that this rulemaking is designed to change, with the exception that it is anticipated that the safety of unarmed combatants will be protected to a greater extent. The amended rules are consistent with current regulatory practice, the standard rules of conduct found in the industry, and with prior substantive policy statements. There will be added provisions to provide concussion testing and protocols to help prevent brain injuries.

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 harm is that the Commission will be powerless to effectively regulate unarmed-combat sports without comprehensive rules adopted under the statutes. Under the current rules, the safety of unarmed-combat participants is at greater risk. Without the rulemaking this risk will continue.

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

Not applicable. There is no specific targeted conduct prompting the rule amendments. It is, however, anticipated that more combat sports events will be attracted to the state as a result of effective and predictable rules, and the sports of unarmed combat will be safer.

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

The rulemaking will result in some increases in licensing and event fees, consistent with industry standards. Increases in licensing and event fees will affect individual promoters, matchmakers, managers, inspectors, judges, referees, timekeepers, announcers, ringside physicians, and Muay Thai sanctioning bodies. Some of these licensees qualify as small businesses. Licensing fees for corporate promoters, cutmen, professional unarmed combatants, trainers, and seconds will not be increased. Licensing fees for amateur unarmed combatants will be reduced. Licensing fees for initial applicants will be waived if their income and other circumstances allow them to qualify for exemption.

Unarmed combat fighters will experience some minimal increase in cost due to increased medical criteria regarding concussion testing, however, those same fighters will directly benefit from increased safety. There may be insurance coverage for some of these costs.

All unarmed combat licensees will benefit from clearer and predictable comprehensive rules. It is predicted that the amended rules will incent more overall usage of Arizona as an unarmed combat venue.

There will be no expected increase in costs for the Commission and no need for additional full-time employees as a result of the rulemaking. Increases in licensing and event fees may slightly increase revenues to the state. The activities of the Commission produced revenue for the state in fiscal year 2017 in the approximate amount of \$143,000. It is estimated that the rulemaking may produce an additional \$10,020 of revenue. The Racing Division is required to fund the Commission. Any additional revenues generated by the Commission will reduce the financial burden on the Racing Division.

Businesses, including small businesses, will be beneficially impacted by the clarification and predictability of the rulemaking, and by added opportunity for income producing events (exhibitions).

The direct monetary benefits of the amended regulations will flow primarily to the Commission, who is tasked with maintaining safety and integrity of the unarmed

combat industry with the minimum number of staff. Amateur combatants will receive a monetary benefit from the rulemaking, with a 50% reduction in licensing fees.

The cost of increased licensing and event fees is spread among licensees and will fall primarily on: (1) officials who are paid for their services, such as referees, inspectors, judges, timekeepers, announcers, and physicians; and (2) promoters, who can easily recuperate the increases from sales of admission to events and sales of broadcasting rights. The Commission regulated 947 licensees in fiscal year 2017. The industry-wide cost increase, including licensing and event fees and projected increases in medical costs, is estimated to be \$18,295. If this amount were apportioned among the current licensees, the cost increase per licensee would amount to an approximate average expenditure of less than \$20, which the Commission proposes is an acceptable increase to achieve greater safety and more effective regulation.

It is difficult to assign a monetary figure to the benefits of increased safety and control of the conduct of contests, but the long-term individual and public cost of long term care for an unarmed combatant who suffers a brain injury should be factored in. Avoidance of just one instance of that result would justify all of the increases occasioned by the rulemaking.

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

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

None.

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

The written and oral comments demonstrate both positive and negative feedback.

Much of the feedback originates from and/or relates to the Commission's power to approve amateur Muay Thai sanctioning bodies that are independent from the United States Muay Thai Association ("USMTA"). The approval of amateur Muay Thai sanctioning bodies and regulation of professional Muay Thai sports represent a minor fraction of the total unarmed combat industry, but Muay Thai issues have generated the lion's share of controversy and need for oversight.

The agency appreciates all comments made and the involvement of those industry stakeholders who were consulted during the drafting of the rules. The following is a summary of both written and oral public comments received.

Positive Comments and Agency Response:

a. The most positive comments came from a person of long-standing connection to the unarmed combat industry, who is an attorney, former administrative law judge, and former Executive Director of the Commission. This person read the rules, felt they were a "significant" improvement, and particularly singled out the following aspects as beneficial:

- (i) The proposed rules codify the regulations under one title (the Title 19 Rules) instead of two separate titles (the Title 19 rules and the Title 4 Rules).

Agency response: None.

- (ii) Regarding section R19-2-B607(C), the rules explain how to account for complimentary tickets, which was lacking before.

Agency response: None.

- (iii) Regarding sections R19-2-C601(J) and R19-2-C605, the rules clarify how a license may be denied, suspended, or revoked.

Agency response: None.

- (iv) Regarding section R19-2-604(A)(4), the rules add concussion testing, which puts Arizona rules on the same level as those from the most progressive states.

Agency response: None.

- (v) Regarding section R19-2-604(B), the rules add drug testing standards, and codify a therapeutic use exemption.

Agency response: None.

- (vi) Regarding sections R19-2-C609 and R19-2-D605, the rules close kickboxing (Muay Thai) loopholes.

Agency response: None.

- (vii) Regarding section R19-2-D601(J)(3), the rules clarify financial penalties for fighters who do not make their weight.

Agency response: None.

- (viii) Regarding section R19-2-D601(K), rules are added to address the failure to show for an event due to illness or injury.

Agency response: None.

- (ix) Regarding section R19-2-D601(P)(1), the rules allow a referee to use instant replay to adjust a call (although the commenter questioned whether someone's cell phone video could be used as an instant replay).

Agency response: The rule in question, section R19-2-D601(P), intends only that official "instant replay" may be used, if it is available. For most events, there will not be official instant replay available, and neither the rule nor the Commission will allow the use of unofficial private cameras as "instant replay." Instant replay is defined as the "recording and immediate playback of part of a live television broadcast." American Heritage® Dictionary of the English Language, Fifth Edition. Copyright © 2016 by Houghton Mifflin Harcourt Publishing Company. Published by Houghton Mifflin Harcourt Publishing Company. All rights reserved. If the instant replay is not part of a live televised broadcast, it cannot be used.

- (x) The addition of the hand-wrapping table is "slick." (Table 2).

Agency response: None

- (xi) The proposed rules advance the safety of the fighters and the integrity of the sports.

Agency response: None

- b. A doctor representing Banner Health, a medical association, complimented the addition of concussion testing and protocols in section R19-2-604(A)(4). Boxing and MMA have been behind the times on this issue, and it is beneficial that Arizona is implementing this.

Agency response: None.

- c. Two promoters involved in the sport of professional Muay Thai expressed approval of all of the rules, and, with regard to section R19-2-C609, especially liked the addition of parameters to define Muay Thai and regulate amateur Muay Thai sanctioning bodies.

Agency response: None.

- d. A referee, in a general call to the public, seemed to endorse the instant replay rule and the new concussion protocols, but he was not speaking at the time appointed for oral responses to the rules and he stated that he was not necessarily addressing the rules.

Agency response: None.

- e. A Native-American promoter, in a general call to the public, complimented the current Commission staff, and proposed that the Commission should regulate events that occur on tribal land in other states. He did ask for event fee or bond fee

reductions for tribal promotions, which do not depend on the gate to pay obligations. He asked for uniformity in regulation, because of confusion as to which sanctioning bodies are regulating events.

Agency response: The ability to regulate events that occur out-of-state are not, and could not, be a subject of the rules. Such arrangements, if at all possible, would have to be through intergovernmental agreements. The amended rules allow the Commission to exercise discretion with regard to event bonds. The purpose of the amended rules is to clarify and achieve uniformity and standardization in regulation.

Negative Comments and Agency Response:

- a. A boxing trainer, who was a former boxing judge, made the following comments:
 - (i) Regarding repeal of the Title 4 Rules, the boxing rules should not have been repealed, they should have just been changed.

Agency response: The Title 4 Rules were renumbered, amended and consolidated into the Title 19 Rules. Several Title 4 Rules had already been recodified into the Title 19 Rules in 1999. Recodification was not appropriate for the remaining sections because of changes that were made. The Commission did not want to have rules in two separate titles. For those reasons, the remainder of the Title 4 Rules were relocated into the Title 19 Rules. The following list shows the approximate relocation of the Title 4 rules:

Old Numbering Scheme

New Numbering Scheme

Article 1

Article 6, Part D

<i>R4-3-101</i>	<i>R19-2-D602(A)</i>
<i>R4-3-102</i>	<i>R19-2-D602(B)</i>
<i>R4-3-103</i>	<i>R19-2-D601(V) and Table 2</i>
<i>R4-3-104</i>	<i>R19-2-D602(C)</i>
<i>R4-3-105</i>	<i>R19-2-D601(C)</i>
<i>Article 2</i>	<i>Article 6, Part D</i>
<i>R4-3-201</i>	<i>R19-2-D601(I)(1)</i>
<i>R4-3-202</i>	<i>R19-2-D601(I)</i>
<i>R4-3-203</i>	<i>R19-2-D601(J)</i>
<i>Article 3</i>	<i>Article 6, Part D</i>
<i>R4-3-301</i>	<i>R19-2-D602(E)</i>
<i>R4-3-302</i>	<i>R19-2-D602(F)</i>
<i>R4-3-303</i>	<i>R19-2-D602(G)</i>
<i>R4-3-304</i>	<i>R19-2-D601(L)</i>
<i>R4-3-305</i>	<i>R19-2-D601(P)</i>
<i>R4-3-306</i>	<i>R19-2-D602(H)</i>
<i>R4-3-307</i>	<i>R19-2-D601(O)</i>
<i>R4-3-308</i>	<i>R19-2-D602(I)</i>
<i>R4-3-309</i>	<i>R19-2-D601(R)(1)</i>
<i>R4-3-310</i>	<i>R19-2-D601(D)</i>
<i>Article 4</i>	<i>Article 6, Part C</i>
	<i>Article 6, Part D</i>
	<i>Article 6, Part B</i>

<i>R4-3-401</i>	<i>R19-2-C604</i>
<i>R4-3-402</i>	<i>R19-2-D601(G)</i>
<i>R4-3-403</i>	<i>R19-2-D601(B)</i>
<i>R4-3-404</i>	<i>R19-2-B603</i>
<i>R4-3-405</i>	<i>R19-2-B601</i>
<i>R4-3-406</i>	<i>R19-2-B609</i>
<i>R4-3-407</i>	<i>R19-2-B605</i>
<i>R4-3-408</i>	<i>R19-2-B606</i>
<i>R4-3-409</i>	<i>R19-2-B602</i>
<i>R4-3-410</i>	<i>R19-2-B604</i>
<i>R4-3-411</i>	<i>R19-2-C605</i>
<i>R4-3-412</i>	<i>R19-2-C601</i>
<i>R4-2-412.01</i>	<i>R19-2-C602</i>
<i>R4-3-413</i>	<i>R19-2-C603</i>
<i>R4-3-414</i>	<i>R19-2-C608</i>
(ii) Regarding section R19-2-D601(L)(4), there should be an exhaustive list of approved coagulants in the rules.	
<i>Agency response: The Commission will not list all possible coagulants that may be acceptable. Unarmed combat sports are continuously evolving and new compounds may be developed. A specific list of named coagulants could become obsolete, thereby requiring rules amendment.</i>	
(iii) Regarding section R19-2-B601(D), the rules should not require two separate fighter contracts to be signed.	

Agency response: The rule does not require signatures on more than one contract. The rule addresses only the timing required for giving proof of a contract to the Commission:

- *Proof that the contract for a main event was signed by the fighter is due to the Commission 72 hours before the event;*
- *Proof that the contract for a preliminary event was signed by the fighter is due to the Commission 48 hours before the event;*
- *Proof of a fully executed contract (signed by everyone) is due to the Commission prior to the weigh-in.*

(iv) Regarding section R19-2-D601(V) and Table 2, the rules should expand the materials and methods used for hand wrapping, and the inspectors should be better trained on hand wrapping.

Agency response: Section R19-2-D601(V)(6) provides that other wraps or bandages may be allowed if approved by the Commission. The goal of the Commission was to provide specific rules, for the benefit of participants, and to aid inspectors, who implement the rules regarding hand wrapping. It would be impossible to list every possible variation that may exist in the industry. The standards adopted were synthesized from multiple recognized authorities.

(v) Generally, the people writing the rules should be experts with more experience.

Agency response: The Boxing Commissioners responsible for the approval of the amended rules possess an approximate combination of twenty-two

years of experience in regulating unarmed combat sports. The Boxing Commission staff who worked on drafting the rules have an approximate combination of nineteen years of experience in regulating unarmed combat sports. The Commission does not agree that it does not have sufficient experience to draft the rules.

- (vi) Regarding R10-2-D602(D), the weight classes should include junior weight classes. (In written comments, the commenter specified the Administrative Register page number that he was discussing, which means that he was discussing boxing weight classes, not those in other disciplines.)

Agency response: Because the establishment of weight classes is fluid even within a discipline, the weight classes listed were only to be used as guidelines. To the extent that junior boxing weight classes apply to amateurs, the Commission does not regulate boxing amateurs. All weight-class rules were based on recognized industry authorities.

- (vii) Regarding sections R19-2-D601(R)(10) and R19-2-D603(I)(2), the rules should not allow an even round if a judge will be later told by the Commission that he or she can't score a round as even.

Agency response: This comment related to an experience that the speaker had in the past as a judge. As a past administration was responsible for the ruling in question, the Commission feels that the comment does not relate to the amended rules or the current Commission administration. The previous rules did allow for an even score, and this has not changed in the amended rules, although it is stated in the amended rules that such a result

should be a rare event under the ten-point must system. Regardless of what may have happened in the past, the Commission intends to abide by its rules.

- (viii) The commenter questions the assertion in the summary of the economic impact statement that licensing fees will not be increased for corporate promoters, cut men, professional unarmed combatants, trainers, and seconds.

Agency response: The assertion is true. The licensing fees charged under R4-3-413(A) for the listed licensees will be the same under amended rule section R19-2-C603(B). There will be no increase in licensing fees charged by the Commission for the listed individuals.

- (ix) The commenter questions the assertion in the summary of the economic impact statement that some physical examinations to detect brain injury will be mandatory in "certain circumstances." The commenter feels the term "certain circumstances" is "suspect to meaning."

Agency response: The comment referred to is comparing the requirements of the federal Professional Boxing Safety Act (where medical procedures to detect brain injury are discretionary) to the requirements of the amended rules, where such procedures will be mandatory under "certain circumstances." The specific circumstances for which a brain injury assessment will be mandatory are not listed in the summary of the economic impact statement, but they are listed in amended section R19-2-C604(A)(4)(c). There is no confusion as to what is required in the amended

rules. The summary of the economic impact statement is not a part of the rules, but only a narrative description of their impact.

- (x) Regarding section R19-2-B608(B), the event bond should not be discretionary.

Agency response: An event bond is designed to insure that a promoter will pay his obligations. There are times when an event bond is not appropriate, as with a promotion on tribal lands, where the tribe pays for all obligations instead of the promoter. (Note that tribal promotions are regulated by the Commission pursuant to intergovernmental agreements.)

- (xi) With regard to the amateur licensing fee in section R19-2-C603(B)(6), there is concern that this applies to amateur boxing, over which the Commission has no jurisdiction.

Agency response: Amateur boxing combatants are exempt from regulation under A.R.S. § 5-222(A)(3). Comparable to the previous rules, the amended rules do not restate the exemption. The Commission does not regulate amateur boxing, provided it qualifies for the exemption under the statute, therefore, the amateur licensing fee does not apply to amateur boxers.

- (xii) Regarding section R19-2-D602(A)(1), a sixteen feet by sixteen feet square is too small for a boxing ring.

Agency response: The rule provides a range of size from sixteen to twenty feet, therefore, a sixteen foot ring is not required, only allowed. This range was adopted from the Association of Boxing Commission and Combative Sports Regulatory Guidelines and Rules for All World and Regional

Championship Bouts. See <http://www.abcboxing.com/abc-regulatory-guidelines/>. The amended rule has slightly more flexibility from the previous rule (18 to 20 feet). Variation can be approved by the Commission, if it is needed, under R19-2-D601(A).

- b. One gym owner and one Muay Thai representative thought all professional associations or individual licensees should have been involved in drafting the rules. Some commenters suggested that the gym owners, trainers, promoters, managers, etc., should actually draft the rules.

Agency response: Because section R19-2-D601(A) allows promoters to choose preferred professional association rules as long as such rules are equivalent to the Arizona rules with regard to safety, the Commission did not feel that it should be directly influenced by professional association representatives. The desire was to establish a set of rules that could be independently applied to unarmed combat sports in the absence of professional association rules, or to provide a "yardstick" by which to measure professional association rules. The drafters of the amended rules did study professional association rules to determine if Arizona wished to follow them or not follow them. Lastly, with regard to MMA, the Commission is required by statute to adopt the New Jersey rules, and therefore had little choice in the matter. Although, the Commission did not seek out the opinions of every unarmed combat professional in Arizona, it did seek out the opinions of individuals known as experts in their field, when advice was needed. Although the Commission values the input received, the Commission does not feel that the rules should be drafted by those persons regulated by the rules. In spite of these comments, it is

important to note that the commenters who criticized the expertise of the rules drafters did not identify significant deficiencies in the rules.

- c. Two representatives of independent amateur Muay Thai sanctioning bodies, which applied for and were granted approval as Muay Thai amateur sanctioning organizations, had the following comments:
 - (i) The Commission does not have authority to regulate professionals or amateurs in the sport of Muay Thai.

Agency response: Muay Thai is considered by the department to be a form of kickboxing, which is defined as a form of boxing, under A.R.S. § 5-221.

Kickboxing and boxing are regulated by the Commission under A.R.S. § 5-225. Excluded from regulation under A.R.S. § 5-222(4) are amateur kickboxing events that are sanctioned and conducted by the United States Muay Thai Association (“USMTA”) or “another muay thai sanctioning body that is approved by the commission if all contestants are amateur contestants.” Therefore, the Commission is responsible for regulating professionals in the Muay Thai sport. It is also responsible for approving amateur Muay Thai sanctioning bodies other than the USMTA, and has done so with two independent Muay Thai sanctioning bodies. There has not been significant oversight of those entities and there have surfaced allegations that those organizations are committing safety abuses, some of which have been investigated and confirmed by Commission staff. Changes in the rules are designed to provide more parameters around the approval and continued licensing of those sanctioning bodies.

- (ii) Section R19-2-C604(A)(4)(b) should not put responsibility on physicians, trainers, seconds, and cutmen to report suspected head injuries to the Commission.

Agency response: The Commission feels that the listed individuals have the most accurate knowledge and observation of a combatant and should share in the responsibility for the safety of fighters under their care. The rule is designed to protect unarmed combatants, and to ensure that industry participants have a stake in implementing the new concussion protocols.

No licensee would be disciplined unless the Commission could prove that the failure to report was knowingly done.

- (iii) The rules of other states should not have been used in drafting the rules, as Arizona has a different culture that fosters independent "club promoters."

Agency response: The Commission used every resource available to adopt coherent and well-drafted rules. In the case of MMA, the Commission is required by statute to adopt existing New Jersey rules. In the experience of those individuals drafting the rules, the proposition that the regulation of unarmed combat sports in Arizona should differ from the regulation used by other states is not confirmed. Whenever it is possible to achieve it, national uniformity in rules promotes the unarmed combat industry, by making it easier for participants in the sport to travel from one jurisdiction to the next to compete. It is also important that events in Arizona are equivalent to events in other jurisdictions, so that a fighter's record is protected and a matchmaker can make safer matches.

- (iv) The Commission was regulating kickboxing without rules prior to this rulemaking and didn't have authority to do so.

Agency response: The Commission does and did have authority to regulate kickboxing under the statutes. See answer to Negative Comment # c(i) above. The Commission was hampered in such regulation by the absence of rules specific to kickboxing. The amended rules eliminate that problem.

- (v) No one in the Commission is qualified to draft rules for, or to regulate, unarmed combat, especially Muay Thai.

Agency response: See answer to Negative Comment # a(v). Even if the concern were valid, and the individuals appointed to, and working for, the Commission were incompetent to draft and adopt rules, the commenters have not provided substantiation that such alleged incompetence has led to the proposal of invalid rules.

- (vi) The amateur Muay Thai sanctioning bodies should not be regulated by the state.

Agency response: The statutes mandate that professional Muay Thai and amateur Muay Thai sanctioning bodies should be regulated, as discussed above. The Commission has previously followed that mandate. The amended rules do not alter the requirement for regulation, but the amended rules regarding amateur Muay Thai sanctioning bodies do increase oversight over the amateur sanctioning organizations. This is seen to be necessary because of safety concerns and reports of abuse. Based on comments by industry participants and on observations by the Commission,

the independent Muay Thai sanctioning organizations may be endangering the safety of amateur combatants. The allegations are that these sanctioning bodies do not have adequate rules, are not following the rules that they do have, are engaging in unsafe matchmaking, are encouraging other forms of unarmed combat that do not qualify as Muay Thai, are charging for admission, are holding professional bouts for non-amateurs, and are allowing the number of event rounds to exceed safety standards. Because of such allegations, it appears that the Muay Thai sanctioning bodies do need additional oversight, because the prior hands-off, laissez-faire approach has not been effective.

- (vii) State officials, including the Commissioners, should be tested in each discipline, and, with regard to Muay Thai, the Commission wants to be a dictatorship with no accountability.

Agency response: The commenters have not shown what tests should be utilized, or how such testing would relate to the adoption of the amended rules. There is no indication that the amended rules will allow the Commission to be a dictatorship. Amended section R19-2-C609 requires amateur Muay Thai sanctioning bodies to fill out an application to be registered (no change from prior practice), provide a complete set of rules that adequately protect the safety of combatants (changed only to add the safety factor), and pay a fee for the privilege of being sanctioned as a ruling body (this is new). Under the rule, a sanctioning organization may lose its registration if it fails to provide required information, fails to follow its own

rules, fails to dismantle and remove event equipment, or commits other violations named in the statute and rules as cause for discipline. These criteria for discipline may be new as applied to amateur Muay Thai sanctioning bodies, but they are no more stringent than the rules that must be followed by the participants of every other unarmed combat discipline. The sanctioning organizations have the same appeal rights as other regulated parties. The rule is an appropriate exercise of regulatory authority.

- (viii) Regarding the discretion to approve mixed gender matches in section R19-2-D601(H), the rules should prohibit matches between male and female fighters.

Agency response: The rule prohibits such a match unless the Commission approves an exception. This flexibility is the result of the Commission's belief that, in modern society, it may not be equitable to assign or adhere to traditional gender roles.

- (ix) Section R19-2-C606(C) should not prohibit a licensee whose license has been suspended or revoked from entering the dressing rooms at an unarmed combat event, from sitting close enough to the action to have an influence on an unarmed combat event, or from communicating with any combatants, managers, seconds, or referees during an unarmed combat event.

Agency response: The purpose of the rule is to prevent a licensee with a suspended or revoked license from indirectly participating in an unarmed combat event, thereby avoiding the suspension or revocation. This rule was

adopted from the Nevada unarmed combat regulations, with modifications, and is considered a necessary implementation to prevent avoidance of discipline.

- (x) Section R19-2-C609(B), which outlines the reasons for discipline, is too general and vague.

Agency response: The previous rules provided no guidelines for managing the approval of amateur Muay Thai sanctioning bodies. The amended rule provides the parameters for denying, revoking, suspending, or creating conditions for such a license. The Commission does not believe the reasons for discipline are general or vague: failure to provide information required, failure to follow the sanctioning organization's adopted rules, failure to remove equipment at the end of an event; and any other cause that is listed in A.R.S. Title 5 or the regulations thereunder as a reason for discipline or denial of a license. See, e.g., A.R.S. §§ 5-235.01(B), 5-236, 5-238, and amended sections R19-2-C601 and R19-2-C605(C).

- (xi) Sections R19-2-C601(J)(2) and R19-2-C605(C)(3) uses words like "reputation" and "industry" which are too vague, and exposes the state to a suit for libel.

Agency response: The term "industry" is defined in R19-2-A601(16). The meaning of the term "reputation" is commonly understood. The purpose of both listed sections is to tie any background deficiency directly to the industry and the purposes of A.R.S. Title 5. It is, in fact, a prohibition on the Commission's ability to deny a license for any negative background that

does not affect the integrity of the industry, or the health, safety or welfare of the public or industry participants. The Commission is not concerned with its exposure to liability for defamation.

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

There are no other matters prescribed by statute applicable to the Commission, its rules, or its class of rules other than those matters listed below in this section # 12.

a. Does the rule require a permit, whether a general permit is used and if not, the reasons that a general permit is not used.

The amended rules do not require a general permit, and will not utilize a general permit in lieu of specific licenses and license fees. A.R.S. § 41-1037 requires agencies to use a general permit instead of individual licenses, unless certain conditions apply. There are three exceptions to the requirement that apply to the Boxing Rules:

- The issuance of an alternative type of permit, license or authorization is specifically authorized by state statute.
- The issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements.
- The issuance of a general permit would result in additional regulatory requirements or costs being placed on the permit applicant.

A.R.S § 5-228(A) requires a specific license for each type of boxing professional: referees, judges, matchmakers, promoters, trainers, ring announcers; timekeepers, ringside physicians, inspectors; contestants, managers, and seconds. For some of those licensees, additional fees are required for background investigations and specialized additional requirements are necessary. It is not technically feasible to authorize these separate categories with a general permit, as each category has a different level of skill, expertise, qualifications, and training that must be met.

A licensee in each category may only be permitted to do what that license allows. For example, a contestant is not authorized to be a ringside physician. Each licensee must qualify for, and be licensed specifically to perform, a specific set of duties. Specific license fees are also representative of the resources of a licensee and the licensee's ability to earn money with the license. Averaging out fees in order to charge for one permit would cause licensees with lower fees to pay more and licensees with higher fees to pay less. Utilizing a general permit would work a hardship on unarmed combatants, especially amateurs, by making them pay more for a general permit than they could afford to be able to compete in their sport. Conversely, it would provide promoters an unwarranted windfall, because they would pay much less for a permit that gives them the opportunity to make a great deal of profit. Such inequity would be inappropriate.

- 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 Professional Boxing Safety Act ("PBSA"), 15 U.S.C.A. § 6301 through § 6313, applies to the sport of boxing. It does not apply to other unarmed combat sports. The current Arizona statutes and rules are compliant with the PBSA. The amended rules will also comply with the PBSA. The PBSA states in 15 U.S.C.A. § 6305(c) that it is advisable for a state commission to advise boxers to "undergo medical procedures designed to detect brain injury." The amended rules will make such physical examinations mandatory under certain circumstances. In addition, certain requirements applicable to the sport of boxing under the PBSA, will be made applicable to other unarmed combat sports by the amended rules. The PBSA provides, in 15 U.S.C.A. § 6313, that "[n]othing in this chapter shall prohibit a State from adopting or enforcing supplemental or more stringent laws or regulations not inconsistent with this chapter, or criminal, civil, or administrative fines for violations of such laws or regulations."

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 comparative analysis of competitiveness was submitted.

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

None

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

shall state where the text was changed between the emergency and the final rulemaking package.

Not applicable.

15. The full text of the rules follows:

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

CHAPTER 2. ARIZONA RACING COMMISSION

ARTICLE 6. STATE BOXING AND MIXED MARTIAL ARTS COMMISSION:

ADMINISTRATION OF UNARMED COMBAT SPORTS

PART A: GENERAL ADMINISTRATION

Section

R19-2-601. R19-2-A601. Definitions

R19-2-602. R19-2-A602. Notice to the Department Delegation by and Reports to the Commission

PART B: EVENTS

Section

R19-2-B601. Notice and Approval of Events; Publicity

R19-2-B602. State Championships

R19-2-B603. Duty of Matchmakers

R19-2-B604. Insurance for Contestants

R19-2-B605. Selection and Payment of Officials

R19-2-B606. Commission Seating at Events

R19-2-B607. Ticket Manifest, Collection, Accounting

R19-2-B608. Annual Bond, Event Bond, Claims

R19-2-B609. Payment of Contestants

PART C: LICENSING AND DISCIPLINE

Section

R19-2-C601. Licensing, General Requirements

R19-2-C602. Licensing Time-Frames

~~R19-2-605.~~ R19-2-C603. License Fees

R19-2-C604. Licensing Requirements Related to Ability and Fitness

R19-2-C605. Grounds for Disciplinary Action; Penalties

R19-2-C606. Effect of Discipline

~~R19-2-606.~~ R19-2-C607. Fines

R19-2-C608. Rehearing or Review of Decision

R19-2-C609. Registration of Amateur Sanctioning Organizations: Requirements; Application; Fees; Revocation, Suspension or Setting Conditions

PART D: UNARMED COMBAT RULES

R19-2-D601. General Provisions for All Unarmed Combat Disciplines

R19-2-D602. Boxing

R19-2-D603. Mixed Martial Arts

R19-2-D604. Kickboxing

R19-2-D605. Muay Thai

R19-2-D606. Toughman

R19-2-D607. Exhibitions; Fee

Table 1. Time-frames

Table 2. Bandages (Gauze and Tape)

ARTICLE 6. STATE BOXING AND MIXED MARTIAL ARTS COMMISSION:

ADMINISTRATION OF UNARMED COMBAT SPORTS

PART A: GENERAL ADMINISTRATION

R19-2-601. R19-2-A601. Definitions and Interpretation Guidance

A. The following terms apply to this Article:

1. “Abdominal guard” means a protective device that is designed to protect the abdomen below the umbilicus, and the term includes a pelvic girdle for women designed to protect the pubic area, ovaries, coccyx, and sides of hips. Unless otherwise indicated herein, the term “abdominal guard” will include a “groin guard.”
2. “Admission fee” means the charge paid to gain access to an unarmed combat event, as evidenced by a ticket.
4. 3. “Annual bond” means the cash or surety bond, required under A.R.S. § 5-228(E), to be deposited with the Department by a promoter as a prerequisite for a promoter’s license.
4. “Business entity” means any corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity except an individual or sole proprietorship.
5. “Combatant” means any person who practices the sport of unarmed combat in this state.
2. 6. “Commission” means the Arizona State Boxing and Mixed Martial Arts Commission, and staff delegated to provide support to the Commission. Unless otherwise stated, a reference to the Commission includes the Executive Director.
7. “Contestant” means any combatant who is engaged in an unarmed combat contest or exhibition.

- 3.8. “Department” means the Arizona Department of ~~Racing~~ Gaming.
9. “Division” means the Arizona Department of Gaming, Racing Division.
10. “Event” means any unarmed-combat contest or exhibition for which tickets are issued and sold.
- 4.11. “Event bond” means the cash or surety bond, authorized under A.R.S. § 5-229(B), which the Commission may require a promoter to deposit with the Department before each ~~contest~~ event.
12. “Executive Director” means the director appointed to execute the directions of the Commission.
13. “Exhibition” means any demonstration of technique or training in unarmed combat, which is attended by members of the public, including any such demonstration involving the sale of tickets or collection of admission fees.
14. “Groin guard” means a foul-proof athletic cup or other protection of the pubic area.
- 5.15. “Gross receipts” means all ~~gross~~ receipts from the face value of tickets sold as defined by A.R.S. § 5-104.02(E).
16. “Industry” means all matters or business related to regulated unarmed-combat events.
17. “License” means any permit, license, approval, sanction, authority, registration, or other permission received from the Commission under these rules or A.R.S. Title 5, Chapter 2, Article 2. For purposes of these rules, a permit is equivalent to a license.
18. “Majority of rounds” means a sufficient number of completed rounds to render a decision via the score cards. For example, two completed rounds in a three-round bout, or three completed rounds in a five-round bout.

19. “Mismatch” means a pairing of unarmed combatants for a contest who have unequal ability. Factors to be considered in matching the ability of combatants include, but are not limited to:

- a. Experience;
- b. Training;
- c. Fighting record;
- d. Age;
- e. Physical condition;
- f. Height;
- g. Weight;
- h. Skill sets;
- i. Arm or leg length; and
- j. Any other differences in the ability of combatants that would create a competitive imbalance between them or that would render a match unsafe.

20. “MMA” means mixed martial arts as defined by A.R.S. § 5-221(8).

21. “Official” means a licensed referee, judge, timekeeper, ringside physician, or inspector.

22. “Permit” means any approval or license to conduct an event.

23. “Prohibited list” means the prohibited substance list published by the World Anti-Doping Agency (“WADA”).

24. “Prohibited substance” means any substance, or class of substances, identified as prohibited on the prohibited list. Alcohol shall also be considered a prohibited substance regardless of whether it appears on the prohibited list.

25. “Ticket” means the tangible proof of the right to admission to an event.

6. 26. “Ticket agent” means a person authorized by a promoter to print tickets.
7. 27. “Ticket vendor” means a person authorized by a promoter to sell tickets.
8. 28. “Tickets issued” means all tickets printed for an event.
29. “A.R.S. Title 5, Chapter 2, Article 2” means Arizona Revised Statutes (“A.R.S.”) §§ 5-221 to 5-240, and any successor provisions.
30. “Unarmed combat” means any professional or amateur training, contest, or exhibition regulated by the Commission, whether or not conducted for profit, including boxing, kickboxing, MMA, Muay Thai fighting, or Toughman competition.
- B.** Wherever appropriate, and if not expressly indicated, words in the singular form shall be construed to include the plural and vice versa. Nouns and pronouns in masculine, feminine and neuter genders shall be construed to include any other gender.
- C.** Examples shall not be construed to limit, expressly or by implication, the matter they illustrate.
- D.** The word “includes” and its derivatives means “includes, but is not limited to” and corresponding derivative expressions.

R19-2-602. R19-2-A602. Notice to the Department Delegation by and Reports to the Commission

- A.** The Commission shall notify the Department in writing not more than two business days after approving the date of a event. The Commission shall also notify the Department immediately if any change in the scheduled event occurs may delegate execution of its statutory powers and duties to the Executive Director.

B. The Commission shall provide copies of all contracts to the Department, if requested. The Executive Director shall regularly keep the Commission informed regarding those matters which have been delegated to the Executive Director by the Commission.

PART B: EVENTS

R19-2-B601. Notice and Approval of Events; Publicity

A. A promoter's request to the Commission for reservation of an event date shall be made as soon as possible and shall be deemed by the Commission to be a representation by the promoter of the promoter's good faith intention to actually hold the event on that date. A promoter is prohibited from requesting event dates solely for the purpose of preempting the organization of an event by others on or near the scheduled event date or for any other anti-competitive reason, which may be demonstrated by a pattern of requesting and cancelling dates.

B. The Commission's approval of an event shall constitute a license to conduct, hold or give an unarmed combat event. A promoter shall not hold an event of unarmed combat unless:

1. No less than 60 calendar days before the event is held, the promoter submits to the Commission a written request for permission to hold the event, and for approval of the date for the event; and
2. The Commission has approved the request and the date for the event.

C. The Commission shall not approve an event scheduled to take place within 72 hours before a previously approved event in the same county, unless the second promoter compensates the first promoter or the Commission has determined that special circumstances exist. A promoter is required to have a commitment for an arena, and have advanced funds with

respect to his or her scheduled event, in order for a promoter to have a date protected by the Commission in accordance with this rule.

D. Contracts signed by the combatants for the main event shall be filed with the Commission at least 72 hours prior to the date of the event. Contracts signed by the combatants for preliminary events shall be filed with the Commission 48 hours prior to the date of the event. Copies of all fully-executed contracts, on a form approved by the Commission, shall be filed with the Commission prior to the weigh-in.

E. Publicity for a scheduled event shall be factual and not misleading to the public. An event shall not be publicized prior to approval of the event by the Commission. Tickets shall be priced and available as represented to the public. All promotion materials, both prior to and during an event, shall clearly designate the professional, amateur, or mixed status of the event.

F. The Commission shall not approve a scheduled event until the promoter discloses in writing all persons having a financial interest in the event, as defined in A.R.S. § 5-228(B), and otherwise complies with these rules insofar as they apply to promoters.

G. A written request for permission to hold an event shall include, without limitation:

1. The proposed site for the event;
2. A listing and description of all fights, with designation of all title fights to be held in the event;
3. A listing of the number of rounds per each fight, and number of contestants; and
4. If the event will be televised, the date and network on which the program will be premiered, and the date and network of second showings, if known.

H. The event permit fee required by the Commission, pursuant to R19-2-C603(C), shall be submitted with the application. The Commission shall return the fee if the permit is not approved. The failure of the promoter to notify the Commission of a cancellation at least 30 calendar days before the date of the event shall result in the forfeiture of the permit fee and may subject the promoter to disciplinary action, provided that, if the promoter is able to schedule another date that is acceptable to the Commission, the permit fee shall apply to the rescheduled event.

I. In determining whether to approve a permit for an event of unarmed combat, the Commission may take into account any factors that affect the best interests of the combatants, the state, the industry, and the Commission.

J. A promoter who wishes to present an event of unarmed combat for charitable purposes shall file with the Commission an application for a permit to present the event.

1. The application shall contain the name of the charity, charitable fund, or organization which is to benefit from the event, with evidence satisfactory to the Commission that the benefitted organization is recognized as exempt from federal income tax pursuant to the Internal Revenue Code of 1986, 26 U.S.C. § 501(c)(3), and the amount or percentage of the receipts of the event which is to be paid to the charity.

2. Within 10 days after such an event is held, the promoter shall furnish to the Commission a certified itemized statement of the receipts and expenditures in connection with the event and the net amount paid to the charitable fund or organization. If the promoter fails to file the statement within the prescribed time, the Commission:

a. May suspend or revoke the promoter's license, or impose a civil penalty; and

- b. May thereafter refuse to issue a permit to the promoter for the holding of any event of unarmed combat for charitable purposes.

K. The Commission may waive any deadline requirements if good cause is shown and the Commission can accommodate the request.

L. If approval of events has been generally delegated to the Executive Director, the Executive Director may defer the approval of a specific event to the Commission.

R19-2-B602. State Championships

A. The Commission may approve a contest as one for a state championship where:

1. One of the contestants is a bona fide resident of Arizona and the other is either:
 - a. Also a bona fide resident of Arizona; or
 - b. A resident of California, Nevada, Texas, Utah, Colorado, or New Mexico, who has fought in Arizona at least two times within the 12-month period prior to the time the Commission's approval is requested,
2. The contestants are qualified to fight for a state championship by virtue of demonstrated ability and record, and
3. The contestants make the weight for the pertinent weight classification at the weigh-in.

B. The Commission shall determine how many rounds are appropriate for any state championship contests.

C. A contest may not be promoted as one for a state championship, or as a state championship elimination, without the prior consent of the Commission.

D. State championships shall be defended in Arizona.

E. The Commission may vacate a state championship title for violation of these rules.

R19-2-B603. Duty of Matchmakers

- A.** Matchmakers shall use due diligence to determine and report to the Commission in writing, on a form to be provided by the Commission, no later than 48 hours prior to a scheduled event, the following information:
1. The true identity of contestants;
 2. The contestant's complete record, including the date and result of the last contest engaged in by the contestant and any fight or medical records obtained from commissions in other states (the Commission has the discretion to disregard non-sanctioned bouts, in the interests of the industry or the health and safety of combatants);
 3. Whether contestants are under suspension from any unarmed combat regulatory commission; and
 4. The ability of the contestants to compete.
- B.** Matchmakers shall be held responsible for the making of mismatches. For the protection of contestants and the public, repeated making of mismatches is grounds for discipline, up to and including civil penalties and suspension or revocation of a matchmaker's license. The Commission reserves the right to disapprove any matches that are deemed by the Commission to be mismatches.
- C.** The matchmaker's cost of obtaining any fight or medical records from regulatory bodies in other states shall be charged back to the promoter unless the promoter has supplied the Commission with the requisite information.
- D.** Matchmakers shall verify that all matched fighters, trainers, seconds, or other persons involved in a proposed match are licensed in accordance with these rules.

R19-2-B604. Insurance for Contestants

For each contestant, a promoter shall provide to the Commission proof of insurance that complies with A.R.S. § 5-233.

R19-2-B605. Selection and Payment of Officials

- A. Any referees, judges, timekeepers, ringside physicians, and inspectors shall be finally selected by the Commission and notice of the selections shall be provided to the promoter or matchmaker 36 to 48 hours prior to the scheduled event. The Executive Director shall ensure that all officials receive compensation from the promoter immediately after the last scheduled bout in accordance with the Commission's fee schedule. The fee schedule shall be made known to the promoter before the scheduled event when requested by the promoter.**
- B. A promoter or matchmaker may protest the assignment of officials only upon specific grounds submitted to the Commission in writing no less than 24 hours prior to the start of the scheduled event.**
- C. Referees shall be given a physical examination by the ringside physician before officiating a contest.**
- D. A promoter may be disciplined, up to and including license revocation, if rules of selection of officials and participants are not followed for an event.**
 - 1. Bouts may only be arranged by a promoter or a matchmaker licensed by the Commission.**
 - 2. Every combatant and announcer selected by the promoter shall be licensed by the Commission. The promoter's selection of announcer shall be approved by the Commission.**

R19-2-B606. Commission Seating at Events

As designated by the Executive Director, the promoter shall provide a table and front row or contiguous ringside seating for Commission members, the Executive Director, and those officials assigned to work the event, including the judges, timekeepers, ringside physicians, or other staff.
Commission representatives or officials who will be working the event have priority for ringside seating with a table.

R19-2-B603, R19-2-B607. Ticket Manifest, Collection, Accounting

A. General requirements.

1. Admission fees shall be charged for every unarmed-combat event. Tickets may also be sold for an exhibition if approved by the Commission.
 - a. The right of admission to any event of unarmed combat shall not be sold to a person unless that person is provided with a ticket.
 - b. Every ticket shall have the price, name and date of the event, and name of the promoter plainly stated on it. Every ticket stub shall state the price.
2. No admission fees shall be charged for any event until:
 - a. The promoter achieves compliance with occupant load, fire apparatus and exits, aisle spacing, and other building and fire code permissions or approval required by the relevant regulatory authorities, and provides verification of such approval to the Commission upon request; and
 - b. The Commission issues a permit for the event.
- 4.3. No later than five days after the completion of an event, A-a promoter shall provide the Department Commission with: a. A-an electronic ticket manifest or an accounting from each ticket agent no later than weigh-in as follows:

- a. ~~The manifest shall be accompanied by a signed affidavit from the ticket agent or the ticket agent's designee, certifying that the manifest is accurate and complete.~~ The manifest shall list the total number of tickets issued and the number of tickets in each price category. The manifest shall account for any tickets that are overprints, changes, or extras. The manifest shall be accompanied by a signed affidavit from the ticket agent or the ticket agent's designee, certifying that the manifest is accurate and complete.
- b. If tickets issued are sold through a ~~computerized~~ system that ~~does not lend itself to a manifest; cannot produce an electronic manifest,~~ an accounting from each ticket agent of the total number of tickets in each price category shall be provided. The accounting shall be accompanied by a signed affidavit from the ticket agent or the ticket agent's designee, certifying that the accounting is accurate and complete.
2. ~~The ticket price shall be clearly printed on each ticket and ticket stub.~~
3. 4. A promoter shall ensure that tickets are distributed only through ticket vendors specified by the promoter. Notwithstanding the above, a promoter may provide tickets to contestants for sale to friends or family.
4. 5. The Commission shall, upon request, provide the Department with the names and contract information for all ticket agents and vendors.
- B. ~~Reduced price~~ Reduced-price tickets. A promoter shall ensure that the actual price of tickets sold for less than the printed price are is plainly over-stamped displayed by over-stamping or other mechanism with the actual price charged on the printed face of the ticket and ticket stub, and the tickets are itemized correctly on the ticket manifest.
- C. Complimentary tickets. ~~A promoter shall ensure that:~~

1. A promoter shall ensure that The the total number of complimentary tickets does not exceed 2% of the total number of tickets issued for the event or 75 whichever is greater, as the maximum number of tickets specified under A.R.S. § 5-104.02(D). This maximum number shall be referred to as the “Cap.”
2. Complimentary tickets in excess of the ~~greater value of 2% or 75 Cap~~ are treated as ~~noncomplimentary non-complimentary~~ and shall be subject to the levy on attendance under subsection (D).
3. If complimentary tickets are provided from different price categories, the amount of money that shall be exempt from the attendance levy (the “Total Exemption”) shall be calculated in the order of highest to lowest priced tickets, as follows:
 - a. The Cap under Subsection (C)(1) above shall be computed;
 - b. Highest-priced complimentary tickets are classified as Tier 1 tickets, and complimentary tickets in successively lower levels of price categories are classified as Tier 2 through Tier X, as needed;
 - c. If the Cap is less than the number of Tier 1 tickets, then the Total Exemption shall be equal to the Cap multiplied by the price of the Tier 1 tickets, and no further calculation need be made;
 - d. If the Cap is higher than the number of Tier 1 tickets, then the next highest Tier shall be applied, in whole or in part, to reach the Cap, and the calculation shall continue in that manner until the total Cap is met;
 - e. The number of complimentary tickets in each Tier used to satisfy the Cap shall be multiplied by the price of the tickets in that Tier to determine the Tier Exemption;
 - f. The Total Exemption for the event shall be the sum of Tier Exemptions.

3.4. ~~Complimentary~~ The word "Complimentary" shall be plainly displayed on complimentary tickets and ticket stubs are punched or stamped "complimentary."

D. Ticket accounting and ~~fee~~ levy payment. Representatives of the promoter and ~~Department~~ Commission shall meet within 10 days of ~~after~~ an event to account for all tickets sold and pay the required ~~tax~~ attendance levy. If required by the Department, the promoter shall provide an accounting by each ticket vendor.

1. The promoter shall provide the ~~Department~~ Commission with the following information on a ~~Department~~ the Commission's attendance levy form:
 - a. The number of tickets sold and unsold in each price category;
 - b. The amount of the gross receipts calculated using the printed price on each ticket sold; and
 - c. The signature of the promoter, certifying that the information is true and correct.
2. The ~~Department~~ Commission shall consider as sold any tickets listed ~~on a manifest~~ as issued, ~~and but not physically presented to the Department by the promoter reported as being~~ unsold.
3. The promoter shall pay the Department an attendance levy of 4% of the gross receipts after the deduction of city, state, and federal taxes, of the ~~match or exhibition~~ event.

R19-2-604. R19-2-B608. Annual Bond, Event Bond, Claims

A. Annual bond under A.R.S. § 5-228(E).

1. ~~A promoter shall~~ The approval of a promoter's license is contingent upon deposit of the annual bond with the Department no later than weigh in for the first event promoted.
2. Upon receipt of written request of the promoter, notice from the Commission that a ~~promoter's obligations for all events during the calendar year are satisfied, the~~

~~Department shall release~~ may release the promoter from the annual bond responsibility requirement, if the Commission determines that the promoter has satisfied all past obligations and is not planning additional events for that year.

B. Event bond under A.R.S. 5-229(B).

1. The Commission shall notify the ~~Department~~ promoter in writing of the imposition and amount of an event bond and ~~the promoter shall~~ deposit the bond with the ~~Department Commission~~ no later than ~~the weigh in for~~ 48 hours prior to the event. The ~~Department Commission~~ shall retain the event bond until notice is received from the Commission that the promoter has satisfied all obligations concerning the bond guarantee for the event, at which time the Commission shall return the bond to the promoter.
2. Upon receipt of written notice from the Commission that the promoter's obligations for an event are satisfied, the Department shall return the bond to the promoter.
3. 2. If an event is not held, the ~~Commission~~ promoter shall notify the ~~Department Commission~~, not later than 22 business days after the scheduled event, whether the promoter's obligations for the event have been satisfied, ~~and whether~~ at which time the promoter's event bond can be returned.

C. ~~Department~~ Commission claim. If a promoter fails to comply with payment of the attendance levy on gross receipts under R19-2-B607(D), ~~The Department~~ the Commission shall notify the promoter and the Department. ~~A promoter~~ Notification to the promoter shall be made by registered or certified mail, return receipt requested, and shall state that:

- a. 1. The unpaid ~~tax~~ levy on gross receipts shall be paid within 10 business days from receipt of the notice; and

b. 2. If the payment is not received within the 10 business days, forfeiture proceedings against the bond may be initiated based on the ~~Department's~~ Commission's determination of whether a promoter's obligations have been faithfully performed.

2. ~~The Commission if a promoter fails to pay the required tax on gross receipts.~~

D. The Department and Commission shall not release any bond for which a claim is pending.

R19-2-B609. Payment of Contestants

A. All contestants shall be paid in full according to their contracts, and no part or percentage of their remuneration may be withheld except by order of the Commission, nor shall any part of their remuneration be returned through arrangement with the combatant or the combatant's manager to any matchmaker or promoter.

B. Payment shall be made immediately after the event under the supervision of a Commission representative.

C. In cases where the Commission does not require an event bond, the promoter shall execute an assignment in favor of the Commission of box office proceeds to the extent necessary to secure the payment of purses. Such assignment is a condition precedent to the approval of an event. When all contestants have been paid, the assignment shall be returned to the promoter and the promoter shall be released therefrom.

PART C: LICENSING AND DISCIPLINE

R19-2-C601. Licensing, General Requirements

A. An application for a license for every industry combatant, promoter, matchmaker, inspector, manager, second, including trainers and cutmen, referee, judge, timekeeper, announcer, or physician, shall be made in writing on a form supplied by the Commission and signed by the applicant under penalty of perjury. The Commission shall accept electronic signatures on

applications, which may include faxed signatures, electronic facsimiles of signatures, or any other electronic methods that comply with state policy and are designed to facilitate the application process for the public. The Commission, in its discretion, may act on an applicant's request for a license before the form is submitted, but a license shall not be issued to the applicant until the applicant complies with the licensing requirements pursuant to this Section. Issuance of a license is in the reasonable discretion of the Commission.

- B. Every combatant shall be licensed prior to participating in any event, with the exception of those individuals excluded under A.R.S. § 5-222.**
- C. All licenses expire on December 31 at midnight on the year of their issuance and each licensee has the responsibility to apply for renewal prior to such expiration. A combatant may petition the Commission for waiver of medical licensing requirements upon renewal if the combatant fulfilled those requirements within 90 days prior to December 31.**
- D. Before issuing a license, the Commission or its staff may require an applicant to provide independent proof of the applicant's true identity, fingerprints, and other material information requested on the license application or otherwise required by the Commission.**
- E. An applicant for an official's license shall submit to the Commission a signed copy of the Commission's Code of Ethics and Conduct for the type of license being sought, acknowledging that the applicant has read and understands the Code, and agrees to comply with its terms.**
- F. Each license issued is subject to the conditions and agreements set forth in the application.**
- G. The applicant shall demonstrate to the satisfaction of the Commission an understanding of the Commission's drug testing program, including, without limitation, an understanding of anti-doping violations and the penalties for those violations.**

H. The Commission may require an applicant to appear before the Commission to answer questions or provide documents in conjunction with an application for a license.

I. Expenses necessarily incurred by the Commission in the investigation of an applicant shall be charged back to the applicant.

J. The Commission may take disciplinary action or refuse to issue or renew a license for those reasons stated in A.R.S. § 5-235.01, or if the applicant:

1. Has violated any industry laws or regulations of any other state;
2. Does not possess a good reputation or moral character, or demonstrates a lack of honesty, ethics, or moral character so as to reflect discredit to the industry and thereby render adverse action consistent with the public interest and the purpose of A.R.S. Title 5, Chapter 2, Article 2, and these rules adopted thereunder;
3. Has an industry license that has previously been suspended, revoked, or denied in this or other jurisdictions;
4. Does not, in the sole discretion of the Commission, possess the health, fitness or skills to safely participate in the industry;
5. Has committed any actions that would be grounds for discipline under R19-2-C605; or
6. Is not qualified to be granted a license or permit, based on the best interest of the safety, welfare, economy, health, and peace of the industry or the people of the state of Arizona.

K. A manager need not obtain a manager's license if the manager is not a resident of Arizona and comes into Arizona for the sole purpose of working the corner of the manager's combatant. A second's license is sufficient.

L. A licensed manager may act as a second.

M. A manager or promoter contract shall not be recognized by the Commission as valid unless the parties to the contract are licensed. Such contracts shall be in a format approved by the Commission.

N. Prior to licensing, a promoter or matchmaker shall provide to the Commission:

1. A copy of any agreement with a combatant that binds the applicant to pay a fixed fee or percentage of gate receipts to the combatant;
2. If a business entity, a list of all persons who control 25% or more of the entity;
3. If a corporation, a copy of the latest financial statement of the entity; and
4. A copy of the insurance contract required by A.R.S. Title 5, Chapter 2, Article 2.

R19-2-C602. Licensing Time-Frames

A. Overall time-frame. The Commission shall issue or deny a license within the overall time-frames listed in Table 1 after receipt of the complete application. The overall time-frame is the total of the number of days provided for the administrative completeness review and the substantive review.

B. Administrative completeness review.

1. The applicable administrative completeness review time-frame established in Table 1 begins on the date the Commission receives the application. The Commission shall notify the applicant in writing within the administrative completeness review time-frame whether the application or request is incomplete. The notice shall specify what information is missing. If the Commission does not provide notice to the applicant, the license application shall be considered complete.
2. An applicant with an incomplete license application shall supply the missing information within the completion request period established in Table 1. The administrative

completeness review time-frame is suspended from the date the Commission mails the notice of missing information to the applicant until the date the Commission receives the information.

3. If the applicant fails to submit the missing information before expiration of the completion request period, the Commission shall close the file, unless the applicant requests an extension. An applicant whose file has been closed may submit a new application.

C. Substantive review. The substantive review time-frame established in Table 1 begins after the application is administratively complete.

1. If the Commission makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review time-frame is suspended from the date the Commission mails the request until the information is received by the Commission. If the applicant fails to timely provide the information identified in the written request the Commission shall consider the application withdrawn.
2. The Commission shall issue a written notice granting or denying a license within the substantive review timeframe. If the application is denied, the Commission shall send the applicant written notice explaining the reason for the denial with citations to supporting statutes or rules, the applicant's right to seek a fair hearing, and the time period in which the applicant may appeal the denial.

R19-2-605 R19-2-C603. License Fees

A. The following applicants shall complete an authorized fingerprint card and pay a fingerprint processing fee per A.R.S. § 41-1750(G)(2) and (J): inspectors, ringside physicians, judges, timekeepers, referees, managers, matchmakers, and promoters.

B. Fees for the issuance of annual licenses shall be as follows:

1. Promoters, \$400;
2. Matchmakers, \$125;
3. Managers, \$100;
4. Inspectors, judges, referees, timekeepers, announcers, and ringside physicians, \$30;
5. Cutmen, professional combatants, trainers, and seconds, \$25; and
6. Amateur combatants, \$10.

C. At the time an event permit request is submitted for Commission approval, the following fees for events shall be paid to the Commission:

1. \$750 for non-live televised events at a venue seating 5000 persons or less;
2. \$1500 for:
 - a. Non-live televised events at a venue seating more than 5000 persons;
 - b. Events streamed live for a charge on Facebook or other equivalent Internet broadcast;
and
 - c. Live televised events on cable or satellite television;
3. \$2000 for live televised events on cable or satellite television that include a recognized world title bout (e.g., WBA, WBC, IBF, WBO, UFC, IBO); and
4. \$4000 for live pay-per-view events on cable or satellite television (e.g., HBO, Showtime).

5. If an event has been previously approved by the Commission, any time an event date change request is submitted for Commission approval, an additional fee of \$250 shall be paid to the Commission.
6. The Commission may establish a fee not to exceed \$2000 for an event that is not within the categories set forth in subsections (C)(1) through (4). If a fee is initially paid for a type of event and that event type later changes to a higher fee category, the promoter shall pay the difference in fees prior to the event date.

A.-D. The Commission shall forward license fees to, or deposit them in the account of, the Department within five business days of receipt with the following information:

1. The type of license issued;
2. The name and date of birth of the licensee;
3. The license number; and
4. The date and amount of payment received and/or deposited.

B.-E. The Commission shall retain a current list of the licenses issued and the additional applicable licensing information and make the information available to the Department.

F. Licensing fees shall be waived for those persons who qualify for exemption under A.R.S. § 41-1080.01. For purposes of waiving licensing fees under A.R.S. § 41-1080.01:

1. The costs for background checks and fingerprint processing shall not be waived;
2. Any fees that are waived shall be fully reimbursed to the Division or Department if investigation indicates the applicant does not qualify for waiver;
3. Licensing fees may only be waived if the applicant complies with the process established by the Commission to determine eligibility and the request for waiver is submitted at the same time that the application is submitted; and

4. A first-time application shall mean the first application for any license and not the first application for each separate category of license.

R19-2-C604. Licensing Requirements Related to Ability and Fitness

A. Age and physical condition of combatant applying for license.

1. Prior to issuance or renewal of a license, an applicant for a license to engage in unarmed combat shall be examined by a physician approved by the Commission, and satisfy the Commission that the applicant has the ability to compete, if the applicant:
 - a. Reached thirty-six years of age or will reach thirty-six years of age during the licensing year;
 - b. Has not competed in unarmed combat for at least thirty-six consecutive months; or
 - c. Has any medical, physical or mental unfitness that could affect the applicant's safety or welfare if the applicant were licensed.
2. The Commission may revoke, suspend, or refuse to issue or renew the license of any combatant because of injury or unfitness that could affect the safety or welfare of the licensee or other industry participants. The combatant's license shall be reinstated when and if the Commission, in its sole discretion, determines that the injury or unfitness has been resolved. The Commission may consult with a physician selected by the Commission in making this determination.
3. The Commission shall not issue or renew a license to engage in unarmed combat to an applicant or combatant who is found to be blind in one eye or whose vision in one eye is so poor that a physician recommends that the license not be granted or renewed. This rule applies, regardless of how good the vision of the applicant or combatant may be in the other eye.

4. Together with the medical exams required by A.R.S. § 5-228(F)(1-5), an applicant shall submit to testing as follows:
- a. Before the commission issues a license, the applicant shall undergo a base-line concussion examination conducted or supervised by a physician who is licensed pursuant to A.R.S. Title 32, Chapter 13 or 17. The base-line concussion examination shall consist of any neurological testing protocol approved by the American Academy of Neurology, that includes the following tests, or the reasonable and recognized equivalent to the following tests:
- (1) A Post-Concussion Symptom Scale (PCSS), to determine if the applicant is exhibiting any current symptoms that may be related to concussion;
- (2) A recognized quantitative test of cognition, such as the Cogstate Computerized Cognitive Assessment Tool (CCAT), ImPACT, or the Standardized Assessment of Concussion (SAC);
- (3) A recognized quantitative test of oculomotor function, such as the King-Devick Test;
- (4) A recognized quantitative test of balance, such as the Balance Error Scoring System (BESS), the Rhomberg test, pronator drift, or the timed tandem gait test.
- b. Every ringside physician, trainer, second, or cutman present at an event, and every trainer present at a practice session, has the responsibility of acting as a “spotter” and notifying the Commission if the spotter reasonably suspects that a combatant has suffered a head injury or concussion. A spotter’s knowing failure to notify the Commission of a suspected head injury or concussion of a combatant shall result in discipline, up to and including revocation. A spotter who, in good faith, reports a

suspected head injury or concussion shall be immune from civil liability with respect to all decisions made and actions taken that are based on good faith implementation of the requirements of this subsection, except in cases of gross negligence, intentional misconduct, or wanton or willful neglect. A referee or a ringside physician shall be responsible for stopping a bout if he or she suspects that a combatant has a head injury or concussion.

- c. The license of every combatant who is suspected of having a head injury or concussion shall be suspended until he or she undergoes a post-injury concussion assessment, and is able to provide to the Commission clearance from his or her treating neurologist that the combatant is cleared to resume participation in the sport of unarmed combat. The post-injury concussion assessment shall consist of the same testing used to perform the base-line concussion examination required above, and shall be compared to the base-line test to determine the concussion status of the combatant.

5. The Commission may hold a hearing to determine whether a license should be denied, granted or renewed, or granted or renewed on a conditional basis, in view of the applicant's ability and fitness.

6. All combatants shall have attained their 18th birthday before being licensed.

B. Drug testing and anti-doping.

1. It is the duty of each combatant to ensure that no prohibited substance enters the combatant's body, and a combatant is strictly liable for the presence of any prohibited substance or its metabolites or markers found to be present in the combatant's sample or specimen. To establish a violation of this Section, it is not necessary to establish that the

combatant intentionally, knowingly or negligently used a prohibited substance or that the combatant is otherwise at fault for the presence of the prohibited substance or its metabolites or markers found to be present in the combatant's sample or specimen.

2. At any time upon request of the Commission or its representative, whether in or out of competition, a combatant shall submit to a drug test.
 - a. A test of any sample or specimen of a combatant may be performed by a laboratory approved by the Commission or a laboratory approved and accredited by the World Anti-Doping Agency. Approval by the Commission will be based, in part, on whether the laboratory has implemented the *International Standard for Laboratories* and the *Decision Limits for the Confirmatory Quantification of Threshold Substances*.
 - b. The sample or specimen taken for testing will be referred to as the primary sample. The combatant may request that another sample be collected and preserved, which shall be referred to as the secondary sample.
3. A combatant who utilizes, applies, ingests, injects, or consumes by any means, or attempts to utilize, apply, ingest, inject, or consume by any means, a prohibited substance or prohibited method, whether successful or not, commits an anti-doping violation and is subject to disciplinary action by the Commission. An anti-doping violation is established when:
 - a. Analysis of either the primary or secondary sample indicates that one or both of the samples contains any quantity of a prohibited substance or its metabolites or markers, even if the results of testing on both samples is not identical regarding the amount.

- b. A combatant, without compelling justification, refuses or fails to submit to the collection of a sample or specimen upon the request of the Commission or its representative or who otherwise evades the collection of a sample or specimen.
 - c. An in-competition combatant possesses any prohibited substance or prohibited method, or an out-of-competition combatant who possesses any prohibited substance or prohibited method which is prohibited out of competition.
4. A combatant does not violate the provisions of this Section if:
- a. The quantity of the prohibited substance or its metabolites or markers found to be present in the combatant's sample or specimen does not exceed the threshold established in the prohibited list for the prohibited substance or its metabolites or markers.
 - b. The special criteria in the prohibited list for the evaluation of a prohibited substance that can be produced endogenously indicate that the presence of the prohibited substance or its metabolites or markers found to be present in the sample or specimen of the combatant is not the result of the combatant's use of a prohibited substance.
 - c. If one sample is conclusively positive and one is conclusively negative, and there is no reasonable explanation for the variance.
5. A combatant commits an anti-doping violation and is subject to discipline by possessing any prohibited substance or prohibited method in or out of competition. Any other licensee who possesses a prohibited substance or prohibited method and who is in direct contact with a combatant at the time of possession, has also committed an anti-doping violation.

6. For the purposes of this Section, “possession” means actual physical or constructive possession of the prohibited substance or prohibited method.

 - a. “Constructive possession” means exclusive control or the intent to exercise exclusive control over a prohibited substance or prohibited method or the premises on or in which a prohibited substance or prohibited method is located.
7. The following are anti-doping violations if committed by any means, and will subject a licensee to discipline:

 - a. Supervise, facilitate, or participate in the use of a prohibited substance or prohibited method by another person;
 - b. Sell, give, transport, send, deliver, or distribute a prohibited substance or prohibited method to another person; or
 - c. Possess with the intent to sell, give, transport, send, deliver, or distribute a prohibited substance or prohibited method to another person.
8. A physician or other bona fide medical personnel who provides or supplies a prohibited substance or prohibited method to a combatant, or who supervises, facilitates or otherwise participates in the use or attempted use of a prohibited substance or prohibited method by a combatant, for genuine and legal therapeutic purposes or any other purposes deemed appropriate by the Commission, is not in violation of this Section.
9. The Commission will report any violation of this Section that also violates any other law or regulation of this state to the appropriate law enforcement, administrative, professional or judicial authority.
10. A combatant may obtain a therapeutic use exemption from an anti-doping violation by submitting to the Commission an application and any medical information the

Commission deems necessary to determine whether to grant the therapeutic use exemption. The Commission may grant a therapeutic use exemption if the medical information provided demonstrates that the therapeutic use will not confer an unfair advantage or disadvantage on the combatant, in the sole discretion of the Commission.

a. The Commission will not grant:

- (1) A therapeutic use exemption that applies to a contest or exhibition in which the applicant has already participated; or
- (2) A therapeutic use exemption for testosterone replacement therapy or any similar therapy designed to induce or stimulate testosterone replacement.

b. A therapeutic use exemption granted by the Commission pursuant to this Section is valid until the end of the calendar year in which it was granted, and may be renewed at the time that a combatant applies for the issuance or renewal of his or her license or at such time as the Commission determines.

11. If the Commission grants a therapeutic use exemption to a combatant, the combatant, a person who is licensed, approved, registered or sanctioned by the Commission, and any other person associated with unarmed combat in this state who acts consistently with the therapeutic use exemption, does not commit an anti-doping violation under this rule.

R19-2-C605. Grounds for Disciplinary Action; Penalties

A. Disciplinary action against a person licensed by the Commission, or otherwise associated with unarmed combat in this state, may include denial, revocation, or suspension of license; ban on participation; imposition of a civil penalty; forfeiture of all or part of a purse; altering the result of a bout; or any combination of such actions as may be appropriate under the aggravating or mitigating circumstances.

B. A licensee shall be held responsible for knowing these rules and the provisions of A.R.S.

Title 5, Chapter 2, Article 2 related to unarmed combat.

C. In addition to those grounds listed in A.R.S. § 5-235.01(B), grounds for disciplinary action are:

1. Violation of an order of the Commission;
2. Breach of an industry contract;
3. Where the licensee's conduct is lacking in honesty, ethics, or moral character so as to reflect discredit to the industry and thereby render disciplinary action consistent with the public interest and the purpose of A.R.S. Title 5, Chapter 2, Article 2 and these rules;
4. Where the licensee has been disciplined in another jurisdiction, if the disciplinary action is ordered for conduct which relates to safety, would be a violation in this state, or tends to reflect negatively on the reputation of this state or the industry;
5. Where the licensee had knowledge or, in the judgment of the Commission, should have had knowledge that a combatant suffered a concussion or serious injury during training or an event and the licensee failed or refused to inform the Commission of that knowledge; or
6. Where the licensee has committed any actions that would be grounds for denial of license under R19-2-C601.

R19-2-C606. Effect of Discipline

A. Every promoter and matchmaker shall take notice of the suspensions or revocations listed on registries recognized by the Commission and shall not permit any person under suspension or revocation to participate in, arrange, or conduct events during the period of suspension or revocation.

- B. A person whose license has been denied, suspended or revoked by the Commission is prohibited from participating in, matchmaking, or holding events during the period of denial, suspension or revocation.
- C. A person whose license has been suspended or revoked is barred from:
1. The dressing rooms at the premises where any event of unarmed combat is being held;
 2. Occupying any seat within six rows of the ring platform or cage; and
 3. Communicating in the arena or near the dressing rooms with any of the event principals, their managers, their seconds, or the referee, whether directly or by a messenger, during any event.
- D. A person who violates a provision of this section may be ejected from the arena or building where the event is being held, and the price paid for his or her ticket shall be forfeited. Thereafter, the person is barred entirely from all premises used for events during the contest or exhibition.
- E. A manager who is revoked or under temporary suspension is considered to have forfeited all rights in this state under the terms of any contract with a combatant licensed by the Commission. Any attempt by a suspended manager to exercise those contract rights in this state shall result in a revocation of the manager's license. The Commission may also revoke a license of any combatant, matchmaker, or promoter who continues to engage in any contractual relations with a revoked or suspended manager within the state of Arizona.
- F. A combatant whose manager has been suspended or revoked may continue competing independently during the term of that suspension or revocation, by personally negotiating and signing the combatant's event contracts or entering into contracts with other managers. Payment of the earnings of a combatant may not be made by any promoter to a manager who

is under suspension, or to the manager's agent. Instead, the purse shall be paid in full to the combatant.

G. Unless otherwise specified in these rules, any applicant who has been denied a license or whose license has been suspended or revoked by the Commission shall not file a new application or application for reinstatement until one year after the date of the denial, revocation, or suspension (unless the suspension has been lifted by the Commission prior to expiration of the license) and the applicant has paid in full all fees and fines imposed on the applicant by the Commission. The Commission may require a person who has had his or her license suspended for any period because of an anti-doping violation to submit to the Commission documentation satisfactory to the Commission that indicates that a test performed on a sample or specimen obtained from the person did not indicate the presence of a prohibited substance or the use of a prohibited method. Documentation would be unsatisfactory if the documentation creates articulable suspicion that the test may not be valid. Examples of unsatisfactory documentation include:

1. Documentation from a laboratory that does not meet the standards of R19-2-C604(B)(2)(a); and
2. Documentation that does not establish sufficient controls to eliminate the potential of tampering with samples or specimens.

H. The expiration of, or failure to obtain, a license from the Commission does not deprive the Commission of jurisdiction to:

1. Proceed with an investigation of any person associated with unarmed combat in this state;
2. Proceed with an action or disciplinary proceeding against any person associated with unarmed combat in this state;

3. Render a decision to suspend or revoke the license, approval, registration or sanctioning, or the privilege to obtain such license, approval, registration or sanctioning, as applicable;
or
4. Otherwise discipline any licensee, person approved, registered or sanctioned by the Commission, or any person otherwise associated with unarmed combat in this state, including, without limitation, banning such a person from participation in unarmed combat in this state for any period of time, including, without limitation, a lifetime ban from participation in unarmed combat in this state.

R19-2-606. R19-2-C607. Fines Civil Penalties

- A. The Commission shall notify the Department in writing if a licensee is issued a fine civil penalty under A.R.S. § 5-235.01(A)(3) or (C).
- B. Upon receipt, The the Commission shall immediately forward the fine civil penalty to the Department for deposit.
- C. Failure to pay a civil penalty of any kind shall result in a suspension of a license until the penalty is paid.

R19-2-C608. Appeal, Rehearing, or Review of Decision

- A. Except as provided in subsection (I), any party in a contested case before the Commission who is aggrieved by a decision rendered in such case by the Executive Director may file with the Commission, not later than 10 days after service of the decision, a written motion for appeal of the decision specifying the particular grounds therefor. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at the party's last known residence or place of business; or by electronic mail if the party has agreed to receive electronic notifications.

B. An appeal, or a motion for rehearing or review under this rule may be amended at any time before it is ruled upon. A party shall provide a copy of any pleading on all opposing parties or parties who may be directly affected by the issues presented, and the pleading shall contain a certification of delivery to listed recipients. A response may be filed by any other party within 10 days after delivery of such pleading on the other party. The Commission may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

C. The Commission may affirm or modify the decision, or grant a rehearing to all or any of the parties, on all or part of the issues for any of the following reasons materially affecting the moving party's rights:

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

D. If a rehearing is granted, the Commission may hear the case or may refer the case to the Office of Administrative Hearings. The decision of the administrative law judge becomes the decision of the Commission unless rejected or modified by the Commission in accordance

with A.R.S. Title 41, Chapter 6, Article 10. A decision of the Commission at this level of review is a final decision.

- E. Except for a decision under subsection (I), a rehearing or review of the final Commission decision shall be requested in order for the aggrieved party to have the right to appeal under A.R.S. Title 12, Chapter 7, Article 6. The Commission shall rule on the motion for rehearing or review within fifteen days after the response to the motion is filed or at the Commission's next meeting after the motion is received, whichever is later.
- F. Not later than 10 days after a decision is rendered, and after giving the parties or their counsel notice and an opportunity to be heard on the matter, the Commission may, on its own initiative, order a rehearing or review of its decision for any reason for which it might have granted a rehearing on motion of a party.
- G. Any order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
- H. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 10 days after such service, serve opposing affidavits, which period may be extended by the Commission for an additional period not exceeding 20 days for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
- I. If, in a particular decision, the Commission makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision

without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Commission's final decisions under A.R.S. Title 12, Chapter 7, Article 6.

- J. For purposes of this Section, the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.
- K. To the extent that the provisions of this rule are in conflict with the provisions of any statute providing for rehearing of decisions of the Commission, such statutory provisions shall govern.
- L. The Commission may deny a petition or application that is not filed in accordance with this Section without a hearing.
- M. The final result of an unarmed combat bout, even if based upon errors of judgment of the referee or the judges, shall not be overturned or modified by the Commission unless there is substantial evidence that the following have occurred:
 1. The compilation of the scorecards of the judges shows an error if such error would result in the win being given to the wrong contestant; or
 2. There has been fraud or collusion affecting the result.

R19-2-C609. Registration of Amateur Sanctioning Organizations: Requirements; Application; Fees; Revocation, Suspension or Setting Conditions

- A. All sanctioning organizations that are required to be approved under A.R.S. § 5-222(A)(4) shall be registered with the Commission. A sanctioning organization that is required to be registered shall submit to the Commission:
 1. A completed application for registration on a form provided by the Commission;

2. A complete set of rules adopted by the sanctioning organization to govern the particular discipline, which must be substantially equivalent to the rules of this Article 6 with regard to safety of the combatants; and
3. An application or renewal fee of \$1,000.

B. A sanctioning organization that is required to be registered may have its registration denied, revoked, suspended, or conditioned by the Commission for:

1. Failing to provide information as requested by the Commission or the Executive Director;
2. Failing to establish or follow its own complete set of rules;
3. Failure to dismantle and remove all equipment, ring, cage, and seating upon conclusion of an event; or
4. Any other cause for the revocation, suspension or conditioning of a license set forth in A.R.S. Title 5, Chapter 2, Article 2, and these rules adopted thereunder.

C. A sanctioning body that is required to be registered shall not participate, directly or indirectly, in any amateur event of unarmed combat if registration is not obtained.

D. The Commission may approve one amateur sanctioning organization for each Muay Thai discipline. The Commission may limit, deny, suspend, or revoke registration of a separate organization, if the Commission, in its sole discretion, determines registration of the organization is not in the best interest of the industry.

E. The Commission may waive the requirements of subsections A, B, C, and D.

F. The provisions of this Section do not apply to professional Muay Thai events, which shall be sanctioned by the Commission, or to a professional Muay Thai promoter whose license is issued by the Commission and who is in good standing.

PART D. UNARMED COMBAT RULES

R19-2-D601. General Provisions for All Unarmed Combat Disciplines

- A.** Applicability of requirements/alteration. This Section shall apply to all regulated unarmed combat disciplines, unless otherwise noted herein. In case of a conflict between this general Section and a provision relating to a specific discipline, the specific provision shall control. The Commission may approve the alteration of requirements of Part D if it is determined that the alteration is dictated by the event venue or by nationally-accepted rules and that the alteration will not compromise the safety of the combatants. If the rules regarding a specific unarmed combat discipline do not adequately cover an issue pertinent to that discipline, the Commission may refer to and use rules applicable to a different unarmed combat discipline as guidance.
- B.** Time between bouts. Unless special approval is obtained from the Commission, a contestant shall not be allowed to compete until the following time periods have elapsed:
1. Five days, if the contestant has competed anywhere in a bout of six rounds or less; or
 2. Ten days, if the contestant has competed anywhere in a bout of more than six rounds.
- C.** Dressing rooms. The promoter shall provide contestants with dressing rooms or areas which shall be equipped with showers, be sanitary, safe, ventilated, and have sufficient seating. Separate dressing rooms shall be provided for contestants of separate genders.
- D.** Mouthpiece.
1. During competition, each contestant is required to wear a mouthpiece that has been fitted to the contestant's mouth. The mouthpiece shall be subject to examination by and approval of the referee. A round cannot begin without the mouthpiece in place.

2. If the mouthpiece is dislodged or spit out during the course of a round, the referee shall call time at the first opportune moment without interfering with the immediate action or the advantage the aggressor may have. As soon as it can be properly replaced, the referee shall direct a second to wash the mouthpiece and the referee shall then replace it with all deliberate speed. For professional kickboxing contests, a round will not be stopped by the loss of a mouthpiece.

3. A contestant who intentionally spits out a mouthpiece in an apparent attempt to cause the progress of a round to be interrupted is subject to penalty to be determined by the referee.

E. Stools. The promoter shall provide an appropriate number of stools or chairs for each combatant's corner. The stools or chairs shall be of a type approved by the Commission. All stools and chairs shall be thoroughly cleaned or replaced after each bout.

F. Bell. The term "bell" shall refer to a bell, horn, gong, or other sound device approved by the Commission, which shall be positioned at a location approved by the Commission, and shall carry a clear tone so that the contestants may easily hear its sound.

G. Injured Combatants.

1. The ringside physician shall enter the fighting enclosure and examine and tend to a contestant who has been knocked out or is otherwise injured. The physician may enter at the conclusion of a bout, when called in by the referee, or when it is deemed medically necessary by the physician. The seconds of the injured contestant shall not interfere with the physician.

2. Contestants who have been knocked down and out shall be kept in a stable position until they have recovered.

3. A contestant who has been knocked out shall not be permitted to compete until the Executive Director and a physician approved by the Executive Director jointly clear the contestant's return to competition. In making this decision, the consideration of the Executive Director and the physician shall include, but shall not be limited to, the requirements under R19-2-C604(A)(3).
4. A combatant who has been knocked out three times within a twelve-month period shall be suspended from competition for six months from the date of the last knock-out, and must satisfy the Commission that he or she is capable of returning to competition, including, but not limited to, documenting clearance under R19-2-C604(A)(3).
5. The term "knockout" as used in this subsection (G) includes a technical knockout that is injury-based.

H. Female Combatant. A female combatant shall not be matched or engage in a bout with a male combatant, unless approved by the Commission.

I. Weigh-in; when contestants are required to appear.

1. The weigh-in shall be held at a time and place approved by the Commission in conformance with A.R.S. § 5-225(E). It shall be supervised by a Commission representative. Promoters are required to contact the Commission at least 48 hours in advance of the weigh-in to make appropriate arrangements therefor. Contestants shall appear at the weigh-in and the failure to do so may subject the contestant to discipline, up to and including disqualification from competing.
2. Contestants shall appear at the event location at least one hour before the scheduled bout in which they will compete.

3. Contestants who are already licensed and scheduled to fight shall be present in the city of the scheduled event at least 24 hours before the event and make their presence known to the Commission.

J. Physical examination, appearance and weight.

1. Each contestant shall be required to complete a pre-fight physical examination by an appointed physician as directed by the Commission. The examining physician shall be satisfied that a contestant is in good physical condition and able to compete in the scheduled event. Each contestant shall be re-examined within one hour after the bout in which he or she has competed.
 2. Facial and head hair shall not create a hazard to safety or interfere with the supervision or conduct of the event. The Commission may require alteration to facial and head hair in the sole discretion of the Commission representative at the weigh-in. Hair stays must be approved by the Commission. Jewelry and piercing accessories are prohibited during competition.
 3. A contestant who exceeds his or her contractual weight by more than one pound at the weigh-in is in breach of his or her contract. At the discretion of the Commission, the contestant may be permitted a second opportunity to make the weight within two hours. In the alternative, the Commission may impose a penalty consisting of a forfeiture of no more than 20% of the gross purse. Penalty amounts may be added to the purse of the contestant's opponent.
 4. There shall be allowed variations in weight allowances and weight classes in non-championship fights, if both contestants and the Commission approve the variation.

K. Illness and absence.

1. Whenever a contestant, because of injuries or illness, is unable to take part in an event for which the contestant is under contract, that contestant or the contestant's designated representative shall immediately report that fact to the Commission. The Commission may then require the contestant to submit to an examination by a physician. The examination fee of the physician shall be paid by the contestant, or by the promoter, if the latter requests the examination.
2. Any contestant who fails to appear for an event in which the contestant is under contract shall be subject to disciplinary action, unless the contestant has submitted to the Commission a written valid excuse or physician's certification of illness or injury in advance of the event.

L. Substances.

1. It is prohibited for drugs, injections, intravenous fluids, or stimulants to be administered to, possessed by, or used by, a contestant during, or within 24 hours preceding an event. This includes smelling salts, ammonia capsules, or similar irritants. Caffeine or caffeinated beverages cannot be consumed during or within two hours before a fight.
2. The Commission may order anti-doping examinations immediately before and/or after the event. A sample (blood, breath, or urine) shall be provided, using sterile containers, in the presence of the Commission representative, the physician appointed by the Commission, or his or her appointee, and a representative of the combatant.
3. During an event, administering to a contestant any substance other than plain water or Commission-approved electrolyte drinks is absolutely prohibited.

4. Coagulants such as adrenalin 1/1000, and others expressly approved by the ringside physician, may be used between rounds to stop bleeding of cuts. “Iron type” coagulants, such as Monsel’s solution, are absolutely prohibited and shall be grounds for disqualification.
5. In the discretion of the referee, a small amount of petroleum jelly may be used around the eyes. The use of lubricants, grease, or any other foreign substance on the arms, legs, or body is absolutely prohibited. The referee of a Commission representative has the right to require the removal of excessive lubricants or other foreign substances.

M. Inspectors.

1. The Commission shall appoint a minimum of one chief inspector for each event for the purpose of overseeing and coordinating the activities occurring in the dressing rooms with the activities occurring at ringside and the television coordinator.
2. Chief Inspectors shall:
 - a. Enforce the rules regarding hand wraps, glove weights and types, approved substances, and equipment and supplies that must be in the corner during a match, conduct of the seconds in the corner during the match, how a fight may be stopped by the chief second, and drug test administration;
 - b. Have drug testing kits, tape, pens, gloves, and other equipment available and in good working condition, for use by the Commission; and
 - c. Ensure that the promoter has provided the required emergency medical personnel and their equipment.

3. The Commission shall appoint additional inspectors as necessary for each event for the purpose of overseeing, directing, and controlling the activities occurring in the dressing room and at ringside.
4. Inspectors shall know and follow these rules and the Inspector's Training Guidelines provided by the Commission.

N. Presence of medical assistance.

1. At least one licensed physician shall be assigned to cover every contest, and shall sit at the immediate ringside of all bouts, unless the Commission determines that more than one assigned physician is necessary to protect the safety of fighters or promote the success of the event. No bout shall be allowed to proceed until at least one assigned physician is seated ringside. No assigned ringside physician shall leave the fighting venue until the dressing rooms are cleared after the final bout. Every assigned ringside physician shall be prepared to assist if any serious emergency arises and shall render temporary or emergency treatments for cuts and minor injuries sustained by the contestants.
2. No manager or second shall attempt to render aid to a contestant during the course of a round before the assigned ringside physician has had an opportunity to examine the contestant who may have been injured.
3. No event shall take place, whether amateur, professional, or both, without a team of fully equipped, qualified paramedics and a paramedic ambulance (collectively, a "paramedic unit") present at the event venue for each bout at all times.

 - a. If a paramedic unit leaves the site of the event to transport an unarmed combatant to a medical facility, the unarmed combat event shall not continue until another paramedic

- unit is present and available. If the event cannot be stopped, as in the case of a televised event, the promoter shall make prior arrangements to ensure that there will be a paramedic unit present at all times, including arranging for the presence of additional paramedic units at the event start.
- b. If a paramedic unit is not available because of the location of the site, the highest level of paramedic assistance and transportation in that location shall be present, able, and available to treat and transport an unarmed combatant to a medical facility.
- c. The medical personnel described in this subsection (N) shall be designated to render service only to the unarmed combatants in the event, and shall be positioned in a location that is deemed appropriate by the ringside physician.
- d. Each promoter shall give notice of the event to:
- (i) The paramedic-unit companies that are located nearest to the site of the event and ascertain from the service the length of time required for one of its ambulances to reach the site; and
- (ii) The nearest hospital emergency room.
- e. For purposes of this subsection (N), an event of unarmed combat begins with the commencement of the first bout and ends when the last unarmed combatant leaves the site.
- f. The Commission may waive all or part of the paramedic unit requirement, in its discretion, if the person requesting the waiver demonstrates that adequate alternative medical facilities are readily accessible.

O. Conduct of seconds.

1. A contestant may have up to three seconds and shall designate to the referee which of them is the chief second. The chief second is responsible for the conduct of the assistant seconds. Only one second can be inside the ring during a period of rest, unless a greater number is approved by the Commission, except that there may be two seconds in the ring during a Muay Thai rest. The Commission, in its sole discretion, may approve an increase in the number of seconds to four in a championship contest or in a special event.
2. A second shall remain seated outside of, and shall not enter, the fighting area or stand on the apron during the progress of a round. A second shall not administer aid to a contestant during a round. During an officially interrupted round, a second may stand on the apron only with the express permission of the referee.
3. Seconds shall not interfere with the progress of a round, for example, by banging on the apron or excessive coaching. The referee has the discretion to disqualify a second whose conduct is interfering with a bout.
4. Any excessive or undue spraying or throwing of water on a combatant by a second during a period of rest is prohibited.
5. A chief second may signal a referee to stop the fight in the manner approved by the Commission.

P. Referee.

1. The referee shall have direction and control over contestants and their seconds during a bout subject to the governing laws and rules. The referee shall have final authority to decide if an injury is produced by a fair or foul blow and if an act is intentional or accidental. The referee shall have final authority to stop a bout when in the referee's

opinion a contestant is unfit to continue or otherwise cannot compete. When instant replay is available, the referee, in the referee's sole discretion, may utilize the instant replay to determine the actual result of the fight-ending sequence in the case where a fight has been officially stopped and the result may have been caused by any type of foul, under the following rules:

- a. A fight-ending sequence shall mean the final exchange of strikes or maneuvers that results in the ending of a bout.
 - b. The referee, and only the referee, may use the instant replay if the referee indicates to the Commission the need to do so ("Call for Replay Review") within three minutes from the stoppage of the fight.
 - c. The referee shall have no more than five minutes to review the fight-ending sequence once the instant replay is made available and shall make a final decision within that period of time.
 - d. The information obtained from the replay shall not be used to restart the fight as the fight is officially over and cannot be resumed.
 - e. If there is technical difficulty in accessing the instant replay that cannot be resolved within 10 minutes of the Call for Replay Review, the referee's initial determination shall be final.
 - f. Instant replay shall not be used by any party to challenge the decisions of the referee.
2. In the case of a cut or other injury which the referee believes may be incapacitating, the referee may consult with the ringside physician before making a decision and may interrupt a round and have the clock stopped for this purpose. The Referee shall notify

Commission representatives of any cuts or injury observed, regardless of the severity of the injury.

3. When a contestant is incapacitated because of a foul, the referee has the discretion to interrupt a round and have the clock stopped for up to five minutes to enable the contestant to recover.
4. If the referee reasonably suspects that the contestants are not honestly competing, the referee shall stop the bout and declare a “no contest.” Purses of both contestants shall be held pending investigation and disposition by the Commission, in its sole discretion.
5. Prior to giving a warning for rule infringement, the referee shall stop the fight, use the correct warning signal to ensure the contestant’s understanding and then indicate the offending contestant to the judges. Any contestant, who is warned three times or more, may be disqualified.
6. The referee shall pick up the count for knock downs from the timekeeper by the fourth second.
7. The referee shall provide a 10-second warning to the seconds to leave the fighting area. The seconds must be out of the fighting area when the bell rings.
8. Should the contestant causing a knockdown fail to stay in the farthest neutral corner during the count, the referee shall cease counting until the contestant has returned to that corner. The referee shall then go on with the count from the point at which it was interrupted.
9. The referee shall wave both arms to indicate that a contestant has been counted out or cannot otherwise continue.
10. The referee shall raise the hand of the winner at the end of the bout.

Q. Judges.

1. The judges shall be independent and free to score according to the rules and normal practice.
2. Each judge shall sit separately from each other and from the audience.
3. The judges shall remain neutral during the match. However, a Muay Thai judge may notify the referee of a rule violation during the round interval.
4. At the end of each round, the judges shall complete the score card for that round.
5. The judges are not allowed to leave their seat until the match ends and result has been announced.

R. Type of results. Unless otherwise indicated in these rules, the following result types apply to every unarmed combat discipline regulated by the Commission:

1. A knockout occurs by failure of a combatant to rise from the canvas. The failure to resume fighting after a rest period shall be considered as if a knockout or technical knockout occurred in the next round.
2. A technical knockout occurs when:
 - a. The referee stops a bout;
 - b. The ringside physician stops a bout; or
 - c. An injury as a result of a legal maneuver is severe enough to terminate a bout.
3. A decision via score cards occurs when there is no knockout or technical knockout. A score card decision is of three types:
 - a. Unanimous – when all three judges score the bout for the same contestant;
 - b. Split Decision – when two judges score the bout for one contestant and one judge scores for the opponent; or

- c. Majority Decision – when two judges score the bout for the same contestant and one judge scores a draw.
- 4. A draw is of three types:
 - a. Unanimous – when all three judges score the bout a draw;
 - b. Majority – when two judges score the bout a draw; or
 - c. Split – Where one of the three judges scores the contest in favor of one fighter, another judge scores the contest in favor of the other fighter, and the third judge scores the contest as a draw.
- 5. Disqualification of a contestant who has committed fouls may occur when the referee determines that a foul was intentional, severe, or flagrant, there is a combination of fouls of any type, or the bout is terminated as a result of an injury resulting from an intentional foul. A disqualification shall result in a win for the opponent of the disqualified contestant.
- 6. Forfeiture may occur when a contestant fails to begin competition or prematurely ends the bout for reasons other than those listed in these rules.
- 7. A technical draw may occur when an injury sustained during competition as a result of an intentional foul causes the injured contestant to be unable to continue and the injured contestant is even or behind on the score cards at the time of stoppage. A technical draw will also occur when both fighters are simultaneously knocked out (“double knockout”), both contestants are in such condition that a continuance may subject them to serious injury, or, in kickboxing, an accidental foul terminates a bout during the first round.
- 8. A technical decision may occur when the bout is prematurely stopped due to injury and a contestant is leading on the score cards.

9. No contest may occur when a bout is prematurely stopped due to accidental injury and a majority of rounds has not been completed to render a decision via the score cards. A no contest shall render the contest a nullity, with no winner or loser.
10. In a discipline using a 10-point must system of scoring, an even 10-10 score is allowed, but shall be a relatively rare result.

S. Timekeeper.

1. The timekeeper shall keep precise timing of each round and the breaks, following the referee's instructions to start or stop, according to the rules and normal practice. A timekeeper is responsible for keeping the official time of each bout and shall:

 - a. Start and end the round by striking the bell or other sound device approved for the bout.
 - b. Warn contestants when there is only 10 seconds remaining in a round by the method approved for the unarmed combat discipline.
 - c. Signal the end of each rest period by use of a distinctive whistle or other approved sound.
 - d. Correctly regulate all periods of time and counts by a stop watch or clock, but shall only stop the clock when instructed by the referee with the command "time," then resuming timekeeping when the referee gives the command "time in."
 - e. Use two stop watches or clocks for regulating rounds and rehabilitation periods.
 - f. For all disciplines other than MMA, start the knock down count by standing and signaling to the referee, audibly and by hand gestures, the correct count in one-second intervals.
2. There is no saving by the bell during a count, except during the last round.

T. Announcer.

1. The announcer has the responsibility to:
 - a. Announce the combatants' names, corner, and weight or weight class prior to the fight and again as they arrive in the ring;
 - b. Hold the microphone for the referee to announce the rules or guidelines;
 - c. Announce the round number at the start of each round;
 - d. Announce the correct winner's name and corner, when the referee raises the combatant's hand; and
 - e. Announce any other information required by the unarmed combat discipline or the Commission.

U. Gloves.

1. The Commission may require that promoters provide, for approval, a deconstructed sample of non-certified gloves to be used in any match, together with a list of materials used to construct the gloves.

V. Bandaging.

1. As a general rule, soft surgical bandage ("gauze") and surgeon's adhesive tape ("tape") may be used to protect the hands or feet of combatants, depending on the discipline.
2. With regard to hand bandaging, tape shall be placed directly on the skin of the hand nearest to the wrist to protect that part of the hand. Said tape may cross the back of the hand twice, but shall not exceed one winding's width (for example two inches for boxing hand wraps). Bandages shall be evenly distributed across the hand.
3. Contestants shall not wet wraps or apply a substance to the wrapping.

4. Bandages and tape shall be applied in the dressing room in the presence of the inspector.

Gloves shall not be placed on the hands of a contestant until the bandages are approved by the inspector. If approved by the Commission, a contestant has the right to have a second or manager witness the bandaging of an opponent's hands.

5. Variations specific to each discipline are listed in Table 2.

6. All other wraps or bandages that are not specifically allowed in these rules must be approved by the Commission.

W. Fouls. The following actions are fouls in every unarmed combat discipline:

1. Striking or abusing an official;

2. Hitting on a break, after the round has ended, or after the referee has stopped the bout;

3. Butting with the head;

4. Groin attacks of any kind;

5. Refusal to obey the commands of the referee;

6. Timidity (avoiding contact, intentionally falling down, faking an injury, intentional stalling, refusing to engage, intentionally dropping the mouthpiece, or using passive tactics);

7. Spitting or biting;

8. Use of swearing or abusive language during the event by a contestant or the contestant's representatives;

9. Eye gouging;

10. Hair pulling;

11. Strikes to the spine, back of the head, or base of the skull ("rabbit blows");

12. Interference by seconds;

13. Intentionally throwing an opponent out of fighting area;
14. Holding the ropes or onto the cage for any reason; and
15. Any unsportsmanlike conduct that, in the opinion of the referee, does, or is likely to, cause an injury to an opponent or interference with the contest.

X. Rounds.

1. A round of unarmed combat includes a period of unarmed combat immediately followed by a period of rest, with the exception that there is no period of rest after the final round.
2. The Commission may approve a variation on the standard number and duration of rounds during a bout.
3. A round only begins upon the sounding of the bell. Any stoppage during the match for any reason, will not be counted as part of the round time.

R19-2-D602. Boxing

A. The ring. The promoter is responsible for providing a safe ring in accordance with the following:

1. The ring shall be four sided, between 16 and 20 feet per side, with two feet outside the ropes, and securely assembled.
2. The floor shall be covered with shock-absorbent padding, such as Ensolite or the equivalent.
3. The padding shall be covered with tightly-stretched clean canvas securely laced to the platform.
4. There shall be four ropes, stretched and linked to four corner posts. The rope shall not be less than one inch in diameter, and shall be covered by a soft or cushioning material. Positioning and tensioning of the rope shall be approved by the Commission.

B. Gloves. The promoter is responsible for providing boxing gloves for contestants in accordance with the following:

1. Gloves shall be 8 ounces in weight for all divisions under 135 pounds; and 10 ounces in weight for all divisions over 135 pounds, except that fighters of weight between 135 to 147 pounds may mutually agree in writing to use 8-ounce gloves. The promoter shall have two extra sets of 8-ounce and 10-ounce gloves available during an event.
2. All gloves shall be nationally-approved brands or shall be submitted for approval to the Commission, and shall be in sanitary, safe, and good condition.
3. Gloves for title bouts shall be new and delivered to the Commission representative with the packaging unbroken.

C. Contestant's equipment and apparel. Each contestant has the duty to provide personal hand bandaging, uniforms, robe, boxing or combat shoes, abdominal guard, mouthpiece, water bottle, bucket, and towel for use during a bout, unless certain items are provided under the promoter/fighter contract. A contestant's equipment is subject to the approval of the Commission or its representative and the following requirements apply to the equipment and apparel of all contestants:

1. The contestants may not wear the same colors in the ring, without the approval of the Commission's representative. Each contestant shall have two uniforms in contrasting colors, with each uniform consisting of trunks for male contestants and a top and shorts for female contestants.
2. The belt of the trunks or shorts shall not extend above the waistline.
3. Facial cosmetics shall be prohibited.

4. Each contestant shall wear an abdominal guard that will protect him or her against injury from a foul blow. The abdominal guard shall not cover or extend above the umbilicus.

D. Weight classes. The following traditional weight classes shall be used as a general guide:

<u>Weights</u>	<u>Weight Range in Pounds</u>
<u>Flyweight</u>	<u>Less than 118</u>
<u>Bantamweight</u>	<u>118-125.9</u>
<u>Featherweight</u>	<u>126-134.9</u>
<u>Lightweight</u>	<u>135-146.9</u>
<u>Welterweight</u>	<u>147-159.9</u>
<u>Middleweight</u>	<u>160-174.9</u>
<u>Light Heavyweight</u>	<u>175-199.9</u>
<u>Heavyweight</u>	<u>200+</u>

E. Fair blows and fouls.

1. Fair blows are delivered by a combatant with the padded knuckle part of the glove to the front or sides of the head, shoulders, arms, and front torso above the belt line of an opponent.
2. All blows that are not fair as described in subsection (E)(1) above are fouls. In addition to the foul blows listed in R19-2-D601(W), the following practices are also classified as fouls in boxing:
 - a. Hitting an opponent who is down or in the process of getting up after being down;
 - b. Holding an opponent with one hand and hitting with the other, or duck so low that the contestant's head is below an opponent's belt line;

- c. Holding or maintaining a clinch after directed by the referee to break, or failure to take a full step back when the referee breaks a clinch;
- d. Pushing, tripping, kicking, or wrestling;
- e. Hitting with elbows, shoulder, or forearm;
- f. Hitting with an open glove, the inside of the glove, the wrist, the backhand, or the side of the hand; and
- g. Punching an opponent's back or the kidneys (kidney punch).

F. Intentional foul.

- 1. The referee shall have discretion as to the penalty for fouling. The referee may direct the deduction of points, and may also disqualify the wrongdoer, in the case of persistent or major fouling, or where the foul prevents continuance of the bout. Normally, in the case of minor fouling, the referee is expected to issue a warning before imposing a penalty. Penalties shall be imposed during or immediately after the round in which the foul occurs. The referee shall personally advise the corners and each judge of the points deducted immediately upon imposition of the penalty.
- 2. If a contestant is injured (e.g., cut) by an intentional foul but can continue, the referee shall notify the judges and the Commission representative at ringside that if the inflicted injury is subsequently aggravated to the point that the injured contestant cannot continue, a technical win will be rendered in favor of the injured contestant if the injured contestant is ahead on points, or the points are even, and a technical draw will be rendered if the injured contestant is behind on points.

G. Accidental foul.

1. If a contestant is accidentally fouled so that the contestant cannot continue, the referee shall stop the bout and a technical decision shall be rendered in favor of the contestant ahead on points. If the points are even, or if the foul occurs in the first three rounds, a no contest shall be declared.
2. If a contestant is injured by an accidental foul but can continue, the referee shall notify the judges and the Commission representative at ringside that if the foul-inflicted injury is subsequently aggravated to the point that the injured contestant cannot continue, the bout will be stopped and a technical win will be rendered in favor of the contestant ahead on points. If the points are even, or if the injury occurs in the first three rounds, a no contest shall be declared.

H. Results specific to boxing.

1. In addition to the type of results listed in R19-2-D601(R), the following results are specific to boxing:
 - a. When contestant is considered knocked down. A contestant is considered to be knocked down when any part of the contestant's body, other than the soles of the feet are on the canvas, or the contestant hangs helplessly on the ropes, unable to stand, or the contestant is knocked out of the ring.
 - b. Counting. When the contestant is knocked down the referee shall order the opponent to the farthest neutral corner of the ring, pointing to the corner. The count shall begin by the timekeeper immediately upon the knockdown. The timekeeper, by audible counting and hand signaling, shall give the referee the correct one-second interval for the count. The referee shall pick up and audibly announce the passing of the

seconds, accompanying the count with appropriate hand motions. The referee's count is the official count.

- c. Length of Count. A contestant who is knocked down shall not be allowed to resume boxing until the referee has finished counting 8 (“mandatory 8 count”). A contestant may take the count either on the floor or standing. If the contestant taking the count is not standing in a complete upright position when the referee calls the count of 10, the referee shall wave both arms indicating that the contestant has been knocked out.
- d. No saving by bell. Except in the last round, there is no saving by the bell. If a contestant is knocked down during the last 10 seconds of a round, the count shall continue after the end of the round as if the round was not ended. The one-minute rest period will begin from the time the contestant rises after the knockdown. If a contestant is knocked down during a round, and counted out after the end of a round, the knockout shall be considered as having taken place during the round which was last finished.
- e. Wiping gloves. Before a contestant resumes boxing after having been knocked down, or having slipped, to the floor, the referee shall wipe any foreign substance from the contestant's gloves before allowing the bout to resume.
- f. Three knockdowns. When a contestant is knocked down for the third time in a round, the referee shall stop the bout. The opponent shall be declared the winner. This rule shall not apply to championship contests, unless both contestants and the Commission agree that it should apply.

g. Knocked out of ring. A contestant who is knocked or fallen out of the ring, may be helped back onto the ring apron by anyone except the contestant's manager or seconds. The contestant has a total of 20 seconds to get into the ring and rise.

I. Method of judging.

1. Three judges shall score all bouts. Under special circumstances two judges and the referee may score. The method of judging shall be the 10-point must system. In this system the better contestant receives 10 points and the opponent proportionately less, but not less than 7 points. If the round is even, each contestant receives 10 points. A fraction of points may not be given. Points for each round shall be awarded immediately after the termination of the round and not subsequently changed. Judges shall sign their scorecards.
2. After each round, the referee shall pick up the scorecards of the judges and then deliver the cards to the Commission representative assigned to check them for mathematical accuracy. When the Commission representative has completed checking the final scorecards, the representative shall advise the announcer of the decision, and the announcer shall then inform the audience of the decision over the speaker system. The Commission representative shall be present at the ring apron when checking the scorecards.

J. Rounds.

1. The number of rounds in a boxing bout shall not exceed a maximum of 12.
2. The duration of each round shall be a maximum of three minutes, followed by a one-minute rest period after each non-final round.

R19-2-D603. Mixed Martial Arts.

A. The fighting area.

1. Regardless of the shape of the fighting area, the fighting area canvas shall be no smaller than 518 square feet and no larger than 746 square feet. The fighting area canvas shall be padded in a manner as approved by the Commission, with at least a 1-inch layer of foam padding. Padding shall extend beyond the fighting area and over the edge of the platform. Vinyl or other plastic rubberized covering shall not be permitted unless approved by the Commission.
2. The fighting area canvas shall not be more than 4 feet above the surface upon which the fighting area is constructed and shall have suitable steps or ramp for use by the participants. Posts shall be made of metal not more than 6 inches in diameter, extending from the floor of the building to a minimum height of 58 inches above the fighting area canvas and shall be properly padded in a manner approved by the Commission.
3. The fighting area shall be enclosed by a fence made of such material as will not allow a fighter to fall out or break through it onto the floor or spectators, including, but not limited to, vinyl coated chain link fencing. All metal parts shall be covered and padded in a manner approved by the Commission and shall not be abrasive to the contestants.
4. The fence may provide two separate entries onto the fighting area canvas, but one entrance is acceptable.

B. Gloves. The promoter is responsible for providing gloves for contestants in accordance with the following:

1. The gloves shall be new for all main events and in good condition, or they must be replaced.

2. All contestants shall wear gloves of 4, 5, or 6 ounces in weight, approved by the Commission. No contestant shall supply their own gloves for participation, unless approved by the Commission and mutually agreed upon by the contestants.

C. Contestant's equipment and apparel.

1. For each bout, the promoter shall provide at least one clean water bucket and clean plastic water bottle in each corner.
2. Male contestants shall wear a groin guard of their own selection, of a type approved by the Commission.
3. Female contestants are prohibited from wearing groin guards, but may be required to wear a chest protector during competition, of a type approved by the Commission.
4. Gis, shirts, socks, and shoes are prohibited during competition. Each contestant shall wear MMA shorts, biking shorts, or kickboxing shorts, and women contestants shall also wear approved tops.

D. Weight classes. The following weight classes shall be used as a general guide:

<u>Weights</u>	<u>Weight Range in Pounds</u>
<u>Flyweight</u>	<u>Less than 126</u>
<u>Bantamweight</u>	<u>126-134.9</u>
<u>Featherweight</u>	<u>135-144.9</u>
<u>Lightweight</u>	<u>145-154.9</u>
<u>Welterweight</u>	<u>155-169.9</u>
<u>Middleweight</u>	<u>170-184.9</u>
<u>Light Heavyweight</u>	<u>185-204.9</u>
<u>Heavyweight</u>	<u>204-264.9</u>

<u>Super-Heavyweight</u>	<u>265+</u>
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E. Fouls.

In addition to the foul blows listed in R19-2-D601(W), the practices addressed in subsections (E)(1) and (2) below are classified as fouls in MMA.

1. The following infractions shall receive a warning for the first instance, and thereafter shall result in a penalty:
 - a. Holding or grabbing the fence;
 - b. Holding an opponent's shorts or gloves; and
 - c. The presence of more than one second in the fighting area during a period of rest or the presence of a second on the apron without permission from the referee.
2. The following infractions shall receive a penalty if committed at any time:
 - a. Fish hooking;
 - b. Intentionally placing a finger in any orifice of an opponent;
 - c. Downward pointing of elbow strikes (i.e. a "12-to-6" downward elbow strike);
 - d. Small joint manipulation;
 - e. Heel kicks to the kidney;
 - f. Throat strikes of any kind;
 - g. Clawing, pinching, twisting the flesh or grabbing the clavicle;
 - h. Kicking or kneeing the head of a grounded contestant;
 - i. Stomping a grounded contestant, or kneeing or kicking the head of a grounded contestant;
 - j. Spiking an opponent to the canvas on the opponent's head or neck; and

k. For amateurs only:

- (1) Elbow strikes to the head of a grounded opponent;
- (2) Twisting leg submissions;
- (3) Linear kicks to the knees; or
- (4) Foot stomps.

- 3. Only a referee can assess a foul. If the referee does not call the foul, judges shall not make that assessment on their own and cannot factor such into their scoring calculations.
- 4. If a foul is committed, the referee shall:
 - a. Call time;
 - b. Check the condition and safety of the fouled contestant; and
 - c. Assess the foul to the offending contestant, deduct points, and notify each corner's seconds, judges, and the official scorekeeper of that decision.
- 5. There shall be no scoring of an incomplete round. If the referee penalizes either contestant, the appropriate deduction of points will occur when the final score is calculated.
- 6. For purposes of MMA, a "grounded" contestant occurs when any part of the contestant's body, aside from a single hand and soles of the feet, are touching the fighting-area floor. To be grounded, both hands palm/fist down, and/or other body part, will be touching the fighting-area floor. If a single knee or arm is touching the fighting-area floor, the combatant or contestant is grounded without having to have another body part touching the fighting area floor.

F. Intentional fouls. For intentional fouls, the following rules shall apply:

1. An intentional foul that does not result in an injury shall result in a deduction of one point from the offending combatant's score. If an injury results from an intentional foul, the referee shall inform the scorekeeper to deduct two points from the score of the offending contestant.
2. The offending contestant loses by disqualification if the referee determines that any of the offenses were intentional, severe, or flagrant, there is a combination of three of the fouls listed in subsection (E)(2) above, or the bout is terminated as a result of an injury resulting from an intentional foul.
3. If an injury sustained during competition as a result of an intentional foul causes the injured contestant to be unable to continue at a subsequent point in the bout:
 - a. The injured contestant will win by a technical decision, if the injured contestant was ahead on the score cards; or
 - b. The outcome will be declared a technical draw, if the injured contestant was behind on the score cards.
4. If a contestant incurs injury while attempting to foul an opponent, the referee shall not take any action in the contestant's favor, and the injury shall be treated in the same manner as an injury produced by a fair blow.
5. If, during grappling, the contestant on the bottom commits a foul, the bout will continue to protect the superior position of the topmost contestant, unless the contestant on the top is too injured to continue.

G. Accidental fouls.

1. Accidental fouls will result in one point being deducted by the official scorekeeper from the offending combatant's score if directed by the referee.
2. If an injury sustained during competition as a result of an accidental foul is severe enough for the referee to stop the bout immediately, the bout shall result in a no contest, if stopped before a majority of rounds have been completed.
3. If an injury sustained during competition as a result of an accidental foul is severe enough for the referee to stop the bout immediately, the bout shall result in a technical decision awarded to the contestant who is ahead on the score cards at the time the bout is stopped only when the bout is stopped after a majority of rounds have been completed.

H. Results specific to MMA. In addition to the type of results listed in R19-2-D601(R), bout results can include submission by:

1. Tap out, which occurs when a contestant physically uses his or her hand to indicate that he or she no longer wishes to continue; or
2. Verbal tap out, which occurs when a contestant verbally announces to the referee that he or she does not wish to continue.

I. Method of judging.

1. All bouts will be evaluated and scored by three judges.
2. The 10-point must system will be the standard system of scoring a bout. Under the 10-point must scoring system, 10 points must be awarded to the winner of the round and 9 points or less must be awarded to the loser, except for an even (10-10) round.

3. Judges shall evaluate the following MMA techniques in the following order of importance: effective striking, grappling, control of the fighting area, aggressiveness, and defense.
- a. Effective striking is judged by determining the total number of legal heavy strikes landed by a contestant.
 - b. Effective grappling is judged by considering the amount of successful executions of a legal takedown and reversals. Examples of factors to consider are takedowns from standing position to mount position, passing the guard to mount position, and bottom position contestant using an active, threatening guard.
 - c. Effective fighting area control is judged by determining who is dictating the pace, location, and position of the bout. Examples of factors to consider are countering a grappler's attempt at takedown by remaining standing and legally striking, taking down an opponent to force a ground fight, creating threatening submission attempts, passing the guard to achieve mount, and creating striking opportunities.
 - d. Effective aggressiveness means moving forward and landing a legal strike.
 - e. Effective defense means avoiding being struck, taken down, or reversed while countering with offensive attacks.
4. The following objective scoring criteria shall be utilized by the judges when scoring a round:
- a. A round is to be scored as a 10-10 round when both contestants appear to be fighting evenly and neither contestant shows clear dominance in a round;
 - b. A round is to be scored as a 10-9 round when a contestant wins by a close margin, landing the greater number of effective legal strikes, grappling and other maneuvers;

- c. A round is to be scored as a 10-8 round when a contestant overwhelmingly dominates by striking or grappling in a round; and
 - d. A round is to be scored as a 10-7 round when a contestant totally dominates by striking or grappling in a round.
5. Judges shall use a sliding scale and recognize the length of time the contestants are either standing or on the ground, as follows:
- a. If the contestants were on the canvas most of the round, then:
 - (1) Effective grappling is weighed first; and
 - (2) Effective striking is then weighed.
 - b. If the contestants were standing most of the round, then:
 - (1) Effective striking is weighed first; and
 - (2) Effective grappling is then weighed.
 - c. If a round ends with a relatively even amount of standing and canvas fighting, striking and grappling are weighed equally.

J. Rounds.

- 1. The number of rounds in a professional MMA bout shall not exceed a maximum of five rounds.
- 2. The duration of each professional round shall be a maximum of five minutes, followed by a one-minute rest period after each non-final round.
- 3. The number of rounds in an amateur MMA bout shall not exceed a maximum of three rounds.
- 4. The duration of each amateur round shall be a maximum of three minutes, followed by a one-minute rest period after each non-final round.

R19-2-D604. Kickboxing

A. The ring. The promoter is responsible for providing a safe ring in accordance with the following:

1. The ring shall be four-sided, not less than 17 feet nor more than 20 feet per side measured within the ropes.
2. The ring platform shall not be more than 4 feet above the surface upon which the ring is constructed and shall be provided with suitable steps for use of the contestants. Ring posts shall be of metal, not more than 4 inches in diameter, extending from the floor of the building to a height of 58 inches above the ring floor and shall be properly padded.
3. The floor shall be covered with shock-absorbent padding, as approved by the Commission, which shall extend beyond the ring ropes and over the edge of the platform.
4. The padding shall be covered with tightly-stretched clean canvas securely laced to the platform.
5. There shall be four ropes, stretched and linked to four corner posts. The rope shall not be less than 1 inch in diameter and shall be covered by a soft or cushioning material. Positioning and tensioning of the rope shall be approved by the Commission.

B. Gloves and footpads.

1. World title bouts for men shall be fought with 8-ounce regulation gloves. All other male professional bouts may be fought with 8-ounce or 10-ounce gloves by agreement between the promoter and the contestants. All women's professional bouts, including world title bouts, and all amateur competitions shall be held with 10-ounce regulation gloves. Those contestants matched at a weight heavier than super welterweight may be required to wear gloves with more extensive padding than those contestants matched at a lighter weight.

2. All gloves shall be nationally-approved brands or shall be submitted for approval to the Commission, and shall be in sanitary, safe, and good condition. Matched contestants shall wear padded protective equipment on the hands and feet of an identical size, shape, style and manufacture as provided by the promoter.
3. Gloves for title fights shall be new and delivered to the Commission representative with the packaging unbroken.
4. If footpads or shin guards are used, they shall be new and unbroken and shall be approved by the Commission.

C. Contestant's equipment and apparel.

1. For each bout, the promoter shall provide at least one clean water bucket in each corner, and shall provide the gloves for each contestant to ensure that matched contestants wear equipment of the same size, shape, style and manufacture.
2. Each contestant has the duty to provide the contestant's own hand bandaging, at least one light-colored and one dark-colored uniform, padded protective equipment to be worn on the feet, abdominal guard, breast protector (for women), mouthpiece, water bottle, and towel for use during an event. A contestant's equipment is subject to the approval of the Commission or its representative and the following requirements apply to the equipment and apparel of contestants:

 - a. The combatants may not wear the same colors in the ring, without the approval of the Commission's representative. In bouts involving a champion currently recognized by the Commission, the champion shall choose which color uniform to wear. In all other bouts, the referee or the Commission representative in charge will designate which

contestant will wear the light-colored uniform and which contestant will wear the dark-colored uniform.

- b. All contestants shall follow the World Kickboxing Association Dress Code approved for the discipline their bout is fought under.
- c. Facial cosmetics shall be prohibited.
- d. Male contestants shall wear a foul-proof groin guard or abdominal guard. A plastic or aluminum cup with an athletic supporter is adequate.
- e. Female contestants must wear foul-proof breast guards. Plastic breast covers are adequate. Female contestants may also wear an abdominal guard.

D. Weight classes. No bout shall be scheduled when the weight difference between combatants exceeds an allowance of three and one-half percent of the division weight.

1. The following weight classes shall be used as a general guide for men:

<u>Weights</u>	<u>Weight Range in Pounds</u>
<u>Strawweight</u>	<u>Less than 108</u>
<u>Atomweight</u>	<u>108-111.9</u>
<u>Flyweight</u>	<u>112-116.9</u>
<u>Bantamweight</u>	<u>117-121.9</u>
<u>Featherweight</u>	<u>122-126.9</u>
<u>Lightweight</u>	<u>127-131.9</u>
<u>Super Lightweight</u>	<u>132-136.9</u>
<u>Light Welterweight</u>	<u>137-141.9</u>
<u>Welterweight</u>	<u>142-146.9</u>
<u>Super Welterweight</u>	<u>147-152.9</u>

<u>Light Middleweight</u>	<u>153-158.9</u>
<u>Middleweight</u>	<u>159-164.9</u>
<u>Super Middleweight</u>	<u>165-171.9</u>
<u>Light Heavyweight</u>	<u>172-178.9</u>
<u>Light Cruiserweight</u>	<u>179-185.9</u>
<u>Cruiserweight</u>	<u>186-194.9</u>
<u>Super Cruiserweight</u>	<u>195-214.9</u>
<u>Heavyweight</u>	<u>215-234.9</u>
<u>Super Heavyweight</u>	<u>235+</u>

2. The following weight classes shall be used as a general guide for women:

<u>Weights</u>	<u>Weight Range in Pounds</u>
<u>Strawweight</u>	<u>Less than 108</u>
<u>Atomweight</u>	<u>108-111.9</u>
<u>Flyweight</u>	<u>112-116.9</u>
<u>Bantamweight</u>	<u>117-121.9</u>
<u>Featherweight</u>	<u>122-126.9</u>
<u>Lightweight</u>	<u>127-131.9</u>
<u>Super Lightweight</u>	<u>132-136.9</u>
<u>Light Welterweight</u>	<u>137-141.9</u>
<u>Welterweight</u>	<u>142-146.9</u>
<u>Super Welterweight</u>	<u>147-152.9</u>
<u>Light Middleweight</u>	<u>153-158.9</u>

<u>Middleweight</u>	<u>159-164.9</u>
<u>Super Middleweight</u>	<u>165-174.9</u>
<u>Cruiserweight</u>	<u>175-184.9</u>
<u>Super Cruiserweight</u>	<u>185-214.9</u>
<u>Heavyweight</u>	<u>215-234.9</u>
<u>Super Heavyweight</u>	<u>235+</u>

E. Fair blows and fouls.

1. All punches must land with the knuckle part of the glove, and no other part of the glove or forearm can be used. All kicks must connect with the ball of the foot, the instep, the heel, side of the foot, or the shin from below the knee to the instep.
2. In professional kickboxing competition there is a minimum kick expectation of eight kicks per round, although kick counters will not be used. If the referee feels that a contestant is not kicking enough he or she may give a verbal warning. If the contestant continues without using enough kicks, the referee may deduct a point, and judges shall implement that deduction.
3. Contestants may kick or sweep to the inside or outside region of the leg. Any deliberate kick to the knee, groin, or hip joint shall be prohibited and shall constitute a foul. The referee may issue a warning, order point deductions from the judges scoring, or may disqualify the offending contestant for repeated violations.
4. In addition to the foul blows listed in R19-2-D601(W), the following practices are classified as fouls in kickboxing:

- a. Knee strikes, elbow strikes, palm-heel strikes, slapping, or clubbing blows with the hands
- b. Striking the throat, collarbone, the kidneys, or a female contestant's breasts.
- c. Hitting with the open glove, or with the wrist.
- d. Kicking into the knee, or striking below the belt in any unauthorized manner.
- e. Anti-joint techniques (i.e. striking or applying leverage against any joint).
- f. Holding an opponent with one hand and hitting with the other.
- g. Grabbing or holding onto an opponent's leg or foot.
- h. Leg checking the opponent's leg (act of extending the leg or foot to stop the kick of an opponent) or stepping on the opponent's foot to prevent the opponent from moving or kicking.
- i. Holding any part of the body or deliberately maintaining a clinch for any purpose.
- j. Throwing or taking an opponent to the floor in any unauthorized manner.
- k. Striking a downed opponent, or an opponent who is getting up after being down. A contestant is "downed" when any part of the contestant's body other than the soles of the feet touches the floor.

F. Intentional foul.

- 1. The referee shall have discretion as to the penalty for fouling. The referee may direct the deduction of one to two points and may also disqualify the wrongdoer, in the case of persistent or major fouling, or where the foul prevents continuance of the bout. Normally, in the case of minor fouling, the referee is expected to issue a warning before imposing a penalty. Penalties shall be imposed during or immediately after the round in which the

foul occurs. The referee shall personally advise the corners and each judge of the points deducted immediately upon imposition of the penalty.

2. If a contestant is injured (e.g., cut) by an intentional foul but can continue, the referee shall notify the judges and the Commission representative at ringside that if the foul-inflicted injury is subsequently aggravated to the point that the injured contestant cannot continue, a technical win will be rendered in favor of the injured contestant if that contestant is ahead on points, or the points are even, and a technical draw will be rendered if the injured contestant is behind on points.

G. Accidental foul.

1. If a bout is stopped because of an accidental foul, the referee shall determine whether or not the contestant who has been fouled can continue. The referee may consult with the attending physician. If the contestant's chances have not been seriously jeopardized as a result of the foul, the referee may order the bout continued after a reasonable interval.
2. On the other hand, if by reason of accidental foul a contestant shall be rendered unfit to continue the bout, it shall be terminated. The scorekeeper shall tally all scores, subtracting all penalties. If the injured contestant is behind on points in the majority opinion of the judges, then the referee shall declare the bout to be a technical draw. But if the injured contestant has a lead in points, then the referee shall declare the injured contestant to be the winner by technical decision.
3. Should an accidental foul terminate a bout during the first round, the referee shall declare the bout to be a technical draw.

H. Results specific to kickboxing.

1. When contestant is considered knocked down. A contestant shall be declared knocked down in any portion of the contestant's body other than the feet touch the floor, or if the contestant hangs helplessly over the ropes. A contestant shall not be declared knocked down if he or she is pushed, thrown, or accidentally slips to the floor. The determination as to whether a contestant is pushed, thrown or slips to the floor, rather than being knocked down, shall be made by the referee.
2. Counting. Whenever a contestant is knocked down, the referee shall order the contestant's opponent to retire to the farthest neutral corner of the ring, pointing to the corner and immediately begin the count over the knocked down contestant. The timekeeper, through effective signaling, shall give the referee the correct one-second intervals for the count. The referee will audibly announce the passing of each one-second interval, indicating its passage with a downward motion of the arm. The referee's count is the only official count.
3. Length of Count.
 - a. Any time a contestant is knocked down, the referee shall automatically begin a mandatory 8 count and then, if the contestant appears able to continue, will allow the bout to resume.
 - (1) The referee may, at his or her discretion, administer an 8 count to a contestant who has been stunned, but who remains standing. He or she shall direct the contestant's opponent to a neutral corner, then begin counting from 1 to 8, examining the stunned contestant as during the counts.
 - (2) If, after completing the standing 8 count, the referee determines that the contestant is able to continue, the referee shall order the bout to resume. But if the referee

determines that the contestant is not able to continue, the referee shall stop the bout and declare the contestant's opponent to be the winner by technical knockout.

- b. If the contestant taking the count is still down when the referee calls the count of 10, the referee shall wave both arms to indicate that the contestant has been knocked out and will signal that the contestant's opponent is the winner. A round's ending before the referee reached the count of 10 will have no bearing on the count. The contestant must still rise before the count of 10 to avoid a knockout.
 - c. Should a downed contestant rise before the count of 10 is reached and then go down again before being struck, the referee shall resume the count where he or she stopped counting.
 - d. Should both contestants go down at the same time, the referee shall continue to count as long as one of the contestants is down. If both contestants remain down until the count of 10, the bout will be stopped and the referee shall declare the bout to be a technical draw. But if one contestant rises before the count of 10 and the other contestant remains down, the first contestant to rise shall be declared the winner by knockout. Should both contestants rise before the count of 10, the round will continue.
4. Should a contestant be knocked down three times in one round from blows to the head, the referee shall stop the bout and declare the contestant's opponent to be the winner by technical knockout.
 5. Whenever a contestant is knocked out primarily as a result of a kick, whether or not the kick occurred in combination with punches, the referee shall declare the contestant's

opponent to be the winner by either kick knockout or technical kick knockout whichever is appropriate and shall be entered into the contestant's official record as a KKO.

6. A contestant who has been wrestled, pushed, or who has fallen through the ropes during the bout, may be helped back by anyone except the contestant's own seconds or manager.
The referee shall allow reasonable time for the return. When on the ring platform outside the ropes, the contestant must enter the ring immediately. Should the contestant stall for time outside the ropes, the referee shall start the count without waiting for the contestant to re-enter the ring.
 - a. Once a fallen contestant re-enters the ring, the referee shall start the round from the moment that the contestant is back in the ring.
 - b. Whenever contestant falls through the ropes, the contestant's opponent must retire to the farthest neutral corner, as directed by the referee, and remain there until ordered to resume the bout.
 - c. A contestant who deliberately wrestles or throws an opponent from the ring, or who hits an opponent who is partly out of the ring and thus prevented by the ropes from assuming a position of defense, may be penalized.
7. Wiping gloves. Before a fallen contestant resumes competition, after having been knocked to, slipped to, or fallen to the floor, the referee shall wipe the contestant's gloves free of any foreign substance.
8. If after consulting with the physician, the referee decides that further contact below the belt, whether from fair or foul blow, will result in injury to a contestant's knee, the referee shall prohibit striking below the belt for the remainder of the bout.

I. Method of judging.

1. The judges shall score all bouts and determine the winner through the use of the 10-point must system. In this system the winner of each round receives 10 points and the opponent receives a proportionately smaller number. But in no circumstances shall a judge award the loser of each round with fewer than 7 points. If a round is judged even, each contestant shall receive 10 points. No fraction of points may be given.
2. Judges should base their scores on the relative effectiveness of each contestant in a given round. An official knockdown always demonstrates superior effectiveness. However, a contestant who is knocked down more from instability than from an opponent's blow, may be able to return from the knockdown and dominate the round by a large enough margin to be judged the winner. Also, the weight given to an official knockdown scored by one contestant must be equal to the weight given to an official knockdown scored by the contestant's opponent.
3. Generally, sweeps should not be given the same weight as an official knockdown. Judges should watch for the technique's effectiveness in slowing down an opponent.
4. A contestant who wins the round and does so with exceptional above-the-belt kicking technique, should be given a more favorable point advantage than the contestant who wins a round with a predominance of punching technique. Below-the-belt kicking technique should be given the same weight as punching techniques. A round should be awarded to the overall most effective above-the-waist kicker.
5. Further, a contestant who aggressively presses an opponent throughout a round, but cannot land a threatening kick or punch, should not be judged as favorably as the contestant who back pedals throughout the round but counter attacks with visible impact.

6. Judges shall award points to contestants on the basis of round by round outcomes and in accordance with the following scores:

 - a. 10 points to 10 points whenever neither contestant dominates the other with a superiority in effectiveness.
 - b. 10 points to 9 points whenever the winning contestant dominates the losing contestant with a marginal superiority in effectiveness.
 - c. 10 points to 8 points whenever the winning contestant dominates the losing contestant with exceptional above-the-waist kicking technique, or whenever the winning contestant dominates the losing contestant with a significant superiority in effectiveness as might be indicated by one knockdown.
 - d. 10 points to 7 points whenever the winning contestant dominates the losing contestant with an overwhelming superiority in effectiveness as must be indicated by more than one knockdown.
7. In the case of a professional or Pro Am title bout that ends in a draw, there shall be a tie-breaking extra round, that shall be decided by the referee.

J. Rounds.

1. The number of rounds in a kickboxing bout shall not exceed a maximum of 12 rounds.
2. The duration of each round shall be a maximum of two minutes, followed by a one-minute rest period after each non-final round.

R19-2-D605. Muay Thai.

- A. The ring.** The promoter is responsible for providing a safe ring in accordance with the following:

1. The ring shall be four-sided, not less than 16 feet nor more than 24 feet per side, measured within the ropes.
2. The floor and corner shall be well constructed with no obstructions and with a minimum extension outside the ring of at least 3 feet. The minimum floor height shall be 4 to 5 feet from the surface upon which the ring is constructed. The corner posts shall have a diameter of between 4 to 5 inches with a height of 58 inches from the ring floor. All four posts shall be properly cushioned.
3. The ring floor shall be padded by either cushioning, rubber, soft cloth, rubber mat, or similar material with a thickness of 1 to 1 1/2 inches. The padding shall be completely covered by a canvas cloth.
4. There shall be four ropes, stretched and linked to four corner posts. The rope shall not be less than 1 inch in diameter and shall be covered by a soft or cushioning material. Positioning and tensioning of the rope shall be approved by the Commission.
5. The ring shall have suitable steps for use of the contestants.

B. Gloves.

1. Promoters are responsible for providing gloves for contestants in accordance with the following:

 - a. Mini Flyweight - Junior Featherweight shall use 6-ounce gloves.
 - b. Featherweight - Welterweight shall use 8-ounce gloves.
 - c. Junior Middleweight and heavier classes shall use no less than 10-ounce gloves; and higher weights may use gloves of 12, 14, 16, or 18 ounces in weight, as approved by the Commission.

- d. The promoter shall have one extra set of gloves for each glove weight, corresponding with the contestants' weight classes participating in the event.
2. All gloves shall be inspected by a Commission inspector prior to the fight.
3. In the case of any problem with the boxing gloves themselves, the referee may temporarily halt the match until the problem is corrected.

C. Contestant's equipment and apparel.

1. Only boxing shorts may be worn by all contestants, and women shall also wear approved tops. Contestants shall have one extra set of apparel for an event.
2. To ensure the combatant's safety, a groin guard shall be worn and shall be checked by an inspector.
3. Long hair may be worn, but hair shall be tied back, and facial hair shall be trimmed.
4. The Mongkol may be worn when performing the Wai Kru (paying respect to one's teacher) prior to the match start.
5. Arm bands may be worn.
6. Single elastic bandages are allowed to be worn on the arms or legs to prevent sprains, however insertion of a shin guard, or similar object, is not allowed.
7. No decoration, jewelry, or material with sharp or metal components is allowed to be worn during the bout.
8. The use of liniment is allowed as long as both contestants and Commission agree. Contestants shall not use liniment on the face.
9. Contestants may wear elastic ankle socks to protect their feet.
10. Any infringement to the dress code may result in the contestant's disqualification.

D. Weight classes. The following weight classes shall be used as a general guide:

<u>Weights</u>	<u>Weight Range in Pounds</u>
<u>Mini Flyweight</u>	<u>Less than 105</u>
<u>Junior Flyweight</u>	<u>105-107.9</u>
<u>Flyweight</u>	<u>108-111.9</u>
<u>Junior Bantamweight</u>	<u>112-114.9</u>
<u>Bantamweight</u>	<u>115-117.9</u>
<u>Junior Featherweight</u>	<u>118-121.9</u>
<u>Featherweight</u>	<u>122-125.9</u>
<u>Junior Lightweight</u>	<u>126-129.9</u>
<u>Lightweight</u>	<u>130-134.9</u>
<u>Junior Welterweight</u>	<u>135-139.9</u>
<u>Welterweight</u>	<u>140-146.9</u>
<u>Junior Middleweight</u>	<u>147-153.9</u>
<u>Middleweight</u>	<u>154-159.9</u>
<u>Super Middleweight</u>	<u>160-167.9</u>
<u>Light Heavyweight</u>	<u>168-174.9</u>
<u>Cruiserweight</u>	<u>175-189.9</u>
<u>Heavyweight</u>	<u>190-208.9</u>
<u>Super Heavyweight</u>	<u>209+</u>

E. Fair blows and fouls.

1. A fair strike may be made by a punch, kick, knee, or elbow. Contestants may strike with punches above the waist, kicks above the waist and to the inside and outside of an opponent's legs, but not to the groin or leg joints. Direct kicks (side-kick style) to the front of an opponent's legs are not allowed. Fighters, promoters, trainers, and the Commission may agree prior to the event to use modified rules, which agreement shall be documented in the promoter/fighter contract.
2. Clinching is allowed if one contestant is active within the clinch.
3. Contestants are allowed to catch their opponent's leg and take one step forward. After one step, the contestant holding the leg must strike before taking further steps.
4. A contestant may kick his or her opponent's supporting leg with the top of the contestant's foot or shin, but may not use the instep as in a karate-style sweep.
5. In addition to the foul blows listed in R19-2-D601(W), the following practices are classified as fouls in Muay Thai:
 - a. Slapping with the lace side of the gloves;
 - b. Holding an opponent's head or arm and hitting;
 - c. Strikes to leg joints or other joint attacks;
 - d. Palm heel strikes;
 - e. Wrestling, back or arm locks or any similar judo or wrestling hold, takedowns or grappling;
 - f. Spinning sweeps;
 - g. Karate-style chopping strikes;

- h. Striking opponent when the opponent has slipped or fallen down (an opponent is down or downed when any part of his or her body other than the soles of his or her feet touches the floor of the ring);
 - i. Spinning forearm or elbow strike. A spinning backhand strike is allowed if the hit is made with the portion of the glove that is above the wrist line (from the tape line at the wrist to the end of the glove);
 - j. Deliberately falling on an opponent; and
 - k. Hip throws.

- F.** Intentional foul. If a contestant commits an intentional foul in the ring, the referee shall have the discretion to do the following, depending on the nature and seriousness of the foul:
- 1. Deduct one point from the fouling contestant per foul;
 - 2. Disqualify the contestant who has fouled; or
 - 3. If there is a disqualification, the purse may be withheld and the contestant may be automatically suspended.

G. Accidental foul.

- 1. If a contestant commits an accidental foul in the ring, the referee shall have the discretion to do the following, depending on the nature and seriousness of the foul:
 - a. Give the contestant who has fouled a caution or a warning (only one warning may be given per bout, and a caution may not follow a warning given for the same type of foul);
 - b. Deduct one point from the fouling contestant per foul; or
 - c. Disqualify the contestant who has fouled, if it is a serious accidental foul or if multiple accidental fouls have been committed.

2. When a self-inflicted injury or an accidental foul causes the bout to be stopped, the result would be a no contest or a disqualification if the bout is stopped before a majority of rounds have been completed. If the injury occurs after a majority of rounds have been completed, then the judge's scorecards will be totaled and the decision of the bout will be announced.

H. Results specific to Muay Thai.

1. In addition to the type of results listed in R19-2-D601(R), the following are the types of bout results:
 - a. A draw will be declared if both contestants are injured and cannot continue the bout, when the stoppage occurs before a majority of rounds have been completed.
 - b. Individual scores will decide a match if both contestants are injured and cannot continue the bout after the majority of rounds have been completed.
2. Counting. The count interval will be at one-second intervals, from 1 to 10. During the count, the referee will signal with his or her hand, to ensure that the contestant receiving the count understands.
 - a. A contestant, upon receiving a count, cannot continue the match prior to a count of 8 and loses immediately on receiving a count of 10.
 - b. If both contestants fall down, the referee will direct the count to the last contestant that fell. If both contestants receive a 10 count, a draw will be declared. Should the contestants lean against each other while sitting up, the referee shall stop counting at that time.
 - c. The referee shall continue the count from the count of 8 when a contestant is "down" as a result of a hit, the contestant rises at or before the complete count of 8, and the

bout is continued after the count of 8 is completed, but the contestant falls again without receiving a fresh hit.

- d. A contestant not ready to fight again when the bell rings after a break, shall receive a count, unless the failure to fight is caused by an equipment problem. The referee will determine the length of time that will be allowed to fix an equipment problem. If the problem cannot be fixed, the result will be a forfeiture under R19-2-601(R)(6).

3. Knocked out of ring.

- a. If a contestant falls partially or completely through the ring ropes onto the apron, the referee shall order the opponent to stand in the farthest neutral corner and if the contestant remains partially outside the ropes, the referee shall start to count to 10. If a contestant falls completely out of the ring, the referee shall count to 20. A contestant must re-enter the ring on his own without assistance from another person.

(1) If the contestant returns to the ring before the count ends, the contestant will not be penalized.

(2) If anyone prevents the fallen contestant from returning to the ring, the referee shall stop the count and warn such person or stop the fight until such interference ceases.

(3) If both contestants fall out of the ring and one tries to prevent his or her opponent from returning to the ring before the count ends, the interfering contestant will be warned or disqualified.

(4) If both contestants fall out of the ring, the one that returns to the ring before the count ends will be considered the winner. If neither contestant can return to the ring, the result will be considered a technical draw.

4. “Flash knockdowns,” where the downed contestant rises up immediately, are usually not counted as knockdowns with a standing 8 count. However, if the contestant is stunned by the knockdown, the referee may decide to perform an 8 count if he or she deems it necessary, no matter how fast the contestant rises after the fall.

I. Method of judging.

1. The following are the scoring rules:
 - a. The maximum score for each round is 10 points, the loser scoring either 9, 8, or 7;
 - b. A round that is a draw is scored as 10 points for both contestants;
 - c. The winner and loser in an indecisive round score 10 to 9 respectively;
 - d. The winner and loser in a decisive round score 10 to 8 respectively;
 - e. The winner and loser in an indecisive round with a single count score 10 to 8 respectively;
 - f. The winner and loser in a decisive round with a single count score 10 to 7 respectively; and
 - g. The contestant scoring two counts against his or her opponent will score 10 to 7.
2. Strikes are scored as follows:
 - a. Points are awarded for a correct Thai boxing style, combined with hard and accurate strikes;
 - b. Points are awarded for aggressive and dominating Muay Thai skill;
 - c. Points are awarded for a contestant actively dominating an opponent; and
 - d. Points are awarded for the use of a traditional Thai style of defense and counter-attack.
3. The following strikes will not receive points:

- a. A strike which is against the rules;
- b. A strike in defense against the leg or arm of an opponent; or
- c. A weak strike.

4. Fouls will be scored as follows:

- a. Any contestant who commits a foul will have one point deducted from his or her score for each foul committed;
- b. The judges will deduct points for fouls as directed by the referee; and
- c. Any foul observed by the judges but not by the referee, will be penalized accordingly.

J. Rounds.

- 1. Prior to the start of the first round, both contestants may perform the Wai Kru (paying respect to the teacher), accompanied by the appropriate Thai traditional music.
- 2. The number of rounds in a Muay Thai bout shall not exceed a maximum of five rounds.
- 3. The duration of each round shall be a maximum of three minutes, followed by a two-minute rest period after each non-final round.

R19-2-D606. Toughman

A. Unless otherwise specified herein, R19-2-D602 shall apply to Toughman events, with the following exceptions:

- 1. Toughman contestants shall wear headgear, padded kidney belt, and abdominal guards, as approved by the Commission.
- 2. A bout shall consist of three one-minute rounds, with a one-minute rest period between each round, and may involve two or more contestants.
- 3. No kicking is permitted.
- 4. The following weight classes shall be used as a general guide:

<u>Weights</u>	<u>Weight Range in Pounds</u>
<u>Lightweight</u>	<u>Less than 140</u>
<u>Middleweight</u>	<u>140 to 159.9</u>
<u>Light Heavyweight</u>	<u>160 to 184.9</u>
<u>Heavyweight</u>	<u>185+</u>

5. The Commission reserves the right to disallow Toughman events or licenses for Toughman participants, if, in the Commission's discretion, the event or licensing would not be in the best interests of the combatants, the state, the industry, and the Commission.

R19-2-D607. Exhibitions; Fee

A. Exhibitions may only be allowed if approved by both the Commission and the Executive Director, and shall be subject to all requirements of A.R.S. Title 5, Chapter 2, Article 2 and these rules adopted thereunder.

B. The fee for an Exhibition shall be \$1000, to be paid by the promoter.

Table 1. Time-frames

<u>License</u>	<u>Statutory Authority</u>	<u>Administrative Completeness Review</u>	<u>Response to Completion Request</u>	<u>Substantive Completeness Review</u>	<u>Response to Additional Information</u>	<u>Overall Time-frame</u>
<u>Promoter, Matchmaker, Manager, Judge, Inspector, Referee, Physician, Timekeeper, Combatants over the age of 36 years</u>	<u>A.R.S. § 5-228</u> <u>R19-2- C602</u>	<u>30</u>	<u>10</u>	<u>15</u>	<u>10</u>	<u>45</u>

<u>Combatant, Second, Cutman, Trainer, Ring Announcer</u>	<u>A.R.S. § 5-228</u>	<u>10</u>	<u>10</u>	<u>10</u>	<u>10</u>	<u>20</u>
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Table 2. Bandages (Gauze and Tape)

	<u>Maximum Gauze Dimensions</u>	<u>Maximum Tape Dimensions</u>	<u>Method of Wrapping</u>
<u>Boxing, per hand</u>	<u>2" wide 60' long</u>	<u>2" wide 10' long</u>	<ul style="list-style-type: none"> <u>Tape shall not extend higher on the hand beyond three-fourths of an inch from the knuckles, when the hand is clenched to make a fist.</u>
<u>MMA, per hand</u>	<u>2" wide 39' long</u>	<u>1" wide 10' long</u>	<ul style="list-style-type: none"> <u>Tape may extend to cover and protect the knuckles when the hand is clenched to make a fist.</u>
<u>Kickboxing , per hand</u>	<u>2" wide 30' long</u>	<u>1.5" wide 6' long</u>	<ul style="list-style-type: none"> <u>Tape shall not extend higher on the hand beyond one inch from the knuckles, when the hand is clenched into a fist.</u> <u>It is acceptable to place 1 strip of tape between the fingers not to exceed ¼" in width and 4" in length to hold bandages in place.</u>
<u>Kickboxing , per foot</u>	<u>None</u>	<u>1.5" wide 12' long</u>	<ul style="list-style-type: none"> <u>Tape may be used to protect the ankles.</u> <u>Gauze shall not be used on the feet.</u> <u>A single elastic or neoprene style supportive sleeve may be worn on each foot and around each knee as long as it has no padding, braces, hinges, or anything that could injure the wearer or his opponent or create an advantage of any kind.</u>
<u>Muay Thai, per hand</u>	<u>2" wide 30' long</u>	<u>1.5" wide 6' long</u>	<ul style="list-style-type: none"> <u>Tape shall not extend higher on the hand beyond one inch of the knuckles when hand is clenched to make a fist.</u>

Arizona Boxing News & Notes with Don Smith:

Benavidez Protégé Valenzuela, Rules Response & More

Boxing Fans, I called Boxing trainer Jose Benavidez Sr. recently to get an update on his 2 boxing sons (David & Jose Jr.). Senior told me that his namesake is fighting on the Horn/Corcoran WBO Welterweight title tiff in Brisbane Australia on December 13 versus a yet to be determined opponent.

It has been 16 months since Jose last fought and his ring inactivity is a direct result of a severe wound suffered from a bizarre shooting incident in Phoenix. The former interim world boxing Champion (25-0-16 knockouts) returned to training 2 months ago and according to his handlers the 25 year old pugilist has shed a few pounds and will be fit as a fiddle and ready to go on December 13 when the 1st bell sounds. The plan is for the California born fighter (Arizona resident) to fight 3-4 times and then challenge for a world title if his team thinks he is ready.

WBC world super middleweight champion David Benavidez (19-0-17 knockouts) is nervously waiting to defend his title after winning the belt by defeating Ronald Gavril (18-2). Talk about a rematch with Gavril is ongoing and the target date appears to be in January or February, 2018. In the meantime, David is staying ready by sparring with light heavyweight title contender Vyacheslav Shabranskyy (19-1-16 knockouts) as he prepares to fight Sergey Kovalev on 11/25 for the vacant WBO world light heavyweight title. David and the light heavy have sparred several times in the past.

In addition to training his sons, Jose Sr. has taken on former amateur standout Jose Valenzuela (40-5-40 knockouts). The 18 year old southpaw will make his professional debut on 11/9 at the W.D. Jackson Armory in Portland Oregon. It is a miracle that the

teenager is physically able to box or even walk after a drunk driver ran over the then 3 year old; sending the child to a local hospital for emergency treatment in Los Mochas Sinaloa, Mexico. Doctors feared he wouldn't survive and called his survival "a Miracle". One important footnote, the drunk driver was arrested and charged accordingly.

The rehabilitation process was excruciating and in addition to learning to walk again, his face was crushed and had to be surgically reconstructed. Financially, it was a major struggle to survive in a financially disadvantaged neighborhood; so, his family decided to leave the impoverished town and relocate in Arizona where the family resided in Tempe and Mesa before moving to Washington State where the family remains. Jose has two older sisters.

His introduction to boxing came at age 10 in Bellingham Washington where his dad took him to a local gym after he became troubled over his son's inability to refrain from street fighting and hanging out with the wrong people. His father would drive him to the gym 3-4 times a week. As Jose's skills began to develop, father and son realized the aspiring boxer needed a more competitive and progressive program; so, dad & mom began driving him to the "Aztec Boxing Club" in Renton Washington, a 2 hour drive. His parents never complained about accommodating their son and the routine continued for 6 years until the family moved to Auburn, Washington, a city of 75,000 and situated between Seattle and Tacoma Washington.

His management team is putting the pedal to the medal in preparing Jose for his debut as noted by the caliber of his sparring partners including undefeated prospect Tramaine Williams (13-0-5 knockouts), title contender Oscar Negrete and the young pugilist will be exchanging blows with Irish heralded

Olympian Michael Conlan on Friday 11/10 at Legendz Boxing in Norwalk California not to be confused with Legends Boxing in Utah.

During our two brief telephone chats, he told me his favorite two fighters are Floyd Mayweather Jr. and Vasyl Lomachenko, two great ring role models to have. Trainer & manager Benavidez told me that the kid is very dedicated to the sport and has all the tools to become a champion. And he has learned from his mistakes in life that gives him a new lease on life. After hearing his story, it's hard not to root for him; big day for Jose on 12/9, stay tuned.

Casino Del Sol: I went to Tucson, Arizona on Halloween day to cover a Golden Boy weigh-in at Casino Del Sol followed by a 6 bout fight night on Thursday November 1. The Casino & Resort is rated 4 stars by Forbes and after a two day visit, I would suggest a five star rating and keep in mind, I rarely rave about the quality of my lodging; of course, I have stayed in some pretty shabby accommodations during my 40 plus years as a journalist. After being treated so royally, I may stay away from hostels.

My room rate was reasonable and the Buffet at the Fiesta Cafeteria was very good; but I wouldn't recommend the cheesecake. Maria my server, on 3 occasions, was excellent as were my servers at Moby's café in the casino.

I arrived at the Casino/Resort at 11:10 on weigh-in day and immediately headed for the site of the event (Paradiso Lounge) where I spotted Tucson fighter Christopher Gonzalez and his good natured team. I immediately joined Christopher and asked him about his opponent Jesus Arevalo (2-1) from Sierra Vista Arizona. Chris told me the two had sparred in the past when he was a different fighter and he was confident he would defeat

Arevalo. The Sierra Vista told me the same story and made the same prediction: victory!

Only one can win and the victor was Gonzales (1-0) who scored often enough with body shots to earn a unanimous decision over Arevalo who made the fight interesting.

I talked to Gonzalez after the fight and asked him the cuts (above the right eye) resulting from 2 head butts would alter his fight schedule and he said no. His manager asked me what I thought about his performance and we both agreed that the crowd loved the actin but the fight was a bit sloppy a C grade would be fair. I think Gonzales has good power but his defense was porous and he tired in the final 4th round. He will only get better and I like his demeanor outside the ring and his grit inside the ring. In a post-fight chat, the young fighter was asked to fight at the casino 7 more times at the venue, I couldn't verify the claim or the next Casino Del fight date; but a win is a good way to start a career.

After lunch, I was escorted to Cesar Alan Valenzuela's room and we had a 15 minute conversation about his next day fight with Ryan Garcia, the current Junior NABF super featherweight title holder and Cesar seemed confident at the time; but, his manager (Gilbert) dominated the conversation and predicted an upset. Unfortunately Garcia manhandled the likeable Valenzuela and the contest was stopped in the third after Garcia had his way with power shots from the right hand and several vicious left hooks. Garcia (12-0-11 knockouts) is the real deal and I expect the 19 year old to fight for a world title within 2 years. He does need to improve his head movement and develop more lateral movement. His speed and power is incredible.

On Thursday morning, fight day, I left my room early and headed for breakfast at Molby's Café where I spotted headliner Jesus Soto Karass (28-13-4)in a booth with his manager Francisco

Espinoza. I went over to wish Soto good luck and was invited by Soto to join him and his manager for breakfast. I wasn't allowed to pay for my breakfast even though I insisted, really!

Soto & Espinosa have been together since the beginning of his fighter's career and the two men interact well together. Both men are easy to talk to although Soto feels more comfortable speaking in Spanish. Francisco is a movie buff and enjoys westerns.

Somehow we began talking about that genre of film and he was able to recall scenes from movies and he also told me he owns a Mexican Fish Restaurant in Phoenix on 59th Avenue & Indian School. Francisco served in the US military and exercised his GI benefits to help his daughter who is very successful in her own right.

It was a very amicable conversation. Soto brought up his father's boxing career. Jose Luis Soto lost more than he won; but he did fight the great Salvador Sanchez and other champion caliber fighters. Soto told me his father let him make his own decisions about his career. I asked if his possible retirement would end the Soto boxing legacy and he said his youngest son (3 years old) showed boxing instincts but he wouldn't encourage or discourage him from boxing.

I asked him if the fight with Jesus Carlos Abreu (20-3-19 knockouts) was his last fight and he said all things must come to end and he told me he is already promoting fights so the knockout loss to Abreu won't end his involvement with boxing. He said he would take a few days off and addresses his ring future. Despite his loss, the veteran fighter was mobbed by fans seeking picture or autograph from the popular fighter who enjoys a cult like following although he has never won a world title.

Espinosa manages Antonio Margarito and I asked him about the rumors that the former world champion was broke and was

forced to fight to stave off bankruptcy by continuing to fight. Mr. Espinoza told me the allegations were false and Antonio was still fighting because he enjoys the sport.

I was ringside when Abreu knocked out Soto in the 8th round and within 5 feet of Abreu when the Dominican Republic fighter confirmed to a fan (near the hotel elevator) that he hurt his right hand early in the third round. He asked his corner what he should do and he was told he had two hands so use the left. He did score with both hands in the 8th and final stanza. It was a gutsy performance for the game but out muscled Soto.

In a very entertaining bout, Journeyman Germain Meraz (from Mexico) did everything to win except fill out the scoreboards in his ferocious battle with Rafael Gramajo (9-1-2). At the end the battle was scored a majority draw and the fans roared their disapproval. In a word, Meraz (58-45-2- 35 knockouts) was robbed.

Pedro Melo (17-18-1 (8 knockouts) made a fight of it four rounds until Cesar Diaz (7-0-5 knockouts) tagged Melo with a barrage of punches that prompted the referee to stop the contest at 1:10 in the 5th round.

Robert Garcia protégé Hector Tanajara Jr. scored a unanimous victory over super featherweight Jesus Serrano with scores of 60-72 x 2 and 79-73. It was a fun night of boxing and I thank Sergio Diaz (Showdown Promotions) and Paco Damian (Paco Presents Boxing) for their hospitality and help with my coverage. The next date for boxing at Casino Del Sol is pending.

Boxing News: Phoenix middleweight Andrew Hernandez is training in Oregon (near Portland) with Jose Benavidez Sr. who told me that Andrew is ready for his fight with Mike Gavronski (24-2-1-15 knockouts) in a title bout on Saturday November 18

in Tacoma, Washington at the Emerald Queen Hotel & Casino. There are 5-6 fights planned for the card. At stake is the WBA-NABA Super Middleweight Title. Their boxing duel is advertised as the "Battle at the Boat 113" in the I-5 Tacoma Showroom. Ticket prices range is: \$30.00, \$50.00, \$75.00 & \$100.00.....Former featherweight champion Yuriorkis Gamboa will fight Jason Sosa in the televised opener to Kovalev vs. Shabrankskyy at MSG in the Big Apple on 11/25 televised on HBO (10:00 p.m. ET/PT. He replaces Robinson Castellanos who suffered an injury. This corner picks Kovalev....Trainer Joel Diaz spoke to ABNN recently in Tucson about Phoenix welterweight Alfredo Escarcega (3-0), a young boxer under his tutelage. Joel said if the young fighter doesn't begin to show more power, Alfredo may be looking for another line of work. I think Alfredo is a fine prospect and the statement was a bit harsh but Diaz is known for candid remarks.Phoenix boxing trainer Danny Riddell and local announcer Ralph Velez Jr. were at Casino Del Sol in Tucson on 11/1 to watch boxing. Both men were in the house when nationally known trainer Robert Garcia was handcuffed and escorted out of the boxing venue. He was not arrested nor put in a holding cell. I was told that he was given a ticket for disorderly conduct after an altercation with a fan that was sporting a black eye resulting from punches thrown by members Garcia's team. Mr. Garcia denies throwing any punches and the existence of an issued ticket wasn't confirmed by Casino Del Sol.....Arizona welterweight Abel Ramos (18-2-13 knockouts) is scheduled to fight Eudy Bernardo (23-2-17 knockouts) in a 6 round contest at the Winnavegas Casino & Resort in Sloan Iowa, a suburb of Sioux City. The event can be viewed on Facebook & BeIN Sports. The show is promoted by Roy Jones JR. Promotions. Bantamweight Max Ornelas (9-0) is the headliner with Randy Moreno (10-1) featured in the Co-Main. Crowd favorites Nathaniel Gallimore (19-1-16 knockouts) and Joshua Greer Jr. (14-1-6 knockouts) are on the

undercard; on paper, good show. I think the Ramos vs. Bernardo fight should have been the main event; but it isn't my nickel; the legendary Roy Jones Jr. will make an appearance.

More Stuff: Phoenix fighters Ryan Riddell and Luis Espinoza are talking trash on Facebook and both have issued challenges even though they fight at different weights.....Sebastian Mitry (F-1 Boxing) won a first place trophy at the Disorder by the Border smoker in San Luis Arizona on 11/2. Mitry was the only fighter from Maricopa County to participate in the event.....Tucson Fighter Christopher Gonzalez and his team handled themselves very well very well at the Casino Del Sol weigh-in and post-fight interviews; great group of guys.....Richard Soto, Chief of officials, USA Boxing LBC-AZ, need help with the weigh-in process at the Gene Lewis Invitational (11/09/-10-11) and volunteers are asked to call 602-702-7053....Sonny's 2nd Annual Masters Tournament (11/17-18)will be held at Sonny's Boxing, 108 E Western Avenue in Goodyear Arizona. Master's Champion Geoff Ronning will not compete this year; instead he will help with registration, etc. If interested in becoming a participant, call Sonny's boxing at 623-806-2421. Sorry, we don't have more details such as entry fees and weight divisions; perhaps, forthcoming! Finally, we hear that there will be a new applicant for a Arizona Boxing Promoter's license and he/she will try to coax Jesus "El Martillo" Gonzales into fighting one more time on a show that will be presented in the spring of 2018; tentative titles being bandied about for the proposed are: Final Round & One More Time". Tucson fighter Christopher Gonzalez planned to wear the flag of the Pascua Yaqui on his trunks when he fought at the Casino Del Sol in Tucson on November 1. His grandmother sewed on upside down and his management team took it off and ran to find a needle and thread. They found the thread but in a rushed attempt to sew the

flag on, the needle broke. Chris promises to have the tribal flag on his trunks if and when he fights at the casino again.

Rules Response: The Arizona Boxing/MMA Commission has submitted proposed rule changes and the public is invited to go online to a link (listed on the Arizona Boxing/MMA Commission website) and read and critique the document. On November 29 at 10 a.m., members of the Arizona Boxing Community are invited to attend the Monthly Commission meeting (1110 W. Washington Street in Phoenix) and discuss the proposed changes. Any further questions on how and where to find the notice of proposed rulemaking vsn be directed to Aiden Fleming, Department of Gaming at 602-255-3879.

It was a very painstaking effort rules drafting team (almost a year) and I can understand the writing teams sensitivity to any criticism and I appreciate the Gaming Department's tolerance of all non-supportive responses of the draft. In all fairness, I have heard from a few reads who think the some of the proposals are needed. In reality, we are talking about the livelihood of athletes, promoters, etc. and any change could affect their long range future.

In my role as a journalist and boxing writer, I thought it would be prudent and didactic to ask a number of men and women working within the Arizona Boxing Industry to thoroughly read the 39 page document and give me their honest and professional take on the proposals. I told persons I approached that I wouldn't print any critique that contained vulgar language or attacked anyone working as a representative of the Arizona Boxing/MMA Commission.

I had several volunteers; but I chose the review from Harvey Prezant, a distinguished member of the Arizona Boxing Community for more than 4 decades. He has served as a coach,

Judge, Inspector and USA boxing official. His contributions to the Gene Lewis and Broadway Boxing Club programs have produced multiple trophies and a deep and genuine appreciation from the young men and women he has served. Harvey is literate and an accomplished businessman and his boxing credentials are well respected.

Here is his personal evaluation of the proposed rule changes. I asked Harvey to present his critique clearly, simply and concisely; so, everyone could decipher the text without calling an attorney.

Arizona Boxing News & Notes: "Thank you for sending the 39 pages with the "Notices of Proposed Rulemaking. What I will submit to you will pertain only to the sport of boxing, as I am not involved in any way with other martial arts listed.

Page 2998 simply covers the proposed repeal of the past rules. Why the "agency" simply repealed the entirety of the past rules, rather than make corrections as needed, I have no idea. Therefore, studying the existing rules for repeal serves no purpose.

On page 3000, below item 8c, it states "a brief summary of information included in the economic, small business and consumer impact statement is included. Paragraph one states that licensing fees for corporate promoters, cut men, professional unarmed combatants, trainers, and seconds will not be increased. How can such a statement be made without including financial information past and present, including income and expense? This part of the presentation, which is open for all to read and question is incomplete and only raises more questions.

On page 3001, 11, b, it states, "The proposed rules will make such physical examinations mandatory under (certain

circumstances". The term, certain circumstances, makes the entirety of the subject suspect to meaning.

On page 3003, item 10(4-11) it states that Event Bond "MAY BE REQUIRED BY THE COMMISSION". The bond is protection for the venue, officials, combatants, and Commission. Under what circumstances would the commission not ask for a bond from the promoter?

Page 3004, item D speaks to the contracts of the combatants. They are now separate, with each combatant signing his own contract. I spent 30 years in business and never saw a contract where each person did not sign the same contract with each receiving copies.

Page 3008, item B 6, states the amateur combatant fee is \$10.00. I have to assume this covers martial arts other than boxing, as the commission has no authority over Amateur Boxing in Arizona.

All coagulants approved by the physician should be in writing so trainers may be prepared for corner work without feeling they have violated regulations.

Page 3016, item V 2. This part states tape may be used on the skin of the wrist. This is against the present policy of no layering (gauze tape). If tape is on the wrist, why not the back of hand to support bones and tendons that are often broken and torn in that location? I am in favor of tape put directly on the hand or over a pre-wrap product to protect the skin. Layering is not a problem nor is the amount of gauze or tape. Neither makes a boxer punch harder or endangers the opponent.

Page 3027 states the amount of gauze and tape allowed for all combatants. This needs to be adjusted as there is a huge difference between a 108 pounders hand and a 250 pound

heavyweight hands. This would appear to be quite obvious. The agency writing this needs to have experienced participants involved, along with a physician. Clearly, that is not the case here.

Page 3016, R19-2-D602. Boxing, item A 1. The ring shall be four sided, between 16 and 20 feet per side, with two feet outside the ropes. I personally have never seen a 16 foot long inside the ropes used. This size ring and a soft cover would be one sided in favor of the puncher as opposed to the boxer.

Page 3017, item D. Weight classes. Why is there no junior weight classes listed?

Page 3018, item 1. Method of judging. This speaks to the 10 point must system and includes information on "even" rounds. Personally, I judged a professional bout here in Arizona and called an even round. I was questioned by the Executive Director of the commission and told there should be no even rounds and that I had to change my score accordingly. How is the commission legally allowed to go directly against its' own rules and tell a judge what his score must be. In a commission meeting of officials, there were some who agreed that there should never be an even round. If that be the case, why have rules, if the commission and its' assignees have the right to ignore them.

The members of the agency writing this needs to be made up of experienced individuals directly involved in boxing, such as, managers, trainers, cut men, seconds and physicians.

I am paraphrasing, but utilizing words like "unless the commission feels otherwise" gives them carte blanche and makes the entire document appear weak".....Harvey Prezant! **Until Next Time!**

From: Peter Mckinn III
To: [Aiden Fleming](#)
Subject: Re: Boxing Rule Proposals
Date: Tuesday, October 31, 2017 1:36:58 PM

Aiden,
R19-2-C606

A-H

We live in America !

You can't ask promoters to do this statue for any reason for its commission job and administrative duties and he is employee of the State.

You can not tell a person who is under suspension or no longer has license with the State Boxing Commission were to sit in a public building and who he can communicate with.

Sent from my Verizon Wireless 4G LTE DROID

Aiden Fleming <AFleming@azgaming.gov> wrote:

Peter,

Per our conversation I've attached a link to the new rule proposals for boxing.

http://apps.azsos.gov/public_services/register/2017/43/04_proposed.pdf

Thank you,

Aiden Fleming

Government & Tribal Relations Manager
Arizona Department of Gaming
1110 W Washington Street, Suite 450
Phoenix, Arizona 85007
Office: 602.255.3879
Cell: 602.376.0338
afleming@azgaming.gov



From: Peter Mckinn III
To: [Aiden Fleming](#)
Subject: Re: Boxing Rule Proposals
Date: Tuesday, October 31, 2017 11:41:19 AM

Aiden,

What I'm reading is you want everyone accountable to discipline and faults. The Boxing Commission wants no accountability or fault and to run as dictatorship and everyone to answer to this agency.

This is why no one wants to conduct business in Arizona too much government regulations that make no sense.

I can tell from my experience no one on your committee understands what is being written.

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Cell: 602.376.0338
afleming@azgaming.gov



From: Peter Mckinn III
To: [Aiden Fleming](#)
Subject: Re: Boxing Rule Proposals
Date: Monday, October 30, 2017 11:39:49 PM

Aiden,
I have question ?

How can rule committee write any rule for the discipline of Muay Thai when in fact there is a statue that states that Arizona Boxing Commission does not have the authority to govern or rule over the rules of Muay Thai organizations. To take it one step further the Arizona Boxing Commission can not sanction a professional Muay Thai event for many reasons, they are not qualified in the discipline, plus there is no authority for the State or statutes to enter into or regulating any sanctioning event

Just for liability purpose of injury or death your in court with no statue to back you of why your there.

My view only and just pointing out some things of concern.

Sent from my Verizon Wireless 4G LTE DROID

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aflenning@azgaming.gov



From: Peter Mckinn III
To: [Aiden Fleming](#)
Subject: Re: Boxing Rule Proposals
Date: Tuesday, October 31, 2017 11:27:07 AM

R19-2-D601

H. Female Fighter

Men and women are physically different and If the commission were to approve this match to take place they would be held solely to liabilities of injury or death and maybe criminally due to the fact they approve mismatch to take place...

Sent from my Verizon Wireless 4G LTE DROID

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Aiden Fleming

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aflenming@azgaming.gov



From: Peter Mckinn III
To: [Aiden Fleming](#)
Subject: Re: Boxing Rule Proposals
Date: Tuesday, October 31, 2017 11:15:49 AM

Aiden,
R19-2-C604
4. B
Reference "Spotter"
Really ! You might as well make general ringside public accountable too.

Sent from my Verizon Wireless 4G LTE DROID

Aiden Fleming <AFleming@azgaming.gov> wrote:

Peter,
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aflenming@azgaming.gov



From: Peter Mckinn III
To: [Aiden Fleming](#)
Subject: Re: Boxing Rule Proposals
Date: Tuesday, October 31, 2017 4:17:38 PM

Adrien,
R19-2-C609

B. Its to general and open for information and vague and sounds more of a statue for fishing expedition.

I as a promoter respect to have my privacy and business practices private.

If Director is asking for any and all information, documents that concern my show. I need written request and my attorney to read letter from Director.

Sent from my Verizon Wireless 4G LTE DROID

Aiden Fleming <AFleming@azgaming.gov> wrote:

Peter,

Tried returning your call but your voicemail is not set up it said. So, I heard your message and you sounded frustrated. I'd appreciate, as you've done in your other e-mails, specific rules you have issue with that way I can direct my answers.

Thank you,

Aiden Fleming

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Arizona Department of Gaming
1110 W Washington Street, Suite 450
Phoenix, Arizona 85007
Office: 602.255.3879
Cell: 602.376.0338
afleming@azgaming.gov



From: Peter Mckinn III [mailto:petermckinn@live.com]

Sent: Tuesday, October 31, 2017 11:41 AM

To: Aiden Fleming <AFleming@azgaming.gov>

Subject: Re: Boxing Rule Proposals

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afleming@azgaming.gov



From: Peter Mckinn III
To: [Aiden Fleming](#)
Subject: Re: Boxing Rule Proposals
Date: Monday, November 06, 2017 2:01:04 PM

Adrien,

Here is 1 of 50 plus Arizona State Violations that have been well documented threw out the years this department has went rogue. This department is bad and not qualified to oversee boxing/mma and now more disciplines to add for this,.....
director to

continue to place the fighters at risk and this administrations past and present now want
matchmakers to be accountable, really.

Would you as X MMA fighter place yourself at risk to fight this Former World Champion.

Date: 3-20-2016 Phoenix,Arizona
Roy Jones Jr. (65-9, 47KO) vs. Vyron Philips (0-0)

Professional fight in a Wrestling Ring.

Director approved complete mismatch.

If guy was hurt serious liable issue can't spin that match pure incompetence.

You bet I'm upset and my contacts in the United States and in the world talk to me about this and its embarrassing to explain. It does not help everyone is reading Don Smith boxing news of rammmmbbbbbling.

Sent from my Verizon Wireless 4G LTE DROID

Aiden Fleming <AFleming@azgaming.gov> wrote:

Mr. Mckinn,

As a member of the rule writing team I can assure you the “scheming” you suggest did not exist while writing these rules, while I was in the room. If you have documentation, I am happy to receive it. Also, the general terms you describe “industry” and “reputation” I believe were included after reviewing other state’s boxing rules using similar language and with our Attorney General Counsel being consulted. After your calls I understand your concern with the rules and am logging all of the public feedback. That said, I am not the arbiter of the rules but can only try to be helpful and pass on the concerns of the public to the Commission for the 11/29 meeting.

Thank you,

Aiden Fleming

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Arizona Department of Gaming
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Cell: 602.376.0338

aфleming@azgaming.gov



From: Peter Mckinn III [mailto:petermckinn@live.com]

Sent: Friday, November 03, 2017 7:00 PM

To: Aiden Fleming <AFleming@azgaming.gov>

Subject: Re: Boxing Rule Proposals

Aiden,

I write Tribal law contracts for Arizona and New Mexico and have work with AGz office for understanding of statues to present to many Tribal Councils.

I have carefully read Rule Proposal and it is quite disturbing and won't get past Arizona's AG office of the Governor for signature.

I have no problem with writing real rules but being veteran promoter there is profiling, targeting of wording like reputation and Industry that cause concern for liable suit against the State in the future. Again department of police mentality and discipline of action to hold license persons accountable after each rule is over kill and done for reason you're not aware of. When you write a rule the discipline has been already established and still falls on commissioners to sanction there is no need to continue after some rules its stupid. I see only motive and reason of a person who is targeting individuals and you are being mislead. The State is great place for paper trail of scheming that has taken place and papers you have not seen. I will provide you with one document that shows you were left in the dark so you would not question writing rules.

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I apologize, I misspelled his name—it's Scott Peters.

From: Peter Mckinn III [mailto:petermckinn@live.com]

Sent: Thursday, November 02, 2017 1:24 PM

To: Aiden Fleming <AFleming@azgaming.gov>

Subject: Re: Boxing Rule Proposals

Wow

Sent from my Verizon Wireless 4G LTE DROID

Aiden Fleming <AFleming@azgaming.gov> wrote:

Mr. Mckinn,
Mr. Peterson is the President of the Commission, yes.

Aiden

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Sent: Thursday, November 02, 2017 11:56 AM

To: Aiden Fleming <AFleming@azgaming.gov>

Subject: Re: Boxing Rule Proposals

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Thank you,

Aiden Fleming

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Office: 602.255.3879
Cell: 602.376.0338
aфleming@azgaming.gov



From: Peter Mckinn III [<mailto:petermckinn@live.com>]
Sent: Thursday, November 02, 2017 11:22 AM
To: Aiden Fleming <AFleming@azgaming.gov>
Subject: Re: Boxing Rule Proposals

Aiden,
I have no confirmation to be on agenda and my associates are reporting your Director is acting like a little kid and playing games with answers of excuses.

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Peter

Call me to help resolve

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From: Peter Mckinn III [<mailto:petermckinn@live.com>]

Sent: Wednesday, November 01, 2017 10:46 AM

To: Aiden Fleming <AFleming@azgaming.gov>

Subject: Re: Boxing Rule Proposals

Adrien,

I email Norma Rivera to place me on Agenda and to furnish my file to our public commissioners for November meeting.

I ask her for notification that my request to be on agenda.

Sent from my Verizon Wireless 4G LTE DROID

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Cell: 602.376.0338

afleming@azgaming.gov



From: Peter Mckinn III
To: [Aiden Fleming](#)
Subject: Re: Boxing Rule Proposals
Date: Wednesday, November 01, 2017 1:12:00 PM

I m requesting to be on agenda anyways and don't believe we have to go back and fourth on any issues to challenge the State for they have no expertise and history of non compliance or relative wrong doing that we need to mirror Nevada, New Jersey, New York etc.... its the in between lines that concerns me that were cleverly worded in the rule changes that disturb me.

Sent from my Verizon Wireless 4G LTE DROID

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From: Peter Mckinn III
To: [Aiden Fleming](#)
Subject: Re: Boxing Rule Proposals
Date: Friday, November 03, 2017 7:00:30 PM

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From: Peter Mckinn III
To: [Aiden Fleming](#)
Subject: Re: Boxing Rule Proposals
Date: Saturday, November 04, 2017 5:23:21 PM

Aiden,

When writing rules reference "PREMBLE"

Always. Its clear guideline, so you can not write rule on Wrestling for example there is no specific statutory reference. You can't write rules now on disciplines that Arizona Boxing and MMA Commission have clearly violated laws of authority to govern by past and present Directors that knew no statues was in place to govern.

Racing Commission is clear proof by collecting illegal tax after 10 days it was Arizona Boxing and MMA sanction to authorize and govern.

They present and past Directors put the State of Arizona liable to injury and death for law suits with no statutory protection.

It appears to be cover up or scheme to push rules of several disciplines that we were told Executive Directors had authority over in fact you didn't and now appears desperate attempt to introduce not rule change but rules of authority this department never had. " Notice Of Proposed Rulemaking" is proof past and present violations were done and phone calls to intimidate promoters, sanctioned bodies were recorded of last and present Directors. Ignorance of the law will not help to clear no one the paper trail is documented threw agenda each month.

The department place safety of the fighters by over seeing events the knew rules and disciplines to sanction.

Does your New wording in rules apply to Arizona Department of Gaming:
"Has Violated any industry laws or regulations of any other state"

Im not attorney it will be hard to spin when media gets wind of this and there already calling promoters for answers on Dennis, Mathew and Juanito of what they knew.

Don Smith
Norm F. With Ringside
FoxSports Richard Saenz
ESPN Rafael

Good Luck

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Cell: 602.376.0338
aflenming@azgaming.gov



From: Peter Mckinn III [<mailto:petermckinn@live.com>]
Sent: Wednesday, November 01, 2017 10:46 AM
To: Aiden Fleming <AFleming@azgaming.gov>
Subject: Re: Boxing Rule Proposals

Adrien,
I email Norma Rivera to place me on Agenda and to furnish my file to our public commissioners for November meeting.

I ask her for notification that my request to be on agenda.

Send from my Verizon Wireless 4G LTE DROID

Aiden Fleming <AFleming@azgaming.gov> wrote:

Peter,
Per our conversation I've attached a link to the new rule proposals for boxing.

http://apps.azsos.gov/public_services/register/2017/43/04_proposed.pdf

Thank you,
Aiden Fleming
Government & Tribal Relations Manager
Arizona Department of Gaming
1110 W Washington Street, Suite 450
Phoenix, Arizona 85007
Office: 602.255.3879
Cell: 602.376.0338
aflenming@azgaming.gov



From: ROLAND SARRIA
To: [Aiden Fleming](#)
Subject: Statues
Date: Tuesday, November 07, 2017 6:05:17 PM

I got a few questions to ask you maybe you can help me could appears that your spree heading that proposal new rules so I figure you'll be the right person to talk to.

Questions.

1. Can you please answer me the question if possible black and white does the State of Arizona have jurisdiction over amateur or Professional Muay Thai, and if that's the case if a person that wants to apply for a promoter license to have to go through boxing commission to get it approved for a license.
2. Why are amateur Muay Thai promoters have been able to do events without getting a promoter license through the State of Arizona if the State of Arizona has jurisdiction over amateur or professional Muay Thai events.
3. Why is the state of Arizona getting involved in terms of putting in a proposal of new rules for amateur Muay Thai event if there's two current amateur Muay Thai sanctioning bodies that been in existence for years in the state of Arizona.

Thx u Roland

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From: ROLAND SARRIA <rolandsarria@msn.com>
Sent: Tuesday, November 7, 2017 5:21:05 PM
To: afleming@azgaming.gov
Subject: Statues

Thank you for calling me earlier we had a great conversation I got a question to ask you because after we part our ways on the phone.

Myself in a few Associates when in studies of statues quite a bit and we couldn't find anything even the statue that you gave me that clarifies that the Arizona boxing commission has jurisdiction over amateur or pro moutai events

My understanding being a promoter for almost 20 years here in Arizona when you apply to be a promoter and you have jurisdiction under the Arizona boxing commission you have to get a license that is correct right

So maybe you can help me with this question if that's the case why didn't mr. Clemente on mr. Carmel ever apply for a license if the Arizona boxing commission has jurisdiction over

amateur promoter event.

It appears to me that there's something not right and it seems to me that the Arizona boxing commission has been conducting business in a way that gave them no jurisdiction over mr. Clemente or Carmel.

I'm really hoping that's not the case because it can definitely create a lot of problems for the Arizona boxing commission conducting unlawful practices.

What I like to do it's possibly sit down with you privately and we can discuss what I think should be done and I mature moutai events in terms of the laws fair enough please let me know love to be part of it and help out.

Thank you I appreciate you Roland

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From: ROLAND SARRIA <rolandsarria@msn.com>
Sent: Tuesday, November 7, 2017 3:57:40 PM
To: afleming@azgaming.gov
Subject: Statues

Thank you for calling me earlier we had a great conversation I got a question to ask you because after we part our ways on the phone I should eat to lower a little bit more along with a few friends and it states clearly that the Box commission doesn't oversee amateur multi at least in our side but the question that I have is there supposed they do why haven't any of the to sanction body president ever fill out any paperwork in terms of a license if that's the case that the Arizona boxing commission oversees amateur Muay Thai.

At least it appears in our side that the Arizona boxing commission has no statues to oversee amateur Muay Thai that's why there was no license giving out but the second question that I have if that's the case that it turns out that the Arizona boxing commission never had jurisdiction over amateur or Pro Muay Thai events but yet sanction a professional Muay Thai event this year is that proper law just asking just trying to help out thank you I appreciate you Roland

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From: ROLAND SARRIA <ROLANDSARRIA@msn.com>
Sent: Friday, November 3, 2017 3:02:35 PM
To: afleming@azgaming.gov
Subject: Re: Scott Peters email

Mr.Fleming

I'm following up on our phone meeting between us earlier about yourself sending myself the request of the legislative session, (the bill or Statutory amendment) House Bill number that was approved by the Governor for Professional and Amatuer Muay Thai.

|

Thx u Roland Sarria

From: ROLAND SARRIA <rolandsarria@msn.com>

Sent: Thursday, November 2, 2017 12:26 PM

To: afleming@azgaming.gov

Subject: Scott Peters email

Mr. Fleming when you have a chance can you please email me Scott Peters personal email
thank you I appreciate you Roland

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From: ROLAND SARRIA <ROLANDSARRIA@msn.com>

Sent: Thursday, November 2, 2017 9:45:49 AM

To: afleming@azgaming.gov

Subject:

Mr. Fleming

Is it possible for my self to call you?

Thx u Roland Sarria

From: [Aiden Fleming](#)
To: ["ROLAND SARRIA"](#)
Subject: RE: Statues
Date: Wednesday, November 08, 2017 9:22:16 AM

Roland,

The statute I'm looking at is 5-222(4) which exempts oversight of amateur kickboxing events by the Boxing & MMA Commission and states,

"Kickboxing events that are sanctioned by and conducted under the direct supervision of the United States muay thai association or another muay thai sanctioning body that is **approved by the commission** if all contestants are amateur contestants" (emphasis added).

How I read this is the sanctioning bodies, in order to exist, must be approved by the Boxing & MMA Commission to be allowed to conduct amateur fights under their own authority. To my knowledge this is the only mention of such authority. When this section came up in rulemaking we contemplated the meaning of the approval since it happened many years ago with little thought to long term outcomes. There were no guidelines of what "approval" means. Reasonable questions like, does this mean approved forever? For 5 years? 10 years? Is there ever a review of the approval process? What if a sanctioning body hypothetically broke the law or flouted the rules that they were approved under? The Commission's approval of the sanctioning body would then be at stake as well as the reputation of the Commission, the industry and safety of any combatants. Beyond what I posted above, the statute is silent on such matters.

To that end, rulemaking authority is vested in a public body (The Boxing & MMA Commission, ARS 5-224) with significant input from the public and intended to provide detail to statutory mandates to fill in these gaps—statute is not designed to anticipate every nuanced outcome. The rule writing team saw this particular deficiency and addressed it by creating a structure to its approval of sanctioning bodies. These are only proposed rules. As the public comment portion of the process is underway I have heard from yourself and a couple others taking issue with the idea that The Commission cannot institute rules that review its own approval process. I have logged the feedback and the Commission will be able to review all of the received complaints before allowing the proposed rules to go forward. I hope this helps answer your questions.

Thank you,

Aiden Fleming

Government & Tribal Relations Manager
Arizona Department of Gaming
1110 W Washington Street, Suite 450
Phoenix, Arizona 85007
Office: 602.255.3879
Cell: 602.376.0338
aflenning@azgaming.gov



From: ROLAND SARRIA [mailto:rolandsarria@msn.com]

Sent: Tuesday, November 07, 2017 3:58 PM

To: Aiden Fleming <AFleming@azgaming.gov>

Subject: Statues

Thank you for calling me earlier we had a great conversation I got a question to ask you because after we part our ways on the phone I should eat to lower a little bit more along with a few friends and it states clearly that the Box commission doesn't oversee amateur multi at least in our side but the question that I have is there supposed they do why haven't any of the to sanction body president ever fill out any paperwork in terms of a license if that's the case that the Arizona boxing commission oversees amateur Muay Thai.

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Sent: Friday, November 3, 2017 3:02:35 PM

To: afleming@azgaming.gov

Subject: Re: Scott Peters email

Mr.Fleming

I'm following up on our phone meeting between us earlier about yourself sending myself the request of the legislative session, (the bill or Statutory amendment) House Bill number that was approved by the Governor for Professional and Amatuer Muay Thai.

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Subject: Scott Peters email

Mr. Fleming when you have a chance can you please email me Scott Peters personal email
thank you I appreciate you Roland

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To: afleming@azgaming.gov

Subject:

Mr. Fleming

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Thx u Roland Sarria

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By **Don Smith:** Boxing Fans, in our last column I mentioned my upcoming December 9 trip to the fabled Madison Square Garden to watch Vasyl Lomachenko defend his WBO World super featherweight title against Guillermo Rigondeaux in what some boxing scribes are describing as the fight of 2017 before the first punch has been thrown.

The event is sold out and yours truly had the foresight to book a flight and room before the cost exceeded our limited budget and ABNN is set to enter Madison Square Garden for the first time. Actually, ABNN did bust the piggy bank for this fairy tale trip but no regrets.



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The original Madison Square Garden was situated at the former New York and Harlem Railroad Depot on East 26th Street Madison Avenue in Manhattan. This was the first venue to use the name and the time frame was 1879-1890. In years since, the name "Madison Square Garden" has been used (without permission) by several entrepreneurs attempting to capitalize on the name. One of the violators was a local gym owner in Phoenix who dropped using the name after a few less than friendly calls from people with power.

The history of MSG includes 4 tar downs and current venue is located at 4 Pennsylvania Avenue- Plaza New York 1001 near the Pennsylvania Hotel where I will be staying while in the Big Apple for the fight. Boxing was first introduced to the Garden in 1925 with a Light Heavyweight title match. The original Madison Square Garden Ring is now in the Hall of Fame.

I was surprised to find out that Thomas Hearns never fought in the Garden but a short list of boxers who did makes me drool: Ali, Frazier, Duran, Leonard, Louis, Marciano, Trinidad, Robinson, Lamotta, and GGG.

After Anthony Joshua's lack luster performance on Saturday, 1028, watching Lomachenko vs. Rigondeaux should be a masterpiece. Here is the tale of the tape and hopefully fans won't miss the war, live from Madison square Garden. It may not be Frazier vs. Ali 1 or 2 if you can catch it at the garden or from your living room, do so. Here is a brief profile on both fighters: **Amateur Records:** Lomachenko was 396-1 before turning professional with 2 Olympic Gold Medals. Rigondeaux was reportedly 463-12 as an amateur and he won 2 gold medals. As professionals, the 2 boxing stars have won a combined 5 world titles. **Pro Record:** Rigondeaux 18-0-12 knockouts & one NC-Lomachenko 9-1-7 knockouts, only loss to Salcido **Reach:** Rigondeaux 68 "-Lomachenko 65 ", **Age:** Rigondeaux 37-Lomachenko is 29, **KO Rate:** Rigondeaux 67%-Lomachenko 70 %, **Stance:** both fighters are southpaws, **Birthplace:** Rigondeaux born in Cuba-Lomachenko born in Ukraine. The advantage Lomachenko has is age and Rigondeaux is coming up in weight to match Lomachenko.

Boxing Noise: Former MCSO boxing coach Rene Bojorquez and his boxing team is regrouping after The Youth Assistance Foundation, has decided to drop the boxing club from its' funding mechanism. Rene aka Mike is currently preparing his kids to compete in the upcoming Gene Lewis Invitational on 11/09-10-11. The dedicated coach seems relieved now that he knows the Maricopa County Sheriff's Office is no longer supporting the boxing club and the organization

* indicates required

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can now solicit funds from new sources. Our mention of the club's plight brought forth one prospective donor who is thinking about offering a generous donation to the program.

READ Has Rigondeaux tarnished his legacy?

We wish Rene and Patricia (his resourceful wife) the best of luck in finding financial support for a worthy program. ABNN apologizes for listing the MCSO as MSCO on two separate sentences in the piece, we know better. The Gene Lewis Invitational is held at 59 E. Broadway Road in Mesa. Show times on Thursday and Friday start at 7 PM; Saturday's boxing commences at 1 PM. Richard Soto, Chief of Officials, gave a shout out to his volunteers" All of you are very important and do an outstanding job"! ABNN will add a post script to his verbal salute; he needs more volunteers: 602-702-7053.... Ray Beltran will get a title shot (WBO lightweight) in February somewhere in Vegas at a date and venue to be announced soon. Super middleweight Gilberto Ramirez defends his title in the main event. Very few boxers' measure up to these two men in the humility category...get your tickets early! November 18 is do or don't day for Middleweight Andrew Hernandez (19-7-1) when he fights Mike Gavronski (24-2-1) n Tacoma Washington. If he wins- The Fighting Pride of Phoenix will be wearing Ralph Polo Blue for the year and it's shopping spree for his wife and if he loses, it's Right Guard and a coke and small order of fries at Wendy's for the Mrs. His fight is huge. I called Harvey Prezant Harry in our last column, so he can call me Norman for two weeks. Only two readers caught the misspelling of Shabranskyy in our headline last week, I left off 1 Y...Amateur Standout Moises Rosales (Fuentes Boxing) competed out of state last week and came home with a 1st place trophy. Bernice, his proud mother, sent word of his success.

Regulatory Review: Boxing fans awaiting the boxing regulatory review results can get on their computer and click on the following link:

http://apps.azsos.gov/public_services/register/2017/43/04_proposed.pdf and read what they have been waiting for. The suggestions were released on 11/ 27 and already people in the boxing industry are calling Aiden Fleming (Arizona Department of Gaming Legislative Liaison) with comments. I hope the newly wed is holding up well, boxing fans can be quite expressive.

To understand the impetus behind this project, every state agency commission in Arizona is required to review its rules every five years and submit a report to the Governor's Regulatory Review Council (GRRC). If this report isn't submitted, the rules will lapse; sometimes haste makes waste!

READ Lomachenko-Rigondeaux to run against Salido-Roman on Sat.

The rules writing team, approved by the Department of Gaming (ADG) executive team met for an estimated 3 months and suggested what they feel are changes that remove outdated and burdensome rules. Another source said the collaboration took longer, I don't know, I wasn't consulted. Critics of the rule writing team wish the ADG had selected working members of the boxing industry to sit in on rule writing process. Where are the people who sweat boxing? One or two meetings with men and women in the profession might have given the writers a little more insight. One reader says she would like to offer a test to the rule writers to see what they know in boxing. She says the proposed taping rules are silly. How, she continues, can a big man use the same amount of tape as a small man? Another reader who claims to have read the document, believe the proposed changes will lead to overregulation of the two sports. ABNN sent the document out to 75 readers and that is why this column is late on arrival.

For the record here are the names of the rules writing team and their job descriptions: Aiden Fleming, ADG Legislative Liaison-Kris Fasching, ADG Agency Counsel and short term Public information officer for the Department of Gaming-Deanie Rey, Attorney General's office-Norma Rivero, ADG Boxing Commission Staff and Juan Estrada, ADG Executive Director of the Arizona

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Boxing/MMA Commission. All of the writers mentioned are employees of the state; but, it is my understanding that the group solicited ideas from various sources and examined rules and regulations followed by other state Boxing/MMA Commissions.

My main question would be how many people in the boxing industry, boxers, promoters, referees, matchmakers, corner men, etc.; are capable of understanding the text in the document and how many will find the time to read the 39-page document or even find it on the website. People who object to some of the changes can submit emails to Mr. Fleming (ADG Legislative Liaison) at: afleming@azgaming.gov. or reach him by phone, 602-255-3879.

So far, at least 20 people have contacted me through one form or another and majority of complaints registered to have centered on the proposed changes in blood testing and the lack of "real" attention to brain trauma injuries. Most of major boxing commissions require a mandatory MRI for fighters with a history of knockouts. Arizona, Mexico and Canada didn't last time I checked. The Arizona boxing commission has kicked the "baseline concussion testing concept around and posting a spotter at ringside is as insightful as just say no to drugs. We will see how the rule dismantling process goes and I do support changes but not with a gun to your head approach and a stop watch in the other.

I was first told that oral arguments could be made at three Monthly meetings; now the timetable has been altered and the time frame for all oral arguments to end falls on November 29th, 6 days after Thanksgiving, at the end of the Monthly Commission meeting held in the second-floor conference room, 1110 W. Washington St., suite 250 Phoenix Arizona 85007. Please call everybody, the issue is very important.

READ [Lomachenko promising to squash Guillermo Rigondeaux](#)

I have no idea on what will happen at the 11/29 Arizona Boxing/MMA Commission meeting. Phoenix and Maricopa County boxers are known to be openly apathetic towards hope, promise and change. If the community can't support the Golden Gloves, Copper Gloves and each other; I don't expect much resistance to anything in boxing except when the commission withholds a fighter's paycheck. My apologies to the very efficient Arizona Gaming Department PIO Carline Oppelman for not finishing my column on Monday as promised; but readers unsure of what the rule changes mean kept me busy on the phone and several stories I was tracking didn't materialize, sorry! I met deadlines when it is practical to do so. Missing this one, marks the fifth time in a 45-year journalism career that I was late out of the gate with a column or story.

Showdown in Tucson: Sergio Diaz and Jerry Truax (Showdown Promotions) are pleased with their ticket sales for their show at Casino Del Sol in Tucson on Thursday November 2, the day after Halloween. I talked to Sergio about ticket sales and his attitude was upbeat on the phone expecting a sellout of 1,500 to show up at the Event Center, doors open 5 PM on Thursday night and first bell chimes at 5:30 p.m. The venue is great for boxing. Tickets for the event can be purchased at the Casino Del Sol Gift Shop and online www.casinodelsol.com

Television coverage on ESPN and ESPN Deportes commences at 6:30 p.m. And the card promises a lot of punches and maybe an upset or two. In the Main Event the always dangerous Jesus Soto Karass (takes on high energy welterweight Juan Carlos Abreu in (19-3-1) a 10-round contest that has action written all over it and don't let Soto's 28-12-4 record fool you, he always comes to fight. In the Co-Main, Ryan Garcia (11-0) hopes to continue his winning ways against Arizona junior lightweight Cesar Alan Valenzuela (14-5-1). Valenzuela may have something to say about that. . Arizona's Christopher Gonzales makes his debut versus Jesus Arevalo (2-1).

We missed our deadline so we you have missed an opportunity to watch Jesus Soto Karass and Christopher Gonzalez workout on Tuesday, but Wednesday is the weigh-in day, so you have plenty of time to hop into the neighbor's Jaguar and drive to Tucson for the noon time scale check and see close-up who ate some of the kids Halloween candy. The event is open to the

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public and available to all at the Casino Del Sol New Pool Lounge; see you there...**Until Next Time!**



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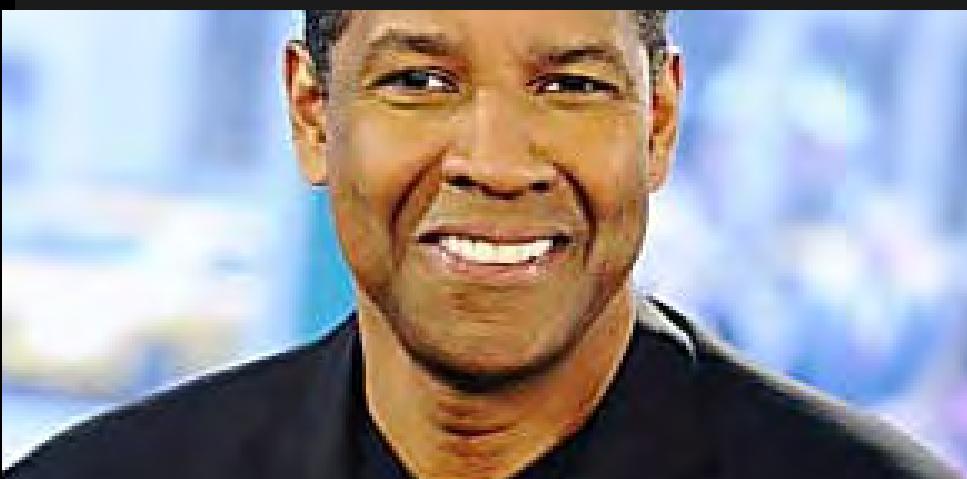
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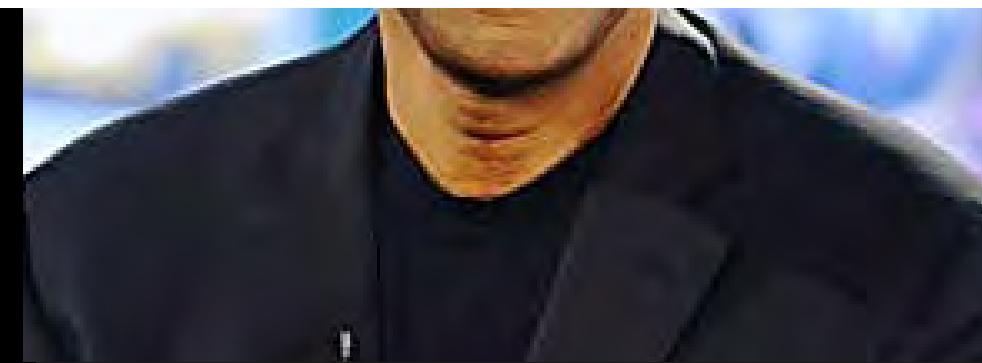




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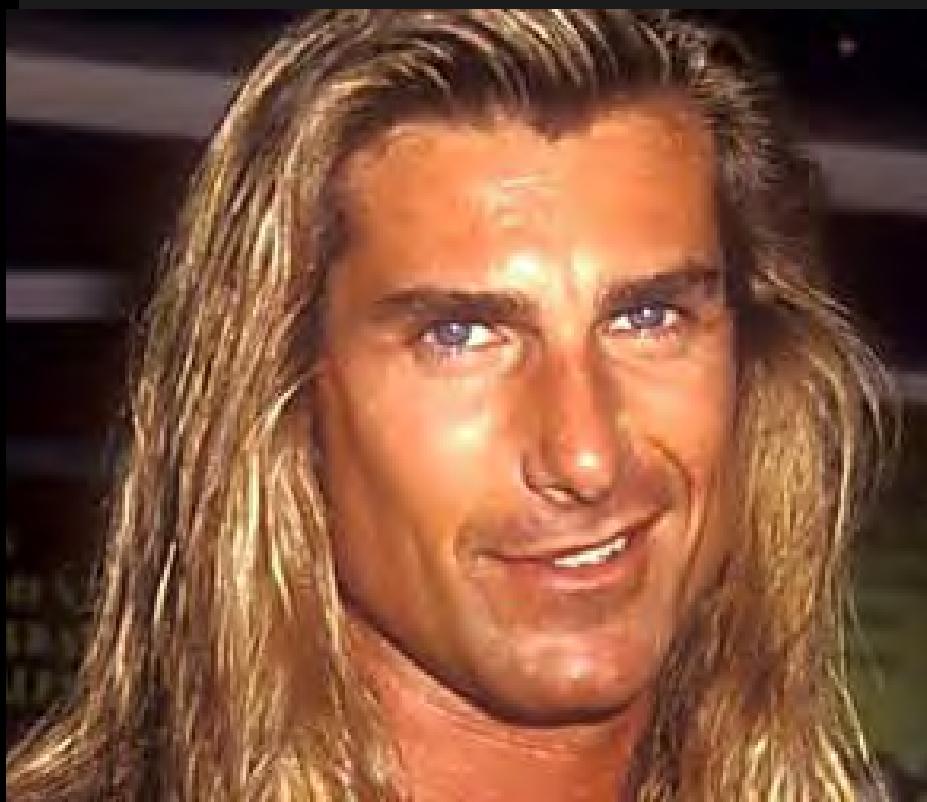
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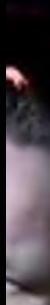
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By Chris Williams: Manny Pacquiao's promoter Bob Arum said this week that he'd like to match him up against WBC middleweight champion Saul "Canelo" Alvarez



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Has Gennady Golovkin brought racism to boxing? - Boxing News



by Jermill Pennington: Not his fault of course, however in recent memory I can't recall a time where race has been brought in to boxing conversations so re

Hughie Fury vs. Andy Ruiz confirmed for Oct.29 - Boxing News





by Scott Gilfoyle: Heavyweight Hughie Fury (20-0, 10 KOs) will be taking a slight step up next month in facing unbeaten Andy Ruiz Jr. (28-0, 19 KOs) in a WB

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by Scott Gilfoyle: In response to new IBF/IBO/WBA/WBO heavyweight champion Tyson Fury (25-0, 18 KOs) calling him out, former heavyweight world champion Lennox Lewis

Rosado: It's obvious why Golovkin avoided Andre Ward - Boxing News





by Dan Ambrose: Former world title challenger Gabriel Rosado says he saw weakness from IBF/IBO/WBA/WBC middleweight champion Gennady "GGG" Golovkin (36-0,

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By Allan Fox: IBF/WBA/WBO light heavyweight champion Andre "SOG" Ward is willing to fight middleweight champion Gennady "GGG" Golovkin, as long as he moves

Kellerman: Golovkin beat Canelo » Boxing News





by Allan Fox: Max Kellerman of HBO gave score last night's fight between middleweight champion Gennady "GGG" Golovkin (37-0-1, 33 KOs) and Saul "Canelo" A

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by Gerardo Granados: Last night, the middleweight Champion of the World Gennady 'GGG' Golovkin and challenger Saul Canelo Alvarez fought to a controversial

Mayweather says beating Golovkin would be easy - Boxing News



by Allan Fox: Floyd Mayweather Jr. spoke up over the weekend to tell an assembled mass of people that he would easily beat IBF/IBO/WBA middleweight champio



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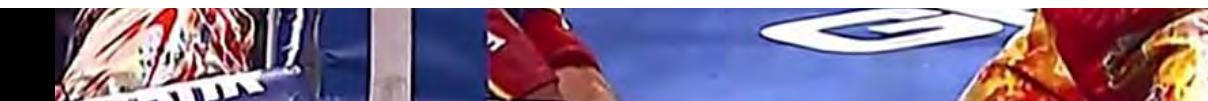
Arum: Gilberto Ramirez beats Golovkin; he won't get Canelo



By Dan Ambrose: Top Rank promoter Bob Arum says he wants to match his unbeaten 24-year-old fighter Gilberto "Zurdo" Ramirez (33-0, 24 KOs) against Gennady

Rigondeaux: I will stop Lomachenko » Boxing News





by Chris Williams: 122-pound champion Guillermo Rigondeaux saw WBO super featherweight champion Vasyl Lomachenko's win over 2nd tier fighter Miguel Marriag

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Norma Rivero

From: Norma Rivero
Sent: Tuesday, September 05, 2017 1:21 PM
To: Juan Estrada; Scott Peters (scott@safefootball.org); Scott Fletcher (scottbfletcher@yahoo.com); Joe Pennington (oaks47@comcast.net)
Cc: Deanie Reh; Norma Rivero
Subject: FW: Event Cancellation

Thiago asked to be forwarded to you all.

Norma Rivero
Arizona Boxing and MMA Commission
Boxing and MMA Assistant
1110 W. Washington Street, #450
Phoenix, Arizona 85007

Office: (602) 364-1721
Fax: (602) 364-1703
Email: infobox@azgaming.gov
Website: www.boxingandmma.az.gov

-----Original Message-----

From: Siam Fight Productions [mailto:siamfightproductions@gmail.com]
Sent: Tuesday, September 05, 2017 12:05 PM
To: Norma Rivero
Subject: Event Cancellation

Please forward this message to ALL commissioners.

Hello,

I wanted to give you notice that we reluctantly have to cancel our Siam Fights LIVE show on that was scheduled for October 20th at Tempe Center for the Arts. This cancellation has come about as a result promoters putting on Boxing bouts and calling them Muay Thai. This is a major problem among our Arizona Muaythai Community. Now what was a potentially strong Muaythai athlete is now developing a padded record of 10 "MT-1" aka barefoot boxing bouts, and then come into my show and get severely beat by an athlete who has developed a legitimate record of 10 Muaythai bouts. So on paper, these 2 athletes are an even match but when they compete it becomes a very dangerous situation for the athlete and a very expensive situation for the promoter. I am very disappointed in the fact that this is allowed to happen. I have been forced to move our event other states which have been properly developing Muaythai. This commission has failed to uphold safety AND fairness in competition by allowing this sanctioning body to continue operating in this way, and has set back decades of work by commissions like the USMTA which upholds strong standards for Muaythai.

I hope that the Arizona State Boxing commission takes MAJOR action in repealing this sanctioning body from operating in this way.

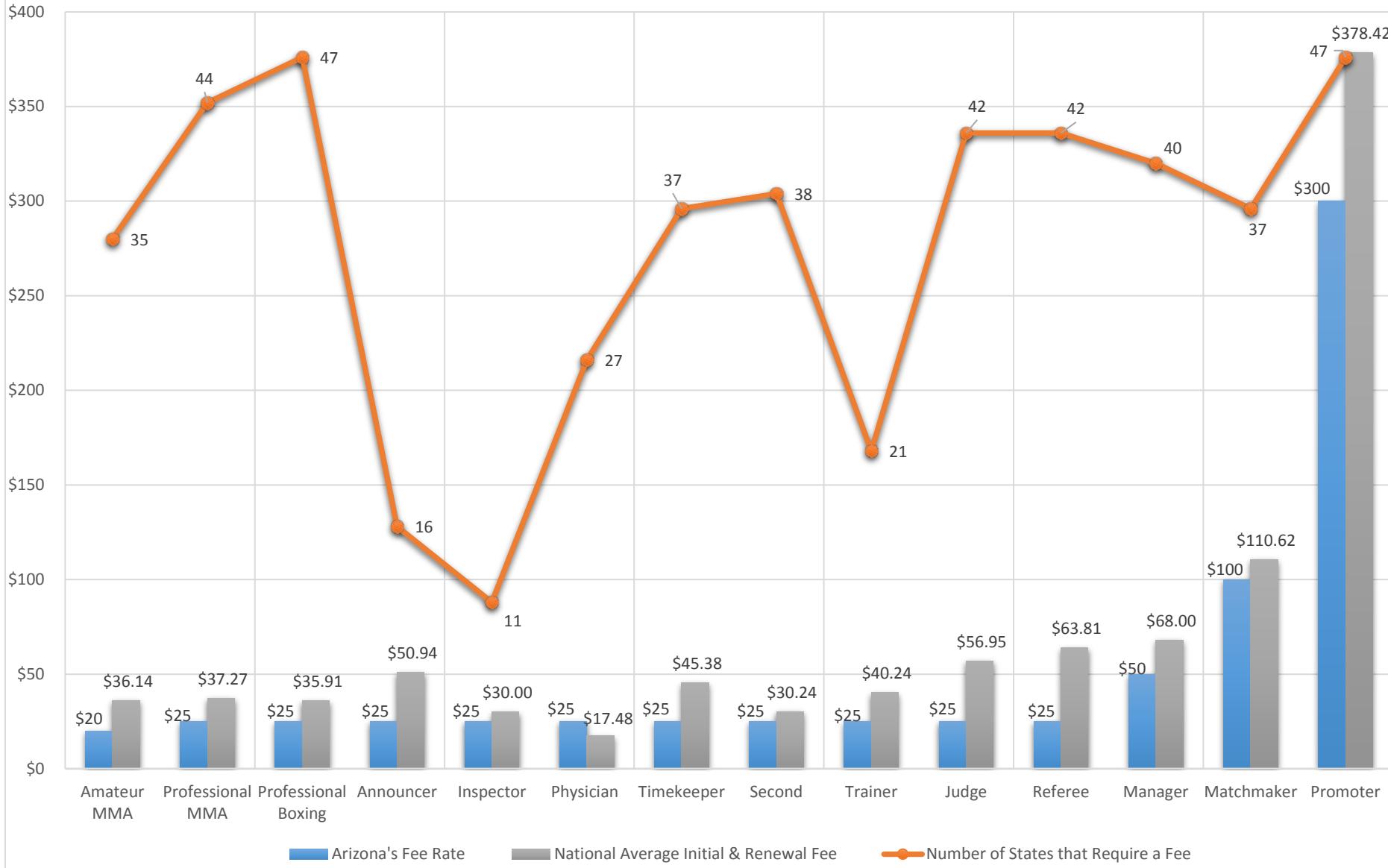
-Thiago Azeredo

Founder - Siam Fight Productions

Founder - United States Muaythai Open (IOC Recognized) Board Member - United States Muaythai Federation (IOC Recognized) Co-Founder - Youth Development League (IOC Recognized) Founder/Head Coach - Sitan Gym Muaythai Arizona

Appendix A

Arizona's Fee Structure: A National Comparison



Appendix B

State	Profession	Initial Fees	Renewal Fees	Is Training Required?	Is Continuing Education Required?
Alabama	Amateur MMA/Kickboxer	\$ 25.00	\$ 25.00	No	No
	Professional Boxer/Kickboxer/MMA	\$ 30.00	\$ 30.00	No	No
	Promoter	\$ 250.00	\$ 250.00	No	No
	Matchmaker	\$ 75.00	\$ 75.00	No	No
	Judge	\$ 100.00	\$ 100.00	ABC Recommended, not Required	No
	Referee	\$ 100.00	\$ 100.00	ABC Recommended, not Required	No
	Manager	\$ 75.00	\$ 75.00	No	No
	Trainer	\$ 30.00	\$ 30.00	No	No
	Second	\$ 30.00	\$ 30.00	No	No
	Physician	\$ -	\$ -	Must be ARP certified	No
	Inspector	\$ -	\$ -	No	No
	Timekeeper	\$ 100.00	\$ 100.00	No	No
Alaska	No boxing commission				
Arizona	Amateur MMA	\$ 20.00	\$ 20.00	No	No
	Professional MMA/Boxing	\$ 25.00	\$ 25.00	No	No
Note: Judges, Referees, Managers, Matchmakers, and both classes of Promoters require fingerprinting, which is an additional \$22 processing fee.	Announcer	\$ 25.00	\$ 25.00	No	No
	Inspector	\$ 25.00	\$ 25.00	No	No
	Physician	\$ 25.00	\$ 25.00	No	No
	Timekeeper	\$ 25.00	\$ 25.00	No	No
	Second	\$ 25.00	\$ 25.00	No	No
	Trainer	\$ 25.00	\$ 25.00	No	No
	Judge	\$ 25.00	\$ 25.00	No	No
	Referee	\$ 25.00	\$ 25.00	No	No
	Manager	\$ 50.00	\$ 50.00	No	No
	Matchmaker	\$ 100.00	\$ 100.00	No	No
Promoter Average (Initial and Renewal):	Promoter, Individual	\$ 200.00	\$ 200.00	No	No
\$ 300.00	Promoter, Corporation	\$ 400.00	\$ 400.00	No	No
Arkansas	All Contestants (MMA/Boxing/Martial Arts)	\$ 20.00	\$ 20.00	No	No
	Federal Boxing License	\$ 20.00	\$ 20.00	No	No
	Announcer	\$ 20.00	\$ 20.00	No	No
	Event Coordinator	\$ 100.00	\$ 100.00	No	No
	Judge	\$ 15.00	\$ 15.00	ABC Certification Required	No
	Manager	\$ 50.00	\$ 50.00	No	No
	Matchmaker	\$ 100.00	\$ 100.00	No	No
	Promoter	\$ 100.00	\$ 100.00	No	No
	Referee	\$ 25.00	\$ 25.00	ABC Certification Required	No
	Second/Corner	\$ 15.00	\$ 15.00	No	No
	Timekeeper	\$ 15.00	\$ 15.00	No	No
	Physician	\$ -	\$ -	ARP Certification Required	No
	Inspector	\$ -	\$ -	No	No
CALIFORNIA	Amateur	\$ -	\$ -	No	No

	Professional MMA, BOXERS & MARTIAL ARTS PARTICIPANT	\$ 60.00	\$ 60.00	No	No
	PROMOTORS	\$ 1,000.00	\$ 1,000.00	No	No
	AMATEUR PROMOTORS	\$ 250.00	\$ 250.00	No	No
	2ND LICENSE	\$ 50.00	\$ 50.00	No	No
	MANAGER	\$ 150.00	\$ 150.00	No	No
	MATCH MAKER	\$ 200.00	\$ 200.00	No	No
	ASSISTANT MATCHMAKER	\$ 200.00	\$ 200.00	No	No
	Timekeeper	\$ 50.00	\$ 50.00	No	No
	Trainer	\$ 200.00	\$ 200.00	No	No
	Physician	\$ -	\$ -	Two training clinics required	No
Colorado	Boxing Participant	\$ 68.00	\$ 68.00	No	No
	Corner	\$ 68.00	\$ 68.00	No	No
	Referee	\$ 100.00	\$ 100.00	No	No
	Judge	\$ 100.00	\$ 100.00	No	No
	Inspector	\$ 100.00	\$ 100.00	No	No
	Promoter	\$ 250.00	\$ 250.00	No	No
Connecticut	ALL PROFESSIONAL MMA/BOXING PARTICIPANTS	\$ 30.00	\$ 30.00	No	No
	ALL AMATEUR MMA/BOXING PARTICPANTS	\$ 15.00	\$ 15.00	No	No
	JUDGES	\$ 130.00	\$ 130.00	No	No
	PROMOTORS	\$ 350.00	\$ 350.00	No	No
	MANAGERS	\$ 130.00	\$ 130.00	No	No
	MATCHMAKER/ASSIST. MATCHMAKER	\$ 130.00	\$ 130.00	No	No
	Announcer	\$ 30.00	\$ 30.00	No	No
	Timekeeper	\$ 30.00	\$ 30.00	No	No
	Referee	\$ 130.00	\$ 130.00	No	No
	Seconds/Trainers	\$ 30.00	\$ 30.00	No	No
	Inspector	\$ -	\$ -	No	No
	Physician	\$ -	\$ -	No	No
Delaware	No boxing commission				
	Note: Delaware only has fees for event permits, because Delaware does not have a boxing commission. Contestants and non-contestants are required to obtain a license from another jurisdiction.				
Florida	Participant (MMA/Boxing/Kickboxing)	\$ 25.00	\$ 25.00	No	No
	Second/Corner	\$ 20.00	\$ 20.00	No	No
	Trainer	\$ 20.00	\$ 20.00	No	No
	Manager	\$ 100.00	\$ 100.00	No	No
	Promoter	\$ 250.00	\$ 250.00	No	No
	Matchmaker	\$ 100.00	\$ 100.00	No	No
	Judge/Training Judge	\$ 100.00	\$ 100.00	Unofficial judging for 18 months and 350 rounds	No
				Certified by USA Boxing (Amateur boxing) or ISKA (kickboxing/MMA)	
	Referee	\$ 100.00	\$ 100.00		No
	Announcer	\$ 50.00	\$ 50.00	No	No
	Physician	\$ -	\$ -	No	No
Georgia	Amateur MMA	\$ 20.00	\$ 20.00	No	No

	Professional Boxer/MMA/Kickboxer	\$ 20.00	\$ 20.00	No	No
	Matchmaker (Boxing/MMA)	\$ 50.00	\$ 50.00	No	No
	Trainer/Second (MMA/Boxing)	\$ 20.00	\$ 20.00	No	No
	Manager (Boxing/MMA)	\$ 50.00	\$ 50.00	No	No
	Official (Boxing/MMA)	\$ 20.00	\$ 20.00	No	No
	Physician	\$ -	\$ -	No	No
Promoter Average (Initial and Renewal):	Promoter, Boxing	\$ 150.00	\$ 150.00	No	No
\$ 325.00	Promoter, MMA	\$ 500.00	\$ 500.00	No	No
Hawaii	Boxing	\$ 28.00	\$ 28.00	No	No
Note: Hawaii adds an additional \$50 to each fee as part of a "Compliance Regulation Fund" (CRF). The fee amounts listed do not include this CRF. In addition, the licenses for Second, Manager, Referee, and Judge, require a \$20 exam fee, which is not included in the amounts listed.	Second	\$ 19.00	\$ 19.00	No	No
	Manager	\$ 95.00	\$ 95.00	No	No
	Physician	\$ 47.00	\$ 47.00	No	No
	Timekeeper	\$ 19.00	\$ 19.00	No	No
	Matchmaker	\$ 28.00	\$ 28.00	No	No
	Judges	\$ 47.00	\$ 47.00	No	No
	Referee	\$ 95.00	\$ 95.00	No	No
	Promoter (Annual, City and County of Honolulu)	\$ 380.00	\$ 380.00	No	No
Promoter Average (initial and renewal):	Promoter (Annual, Each Other County)	\$ 142.00	\$ 142.00	No	No
\$ 201.75	Promoter (Single, City and County of Honolulu)	\$ 190.00	\$ 190.00	No	No
	Promoter (Single, Each Other County)	\$ 95.00	\$ 95.00	No	No
Idaho	Combatant (Boxer, kickboxer, MMA)	\$ 150.00	\$ 150.00	No	No
	Matchmaker	\$ 250.00	\$ 250.00	No	No
	Promoter	\$ 1,000.00	\$ 1,000.00	No	No
	Ring official (Referees, judges, timekeepers, gloves)	\$ 150.00	\$ 150.00	No	No
	Physician	\$ -	\$ -	No	No
Illinois	Contestant (Boxing, Full-Contact Martial Arts)	\$ 100.00	\$ 50.00	No	No
Promoter Average (Initial):	Second	\$ 50.00	\$ 25.00	No	No
\$ 650.00	Referee	\$ 300.00	\$ 150.00	No	No
	Matchmaker	\$ 250.00	\$ 125.00	No	No
Promoter Average (Renewal):	Judge	\$ 100.00	\$ 50.00	No	No
\$ 325.00	Timekeeper	\$ 150.00	\$ 75.00	No	No
	Manager	\$ 200.00	\$ 100.00	No	No
	Promoter (Professional Only or Professional/Amateur)	\$ 1,000.00	\$ 500.00	No	No
	Promoter (Amateur Only)	\$ 300.00	\$ 150.00	No	No
Indiana	Professional (Boxer, MMA)	\$ 50.00	\$ 50.00	No	No
	Referee	\$ 100.00	\$ 100.00	Certification from any referee-certifying organization is required	No
	Judge	\$ 75.00	\$ 75.00	Certification from any judge-certifying organization is required	No
	Timekeeper	\$ 30.00	\$ 30.00	No	No
	Matchmaker	\$ 125.00	\$ 125.00	No	No

		Manager	\$ 50.00	\$ 50.00	No	No
		Trainer	\$ 30.00	\$ 30.00	No	No
		Second	\$ 25.00	\$ 25.00	No	No
		Physician	\$ 10.00	\$ 10.00	ACLS/ATLS certification required	No
Iowa	Professional Boxing		\$ 25.00	\$ 25.00	No	No
	Promoter		\$ 225.00	\$ 225.00	No	No
					No	No
					No	No
Kansas	Contestant (Amateur)		\$ 25.00	\$ 25.00	No	No
	Contestant (Professional)		\$ 45.00	\$ 45.00	No	No
	Referee		\$ 60.00	\$ 60.00	ABC Certification required for boxing referees	No
	Judge		\$ 55.00	\$ 55.00	ABC Certification required for professional judges	No
	Matchmaker		\$ 150.00	\$ 150.00	No	No
	Manager		\$ 110.00	\$ 110.00	No	No
	Second		\$ 30.00	\$ 30.00	No	No
	Timekeeper		\$ 30.00	\$ 30.00	No	No
	Physician		\$ 25.00	\$ 25.00	No	No
	Promoter		\$ 225.00	\$ 225.00	No	No
Kentucky	Contestant (Boxing, Kickboxing, Amateur/Professional MMA)		\$ 25.00	\$ 25.00	No	No
	Non-Contestant (Judge, Trainer, Manager, Referee, Timekeeper, Second)		\$ 25.00	\$ 25.00	No	No
	Promoter		\$ 300.00	\$ 300.00	No	No
	Physician/Healthcare Professional		\$ 25.00	\$ 25.00	No	No
	Federal		\$ 10.00	\$ 10.00	No	No
Louisiana	Boxing/Kickboxing/"Other"		\$ 25.00	\$ 25.00	No	No
	Judge, Timekeeper, Announcer, Referee, Second, Manager		\$ 25.00	\$ 25.00	No	No
	Matchmaker		\$ 250.00	\$ 250.00	No	No
Promoter Average (Initial and Renewal):	Boxing Promoter		\$ 500.00	\$ 500.00	No	No
\$ 375.00	Mixed Technique Promoter		\$ 250.00	\$ 250.00	No	No
Maine	Competitor (Boxing/MMA)		\$ 30.00	\$ 30.00	No	No
	Non-competitor (Judge, Referee, Timekeeper, Physician, Promoter, Matchmaker, Manager, Trainer, Second, Corner)		\$ 30.00	\$ 30.00	No	No
Maryland	Boxer/Kickboxer/MMA		\$ 10.00	\$ 10.00	No	No
	Judge		\$ 15.00	\$ 15.00	Course of Commission-approved training required	No
	Manager		\$ 25.00	\$ 25.00	No	No
	Matchmaker		\$ 25.00	\$ 25.00	No	No
	Promoter		\$ 150.00	\$ 150.00	No	No
	Referee		\$ 150.00	\$ 150.00	Course of Commission-approved training required	No
	Second		\$ 10.00	\$ 10.00	No	No

Massachusetts	Combatant	\$25 per fight, up to \$75	\$25 per fight, up to \$75	No	No
	Manager	\$ 50.00	\$ 50.00	No	No
	Trainer	\$ 50.00	\$ 50.00	No	No
	Second	\$ 50.00	\$ 50.00	No	No
	Promoter	\$ 150.00	\$ 150.00	No	No
	Matchmaker	\$ 50.00	\$ 50.00	No	No
	Physician	\$ 50.00	\$ 50.00	No	No
	Referee	\$ 50.00	\$ 50.00	Must be certified by MSAC, or an MSAC-approved commission	No
	Judge	\$ 50.00	\$ 50.00	Must be certified by MSAC, or an MSAC-approved commission	No
	Timekeeper	\$ 50.00	\$ 50.00	No	No
Michigan	Amateur MMA	\$ 90.00	\$ 45.00	No	No
* Michigan's Administrative Code	Professional Boxing/MMA	\$ 90.00	\$ 45.00	No	No
	Matchmaker	\$ 180.00	\$ 150.00	*	No
	Judge	\$ 100.00	\$ 70.00	*	No
	Timekeeper	\$ 100.00	\$ 70.00	*	No
	Referee	\$ 180.00	\$ 150.00	No	No
	Promoter	\$ 800.00	\$ 300.00	No	No
Minnesota	Amateur	\$ 50.00	\$ 50.00	No	No
	Professional	\$ 70.00	\$ 70.00	No	No
	Judge	\$ 80.00	\$ 80.00	ABC-approved training preferred, but not required	No
	Manager	\$ 80.00	\$ 80.00	No	No
	Promoter	\$ 700.00	\$ 700.00	No	No
	Referee	\$ 80.00	\$ 80.00	ABC-approved training preferred, but not required	No
	Announcer	\$ 80.00	\$ 80.00	No	No
	Physician	\$ 80.00	\$ 80.00	No	No
	Timekeeper	\$ 80.00	\$ 80.00	No	No
	Trainer/Second	\$ 80.00	\$ 80.00	No	No
Mississippi	Any	Not to exceed \$100		No	No
Missouri	Contestant (Boxing/MMA)	\$ 40.00	\$ 40.00	No	No
	Second, Announcer, Sponsor, Timekeeper	\$ 20.00	\$ 20.00	No	No
	Referee and Judge	\$ 50.00	\$ 50.00	No	No
	Manager	\$ 100.00	\$ 100.00	No	No
	Matchmaker	\$ 200.00	\$ 200.00	No	No
	Promoter	\$ 400.00	\$ 400.00	No	No
	Physician	\$ -	\$ -	No	No
Montana	Boxers/Kickboxers	\$ 45.00	\$ 45.00	No	No
	Referees	\$ 45.00	\$ 45.00	No	No
	Managers/Trainers	\$ 45.00	\$ 45.00	No	No
	Seconds	\$ 45.00	\$ 45.00	No	No
	Judges	\$ 45.00	\$ 45.00	No	No
	Promoters	\$ 500.00	\$ 500.00	No	No
	Club Boxing Promoters	\$ 250.00	\$ 250.00	No	No
Nebraska	Contestant	\$ 20.00	\$ 20.00	No	No
	Second	\$ 20.00	\$ 20.00	No	No
	Timekeeper	\$ 20.00	\$ 20.00	No	No

	Judge	\$ 20.00	\$ 20.00	Training is offered, but not required	Training is offered, but not required
	Manager	\$ 20.00	\$ 20.00	No	No
	Physician	\$ 20.00	\$ 20.00	No	No
	Referee	\$ 35.00	\$ 35.00	Training is offered, but not required	Training is offered, but not required
	Matchmaker	\$ 50.00	\$ 50.00	No	No
	Promoter	\$ 200.00	\$ 200.00	No	No
Nevada	Amateur-to-Pro Contestant (Boxing/Kickboxing/MMA)	\$ 50.00	\$ 50.00	No	No
	Professional Contestant (Boxing, Kickboxing, MMA)	\$ 50.00	\$ 50.00	No	No
	Promoter	\$ 750.00	\$ 750.00	No	No
	Second	\$ 50.00	\$ 50.00	No	No
	Manager	\$ 100.00	\$ 100.00	No	No
	Matchmaker	\$ 100.00	\$ 100.00	No	No
	Announcer	\$ 100.00	\$ 100.00	No	No
	Judge	\$ 50.00	\$ 50.00	Judges ideally are registered with a commission, e.g. ABC, which may require training, but this is not required	No
	Referee	\$ 75.00	\$ 75.00	Referees ideally are registered with a commission, e.g. ABC, which may require training, but this is not required	No
	Timekeeper	\$ 50.00	\$ 50.00	No	No
	Physician	\$ 100.00	\$ 100.00	No	No
New Hampshire	Professional Fighter	\$ 20.00	\$ 20.00	No	No
	Manager	\$ 20.00	\$ 20.00	No	No
	Cornerman	\$ 20.00	\$ 20.00	No	No
	Referee	\$ 20.00	\$ 20.00	No	No
	Judge	\$ 20.00	\$ 20.00	No	No
	Timekeeper	\$ 20.00	\$ 20.00	No	No
	Scorekeeper	\$ 20.00	\$ 20.00	No	No
	Promoter (Single event)	\$ 100.00	\$ 100.00	No	No
	Second	\$ 20.00	\$ 20.00	No	No
New Jersey	Amateur and Professional Contestant	\$ 5.00	\$ 5.00	No	No
	Manager	\$ 25.00	\$ 25.00	No	No
	Second	\$ 25.00	\$ 25.00	No	No
	Announcer	\$ 100.00	\$ 100.00	No	No
	Referee	\$ 100.00	\$ 100.00	Training is considered when applying, but not required	No
	Judge	\$ 100.00	\$ 100.00	Training is considered when applying, but not required	No
	Promoter	\$ 300.00	\$ 300.00	No	No
	Matchmaker	\$ 100.00	\$ 100.00	No	No
	Inspector	\$ -	\$ -	No	No
	Physician	\$ -	\$ -	No	No
	Timekeeper	\$ 100.00	\$ 100.00	No	No
New Mexico	Boxing, Professional	\$ 25.00	\$ 25.00	No	No
	Announcer	\$ 25.00	\$ 25.00	No	No
	Judge	\$ 25.00	\$ 25.00	Must pass an exam, then complete training of 3 or more events under instructor supervision	No

	Judge Trainee	\$ 10.00	\$ 10.00	No	No
	Manager	\$ 25.00	\$ 25.00	No	No
	Matchmaker	\$ 35.00	\$ 35.00	No	No
	Promoter	\$ 250.00	\$ 250.00	No	No
	Referee	\$ 25.00	\$ 25.00	No	No
				Must pass an exam, then complete training of 3 or more events under instructor supervision	
	Timekeeper	\$ 25.00	\$ 25.00		No
	Trainer	\$ 25.00	\$ 25.00	No	No
New York	Professional Boxing	\$ 10.00	\$ 10.00	No	No
	Boxing Manager	\$ 30.00	\$ 30.00	No	No
New York Promoter Average (Initial and Renewal):	Boxing Promoter, first class city, < 2500 seats	\$ 450.00	\$ 450.00	No	No
\$ 1,304.17	Boxing Promoter, first class city, 2500-5000 seats	\$ 750.00	\$ 750.00	No	No
	Boxing Promoter, first class, 5,001 - 15,000 seats	\$ 1,000.00	\$ 1,000.00	No	No
	Boxing Promoter, first class, 15,001 - 25,000 seats	\$ 2,000.00	\$ 2,000.00	No	No
	Boxing Promoter, first class, > 25,000 seats	\$ 2,500.00	\$ 2,500.00	No	No
	Boxing Promoter, second class	\$ 300.00	\$ 300.00	No	No
	Boxing Promoter, anywhere else	\$ 150.00	\$ 150.00	No	No
	Boxing Second/Trainer	\$ 10.00	\$ 10.00	No	No
	Boxing Matchmaker	\$ 50.00	\$ 50.00	No	No
				ABC-approved Timekeeper training course required if applicant has no proficiency in timekeeping	
	Boxing Timekeeper	\$ 10.00	\$ 10.00		No
	Boxing Referee	\$ 50.00	\$ 50.00	ABC-approved Referee training course required	No
	Boxing Judge	\$ 50.00	\$ 50.00	ABC-approved Judge training course required	No
	Professional MMA	\$ 50.00	\$ 50.00	No	No
	MMA Manager	\$ 50.00	\$ 50.00	No	No
	MMA Second/Trainer	\$ 40.00	\$ 40.00	No	No
	MMA Matchmaker	\$ 100.00	\$ 100.00	No	No
				ABC-approved Timekeeper training course required if applicant has no proficiency in timekeeping	
	MMA Timekeeper	\$ 40.00	\$ 40.00		No
	MMA Referee	\$ 100.00	\$ 100.00	ABC-approved Referee training course required	No
	MMA Judge	\$ 100.00	\$ 100.00	ABC-approved Judge training course required	No
	MMA Promoter, < 2,500 seats	\$ 500.00	\$ 500.00	No	No
	MMA Promoter, 2,500 to 5,000	\$ 1,000.00	\$ 1,000.00	No	No
	MMA Promoter, 5,001 to 15,000	\$ 1,500.00	\$ 1,500.00	No	No
	MMA Promoter, 15,001 - 25,000	\$ 2,500.00	\$ 2,500.00	No	No
	MMA Promoter, > 25,000 Seats	\$ 3,000.00	\$ 3,000.00	No	No
North Carolina	Contestant	\$ 50.00	\$ 50.00	No	No
Note: Boxing Only	Announcer	\$ 75.00	\$ 75.00	No	No
	Judge	\$ 75.00	\$ 75.00	No	No
	Manager	\$ 150.00	\$ 150.00	No	No

	Matchmaker	\$ 300.00	\$ 300.00	No	No
	Promoter	\$ 450.00	\$ 450.00	No	No
	Referee	\$ 75.00	\$ 75.00	Must complete a seminar less than 1 year before applying	Must complete one seminar per year
	Timekeeper	\$ 75.00	\$ 75.00	No	No
	Knockdown Timekeeper	\$ 75.00	\$ 75.00	No	No
	Seconds/Cornerman	\$ 50.00	\$ 50.00	No	No
North Dakota	Professional Boxer/Kickboxer/MMA	\$ 25.00	\$ 25.00	No	No
* The North Dakota Commission	Judge, Cornerperson, Second, Trainer, Knockdown Counter, Timekeeper, Referee	\$ 25.00	\$ 25.00	*	No
	Matchmaker	\$ 50.00	\$ 50.00	*	No
	Manager	\$ 50.00	\$ 50.00	*	No
	Promoter	\$ 250.00	\$ 250.00	*	No
	Physician	\$ -	\$ -	No	No
	Announcer	\$ -	\$ -	No	No
Ohio	Boxing/MMA	\$ 30.00	\$ 30.00	No	No
	Judge	\$ 30.00	\$ 30.00	No	No
	Referee	\$ 30.00	\$ 30.00	No	No
	Timekeeper	\$ 30.00	\$ 30.00	No	No
	Matchmaker	\$ 30.00	\$ 30.00	No	No
	Manager	\$ 30.00	\$ 30.00	No	No
	Trainer	\$ 30.00	\$ 30.00	No	No
	Second	\$ 30.00	\$ 30.00	No	No
	Promoter	\$ 100.00	\$ 100.00	No	No
	Physician	\$ -	\$ -	No	No
	Inspector	\$ -	\$ -	No	No
Oklahoma	Contestant	\$ 30.00	\$ 30.00	No	No
	Referee	\$ 50.00	\$ 50.00	Must complete an ABC-approved referee training course; must complete an initial referee training seminar conducted by ABC; must shadow a Commission referee for at least 5 events.	Must complete an ABC-approved referee training course at least once every 3 years
	Judge	\$ 50.00	\$ 50.00	Must complete an ABC-approved judge training course; must complete an initial judge training seminar conducted by ABC; must shadow a Commission judge for at least 5 events.	Must complete an ABC-approved Judge training course at least once every 3 years
	Matchmaker	\$ 150.00	\$ 150.00	No	No
	Second	\$ 25.00	\$ 25.00	No	No
	Announcer	\$ 20.00	\$ 20.00	No	No
	Timekeeper	\$ 40.00	\$ 40.00	No	No
	Vendor	\$ 50.00	\$ 50.00	No	No
	Promoter	\$ 250.00	\$ 250.00	No	No
Oregon	Amateur MMA	\$ 10.00	\$ 10.00	No	No
	Professional Boxer/MMA	\$ 15.00	\$ 15.00	No	No
	Manager	\$ 40.00	\$ 40.00	No	No
	Matchmaker	\$ 40.00	\$ 40.00	No	No
	Judge	\$ 25.00	\$ 25.00	No	No
	Referee	\$ 25.00	\$ 25.00	No	No
	Second	\$ 15.00	\$ 15.00	No	No
Promoter Average (Initial and Renewal):	Promoter, One City	\$ 100.00	\$ 100.00	No	No

	\$ 300.00	Promoter, Entire State	\$ 500.00	\$ 500.00	No	No
		Timekeeper	\$ 10.00	\$ 10.00	No	No
Pennsylvania	Professional Boxer/MMA	\$ 22.00	\$ 22.00	No	No	
	Amateur MMA	\$ 10.00	\$ 10.00	No	No	
	Announcer	\$ 20.00	\$ 20.00	No	No	
	Referee	\$ 35.00	\$ 35.00	3 month apprenticeship	No	
	Second	\$ 20.00	\$ 20.00	No	No	
	Timekeeper	\$ 25.00	\$ 25.00	No	No	
	Trainer	\$ 20.00	\$ 20.00	No	No	
	Judge	\$ 35.00	\$ 35.00	3 month apprenticeship	Must attend at least one seminar per year	
	Manager	\$ 60.00	\$ 60.00	No	No	
	Matchmaker	\$ 50.00	\$ 50.00	No	No	
	Physician	\$ 40.00	\$ 40.00	No	No	
	Promoter	\$ 100.00	\$ 100.00	No	No	
Rhode Island	Contestants	\$ 50.00	\$ 50.00	No	No	
	Judge, Referee, Physician, Timekeeper, Inspector, Resuscitators	\$ 10.00	\$ 10.00	No	No	
	Promoter	\$ 800.00	\$ 800.00	No	No	
South Carolina	Amateur MMA/Professional Boxing + MMA	\$ 50.00	\$ 50.00	No	No	
	Judge	\$ 75.00	\$ 75.00	No	No	
	Referee	\$ 75.00	\$ 75.00	No	No	
	Manager	\$ 100.00	\$ 100.00	No	No	
	Second	\$ 50.00	\$ 50.00	No	No	
	Timekeeper	\$ 50.00	\$ 50.00	No	No	
	Trainer	\$ 50.00	\$ 50.00	No	No	
	Announcer	\$ 75.00	\$ 75.00	No	No	
	Matchmaker	\$ 130.00	\$ 130.00	No	No	
	Promoter	\$ 150.00	\$ 150.00	No	No	
South Dakota	Contestant	\$ 50.00	\$ 50.00	No	No	
	Manager	\$ 100.00	\$ 100.00	No	No	
	Matchmaker	\$ 200.00	\$ 200.00	No	No	
	Promoter	\$ 300.00	\$ 300.00	No	No	
	Referee	\$ 50.00	\$ 50.00	No	No	
	Judge	\$ 50.00	\$ 50.00	No	No	
	Timekeeper	\$ 25.00	\$ 25.00	No	No	
	Second	\$ 25.00	\$ 25.00	No	No	
	Physician	\$ -	\$ -	No	No	
Tennessee	Contestant	\$ 75.00	\$ 75.00	No	No	
	Judge	\$ 100.00	\$ 100.00	No	No	
	Referee	\$ 125.00	\$ 125.00	No	No	
	Timekeeper	\$ 100.00	\$ 100.00	No	No	
	Announcer	\$ 150.00	\$ 150.00	No	No	
	Manager	\$ 150.00	\$ 150.00	No	No	
	Matchmaker	\$ 150.00	\$ 150.00	No	No	
	Second	\$ 75.00	\$ 75.00	No	No	
	Promoter	\$ 550.00	\$ 550.00	No	No	
Texas	Contestant	\$ 20.00	\$ 20.00	No	No	
	Manager	\$ 100.00	\$ 100.00	No	No	
	Promoter	\$ 900.00	\$ 900.00	No	No	
	Referee	\$ 125.00	\$ 125.00	Must complete a training program consisting of classroom training and an internship program	No	
	Judge	\$ 100.00	\$ 100.00	Five events scored, under department supervision	No	

	Matchmaker	\$ 100.00	\$ 100.00	No	No
	Second	\$ 20.00	\$ 20.00	No	No
Utah	Contestant	\$ 30.00	\$ 30.00	No	No
	Manager	\$ 50.00	\$ 50.00	No	No
	Matchmaker	\$ 50.00	\$ 50.00	No	No
	Second	\$ 30.00	\$ 30.00	No	No
	Promoter	\$ 250.00	\$ 250.00	No	No
	Judge	\$ 50.00	\$ 50.00	Must show the Commission that the applicant is "qualified by training and experience"	No
	Referee	\$ 50.00	\$ 50.00	Must show the Commission that the applicant is "qualified by training and experience"	No
	Timekeeper	\$ 50.00	\$ 50.00	No	No
	Physician	\$ -	\$ -	No	No
Vermont	Professional contestants	\$ 5.00	\$ 5.00	No	No
* Boxing Control Board Rule 1.3(1)	Managers of professional contestants	\$ 15.00	\$ 15.00	No	No
	Promoters	\$ 25.00	\$ 25.00	No	No
	Professional Referees*	\$ 10.00	\$ 10.00	No	No
	Judges	\$ -	\$ -	No	No
Virginia	Professional Contestant	\$ 40.00	\$ 40.00	No	No
Note: Virginia's "limited" licenses are for single events.	Professional Contestant, limited	\$ 30.00	\$ 30.00	No	No
	Manager	\$ 50.00	\$ 50.00	No	No
	Trainer, Second, Cut	\$ 40.00	\$ 40.00	No	No
	Matchmaker	\$ 50.00	\$ 50.00	No	No
	Promoter	\$ 500.00	\$ 500.00	No	No
Washington	Amateur MMA, Professional Boxing/MMA	\$ 25.00	\$ 25.00	No	No
	Chiropracter	\$ 65.00	\$ 65.00	No	No
	Inspector	\$ 65.00	\$ 65.00	Must be adequately trained by any commission-approved organization (e.g. ABC)	Must be adequately trained annually by any commission-approved organization (e.g. ABC)
	Second	\$ 25.00	\$ 25.00	No	No
	Promoter	\$ 500.00	\$ 500.00	No	No
	Judge	\$ 65.00	\$ 65.00	Must be adequately trained by any commission-approved organization (e.g. ABC)	Must be adequately trained annually by any commission-approved organization (e.g. ABC)
	Timekeeper	\$ 65.00	\$ 65.00	Must be adequately trained by any commission-approved organization (e.g. ABC)	Must be adequately trained annually by any commission-approved organization (e.g. ABC)
	Referee	\$ 65.00	\$ 65.00	Must be adequately trained by any commission-approved organization (e.g. ABC)	Must be adequately trained annually by any commission-approved organization (e.g. ABC)
	Manager/Matchmaker	\$ 65.00	\$ 65.00	No	No
	Physician	\$ -	\$ -	No	No
West Virginia	Boxing, Semi-pro	\$ 10.00	\$ 10.00	No	No
	Professional Boxing	\$ 25.00	\$ 25.00	No	No
	MMA	\$ 25.00	\$ 25.00	No	No
	Judge, Timekeeper, Referee, Inspector	\$ 30.00	\$ 30.00	Training encouraged, but experience is sufficient	
	Manager	\$ 50.00	\$ 50.00	No	No

	Trainer	\$ 20.00	\$ 20.00	No	No
	Second	\$ 20.00	\$ 20.00	No	No
	Promoter	\$ 125.00	\$ 125.00	No	No
Wisconsin	Contestants	\$ 40.00	\$ 40.00	No	No
	Second	\$ 40.00	\$ 40.00	No	No
	Judge	\$ 15.00	\$ 15.00	No	No
	Referee	\$ 15.00	\$ 15.00	No	No
	Physician	\$ 10.00	\$ 10.00	No	No
	Timekeeper	\$ 10.00	\$ 10.00	No	No
	Promoter	\$ 500.00	\$ 500.00	No	No
Wyoming	Contestants	\$ 50.00	\$ 50.00	No	No
Note: MMA only	Referees, Timekeepers, Judges, and Inspectors	\$ 100.00	\$ 100.00	No	No
	Promoter	\$ 300.00	\$ 300.00	No	No

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT
TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 2. ARIZONA RACING COMMISSION
ARTICLE 6. STATE BOXING ADMINISTRATION

1. Identification of the proposed rulemaking

By statute, the Boxing and Mixed Martial Arts Commission is responsible for regulating certain unarmed-combat sports, including boxing, mixed martial arts, kickboxing, Muay Thai, and Toughman contests. Boxing regulations are currently split between Title 19, Chapter 2, Article 6, and Title 4, Chapter 3, Articles 1 through 4. Rules for regulation of unarmed combat disciplines other than boxing have not been adopted previously. Instead, there has been adoption of a substantive policy statement establishing rules for mixed martial arts. The proposed rules are a reengineered blueprint for consolidating the regulation of all forms of unarmed combat into one Title, Chapter, and Article of the Administrative Code. In Title 19, Chapter 2, the title of Article 6 will be amended from “State Boxing Administration” to “State Boxing and Mixed Martial Arts Commission: Administration of Unarmed Combat Sports,” to more correctly describe the authority of the Commission and the purpose of the rules. Parts will be introduced to separate areas of regulation. The proposed rules are designed to improve and clarify the Agency’s regulation of each unarmed-combat sport, with primary emphasis on the safety of unarmed combatants. For example, the proposed rules will add concussion-testing protocols and refine anti-doping regulations. The proposed rules are additionally designed to clarify administrative requirements for licensing and to comply with statutory requirements to adopt rules consistent with New Jersey’s rules governing the conduct of mixed martial arts.

Rules in Title 4, Chapter 3, Articles 1 through 4 (specifically R4-3-101 to R4-3-414 and Table 1) will be repealed in their entirety, with content being renumbered, amended, and consolidated into Title 19, Chapter 2, Article 6.

The amended rules will also increase licensing and event fees. Currently, the economic impact of laws and rules for the regulation of boxing and mixed martial arts include: licensing fees borne by contestants, promoters, trainers, seconds, matchmakers and various officials; regulatory fees pursuant to intergovernmental agreements with Native American communities; the cost of annual physicals, eye exams and blood tests paid by contestants; the costs of medical and accidental death insurance and annual surety bonds paid by boxing promoters; the officials' fees paid by promoters; and a 4% gross receipts sales tax on ticket sales for events held on non-Tribal lands. The 4% gross receipts sales tax provisions are found in the current Title 19, Chapter 2, Article 6.

All participants in unarmed combat sports, including promoters, trainers, managers, combatants, seconds, cutmen, referees, judges, timekeepers, and ringside physicians, must be licensed in Arizona under A.R.S. §§ 5-221 *et. seq.* The proposed rulemaking will not change this requirement, although the parameters for licensing will be clarified for the benefit of the regulated individuals. Under the proposed rulemaking, license fees will be slightly increased for several categories of licensees, because the fees currently charged are out-of-date and not in line with national standards. Event fees will be increased for the same reasons. For some licensees, license fees will either remain the same or will be reduced. Licensing fees for initial applicants will be waived if their income and other circumstances allow them to qualify for exemption. A new license fee for amateur Muay Thai sanctioning bodies is added to help govern amateur Muay Thai sanctioning bodies. Exhibitions are allowed by statute, but the Commission had not previously implemented rules to govern them. The new rules will enable the conduct of exhibitions and will set a new event fee for exhibitions.

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

The Commission and some licensees of the Commission will be directly affected by the proposed

rulemaking. The public may be indirectly affected.

With regard to the direct impact of economic factors, the proposed rulemaking contemplates the following:

Title 4, Chapter 3, Articles 1 through 4:

All substantive content of the rules will be amended and incorporated into Title 19, Chapter 2, Article 6. Once that is accomplished, rules under Title 4, Chapter 3, Articles 1 through 4, will be repealed. There will be no economic impact arising from Title 4, Chapter 3, Articles 1 through 4, after the proposed rulemaking.

Title 19, Chapter 2, Article 6:

Once the proposed rulemaking is finalized, the following economic impacts will be in place:

- All promoters will now pay the same license fee of \$400, resulting in an increase of \$200 for individual promoters, but no increase for corporate promoters;
- The license fee for matchmakers is increased from \$100 to \$125;
- The license fee for managers is increased from \$50 to \$100;
- The license fee for inspectors, judges, referees, timekeepers, announcers and ringside physicians will increase from \$25 to \$30;
- The license fee for cutmen, professional unarmed combatants, trainers and seconds will stay the same, at \$25;
- The license fee for amateur unarmed combatants will be reduced from \$20 to \$10;
- The cost of medical exams of combatant licensees will be increased due to the new requirement for concussion baseline and review testing;
- A one-time licensing fee waiver will be allowed for all licensees whose yearly income falls below federal poverty levels;
- The event permit fees will be impacted as follows:

- § The event fee for non-live televised events with attendance of less than 5000 persons will increase from \$500 to \$750;
 - § The event fee for non-live televised events with attendance with more than 5000 persons, events that are streamed live on Internet broadcasts, or events that are live televised events, will increase from \$1000 to \$1500;
 - § The event fee for events that are live televised events on cable or satellite television that include a recognized world title bout will increase from \$1500 to \$2000;
 - § The event fee for events that are live pay-per-view events will increase from \$2000 to \$4000;
- A new fee of \$1000 has been added to approve Muay Thai sanctioning bodies.
 - A new fee of \$1000 has been added to approve Exhibitions.

3. Cost-benefit Analysis.

This analysis covers the costs and benefits of the proposed rulemaking affecting Title 4, Chapter 3, Articles 1 through 4 and Title 19, Chapter 2, Article 6.

Annual cost/benefit changes are designated as minimal when more than \$0 and less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater. A cost or benefit is listed as significant when meaningful or important and not readily subject to quantification.

Cost Benefit Analysis Matrix

Affected Person or Entity/Proposed Rule	Benefit	Cost	Description (Analysis based on FY2017 statistics)
<u>Commission/Racing Division</u> R19-2-C-603. License Fees	\$10,020	\$0	Substantial combined benefit - Estimated combined increase in revenue from additional licensing and event fees, resulting in a decrease in the subsidy from the racing industry. Figure obtained by multiplying affected licensees by proposed

			increases or decreases. See Section 6 and calculations below.
<u>Licensees</u> R19-2-C-603. License Fees (for Events)	\$0	\$7,500	Moderate combined cost and minimal individual cost - Estimated combined increase in event fees based on individual: <ul style="list-style-type: none">• Increase in 24 promoters' event fees of \$250;• Increase in 3 promoters' event fees of \$500.
<u>Licensees</u> R19-2-C-603. License Fees	\$0	\$520	Minimal combined and individual cost - Estimated combined increase in licensing fees based on individual: <ul style="list-style-type: none">• Increase of \$200 each in 4 promoters' licensing fees;• Increase of \$50 each in 3 managers' licensing fees;• Increase of \$25 each in 9 matchmakers' licensing fees;• Increase of \$5 each in the licensing fees of 67 inspectors, judges, referees, timekeepers, announcers, and physicians; and• Decrease of \$10 each in 99 amateurs' licensing fees.
<u>Licensees</u> R19-2-C609. Registration of Amateur Sanctioning Organizations: Requirements; Application; Fees; Revocation, Suspension or Setting Conditions	\$0	\$2000	Moderate combined and individual cost - Estimated combined increase representing individual addition of approval/registration fee of \$1000 each for 2 current amateur Muay Thai sanctioning bodies.
<u>Licensees</u> R19-2-D607. Exhibitions; Fee	\$0	\$0	Significant potential benefit to Commission and cost to promoters. No quantification can be estimated at this time of exhibition event fee. The Commission has no means to predict whether promoters will take advantage of this new income opportunity.
<u>Licensees</u> R19-2-C604. Licensing Requirements Related to Ability and Fitness	\$0	\$8,275	Moderate combined cost and minimal individual cost - potential combined cost to unarmed combatant licensees to cover baseline concussion testing, based on 331 individual licensees and an individual cost of \$25 each. Post-fight concussion testing cost may be higher, however, medical

			insurance provided by promoters should cover some of the cost of additional testing.
<u>Totals</u>	\$10,020.00	\$18,295.00	

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 rules.

It is predicted that there will be no direct increase in costs for the Commission, primarily because the proposed rules do not vary greatly from the existing rules with regard to licensing, processing of events, or conduct of boxing. The agency has already been implementing the proposed mixed martial arts rules under a substantive policy statement, so there will not be substantial change there. The proposed rulemaking will not significantly increase the Commission's duties.

The Commission has two full-time employees dedicated to regulation of unarmed combat sports. It is not expected that additional personnel will be needed to implement and enforce the proposed rules, unless an increase in number of events is extreme. On the contrary, it is expected that the proposed regulations will assist the Commission staff to be able to regulate in a more efficient and effective manner.

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

Increases in licensing and event fees may slightly increase revenues to the state. The activities of the Commission produced revenue for the state in fiscal year 2017 in the approximate amount of \$143,000. It is estimated that the proposed rulemaking will result in approximately \$10,020 additional revenue to the state. The proposed rulemaking may beneficially affect the Racing Division, which is required to fund the Commission. If additional revenues are generated by the Commission, there will be a reduced financial burden on the Racing Division.

c. Probable costs and benefits to businesses directly affected by the proposed rulemaking,

including any anticipated effect on the revenues or payroll expenditure of employers who are subject to the proposed rulemaking.

Businesses impacted by these rules will most likely be promoters who organize unarmed combat events or matchmakers who arrange pairings of contestants. Both promoters and matchmakers will be directly affected by increases in event and licensing fees, but should not experience significant effects on overall revenue or employment expense. These businesses have the capability of recouping any increased costs through sale of admission to events and sale of broadcasting rights. The general impact of more predictable regulation in unarmed combat sports should be positive for all licensees, including small businesses. The proposed amendments should improve efficiency and provide better predictability, uniformity, and ease of compliance as compared to the existing rules and practices. Feedback has been received to indicate that at least one promoter is reluctant to organize events in Arizona because of the lack of effective regulation of Muay Thai promoters and events. The proposed rulemaking will address this issue. Adding the availability of promoting exhibitions will provide another avenue for industry businesses to generate income.

d. Summary of Costs and Benefits.

The direct monetary benefits of the proposed regulations will flow primarily to the Commission, which is tasked with maintaining safety and integrity of the unarmed combat industry with the minimum number of staff. Amateur combatants will also receive monetary benefit from the proposed rulemaking, with a 50% reduction for amateur combatants' license fees.

The direct monetary cost is spread among licensees and will fall primarily on: (1) officials who are paid for their services, such as referees, inspectors, judges, timekeepers, announcers, and physicians; and (2) promoters, who can easily recapture the increases from sales of admission to events and sales of broadcasting rights. The increased cost of safety of combatants is designed by the proposed rulemaking to be borne by participants in the industry and not by the Commission. The Commission currently regulates 947 licensees. If the industry-wide cost increases listed in the

Cost Benefit Analysis Matrix above (\$18,295) were apportioned, the cost increase per licensee would amount to an approximate average expenditure of less than \$20, which the Commission proposes is an acceptable increase to achieve greater safety and more effective regulation.

It is difficult to assign a monetary figure to the benefits of increased safety and control of the conduct of contests, but the avoidance of the individual and public cost of long-term care for just one unarmed combatant who suffers a brain injury can be predicted to justify all of the increases proposed by the rulemaking.

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

Every unarmed combat event generates a great deal of general economic impact. Appropriate venues must be paid for. Event venues need box office, security, concessions, and facilities personnel. Revenues are generated by sales of admissions and sales of broadcasting rights. Events may spur an increase in hotel stays and sales of gasoline, merchandise, and food. Clearly, the effect on the local economy exists, but the proposed rulemaking is not expected to have any identifiable impact on private and public employment that was not already present under the current rules, unless the frequency of events increases under the new rules.

5. Probable impact of the proposed rulemaking on small business.

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

Some promoters who organize unarmed combat events and matchmakers who arranged pairings of fighters may qualify as small businesses, defined as “a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.” A.R.S. § 41-1001. These businesses will be directly impacted by increases in event and/or licensing fees. The increases are in line with national averages and are

justified by the goal of increased safety and clarity of regulation. See Appendices A and B.

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

It is not anticipated that any additional administrative costs will be incurred by businesses, but any compliance, such as increases in license and event fees, will impact all businesses, including small businesses.

c. A description of methods that may be used to reduce the impact on small businesses and reasons for the agency's decision to use or not use each method.

(i) *Less Stringent Compliance or Reporting Requirements.* With the exception of increased event and licensing fees, the proposed rulemaking is not designed to change the compliance and reporting requirements that already exist under the current rules. However, the following concessions were made:

- The event fee increase for smaller promoters is much less;
- The Commission may waive some requirements or approve variations from the rules under certain limited circumstances, which will help to protect against any unwarranted impact.

Examples would be: waiver of medical examinations if the previous examinations have occurred recently; waiver of provision of a paramedic unit if adequate alternative medical facilities are readily accessible; and waiver of fees for initial applicants who demonstrate financial hardship and qualify for the exemption.

(ii) *Less Stringent Schedules and Deadlines.* Under the proposed rulemaking, provision has been made for waiver of deadline requirements if the Commission can accommodate a request for waiver.

(iii) *Consolidate or Simplify the Rule's Compliance and Reporting Requirements.* The proposed rulemaking is not designed to change the compliance and reporting requirements that already exist under the current rules. There has not been demonstrated any hardship for small businesses in following the current compliance and reporting requirements, and feedback has been received that

indicates the Arizona system is preferred by industry participants over other jurisdictions.

(iv) *Establish performance standards for small businesses to replace design or operational standards in the rule.* This criteria does not apply to the regulation of unarmed combat sports. Any “performance standards” would be related to safety of combatants and the fairness of contests and those standards could not be waived.

(v) *Exempt small businesses from any or all requirements of the law.* The proposed rulemaking is designed to protect the integrity and fairness of the unarmed combat industry, and the safety of participants in that industry. The rules are not designed to burden any regulated person, including small businesses, with artificial and unnecessary requirements. Licensing is dependent on the fitness and integrity of the applicants. Approval of events is based on safety. The law governing the Commission does not even consider a prior criminal conviction to be an excluding factor for a license applicant unless the conviction is related to an unarmed combat sport and would affect the integrity of the industry. The Commission does not believe concessions can be made in its regulations that would reduce the requirements of safety and appropriate conduct. Further, the Commission does not believe it is feasible to allow licensing and event fees to remain at their current level. The current licensing and event fees are not in line with industry standards, and the Commission needs to work toward self-sufficiency, or at minimum, less dependency on the revenues produced by the racing industry. The budget of the Racing Division has been significantly cut. The proposed increase in licensing and event fees and medical expenses is modest and necessary. Further, the rules are designed to shift the burden of increased fees to those licensees who can best tolerate it. For example, one of the biggest impacts of the proposed rulemaking is the elimination of 50% of the amateur licensing fees.

An alternative possible method of raising revenue, which has been used by other jurisdictions to increase revenues, would be to impose a pay-per-view tax. This method cannot be adopted in the proposed rules because of lack of statutory authority. In addition, Arizona has not attracted a pay-

per-view event to date, primarily because there are no venues in the area that are large enough to support one.

A second alternative would be to increase the tax levy on attendance at unarmed-combat events. The current tax rate established by statute is 4% of the gross receipts of an event. A.R.S. § 5-104.02. This alternative also could not be implemented by regulatory rules. It would require statutory amendment, but if passed, it is contemplated that any increased costs would be passed on to the unarmed-combat consumer.

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

Increases in licensing and event fees may result in increases in the prices charged for admission to unarmed combat events for consumers or the general public. However, private persons and consumers will benefit from consistent regulation that ensures the integrity and safety of unarmed combat sports. One common complaint by the public is the lack of consistency or predictability in contest decisions. The proposed rulemaking will provide clear rules of conduct that detail how bouts should be scored.

6. Probable effect on state revenues.

This rulemaking is not anticipated to have a significant impact on state revenues or expenses. However, increases in event and licensing fees may provide slight additional revenue to the state. Based on the data from the 2017 fiscal year and taking into account planned increases and reductions for licensees, licensing revenues would only experience a net increase of approximately \$2,520. Most licensing fees come from professional and amateur unarmed combatants, trainers, and seconds. Those licensing fees are not scheduled to change or, in the case of amateurs, will be reduced.

Greater impact will be experienced as a result of event fee increases. Event fees for the 2017 fiscal

year totaled approximately \$17,000. The same events if repeated under the proposed rules would result in an increase of approximately \$7,500. That amount could be higher if promoters begin to utilize the ability to conduct exhibitions or pay-per-view events.

7. Less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

With the exception of statutory changes that might allow additional or new taxes on events, as discussed above, the Commission is unaware of any other less intrusive or less costly methods for achieving the purpose of the rulemaking. Because events result in much greater profits for promoters, the Commission increased event fees to a greater extent than licensing fees, which is less intrusive than raising licensing fees.

Both licensing and event fees must be kept current to maintain the needed degree of regulation. The proposed rulemaking will be consistent with fee standards throughout the unarmed combat industry. Unarmed combat sports are generally highly regulated in all jurisdictions in order to preserve the integrity of the sports, the safety of participants, and the protection of the public. Such regulation necessarily entails economic impact.

8. Description of any data on which the rule is based.

The Commission studied other jurisdictions to determine the industry standards for licensing fees. See Appendices A and B.

ARTICLE 6. STATE BOXING ADMINISTRATION

R19-2-601. Definitions

The following terms apply to this Article:

1. "Annual bond" means the cash or surety bond, required under A.R.S. § 5-228(E), to be deposited with the Department by a promoter as a prerequisite for a promoter's license.
2. "Commission" means the Arizona State Boxing Commission.
3. "Department" means the Arizona Department of Racing.
4. "Event bond" means the cash or surety bond, authorized under A.R.S. § 5-229(B), which the Commission may require a promoter to deposit with the Department before each contest.
5. "*Gross receipts*" means all receipts from the face value of tickets sold. A.R.S. § 5-104.02(E)
6. "Ticket agent" means a person authorized by a promoter to print tickets.
7. "Ticket vendor" means a person authorized by a promoter to sell tickets.
8. "Tickets issued" means all tickets printed for an event.

Historical Note

New Section recodified from Section R4-3-415 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Amended by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1).

R19-2-602. Notice to the Department

- A. The Commission shall notify the Department in writing not more than two business days after approving the date of a event. The Commission shall also notify the Department immediately if any change in the scheduled event occurs.
- B. The Commission shall provide copies of all contracts to the Department, if requested.

Historical Note

New Section recodified from Section R4-3-416 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Amended by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1).

R19-2-603. Ticket Manifest, Collection, Accounting

A. General requirements.

1. A promoter shall provide the Department with:
 - a. A ticket manifest from each ticket agent no later than weigh-in. The manifest shall be accompanied by a signed affidavit from the ticket agent or the ticket agent's designee, certifying that the manifest is accurate and complete. The manifest shall list the total number of tickets issued and the number of tickets in each price category.
 - b. If tickets issued are sold through a computerized system that does not lend itself to a manifest, an accounting from each ticket agent of the total number of tickets in each price category. The accounting shall be accompanied by a signed affidavit from the ticket agent or the ticket agent's designee, certifying that the accounting is accurate and complete.
2. The ticket price shall be clearly printed on each ticket and ticket stub.
3. A promoter shall ensure that tickets are distributed only through ticket vendors specified by the promoter.
4. The Commission shall, upon request, provide the Department with the names and contract information for all ticket agents and vendors.

B. Reduced price tickets. A promoter shall ensure that tickets sold for less than the printed price are plainly over stamped with the actual price charged on the printed face of the ticket and ticket stub.

C. Complimentary tickets. A promoter shall ensure that:

1. The total number of complimentary tickets does not exceed 2% of the total number of tickets issued for the event or 75 whichever is greater, as specified under A.R.S. § 5-104.02(D).
2. Complimentary tickets in excess of the greater value of 2% or 75 are treated as noncomplimentary.
3. Complimentary tickets and ticket stubs are punched or stamped "complimentary."

D. Ticket accounting and fee payment. Representatives of the promoter and Department shall meet within 10 days of an event to account for all tickets sold and pay the required tax. If required by the Department, the promoter shall provide an accounting by each ticket vendor.

1. The promoter shall provide the Department with the following information on a Department form:
 - a. The number of tickets sold and unsold in each price category;
 - b. The amount of the gross receipts calculated using the printed price on each ticket sold;
 - c. The signature of the promoter, certifying that the information is true and correct.
2. The Department shall consider as sold any tickets listed on a manifest as issued and not physically presented to the Department by the promoter as unsold.
3. The promoter shall pay the Department 4% of the gross receipts after the deduction of city, state, and federal taxes, of the match or exhibition.

Historical Note

New Section recodified from Section R4-3-417 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Amended by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1).

Arizona Racing Commission

R19-2-604. Annual Bond, Event Bond, Claims

- A. Annual bond.
 - 1. A promoter shall deposit the annual bond with the Department no later than weigh-in for the first event promoted.
 - 2. Upon receipt of written notice from the Commission that a promoter's obligations for all events during the calendar year are satisfied, the Department shall release the promoter from the annual bond responsibility for that year.
- B. Event bond.
 - 1. The Commission shall notify the Department in writing of the amount of an event bond and deposit the bond with the Department no later than the weigh-in for the event. The Department shall retain the event bond until notice is received from the Commission that the promoter has satisfied all obligations concerning the bond guarantee.
 - 2. Upon receipt of written notice from the Commission that the promoter's obligations for an event are satisfied, the Department shall return the bond to the promoter.
 - 3. If an event is not held, the Commission shall notify the Department, not later than 22 business days after the scheduled event, whether the promoter's obligations for the event have been satisfied and whether the promoter's event bond can be returned.
- C. Department claim. The Department shall notify:
 - 1. A promoter by registered or certified mail, return receipt requested, that:
 - a. The unpaid tax on gross receipts shall be paid within 10 business days from receipt of the notice; and
 - b. If the payment is not received within the 10 business days, forfeiture proceedings against the bond may be initiated based on the Department's determination of whether a promoter's obligations have been faithfully performed.
 - 2. The Commission if a promoter fails to pay the required tax on gross receipts.
- D. The Department shall not release any bond for which a claim is pending.

Historical Note

New Section recodified from Section R4-3-418 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1).

R19-2-605. License Fees

- A. The Commission shall forward license fees to the Department within five business days of receipt with the following information:
 - 1. The type of license issued;
 - 2. The name and date of birth of the licensee;
 - 3. The license number; and
 - 4. The date and amount of payment received.
- B. The Commission shall retain a current list of the licenses issued and the additional applicable licensing information and make the information available to the Department.

Historical Note

New Section recodified from Section R4-3-419 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Former Section R19-2-605 repealed; new Section R19-2-605 renumbered from R19-2-609 and amended by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1).

R19-2-606. Fines

- A. The Commission shall notify the Department in writing if a licensee is issued a fine.
- B. The Commission shall immediately forward the fine payment to the Department.

Historical Note

New Section recodified from Section R4-3-420 at 5 A.A.R. 1175, April 23, 1999 (Supp. 99-2). Former Section R19-2-606 repealed; new Section R19-2-606 renumbered from R19-2-610 and amended by final rulemaking at 7 A.A.R. 805, effective January 18, 2001 (Supp. 01-1).

**GENERAL AND SPECIFIC STATUTES AUTHORIZING THE RULEMAKING
REGARDING THE TITLE 19 RULES, INCLUDING STATUTORY DEFINITIONS**

ARIZONA STATUTES

5-104. Arizona racing commission; director; department; powers and duties

A. The commission shall:

1. Issue racing dates.
2. Prepare and adopt complete rules to govern the racing meetings as may be required to protect and promote the safety and welfare of the animals participating in racing meetings, to protect and promote public health, safety and the proper conduct of racing and pari-mutuel wagering and any other matter pertaining to the proper conduct of racing within this state.
3. Conduct hearings on applications for permits and approve permits and shall conduct rehearings on licensing and regulatory decisions made by the director as required pursuant to rules adopted by the commission.
4. Conduct all reviews of applications to construct capital improvements at racetracks as provided in this chapter.
5. Adopt rules governing the proper and humane methods for the disposition and transportation of dogs by breeders, kennels or others.

B. The director shall license personnel and shall regulate and supervise all racing meetings held and pari-mutuel wagering conducted in this state and cause the various places where racing meetings are held and wagering is conducted to be visited and inspected on a regular basis. The director may delegate to stewards any of the director's powers and duties as are necessary to fully carry out and effectuate the purposes of this chapter. The director shall exercise immediate supervision over the department. The director is subject to ongoing supervision by the commission, and the commission may approve or reject decisions of the director in accordance with rules established by the commission.

C. The commission or the department is authorized to allow stewards, with the written approval of the director, to require a jockey, apprentice jockey, sulky driver, groom, horseshoer, outrider, trainer, assistant trainer, exercise rider, pony rider, starter, assistant starter, jockey's agent, veterinarian, assistant veterinarian, cool-out, security or maintenance worker, official or individual licensed in an occupational category whose role requires direct hands-on contact with horses, while on the grounds of a permittee, to submit to a test if the stewards have reason to believe the licensee is under the influence of or unlawfully in possession of any prohibited substance regulated by title 13, chapter 34.

D. The department shall employ the services of the office of administrative hearings to conduct hearings on matters requested to be heard by the director or the commission for the department except for those rehearings that are required by the terms of this chapter to be conducted by the

commission. Any person adversely affected by a decision of a steward or by any other decision of the department may request a hearing on the decision. The decision of the administrative law judge becomes the decision of the director unless rejected or modified by the director within thirty days. The commission may hear any appeal of a decision of the director in accordance with title 41, chapter 6, article 10.

E. The department may visit and investigate the offices, tracks or places of business of any permittee and place in those offices, tracks or places of business expert accountants and other persons as it deems necessary for the purpose of ascertaining that the permittee or any licensee is in compliance with the rules adopted pursuant to this article.

F. The department shall establish and collect the following licensing fees and regulatory assessments, which shall not be reduced for capital improvements pursuant to section 5-111.02:

1. For each racing license issued, a license fee.

2. From the purse accounts provided for in section 5-111, a regulatory assessment to pay for racing animal medication testing, animal safety and welfare.

3. From each permittee, a regulatory assessment for each day of dark day simulcasting conducted in excess of the number of live racing days conducted by the permittee.

4. From each commercial racing permittee, a regulatory assessment payable from amounts deducted from pari-mutuel pools by the permittee, in addition to the amounts the permittee is authorized to deduct pursuant to section 5-111, subsection B from amounts wagered on live and simulcast races from in-state and out-of-state wagering handled by the permittee.

G. The commission shall establish financial assistance procedures for promoting adoption of retired racehorses. The provision of financial assistance to nonprofit enterprises for the purpose of promoting adoption of retired racehorses is contingent on a finding by the commission that the program presented by the enterprise is in the best interest of the racing industry and this state. On a finding by the commission, the commission is authorized to make grants to nonprofit enterprises whose programs promote adoption of retired racehorses. The commission shall develop an application process. The commission shall require an enterprise to report to the commission on the use of grants under this subsection. Financial assistance for nonprofit enterprises that promote adoption of retired racehorses under this subsection shall not exceed the amount of retired racehorse adoption surcharges collected pursuant to this subsection. The commission shall collect a retired racehorse adoption surcharge in addition to each civil penalty assessed in connection with horse or harness racing pursuant to this article. The amount of the retired racehorse adoption surcharge shall be five percent of the amount collected for each applicable civil penalty.

H. A license is valid for the period established by the commission, but not to exceed three years, except for a temporary license issued pursuant to section 5-107.01, subsection F. The licensing period shall begin July 1.

I. On application in writing by an objector to any decision of track stewards, made within three days after the official notification to the objector of the decision complained of, the department

or administrative law judge shall review the objection. In the case of a suspension of a license by the track stewards, the suspension shall run for a period of not more than six months. Before the end of this suspension period, filing an application for review is not cause for reinstatement. If at the end of this suspension period the department or administrative law judge has not held a hearing to review the decision of the stewards, the suspended license shall be reinstated until the department or administrative law judge holds a hearing to review the objection. Except as provided in section 41-1092.08, subsection H, a final decision of the commission is subject to judicial review pursuant to title 12, chapter 7, article 6.

J. The commission or the director may issue subpoenas for the attendance of witnesses and the production of books, records and documents relevant and material to a particular matter before the commission or department and the subpoenas shall be served and enforced in accordance with title 41, chapter 6, article 10.

K. Any member of the commission, the administrative law judge or the director or the director's designee may administer oaths, and the oaths shall be administered to any person who appears before the commission to give testimony or information pertaining to matters before the commission.

L. The commission shall adopt rules that require permittees to retain for three months all official race photographs and videotapes. The department shall retain all photographs and videotapes that are used as evidence in an administrative proceeding until the conclusion of the proceeding and any subsequent judicial proceeding. All photographs and videotapes must be available to the public on request, including photographs and videotapes of races concerning which an objection is made, regardless of whether the objection is allowed or disallowed.

M. The director may establish a management review section for the development, implementation and operation of a system of management reports and controls in major areas of department operations, including licensing, work load management and staffing, and enforcement of this article and the rules of the commission.

N. In cooperation with the department of public safety, the director shall establish a cooperative fingerprint registration system. Each applicant for a license or permit under this article or any other person who has a financial interest in the business or corporation making the application shall submit to fingerprint registration as part of the background investigation conducted pursuant to section 5-108. The cooperative fingerprint registration system shall be maintained in an updated form using information from available law enforcement sources and shall provide current information to the director on request as to the fitness of each racing permittee and each racing licensee to engage in the racing industry in this state.

O. The director shall develop and require department staff to use uniform procedural manuals in the issuance of any license or permit under this article and in the enforcement of this article and the rules adopted under this article.

P. The director shall submit an annual report containing operational and economic performance information as is necessary to evaluate the department's budget request for the forthcoming fiscal year to the governor, the speaker of the house of representatives, the president of the senate

and the Arizona state library, archives and public records no later than September 30 each year. The annual report shall be for the preceding fiscal year and shall contain performance information as follows:

1. The total state revenues for the previous fiscal year from the overall pari-mutuel handle with an itemization for each horse racing meeting, each harness racing meeting, each advanced deposit wagering permittee and each additional wagering facility.
2. The total state revenues for the previous fiscal year from the regulation of racing, including licensing fees assessed pursuant to subsection F of this section and monetary penalties assessed pursuant to section 5-108.02.
3. The amount and use of capital improvement funds pursuant to section 5-111.02 that would otherwise be state revenues.
4. The number of licenses and permits issued, renewed, pending and revoked during the previous fiscal year.
5. The investigations conducted during the previous fiscal year and any action taken as a result of the investigations.
6. The department budget for the immediately preceding three fiscal years, including the number of full-time, part-time, temporary and contract employees, a statement of budget needs for the forthcoming fiscal year and a statement of the minimum staff necessary to accomplish these objectives.
7. Revenues generated for this state for the preceding fiscal year by persons holding racing meeting and advanced deposit wagering permits.
8. Recommendations for increasing state revenues from the regulation of the racing industry while maintaining the financial health of the industry and protecting the public interest.

Q. The commission may certify animals as Arizona bred or as Arizona stallions. The commission may delegate this authority to a breeders' association it contracts with for these purposes. The commission may authorize the association, racing organization or department to charge and collect a reasonable fee to cover the cost of breeding or ownership certification or transfer of ownership for racing purposes.

R. The department has responsibility for the collection and accounting of revenues for the state boxing and mixed martial arts commission, including licensing fees required by section 5-230, the levy of the tax on gross receipts imposed by section 5-104.02 and cash deposited pursuant to section 5-229. All revenues collected pursuant to this subsection, from whatever source, shall be reported and deposited pursuant to section 5-104.02, subsection C, except that licensing fees required by section 5-230 shall be deposited in the racing regulation fund established by section 5-113.01. The director shall adopt rules as necessary to accomplish the purposes of this subsection and chapter 2, article 2 of this title.

S. The commission may obtain the services of the office of administrative hearings on any matter that the commission is empowered to hear.

T. The department may adopt rules pursuant to title 41, chapter 6 to carry out the purposes of this article, ensure the safety and integrity of racing in this state and protect the public interest.

5-221. Definitions

In this article, unless the context otherwise requires:

1. “Boxing” means the act of attack and defense with the fists, using padded gloves, that is practiced as a sport. Where applicable, boxing includes kickboxing.
2. “Commission” means the Arizona state boxing and mixed martial arts commission.
3. “Contest” means any boxing or mixed martial arts bout, event, contest, match or exhibition between two persons.
4. “Department” means the department of gaming.
5. “Director” means the director of the department of gaming.
6. “Executive director” means the executive director of the commission.
7. “Kickboxing” means a form of boxing, including muay thai pursuant to rules and regulations of the United States muay thai association or another muay thai sanctioning body that is approved by the commission, in which blows are delivered with any part of the arm below the shoulder, including the hand, and any part of the leg below the hip, including the foot.
8. “Mixed martial arts” means any form of competition or contest, other than boxing or kickboxing, in which blows are delivered and in which the competitors use any combination of tactics including boxing, wrestling, striking, kicking, martial arts and submission techniques.
9. “Professional” means any person who competes for any money prize or a prize that exceeds the value of thirty-five dollars or teaches or pursues or assists in the practice of boxing or mixed martial arts as a means of obtaining a livelihood or pecuniary gain.
10. “Tough man contest” means any boxing match consisting of one minute rounds, between two or more persons who use their hands, wearing padded gloves that weigh at least twelve ounces, or their feet, or both, in any manner. Tough man contest does not include kickboxing or any recognized martial arts competition.

5-222. Application of this chapter

A. This chapter does not apply to any amateur boxing or mixed martial arts contest conducted by the following:

1. Any school, community college, college or university or an association or organization composed exclusively of schools, community colleges, colleges or universities when each contestant is a student enrolled in a school, community college, college or university. As used in this section, "school, community college, college or university" means every school, community college, college or university and every other school, community college, college or university determined by the state board of education, community college districts as defined in section 15-1401 or the Arizona board of regents to be maintained primarily for the giving of general academic education.
 2. A government unit or agency of the United States, this state or a subdivision of this state or a unit of the United States armed forces or the national guard if all contestants are members of that unit of the armed forces or the national guard.
 3. An amateur athletic program that is authorized by and sanctioned under the rules, regulations and policies of a national governing body that is recognized by the United States Olympic committee in which all contestants are amateur contestants.
 4. Kickboxing events that are sanctioned by and conducted under the direct supervision of the United States muay thai association or another muay thai sanctioning body that is approved by the commission if all contestants are amateur contestants.
 5. Any bona fide private school whose primary purpose is instruction and training in the martial arts, if:
 - (a) The contests held in conjunction with the instruction and training are amateur.
 - (b) The contests are of a sparring nature with no official decisions awarded.

© At least one contestant in each contest has been a member in good standing of the sponsoring private school for at least sixty continuous days before the contest.
 - (d) An admission fee or a mandatory donation or other form of payment is not charged for attendance.
 6. Any bona fide private school whose primary purpose is instruction in karate, if the contests held in conjunction with the instruction are amateur.
- B. An amateur mixed martial arts competitor shall not be licensed as a professional mixed martial arts competitor until the person has completed five or more verified amateur contests that are regulated by the commission or by a sanctioning body that is approved by the commission.

The five-contest requirement prescribed by this subsection may be waived by the commission or by the executive director.

5-224. Division of boxing and mixed martial arts regulation; powers and duties

A. A division of boxing and mixed martial arts regulation is established in the department to provide staff support for the Arizona state boxing and mixed martial arts commission. Subject to title 41, chapter 4, article 4, the director of the department shall appoint an executive director to perform the duties prescribed in this article. The resources for the Arizona state boxing and mixed martial arts commission shall come from monies appropriated to the department from the racing regulation fund established by section 5-113.01 or from other sources prescribed in section 5-225, subsection D.

B. The commission shall obtain from a physician licensed to practice in this state rules and standards for the physical examination of boxers and referees. A schedule of fees to be paid physicians by the promoter or matchmaker for the examination shall be set by the commission.

C. The commission may adopt and issue rules pursuant to title 41, chapter 6 to carry out the purposes of this chapter.

D. The commission shall hold regular meetings at least quarterly and in addition may hold special meetings. Except as provided in section 5-223, subsection B, all meetings of the commission shall be open to the public and reasonable notice of the meetings shall be given pursuant to title 38, chapter 3, article 3.1.

E. The commission shall:

1. Make and maintain a record of the acts of the division, including the issuance, denial, renewal, suspension or revocation of licenses.

2. Keep records of the commission open to public inspection at all reasonable times.

3. Assist the director in the development of rules to be implemented pursuant to section 5-104, subsection T.

4. Conform to the rules adopted pursuant to section 5-104, subsection T.

F. The commission may enter into intergovernmental agreements with Indian tribes, tribal councils or tribal organizations to provide for the regulation of boxing and mixed martial arts contests on Indian reservations. Nothing in this chapter shall be construed to diminish the authority of the department.

5-225. Regulation of boxing contests, tough man contests and mixed martial arts

A. All boxing contests are subject to the provisions of this chapter and to rules adopted pursuant to this chapter. The commission shall for every contest that is subject to regulation by the commission:

1. Direct a person authorized by the commission or by the executive director to be present.
2. Direct the person authorized to report results, including suspensions, to a national registry.

B. All tough man contests, including amateur tough man contests, are subject to the provisions of this chapter. Every contestant in a tough man contest shall wear headgear approved by the commission.

C. Mixed martial arts, including amateur mixed martial arts, are subject to the provisions of this chapter and to rules adopted pursuant to this chapter, including rules adopted for boxing that are not inconsistent with specific mixed martial arts contest provisions and rules. Contestants in mixed martial arts shall not strike other contestants in the spinal column or in the back of the head. The commission shall use rules for mixed martial arts that are consistent with the mixed martial arts unified rules adopted by the New Jersey state athletic control board under New Jersey administrative code title 13, chapter 46, subchapter 24A, except that a cage may have one entry door and have a vinyl or rubberized floor covering if approved by a representative of the commission. Nothing in this subsection prevents a promoter of a mixed martial arts event in this state from adopting more restrictive rules for that particular event than would otherwise be allowed. In addition to the applicable provisions of the mixed martial arts unified rules adopted by the New Jersey state athletic control board under New Jersey administrative code title 13, chapter 46, subchapter 24A, amateur mixed martial arts bouts shall consist of three rounds of three minutes per round and the amateur contestants shall not strike with elbows to the head of a grounded opponent, use twisting leg submissions, use linear kicks to the knee joint or use foot stomps. Amateur mixed martial arts bouts shall be clearly designated as such in all promotional materials and at the event.

D. The commission may establish a uniform nonrefundable fee for mixed martial arts and boxing events in an amount determined by the commission that shall be paid to the commission by a promoter when submitting an event application. In determining the amount of the fee, the executive director may consider factors including whether the event is televised, whether the event will be transmitted on pay-per-view, the amount of time likely to be expended in processing the event application and the complexity of the application. The commission may establish a nonrefundable fee that shall be paid to the commission by a promoter if the promoter submits a request to change a previously approved event date. Monies that are derived from the fees charged pursuant to this subsection and monies derived from intergovernmental tribal agreements shall be available to the commission for the administration and regulation of mixed martial arts and boxing, and those monies are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

E. Weigh-ins for all contests shall not be more than twenty-four hours before the scheduled time of the event or less than three hours before the scheduled time of the event. A representative of the commission shall attend and supervise all weigh-ins. The weigh-in period shall be one hour.

5-227. Jurisdiction of commission

A. The commission shall:

1. Except for the financial and accounting functions delegated to the director pursuant to section 5-104, have sole direction, management, control and jurisdiction over all boxing and mixed martial arts contests held within this state unless exempt from the application of this chapter by section 5-222.

2. Have sole control, authority and jurisdiction over all licenses required by this chapter.

B. The commission shall grant a license to an applicant if in the judgment of the commission the financial responsibility, experience, character and general fitness of the applicant are such that his participation is consistent with the public interest, convenience or necessity and the best interests of boxing and in conformity with the purposes of this chapter. The commission may delegate the commission's licensing authority to the commission's executive director.

5-228. Persons required to procure licenses; requirements; background information; fee; bond

A. All referees, judges, matchmakers, promoters, trainers, ring announcers, timekeepers, ringside physicians, inspectors, mixed martial arts contestants, boxers, managers and seconds are required to be licensed by the commission. The commission shall not permit any of these persons to participate in the holding of any contest unless the person has first procured a license.

B. Before participating in the holding of any boxing or mixed martial arts contest, a corporation, its officers and directors and any person holding twenty-five per cent or more of the ownership of the corporation shall obtain a license from the commission. Such a corporation must be authorized to do business under the laws of this state.

C. The commission shall require referees, judges, matchmakers, promoters and managers to furnish fingerprints and background information pursuant to section 41-1750, subsection G before licensure. The commission shall charge a fee for fingerprints and background information in an amount determined by the commission. The commission may require referees, judges, matchmakers, promoters and managers to furnish fingerprints and background information pursuant to section 41-1750, subsection G before license renewal if the commission determines the fingerprints and background information are necessary. The fee may include a reasonable charge for expenses incurred by the commission or the department of public safety. For such purpose the commission and the department of public safety may enter into an intergovernmental

agreement pursuant to title 11, chapter 7, article 3. The fee shall be credited pursuant to sections 35-148 and 41-1750.

D. Before the commission issues a license to a promoter, matchmaker or corporation, the applicant shall:

1. Provide the commission with a copy of any agreement between any contestant and the applicant that binds the applicant to pay the contestant a certain fixed fee or percentage of the gate receipts.
2. Show on the application the owner or owners of the applicant entity and the per cent interest if they hold twenty-five per cent or more interest in the applicant.
3. Provide the commission with a copy of the latest financial statement of the entity.
4. Provide the commission with a copy of the insurance contract required by this chapter.

E. Before the commission issues a license to a promoter, the applicant shall deposit with the department a cash bond or surety bond in an amount set by the commission. The bond shall be executed in favor of this state and shall be conditioned on the faithful performance by the promoter of the promoter's obligations pursuant to this chapter and the rules adopted pursuant to this chapter.

F. Before the commission issues a license to a boxer or a mixed martial arts contestant, the applicant shall submit to the commission the results of a current medical examination performed by a physician licensed pursuant to title 32, chapter 13 or 17 on forms furnished or approved by the commission. In addition to the medical examination, the following information must be submitted:

1. The results of an ophthalmological examination that is recorded on forms furnished or approved by the commission.
2. Negative test results for the human immunodeficiency virus, the hepatitis B surface antigen and the hepatitis C antibody.
3. For persons over the age of thirty-six years, the results of a stress test that is administered by a physician licensed pursuant to title 32, chapter 13 or 17 accompanied by a clearance letter and the results of an electrocardiogram that demonstrates normal cardiovascular function. These results shall be completed within twenty-four months before the person submits the license application.
4. For persons over forty years of age, if recommended by an examining physician, the results of a brain magnetic resonance imaging scan.

5. For female contestants, a pregnancy test that demonstrates a negative result. A pregnancy test that demonstrates a negative result shall also be submitted to the commission by a female contestant before each weigh-in.

6. Any other examination or testing ordered by the commission.

G. Unless otherwise prescribed in subsection F of this section, the medical examinations and tests prescribed in subsection F of this section must be completed after December 15 of the year before the year that the license is issued or before December 15 of the same year that the license is issued. All medical examinations and tests, license applications, national identification card applications, photographs and any other required documents must be completed and received by the commission staff no later than 4:30 p.m. on the day that begins forty-eight hours before the scheduled event. An exception to the forty-eight hour requirement prescribed in this subsection may be granted by the executive director if a person is a late substitute or is traveling from outside this state and demonstrates good cause for not meeting the forty-eight hour requirement.

5-229. Promoters; licenses; bond; proof of financial responsibility

A. The commission may in its discretion withhold the granting of a license to a promoter until the applicant furnishes proof of his financial responsibility to promote contests in accordance with section 5-104.02, subsection B and the rules adopted by the director. The commission may issue a license to conduct, hold or give boxing contests to any qualified person or to a corporation duly authorized to do business under the laws of this state.

B. In addition to the cash bond or surety bond required pursuant to section 5-228, subsection E, the commission may require a promoter to deposit with the department prior to each contest a cash bond or surety bond in an amount set by the commission as a guarantee for the fulfillment of the promoter's contract obligations for that contest, the payment of licenses and taxes on gross receipts of that contest and reimbursement to ticket purchasers if the contest is not held as advertised.

5-230. License fees; expiration; renewal

A. The commission may establish and issue annual licenses and may establish and collect fees for those licenses.

B. A license expires December 31 at midnight in the year of its issuance and may be renewed on filing an application for renewal of a license with the commission and payment of the license fee prescribed in subsection A. The application for renewal of a license shall be on a form provided by the commission. There is a thirty day grace period during which a license may be renewed if a late filing penalty fee equal to the license fee is submitted with the regular license fee. A licensee that files late shall not conduct any activity regulated by this chapter until the commission has

renewed the license. If the licensee fails to apply to the commission within the thirty day grace period the licensee must apply for a new license pursuant to subsection A.

5-231. Financial interest in boxer prohibited

A person shall not have, either directly or indirectly, any financial ownership interest in a boxer competing on premises owned or leased by the person, or in which the person is otherwise interested.

5-232. Age of participants

A person who is under eighteen years of age shall not participate in any boxing or mixed martial arts contest.

5-233. Contestants and referees; physical examination; attendance of physician; payment of fees; insurance

A. All boxers, mixed martial arts contestants and referees shall be examined by a physician licensed pursuant to title 32, chapter 13 or 17 before entering the ring, and the examining physician shall immediately file with the commission a written report of the examination. The physician's report of the examination shall include specific mention as to the condition of the boxer's or mixed martial arts contestant's heart and general physical condition. The physician's report may include specific mention as to the condition of the boxer's or mixed martial arts contestant's nerves and brain as required by the commission. The cost of the examination is payable by the person conducting the contest or exhibition. All boxers and mixed martial arts contestants shall receive a post-bout physical examination from a physician licensed pursuant to title 32, chapter 13 or 17 and may be suspended from participation in additional contests for a period of time based on the evaluation by the examining physician.

B. Every person holding or sponsoring any contest shall have in attendance at every contest regulated by the commission at least one physician who is licensed pursuant to title 32, chapter 13 or 17 and who is assigned by the commission or the executive director. The commission may establish a schedule of fees to be paid to each physician by the person or by the promoter.

C. The commission shall:

1. Require insurance coverage for a boxer to provide for medical, surgical and hospital care for injuries sustained in the ring in an amount of twenty thousand dollars with twenty-five dollars deductible and payable to the boxer as beneficiary.

2. Require life insurance for a boxer in the amount of fifty thousand dollars payable in case of accidental death resulting from injuries sustained in the ring.

D. The cost of the insurance required by this section and any deductible amount that exceeds twenty-five dollars is payable by the promoter.

5-235.01. Disciplinary action; grounds; civil penalty; emergency suspension; injunction

A. The commission may take any one or a combination of the following disciplinary actions:

1. Revoke a license.

2. Suspend a license.

3. Impose a civil penalty in an amount of not to exceed one thousand dollars per violation of this chapter.

B. The commission may take disciplinary action or refuse to issue or renew a license for any of the following causes:

1. Committing an act involving dishonesty, fraud or deceit with the intent to substantially benefit oneself or another or substantially injure another.

2. Advertising by means of known false, misleading, deceptive or fraudulent statements through any communication medium.

3. Violating this chapter or any rule adopted pursuant to this chapter.

4. Making oral or written false statements to the commission.

5. Failing to complete the license application as prescribed by the commission.

C. The commission may conduct tests for the use of alcohol and drugs determined by the commission to impair contestants. Notwithstanding any other provision of this article, the commission may immediately suspend the license, immediately revoke the license or immediately impose a civil penalty not to exceed five hundred dollars, or any combination of these actions, against a contestant who tests positive for alcohol and drugs, who refuses or fails to take a test for alcohol and drugs under rules adopted by the commission or who refuses or fails to take a test for alcohol and drugs after a test is requested by the commission or the executive director. All civil penalties assessed pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund. The rules adopted pursuant to this subsection may include appropriate definitions for drugs determined by the commission to impair contestants.

D. In case of emergency, a member of the commission, on his own motion or on the verified complaint of any person charging a violation of this chapter or of the rules promulgated by the commission, may suspend for a period of not to exceed ten days any license until final determination by the commission, if in his opinion the action is necessary to protect the public welfare and the best interests of boxing.

E. The commission, the attorney general or a county attorney may apply to the superior court in the county in which acts or practices of any person that constitute a violation of this chapter or the rules adopted pursuant to this chapter are alleged to have occurred for an order enjoining those acts or practices.

5-236. Violation; classification

A person is guilty of a class 2 misdemeanor and may be subject to license revocation, denial or suspension if the person:

1. Conducts, holds, sponsors, sanctions or gives boxing or other contests that are subject to regulation by the commission or participates in any contest that is subject to regulation by the commission without first having procured an appropriate license or approval as prescribed in this article.
2. Violates any provision of this chapter or any rule or regulation adopted pursuant to this chapter.

5-237. Selection of referees

The commission shall select and assign referees. The matchmaker may protest the assignment of a referee and in such event the commission shall furnish a list of all licensed referees within the state to the protesting matchmaker. The protesting matchmaker shall have the right to select another referee from such list.

5-238. Sham boxing; withholding a purse

A. The commission may withhold all or part of a purse or other monies payable to any contestant, manager or second if in the judgment of the commission a boxing contestant is participating in a sham or fake boxing contest or is otherwise not competing honestly or to the best of his ability.

B. If the commission withholds a purse or part of a purse or other monies the commission shall give notice to all interested parties and hold a hearing upon the matter within ten days.

C. If the commission determines that a contestant, manager or second is not entitled to a purse, part of a purse or other monies the promoter shall turn such monies over to the director to be applied pursuant to section 5-104.02, subsection C.

5-239. Judicial review

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

5-240. Reciprocity

Notwithstanding section 5-228, a person is entitled to receive a license under this chapter if he complies with the requirements of each of the following:

1. Submits to the commission under oath an application for a license on a form supplied by the commission.
2. Is licensed in another state in which the licensing requirements are at least substantially equivalent to those of this state and which grants similar reciprocal privileges to persons licensed under this chapter.
3. Pays the prescribed fees.

FEDERAL STATUTES

15 U.S.C.A. § 6301

§ 6301. Definitions

For purposes of this chapter:

(1) Boxer

The term “boxer” means an individual who fights in a professional boxing match.

(2) Boxing commission

(A)1 The term “boxing commission” means an entity authorized under State law to regulate professional boxing matches.

(3) Boxer registry

The term “boxer registry” means any entity certified by the Association of Boxing Commissions for the purposes of maintaining records and identification of boxers.

(4) Licensee

The term “licensee” means an individual who serves as a trainer, second, or cut man for a boxer.

(5) Manager

The term “manager” means a person who receives compensation for service as an agent or representative of a boxer.

(6) Matchmaker

The term “matchmaker” means a person that proposes, selects, and arranges the boxers to participate in a professional boxing match.

(7) Physician

The term “physician” means a doctor of medicine legally authorized to practice medicine by the State in which the physician performs such function or action.

(8) Professional boxing match

The term “professional boxing match” means a boxing contest held in the United States between individuals for financial compensation. Such term does not include a boxing contest that is regulated by an amateur sports organization.

(9) Promoter

The term “promoter” means the person primarily responsible for organizing, promoting, and producing a professional boxing match. The term “promoter” does not include a hotel, casino, resort, or other commercial establishment hosting or sponsoring a professional boxing match unless--

(A) the hotel, casino, resort, or other commercial establishment is primarily responsible for organizing, promoting, and producing the match; and

(B) there is no other person primarily responsible for organizing, promoting, and producing the match.

(10) State

The term “State” means each of the 50 States, Puerto Rico, the District of Columbia, and any territory or possession of the United States, including the Virgin Islands.

(11) Effective date of the contract

The term “effective date of the contract” means the day upon which a boxer becomes legally bound by the contract.

(12) Boxing service provider

The term “boxing service provider” means a promoter, manager, sanctioning body, licensee, or matchmaker.

(13) Contract provision

The term “contract provision” means any legal obligation between a boxer and a boxing service provider.

(14) Sanctioning organization

The term “sanctioning organization” means an organization that sanctions professional boxing matches in the United States--

(A) between boxers who are residents of different States; or

(B) that are advertised, otherwise promoted, or broadcast (including closed circuit television) in interstate commerce.

(15) Suspension

The term “suspension” includes within its meaning the revocation of a boxing license.

15 U.S.C.A. § 6302

§ 6302. Purposes

The purposes of this chapter are--

(1) to improve and expand the system of safety precautions that protects the welfare of professional boxers; and

(2) to assist State boxing commissions to provide proper oversight for the professional boxing industry in the United States.

15 U.S.C.A. § 6303

§ 6303. Boxing matches in States without boxing commissions

(a) No person may arrange, promote, organize, produce, or fight in a professional boxing match held in a State that does not have a boxing commission unless the match is supervised by a

boxing commission from another State and subject to the most recent version of the recommended regulatory guidelines certified and published by the Association of Boxing Commissions as well as any additional relevant professional boxing regulations and requirements of such other State.

(b) For the purpose of this chapter, if no State commission is available to supervise a boxing match according to subsection (a), then

(1) the match may not be held unless it is supervised by an association of boxing commissions to which at least a majority of the States belong; and

(2) any reporting or other requirement relating to a supervising commission allowed under this section shall be deemed to refer to the entity described in paragraph (1).

15 U.S.C.A. § 6304

§ 6304. Safety standards

No person may arrange, promote, organize, produce, or fight in a professional boxing match without meeting each of the following requirements or an alternative requirement in effect under regulations of a boxing commission that provides equivalent protection of the health and safety of boxers:

(1) A physical examination of each boxer by a physician certifying whether or not the boxer is physically fit to safely compete, copies of which must be provided to the boxing commission.

(2) Except as otherwise expressly provided under regulation of a boxing commission promulgated subsequent to October 9, 1996, an ambulance or medical personnel with appropriate resuscitation equipment continuously present on site.

(3) A physician continuously present at ringside.

(4) Health insurance for each boxer to provide medical coverage for any injuries sustained in the match.

15 U.S.C.A. § 6305

§ 6305. Registration

(a) Requirements

Each boxer shall register with--

(1) the boxing commission of the State in which such boxer resides; or

(2) in the case of a boxer who is a resident of a foreign country, or a State in which there is no boxing commission, the boxing commission of any State that has such a commission.

(b) Identification card

(1) Issuance

A boxing commission shall issue to each professional boxer who registers in accordance with subsection (a), an identification card that contains each of the following:

- (A) A recent photograph of the boxer.
- (B) The social security number of the boxer (or, in the case of a foreign boxer, any similar citizen identification number or professional boxer number from the country of residence of the boxer).
- (C) A personal identification number assigned to the boxer by a boxing registry.

(2) Renewal

Each professional boxer shall renew his or her identification card at least once every 4 years.

(3) Presentation

Each professional boxer shall present his or her identification card to the appropriate boxing commission not later than the time of the weigh-in for a professional boxing match.

(c) Health and safety disclosures

It is the sense of the Congress that a boxing commission should, upon issuing an identification card to a boxer under subsection (b)(1), make a health and safety disclosure to that boxer as that commission considers appropriate. The health and safety disclosure should include the health and safety risks associated with boxing, and, in particular, the risk and frequency of brain injury and the advisability that a boxer periodically undergo medical procedures designed to detect brain injury.

15 U.S.C.A. § 6306

§ 6306. Review

(a) Procedures

Each boxing commission shall establish each of the following procedures:

- (1) Procedures to evaluate the professional records and physician's certification of each boxer participating in a professional boxing match in the State, and to deny authorization for a boxer to fight where appropriate.

(2) Procedures to ensure that, except as provided in subsection (b), no boxer is permitted to box while under suspension from any boxing commission due to--

- (A) a recent knockout or series of consecutive losses;
- (B) an injury, requirement for a medical procedure, or physician denial of certification;
- (C) failure of a drug test;
- (D) the use of false aliases, or falsifying, or attempting to falsify, official identification cards or documents; or
- (E) unsportsmanlike conduct or other inappropriate behavior inconsistent with generally accepted methods of competition in a professional boxing match.

(3) Procedures to review a suspension where appealed by a boxer, licensee, manager, matchmaker, promoter, or other boxing service provider, including an opportunity for a boxer to present contradictory evidence.

(4) Procedures to revoke a suspension where a boxer--

- (A) was suspended under subparagraph (A) or (B) of paragraph (2) of this subsection, and has furnished further proof of a sufficiently improved medical or physical condition; or
- (B) furnishes proof under subparagraph (C) or (D) of paragraph (2) that a suspension was not, or is no longer, merited by the facts.

(b) Suspension in another State

A boxing commission may allow a boxer who is under suspension in any State to participate in a professional boxing match--

- (1) for any reason other than those listed in subsection (a) if such commission notifies in writing and consults with the designated official of the suspending State's boxing commission prior to the grant of approval for such individual to participate in that professional boxing match; or
- (2) if the boxer appeals to the Association of Boxing Commissions, and the Association of Boxing Commissions determines that the suspension of such boxer was without sufficient grounds, for an improper purpose, or not related to the health and safety of the boxer or the purposes of this chapter.

15 U.S.C.A. § 6307

§ 6307. Reporting

Not later than 48 business hours after the conclusion of a professional boxing match, the supervising boxing commission shall report the results of such boxing match and any related suspensions to each boxer registry.

15 U.S.C.A. § 6307a

§ 6307a. Contract requirements

Within 2 years after May 26, 2000, the Association of Boxing Commissions (ABC) shall develop and shall approve by a vote of no less than a majority of its member State boxing commissioners, guidelines for minimum contractual provisions that should be included in bout agreements and boxing contracts. It is the sense of the Congress that State boxing commissions should follow these ABC guidelines.

15 U.S.C.A. § 6307b

§ 6307b. Protection from coercive contracts

(a) General rule

(1)(A) A contract provision shall be considered to be in restraint of trade, contrary to public policy, and unenforceable against any boxer to the extent that it--

(i) is a coercive provision described in subparagraph (B) and is for a period greater than 12 months; or

(ii) is a coercive provision described in subparagraph (B) and the other boxer under contract to the promoter came under that contract pursuant to a coercive provision described in subparagraph (B).

(B) A coercive provision described in this subparagraph is a contract provision that grants any rights between a boxer and a promoter, or between promoters with respect to a boxer, if the boxer is required to grant such rights, or a boxer's promoter is required to grant such rights with respect to a boxer to another promoter, as a condition precedent to the boxer's participation in a professional boxing match against another boxer who is under contract to the promoter.

(2) This subsection shall only apply to contracts entered into after May 26, 2000.

(3) No subsequent contract provision extending any rights or compensation covered in paragraph (1) shall be enforceable against a boxer if the effective date of the contract containing such

provision is earlier than 3 months before the expiration of the relevant time period set forth in paragraph (1).

(b) Promotional rights under mandatory bout contracts

No boxing service provider may require a boxer to grant any future promotional rights as a requirement of competing in a professional boxing match that is a mandatory bout under the rules of a sanctioning organization.

(c) Protection from coercive contracts with broadcasters

Subsection (a) of this section applies to any contract between a commercial broadcaster and a boxer, or granting any rights with respect to that boxer, involving a broadcast in or affecting interstate commerce, regardless of the broadcast medium. For the purpose of this subsection, any reference in subsection (a)(1)(B) to "promoter" shall be considered a reference to "commercial broadcaster".

15 U.S.C.A. § 6307c

§ 6307c. Sanctioning organizations

(a) Objective criteria

Within 2 years after May 26, 2000, the Association of Boxing Commissions shall develop and shall approve by a vote of no less than a majority of its member State boxing commissioners, guidelines for objective and consistent written criteria for the ratings of professional boxers. It is the sense of the Congress that sanctioning bodies and State boxing commissions should follow these ABC guidelines.

(b) Appeals process

A sanctioning organization shall not be entitled to receive any compensation, directly or indirectly, in connection with a boxing match, until it provides the boxers with notice that the sanctioning organization shall, within 7 days after receiving a request from a boxer questioning that organization's rating of the boxer--

(1) provide to the boxer a written explanation of the organization's criteria, its rating of the boxer, and the rationale or basis for its rating (including a response to any specific questions submitted by the boxer); and

(2) submit a copy of its explanation to the Association of Boxing Commissions.

(c) Notification of change in rating

A sanctioning organization shall not be entitled to receive any compensation, directly or indirectly, in connection with a boxing match, until, with respect to a change in the rating of a boxer previously rated by such organization in the top 10 boxers, the organization--

(1) posts a copy, within 7 days of such change, on its Internet website or home page, if any, including an explanation of such change, for a period of not less than 30 days; and

(2) provides a copy of the rating change and explanation to an association to which at least a majority of the State boxing commissions belong.

(d) Public disclosure

(1) Federal Trade Commission filing

A sanctioning organization shall not be entitled to receive any compensation directly or indirectly in connection with a boxing match unless, not later than January 31 of each year, it submits to the Federal Trade Commission and to the ABC--

(A) a complete description of the organization's ratings criteria, policies, and general sanctioning fee schedule;

(B) the bylaws of the organization;

(C) the appeals procedure of the organization for a boxer's rating; and

(D) a list and business address of the organization's officials who vote on the ratings of boxers.

(2) Format; updates

A sanctioning organization shall--

(A) provide the information required under paragraph (1) in writing, and, for any document greater than 2 pages in length, also in electronic form; and

(B) promptly notify the Federal Trade Commission of any material change in the information submitted.

(3) Federal Trade Commission to make information available to public

The Federal Trade Commission shall make information received under this subsection available to the public. The Commission may assess sanctioning organizations a fee to offset the costs it incurs in processing the information and making it available to the public.

(4) Internet alternative

In lieu of submitting the information required by paragraph (1) to the Federal Trade Commission, a sanctioning organization may provide the information to the public by maintaining a website on the Internet that--

- (A) is readily accessible by the general public using generally available search engines and does not require a password or payment of a fee for full access to all the information;
- (B) contains all the information required to be submitted to the Federal Trade Commission by paragraph (1) in an easy to search and use format; and
- (C) is updated whenever there is a material change in the information.

15 U.S.C.A. § 6307d

§ 6307d. Required disclosures to State boxing commissions by sanctioning organizations

A sanctioning organization shall not be entitled to receive any compensation directly or indirectly in connection with a boxing match until it provides to the boxing commission responsible for regulating the match in a State a statement of--

- (1) all charges, fees, and costs the organization will assess any boxer participating in that match;
- (2) all payments, benefits, complimentary benefits, and fees the organization will receive for its affiliation with the event, from the promoter, host of the event, and all other sources; and
- (3) such additional information as the commission may require.

15 U.S.C.A. § 6307e

§ 6307e. Required disclosures for promoters

(a) Disclosures to the boxing commissions

A promoter shall not be entitled to receive any compensation directly or indirectly in connection with a boxing match until it provides to the boxing commission responsible for regulating the match in a State a statement of--

- (1) a copy of any agreement in writing to which the promoter is a party with any boxer participating in the match;
- (2) a statement made under penalty of perjury that there are no other agreements, written or oral, between the promoter and the boxer with respect to that match; and
- (3)(A) all fees, charges, and expenses that will be assessed by or through the promoter on the boxer pertaining to the event, including any portion of the boxer's purse that the promoter will receive, and training expenses;
- (B) all payments, gifts, or benefits the promoter is providing to any sanctioning organization affiliated with the event; and

(C) any reduction in a boxer's purse contrary to a previous agreement between the promoter and the boxer or a purse bid held for the event.

(b) Disclosures to the boxer

A promoter shall not be entitled to receive any compensation directly or indirectly in connection with a boxing match until it provides to the boxer it promotes--

(1) the amounts of any compensation or consideration that a promoter has contracted to receive from such match;

(2) all fees, charges, and expenses that will be assessed by or through the promoter on the boxer pertaining to the event, including any portion of the boxer's purse that the promoter will receive, and training expenses; and

(3) any reduction in a boxer's purse contrary to a previous agreement between the promoter and the boxer or a purse bid held for the event.

(c) Information to be available to State Attorney General

A promoter shall make information required to be disclosed under this section available to the chief law enforcement officer of the State in which the match is to be held upon request of such officer.

15 U.S.C.A. § 6307f

§ 6307f. Required disclosures for judges and referees

A judge or referee shall not be entitled to receive any compensation, directly or indirectly, in connection with a boxing match until it provides to the boxing commission responsible for regulating the match in a State a statement of all consideration, including reimbursement for expenses, that will be received from any source for participation in the match.

15 U.S.C.A. § 6307g

§ 6307g. Confidentiality

(a) In general

Neither a boxing commission or1 an Attorney General may disclose to the public any matter furnished by a promoter under section 6307e of this title except to the extent required in a legal, administrative, or judicial proceeding.

(b) Effect of contrary State law

If a State law governing a boxing commission requires that information that would be furnished by a promoter under section 6307e of this title shall be made public, then a promoter is not required to file such information with such State if the promoter files such information with the ABC.

15 U.S.C.A. § 6307h

§ 6307h. Judges and referees

No person may arrange, promote, organize, produce, or fight in a professional boxing match unless all referees and judges participating in the match have been certified and approved by the boxing commission responsible for regulating the match in the State where the match is held.

15 U.S.C.A. § 6308

§ 6308. Conflicts of interest

(a) Regulatory personnel

No member or employee of a boxing commission, no person who administers or enforces State boxing laws, and no member of the Association of Boxing Commissions may belong to, contract with, or receive any compensation from, any person who sanctions, arranges, or promotes professional boxing matches or who otherwise has a financial interest in an active boxer currently registered with a boxer registry. For purposes of this section, the term "compensation" does not include funds held in escrow for payment to another person in connection with a professional boxing match. The prohibition set forth in this section shall not apply to any contract entered into, or any reasonable compensation received, by a boxing commission to supervise a professional boxing match in another State as described in section 6303 of this title.

(b) Firewall between promoters and managers

(1) In general

It is unlawful for--

(A) a promoter to have a direct or indirect financial interest in the management of a boxer; or

(B) a manager--

(i) to have a direct or indirect financial interest in the promotion of a boxer; or

(ii) to be employed by or receive compensation or other benefits from a promoter, except for amounts received as consideration under the manager's contract with the boxer.

(2) Exceptions

Paragraph (1)--

- (A) does not prohibit a boxer from acting as his own promoter or manager; and
- (B) only applies to boxers participating in a boxing match of 10 rounds or more.

(c) Sanctioning organizations

(1) Prohibition on receipts

Except as provided in paragraph (2), no officer or employee of a sanctioning organization may receive any compensation, gift, or benefit, directly or indirectly, from a promoter, boxer, or manager.

(2) Exceptions

Paragraph (1) does not apply to--

- (A) the receipt of payment by a promoter, boxer, or manager of a sanctioning organization's published fee for sanctioning a professional boxing match or reasonable expenses in connection therewith if the payment is reported to the responsible boxing commission; or
- (B) the receipt of a gift or benefit of de minimis value.

15 U.S.C.A. § 6309

§ 6309. Enforcement

(a) Injunctions

Whenever the Attorney General of the United States has reasonable cause to believe that a person is engaged in a violation of this chapter, the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order, against the person, as the Attorney General determines to be necessary to restrain the person from continuing to engage in, sanction, promote, or otherwise participate in a professional boxing match in violation of this chapter.

(b) Criminal penalties

(1) Managers, promoters, matchmakers, and licensees

Any manager, promoter, matchmaker, and licensee who knowingly violates, or coerces or causes any other person to violate, any provision of this chapter, other than section 6307a(b), 6307b, 6307c, 6307d, 6307e, 6307f, or 6307h of this title, shall, upon conviction, be imprisoned for not more than 1 year or fined not more than \$20,000, or both.

(2) Violation of antiexploitation, sanctioning organization, or disclosure provisions

Any person who knowingly violates any provision of section 6307a(b), 6307b, 6307c, 6307d, 6307e, 6307f, or 6307h of this title shall, upon conviction, be imprisoned for not more than 1 year or fined not more than--

(A) \$100,000; and

(B) if a violation occurs in connection with a professional boxing match the gross revenues for which exceed \$2,000,000, an additional amount which bears the same ratio to \$100,000 as the amount of such revenues compared to \$2,000,000, or both.

(3) Conflict of interest

Any member or employee of a boxing commission, any person who administers or enforces State boxing laws, and any member of the Association of Boxing Commissions who knowingly violates section 6308(a) of this title shall, upon conviction, be imprisoned for not more than 1 year or fined not more than \$20,000, or both.

(4) Boxers

Any boxer who knowingly violates any provision of this chapter shall, upon conviction, be fined not more than \$1,000.

(c) Actions by States

Whenever the chief law enforcement officer of any State has reason to believe that a person or organization is engaging in practices which violate any requirement of this chapter, the State, as *parens patriae*, may bring a civil action on behalf of its residents in an appropriate district court of the United States--

- (1) to enjoin the holding of any professional boxing match which the practice involves;
- (2) to enforce compliance with this chapter;
- (3) to obtain the fines provided under subsection (b) or appropriate restitution; or
- (4) to obtain such other relief as the court may deem appropriate.

(d) Private right of action

Any boxer who suffers economic injury as a result of a violation of any provision of this chapter may bring an action in the appropriate Federal or State court and recover the damages suffered, court costs, and reasonable attorneys fees and expenses.

(e) Enforcement against Federal Trade Commission, State Attorneys General, etc.

Nothing in this chapter authorizes the enforcement of--

- (1) any provision of this chapter against the Federal Trade Commission, the United States Attorney General, or the chief legal officer of any State for acting or failing to act in an official capacity;
- (2) subsection (d) of this section against a State or political subdivision of a State, or any agency or instrumentality thereof; or
- (3) section 6307b of this title against a boxer acting in his capacity as a boxer.

15 U.S.C.A. § 6310

§ 6310. Notification of supervising boxing commission

Each promoter who intends to hold a professional boxing match in a State that does not have a boxing commission shall, not later than 14 days before the intended date of that match, provide written notification to the supervising boxing commission designated under section 6303 of this title. Such notification shall contain each of the following:

- (1) Assurances that, with respect to that professional boxing match, all applicable requirements of this chapter will be met.
- (2) The name of any person who, at the time of the submission of the notification--
 - (A) is under suspension from a boxing commission; and
 - (B) will be involved in organizing or participating in the event.
- (3) For any individual listed under paragraph (2), the identity of the boxing commission that issued the suspension described in paragraph (2)(A).

15 U.S.C.A. § 6311

§ 6311. Studies

(a) Pension

The Secretary of Labor shall conduct a study on the feasibility and cost of a national pension system for boxers, including potential funding sources.

(b) Health, safety, and equipment

The Secretary of Health and Human Services shall conduct a study to develop recommendations for health, safety, and equipment standards for boxers and for professional boxing matches.

(c) Reports

Not later than one year after October 9, 1996, the Secretary of Labor shall submit a report to the Congress on the findings of the study conducted pursuant to subsection (a). Not later than 180 days after October 9, 1996, the Secretary of Health and Human Services shall submit a report to the Congress on the findings of the study conducted pursuant to subsection (b).

15 U.S.C.A. § 6312

§ 6312. Professional boxing matches conducted on Indian reservations

(a) Definitions

For purposes of this section, the following definitions shall apply:

(1) Indian tribe

The term “Indian tribe” has the same meaning as in section 5304(e) of Title 25.

(2) Reservation

The term “reservation” means the geographically defined area over which a tribal organization exercises governmental jurisdiction.

(3) Tribal organization

The term “tribal organization” has the same meaning as in section 5304(l) of Title 25.

(b) Requirements

(1) In general

Notwithstanding any other provision of law, a tribal organization of an Indian tribe may, upon the initiative of the tribal organization--

(A) regulate professional boxing matches held within the reservation under the jurisdiction of that tribal organization; and

(B) carry out that regulation or enter into a contract with a boxing commission to carry out that regulation.

(2) Standards and licensing

If a tribal organization regulates professional boxing matches pursuant to paragraph (1), the tribal organization shall, by tribal ordinance or resolution, establish and provide for the implementation of health and safety standards, licensing requirements, and other requirements relating to the conduct of professional boxing matches that are at least as restrictive as--

(A) the otherwise applicable standards and requirements of a State in which the reservation is located; or

(B) the most recently published version of the recommended regulatory guidelines certified and published by the Association of Boxing Commissions.

15 U.S.C.A. § 6313

§ 6313. Relationship with State law

Nothing in this chapter shall prohibit a State from adopting or enforcing supplemental or more stringent laws or regulations not inconsistent with this chapter, or criminal, civil, or administrative fines for violations of such laws or regulations.

DEPARTMENT OF GAMING (R-18-0204)

Title 4, Chapter 3, Article 1, Equipment; Article 2, Weigh-In and Examination; Article 3, Conduct of Contests; Article 4, Administration

Repeal: Article 1; R4-3-101; R4-3-102; R4-3-103; R4-3-104; R4-3-105; Article 2; R4-3-201; R4-3-202; R4-3-203; Article 3; R4-3-301; R4-3-302; R4-3-303; R4-3-304; R4-3-305; R4-3-306; R4-3-307; R4-3-308; R4-3-309; R4-3-310; Article 4; R4-3-401; R4-3-402; R4-3-403; R4-3-404; R4-3-405; R4-3-406; R4-3-407; R4-3-408; R4-3-409; R4-3-410; R4-3-411; R4-3-412; R4-3-412.01; R4-3-413; R4-3-414; Table 1



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – REGULAR RULEMAKING

MEETING DATE: February 6, 2018

AGENDA ITEM: F-6

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

FROM: Council Staff

DATE: January 23, 2018

SUBJECT: **DEPARTMENT OF GAMING (R-18-0204)**

Title 4, Chapter 3, State Boxing and Mixed Martial Arts Commission

Repeal: Article 1; R4-3-101; R4-3-102; R4-3-103; R4-3-104; R4-3-105; Article 2; R4-3-201; R4-3-202; R4-3-203; Article 3; R4-3-301; R4-3-302; R4-3-303; R4-3-304; R4-3-305; R4-3-306; R4-3-307; R4-3-308; R4-3-309; R4-3-310; Article 4; R4-3-401; R4-3-402; R4-3-403; R4-3-404; R4-3-405; R4-3-406; R4-3-407; R4-3-408; R4-3-409; R4-3-410; R4-3-411; R4-3-412; R4-3-412.01; R4-3-413; R4-3-414; Table 1

SUMMARY OF THE RULEMAKING

This rulemaking, from the Department of Gaming (Department), seeks to repeal all of the rules in A.A.C. Title 4, Chapter 3, related to the Boxing and Mixed Martial Arts Commission (Commission). The Governor's Office provided an exemption from Executive Order 2017-02 on April 3, 2017.

The Department is consolidating the regulation of all forms of unarmed combat by recodifying all of the Commission's rules. Amendments to the rules currently in Title 4 are made in a separate rulemaking affecting A.A.C. Title 19, Chapter 2. The Department has provided the following list to show the approximate relocation of the Title 4 rules into Title 19:

Old Numbering Scheme	New Numbering Scheme
Article 1	Article 6, Part D
R4-3-101	R19-2-D602(A)
R4-3-102	R19-2-D602(B)
R4-3-103	R19-2-D601(V) and Table 2
R4-3-104	R19-2-D602(C)
R4-3-105	R19-2-D601(C)

R4-3-201	R19-2-D601(I)(1)
R4-3-202	R19-2-D601(I)
R4-3-203	R19-2-D601(J)
R4-3-301	R19-2-D602(E)
R4-3-302	R19-2-D602(F)
R4-3-303	R19-2-D602(G)
R4-3-304	R19-2-D601(L)
R4-3-305	R19-2-D601(P)
R4-3-306	R19-2-D602(H)
R4-3-307	R19-2-D601(O)
R4-3-308	R19-2-D602(I)
R4-3-309	R19-2-D601(R)(1)
R4-3-310	R19-2-D601(D)
Article 4	Article 6, Part C
R4-3-401	R19-2-C604
R4-3-402	R19-2-D601(G)
R4-3-403	R19-2-D601(B)
R4-3-404	R19-2-B603
R4-3-405	R19-2-B601
R4-3-406	R19-2-B609
R4-3-407	R19-2-B605
R4-3-408	R19-2-B606
R4-3-409	R19-2-B602
R4-3-410	R19-2-B604
R4-3-411	R19-2-C605
R4-3-412	R19-2-C601
R4-3-412.01	R19-2-C602
R4-3-413	R19-2-C603
R4-3-414	R19-2-C608

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

Yes. The Department cites to a number of statutes providing authority for the rulemaking, including A.R.S. § 5-224(C), under which the Commission "may adopt and issue rules pursuant to [T]itle 41, [C]hapter 6 to carry out the purposes of this chapter [Title 5, Chapter 2, Boxing and Sparring]."

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

No. The rulemaking does not establish a new fee or contain a fee increase.

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

In this rulemaking, the Department is moving the rules housed under Title 4, Chapter 3 to Title 19, Chapter 2. Several of the rules from Title 4 have already been recodified into Title 19.

The remaining rules in Title 4 involve substantive changes that prevent recodification. Analysis of the economic impact from the substantive rule changes is contained in the rulemaking for Title 19, Chapter 2. This analysis is limited in scope to the impact of recodifying the Title 4, Chapter 3 rules into Title 19, Chapter 2.

4. 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?

This rulemaking does not impose costs. It benefits stakeholders by consolidating all of the unarmed combat rules into Title 19, Chapter 2. The benefits outweigh the costs.

5. What are the economic impacts on stakeholders?

Key stakeholders are the Commission and the Department. The Commission, the Department, and other relevant stakeholders will benefit from this rulemaking because all unarmed combat rules will be grouped together within the same title. This will reduce confusion for any parties researching unarmed combat rules in Arizona.

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

Yes. A summary of the public comments received, along with the Department's responses, can be found on pages 8-11 of the Notice of Final Rulemaking.¹ Staff believes that the Department has adequately addressed the comments on the proposed rules.

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

No. No changes have been made between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking.

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

No. The Department indicates that the Commission's rules are compliant with, and not more stringent than, the Professional Boxing Safety Act.

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

Not applicable.

¹ Copies of written public comments have been included as an attachment to the Notice of Final Rulemaking.

10. 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?

No. The Department indicates that it did not rely on any study in its evaluation of, or justification for, the rulemaking.

11. Conclusion

If approved, this repeal will become effective immediately upon filing with the Secretary of State, as the Title 19 rulemaking also has an immediate effective date requested. The Department requests this immediate effective date under A.R.S. § 41-1032(A)(1) to generally protect public peace, health and safety, and to specifically protect the health and safety of unarmed combatants. Council staff recommends approval of the rulemaking.



ARIZONA DEPARTMENT OF GAMING

TRIBAL GAMING • RACING • BOXING & MIXED MARTIAL ARTS

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Governor

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Director

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December 15, 2017

VIA MAIL AND EMAIL

Chairwoman Michelle Ong Colyer
Governor's Regulatory Review Council
100 North 15 Avenue, Suite 402
Phoenix, Arizona 85007
Email: nicole.ong@azdoa.gov

RE: Final Rulemaking on A.A.C. Title 4, Chapter 3, Articles 1 through 4

Dear Chairwoman,

Pursuant to A.R.S. § 41-1051, *et seq.*, and A.A.C. R1-6-201, the Department of Gaming, on behalf of the Arizona Boxing and Mixed Martial Arts Commission (the “Commission”) requests approval of the Notice of Final Rulemaking regarding A.A.C. Title 4, Chapter 3, Articles 1 through 4, governing the Commission and unarmed combat sports. It should be noted that, under the rulemaking, it is proposed to entirely repeal A.A.C. Title 4, Chapter 3, Articles 1 through 4 (specifically, R4-3-101 to R4-3-414, and Table 1, hereafter referred to as the “Title 4 Rules”). The Title 4 Rules will be modified and incorporated into a comprehensive redraft of A.A.C. Title 19, Chapter 2, Article 6 (the “Title 19 Rules”). The cover letter and Notice of Final Rulemaking for the Title 19 Rules, will be submitted contemporaneously with the cover letter and Notice of Final Rulemaking on the Title 4 Rules.

The following items are in response to the items required by A.A.C. R1-6-201(A) and (B):

- a. The close of record date for rulemaking on the Title 4 Rules was November 29, 2017.
- b. The rulemaking regarding the Title 4 Rules relates to a five-year-review report on the Title 4 Rules, which was approved on December 5, 2017.
- c. There are no new fees being adopted in the repealed Title 4 Rules. Any new fees will be covered in the Notice of Final Rulemaking regarding the Title 19 Rules.
- d. The Title 4 Rules, as repealed, will not contain fee increases. Any fee increases will be covered in the Notice of Final Rulemaking regarding the Title 19 Rules.
- e. The Commission is requesting that the repeal of the Title 4 Rules be immediately effective at the same time that the Title 19 Rules are effective, to generally protect public peace, health and safety, and to specifically protect the health and safety of unarmed combatants under A.R.S. § 41-1032.

- f. The Commission certifies that the Preamble to the Final Notice of Rulemaking will attest that there was no study relevant to the Title 4 Rules that the Commission studied or relied on in evaluating or justifying the rulemaking.
- g. The Commission certifies that no additional full-time employees will be necessary to implement or enforce the repeal of the Title 4 rules.
- h. The following documents are enclosed:
 - (i) The Notice of Final Rulemaking, including the preamble, table of contents for the rulemaking, and text of each rule.
 - (ii) The economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055.
 - (iii) Written comments that were received regarding the repeal of the Title 4 Rules. Other comments are attached to the Notice of Final Rulemaking pertinent to the Title 19 Rules.
 - (iv) The general and specific statutes authorizing the rule, including relevant statutory definitions.
- i. The following documents do not exist or are not applicable:
 - (i) Analysis submitted to the agency regarding the rulemaking's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states, as requested by R1-6-201(A)(5);
 - (ii) Material incorporated by reference in the rulemaking, as requested by R1-6-201(B)(1);
 - (iii) Terms defined by a statute or rule other than the general and specific statutes authorizing the rulemaking, as requested by R1-6-201(B)(3);
 - (iv) Unchanged existing rules, as requested by R1-6-201(B)(4).

Please let me know if you require any other information. Thank you for your time and consideration.

Sincerely,



Daniel Bergin
Director
Arizona Department of Gaming

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 3. STATE BOXING AND MIXED MARTIAL ARTS COMMISSION

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
Article 1	Repeal
R4-3-101	Repeal
R4-3-102	Repeal
R4-3-103	Repeal
R4-3-104	Repeal
R4-3-105	Repeal
Article 2	Repeal
R4-3-201	Repeal
R4-3-202	Repeal
R4-3-203	Repeal
Article 3	Repeal
R4-3-301	Repeal
R4-3-302	Repeal
R4-3-303	Repeal
R4-3-304	Repeal
R4-3-305	Repeal
R4-3-306	Repeal
R4-3-307	Repeal

R4-3-308	Repeal
R4-3-309	Repeal
R4-3-310	Repeal
Article 4	Repeal
R4-3-401	Repeal
R4-3-402	Repeal
R4-3-403	Repeal
R4-3-404	Repeal
R4-3-405	Repeal
R4-3-406	Repeal
R4-3-407	Repeal
R4-3-408	Repeal
R4-3-409	Repeal
R4-3-410	Repeal
R4-3-411	Repeal
R4-3-412	Repeal
R4-3-412.01	Repeal
R4-3-413	Repeal
R4-3-414	Repeal
Table 1	Repeal

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

Authorizing statutes: A.R.S. § 5-104(U), 5-224(C)

Implementing statutes: A.R.S. §§ 5-221, 5-222, 5-225, 5-227, 5-228, 5-229,
5-230, 5-231, 5-232, 5-233, 5-235.01, 5-236, 5-237,
5-238, 5-239, 5-240

3. The effective date of the rules:

The rules should be immediately effective on _____ (*to be filled in by editor*), upon filing of the rules with the secretary of state and the time and date of filing is affixed by the secretary of state to the rule document as provided in A.R.S. § 41-1031. Under A.R.S. § 41-1032(A)(1), the immediate effective date is necessary to generally protect public peace, health and safety, and to specifically protect the health and safety of unarmed combatants.

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 rules:

Notice of Rulemaking Docket Opening: 23 A.A.R. 2950, October 20, 2017

Notice of Proposed Rulemaking: 23 A.A.R. 2989, October 27, 2017

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

Name: Aiden Fleming
Address: Arizona Department of Gaming
1110 W. Washington, Suite 450
Phoenix, AZ 85007
Telephone: (602) 255-3879
Fax: (602) 255-3883
E-mail: afleming@azgaming.gov

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

The proposed rulemaking consists of repeal of the rules in A.A.C. Title 4, Chapter 3, Articles 1 through 4, Sections R4-3-101 through R4-105, R4-3-201 through 203, R4-3-301 through R4-3-310, and R4-3-401 through R4-3-414, and Table 1 (the "Title 4 Rules").

Sections R4-3-415 through R4-3-424 were previously recodified into A.A.C. Title 19, Chapter 2, Article 6 (the "Title 19 Rules").

The Arizona Boxing and Mixed Martial Arts Commission (the "Commission") was placed under the aegis of the Racing Department by Laws 2002, Chapter 328. The Arizona Department of Racing was then put under the jurisdiction of the Arizona Department of Gaming as the Racing Division by Laws 2015, Chapter 19. The Commission's rules have not yet been amended to reflect the statutory changes that were enacted to place the Commission under the Arizona Department of Gaming, Racing Division.

By statute, the Boxing and Mixed Martial Arts Commission is responsible for regulating certain unarmed-combat sports, including boxing, mixed martial arts, kickboxing, Muay Thai, and Toughman contests. Boxing regulations are currently split between the Title 19 Rules and the Title 4 Rules. Rules for regulation of unarmed combat disciplines other than boxing have not been adopted previously. Instead, there has been adoption of a substantive policy statement establishing rules for mixed martial arts. There is no current logic that justifies that division of Commission rules between two sections of the

Administrative Code, and there is a need to codify the substantive policy statement into rules.

The proposed rulemaking is a reengineered blueprint for consolidating the regulation of all forms of unarmed combat into the Title 19 Rules. In the Title 19 Rules, the title of Article 6 will be amended from “State Boxing Administration” to “State Boxing and Mixed Martial Arts Commission: Administration of Unarmed Combat Sports,” to more correctly describe the authority of the Commission and the purpose of the rules. Parts will be introduced to separate areas of regulation. Once the consolidation of the rules into the Title 19 Rules is finalized, the Commission will repeal the Title 4 Rules.

An exception from the rulemaking moratorium outlined in Executive Order 2017-02 was approved by the Governor’s Office on April 3, 2017.

- 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 rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

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

Not applicable

- 9. The summary of the economic, small business, and consumer impact:**

Summary of the identification of the proposed rulemaking.

The proposed rulemaking consists of repeal of the Title 4 Rules. The regulations that existed in the Title 4 Rules will be included into the Title 19 Rules. Much of the substance of the Title 4 Rules will remain unchanged, but there will be reorganization and amendments to create a unified regulatory system.

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

There is no specific licensee conduct that this rulemaking is designed to change, with the exception that it is anticipated that the safety of unarmed combatants will be better protected by repeal of the Title 4 Rules and incorporation of all rules into the Title 19 Rules. Furthermore, the consolidation of the rules will simplify compliance for regulated parties. The proposed Title 19 Rules will include all unarmed combat sports. They will be consistent with current regulatory rules and practice, the standard rules of conduct found in the industry, and with prior substantive policy statements. There will also be added provisions to provide concussion testing and protocols to help prevent brain injuries.

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 harm is that the Commission will be powerless to effectively regulate unarmed-combat sports without comprehensive rules adopted under the statutes. Under the current rules, the safety of unarmed-combat participants is at greater risk. Without the rulemaking this risk will continue.

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

change:

Not applicable. There is no specific targeted conduct prompting the rule amendments. It is, however, anticipated that more combat sports events will be attracted to the state as a result of effective and predictable rules, and the sports of unarmed combat will be safer.

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

The proposed repeal of the Title 4 Rules will not result in any economic, small business or consumer impact. The economic, small business or consumer impact that will be caused by reorganization and amendment of the Title 19 Rules, which will be summarized in the Notice of Proposed Rulemaking that is published for the Title 19 Rules.

Regulated parties, including small businesses, will be beneficially impacted by the repeal of the Title 4 Rules, and the clarification and predictability of the proposed consolidation of those rules into the Title 19 Rules.

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

Name: Aiden Fleming

Address: Arizona Department of Gaming

1110 W. Washington, Suite 450

Phoenix, AZ 85007

Telephone: (602) 255-3879

Fax: (602) 255-3883

E-mail: afleming@azgaming.gov

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

None.

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

The written and oral comments received were most relevant to the Title 19 Rules. Only a few comments were received that specifically regarded the repeal of the Title 4 Rules.

The agency appreciates all comments made and the involvement of those industry stakeholders who were consulted during the drafting of the rules. The following is a summary of comments received.

Positive Comments and Agency Response:

- a. From a person of long-standing connection to the unarmed combat industry, who is an attorney, former administrative law judge, and former Executive Director of the Commission. This person felt that the codification of the regulations under one title was a "significant" improvement.

Agency response: None.

Negative Comments and Agency Response:

- a. A boxing trainer, who was a former boxing judge, commented that the Title 4 Rules should not have been repealed, they should have just been changed.

Agency response: The Title 4 Rules were renumbered, amended and consolidated into the Title 19 Rules. Several Title 4 Rules had already been recodified into the Title 19 Rules in 1999. Recodification was not appropriate for the remaining sections because of changes that were made. The Commission did not want to have rules in two separate titles. For those reasons, the remainder of the Title 4 Rules were relocated into portions of the Title 19 Rules. The following list shows the approximate relocation of the Title 4 Rules:

<i>Old Numbering Scheme</i>	<i>New Numbering Scheme</i>
<i>Article 1</i>	<i>Article 6, Part D</i>
<i>R4-3-101</i>	<i>R19-2-D602(A)</i>
<i>R4-3-102</i>	<i>R19-2-D602(B)</i>
<i>R4-3-103</i>	<i>R19-2-D601(V) and Table 2</i>
<i>R4-3-104</i>	<i>R19-2-D602(C)</i>
<i>R4-3-105</i>	<i>R19-2-D601(C)</i>
<i>Article 2</i>	
<i>R4-3-201</i>	<i>R19-2-D601(I)(1)</i>
<i>R4-3-202</i>	<i>R19-2-D601(I)</i>
<i>R4-3-203</i>	<i>R19-2-D601(J)</i>
<i>Article 3</i>	
<i>R4-3-301</i>	<i>R19-2-D602(E)</i>

<i>R4-3-302</i>	<i>R19-2-D602(F)</i>
<i>R4-3-303</i>	<i>R19-2-D602(G)</i>
<i>R4-3-304</i>	<i>R19-2-D601(L)</i>
<i>R4-3-305</i>	<i>R19-2-D601(P)</i>
<i>R4-3-306</i>	<i>R19-2-D602(H)</i>
<i>R4-3-307</i>	<i>R19-2-D601(O)</i>
<i>R4-3-308</i>	<i>R19-2-D602(I)</i>
<i>R4-3-309</i>	<i>R19-2-D601(R)(1)</i>
<i>R4-3-310</i>	<i>R19-2-D601(D)</i>
<i>Article 4</i>	<i>Article 6, Part C</i>
<i>R4-3-401</i>	<i>R19-2-C604</i>
	<i>Article 6, Part D</i>
<i>R4-3-402</i>	<i>R19-2-D601(G)</i>
<i>R4-3-403</i>	<i>R19-2-D601(B)</i>
	<i>Article 6, Part B</i>
<i>R4-3-404</i>	<i>R19-2-B603</i>
<i>R4-3-405</i>	<i>R19-2-B601</i>
<i>R4-3-406</i>	<i>R19-2-B609</i>
<i>R4-3-407</i>	<i>R19-2-B605</i>
<i>R4-3-408</i>	<i>R19-2-B606</i>
<i>R4-3-409</i>	<i>R19-2-B602</i>
<i>R4-3-410</i>	<i>R19-2-B604</i>
	<i>Article 6, Part C</i>

<i>R4-3-411</i>	<i>R19-2-C605</i>
<i>R4-3-412</i>	<i>R19-2-C601</i>
<i>R4-2-412.01</i>	<i>R19-2-C602</i>
<i>R4-3-413</i>	<i>R19-2-C603</i>
<i>R4-3-414</i>	<i>R19-2-C608</i>

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

There are no other matters prescribed by statute applicable to the Commission, its rules, or its class of rules other than those matters listed below in this section # 12.

- a. Does the rule require a permit, whether a general permit is used and if not, the reasons that 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 Professional Boxing Safety Act ("PBSA"), 15 U.S.C.A. § 6301 through § 6313, applies to the sport of boxing. It does not apply to other unarmed combat sports.

The Title 4 Rules were compliant with the PBSA. The Title 19 Rules will also comply with the PBSA.

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 comparative analysis of competitiveness was submitted.

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

None

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

Not applicable.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 3. STATE BOXING AND MIXED MARTIAL ARTS COMMISSION

ARTICLE 1. ~~EQUIPMENT~~ Repealed

Section

- R4-3-101. ~~The ring~~ Repealed
- R4-3-102. ~~Boxing gloves~~ Repealed
- R4-3-103. ~~Hand bandages~~ Repealed
- R4-3-104. ~~Contestant's equipment~~ Repealed
- R4-3-105. ~~Dressing rooms~~ Repealed

ARTICLE 2. ~~WEIGH-IN AND EXAMINATION~~ Repealed

Section

- R4-3-201. ~~Weigh-in~~ Repealed
- R4-3-202. ~~When contestants must appear~~ Repealed
- R4-3-203. ~~Physical examination, appearance, and weight~~ Repealed

ARTICLE 3. ~~CONDUCT OF CONTESTS~~ Repealed

Section

- R4-3-301. ~~Fair blows and fouls~~ Repealed
- R4-3-302. ~~Intentional foul~~ Repealed
- R4-3-303. ~~Accidental foul~~ Repealed
- R4-3-304. ~~Substances~~ Repealed
- R4-3-305. ~~Referee~~ Repealed
- R4-3-306. ~~Knockdowns~~ Repealed
- R4-3-307. ~~Conduct of seconds~~ Repealed

- R4-3-308. ~~Method of judging~~ Repealed
- R4-3-309. ~~Failure to resume boxing after rest period~~ Repealed
- R4-3-310. ~~Mouthpiece~~ Repealed

ARTICLE 4. ADMINISTRATION Repealed

Section

- R4-3-401. ~~Age and physical condition of boxer applying for license~~ Repealed
- R4-3-402. ~~Boxers injured~~ Repealed
- R4-3-403. ~~Time between bouts~~ Repealed
- R4-3-404. ~~Duty of matchmakers~~ Repealed
- R4-3-405. ~~Notice to the Commission of promotions; publicity~~ Repealed
- R4-3-406. ~~Payment of contestants~~ Repealed
- R4-3-407. ~~Selection and payment of officials~~ Repealed
- R4-3-408. ~~Commission seating at contests~~ Repealed
- R4-3-409. ~~State championships~~ Repealed
- R4-3-410. ~~Insurance for contestants~~ Repealed
- R4-3-411. ~~Grounds for disciplinary action~~ Repealed
- R4-3-412. ~~Licensing~~ Repealed
- R4-2-412.01. ~~Licensing Time frames~~ Repealed
- R4-3-413. ~~Fees~~ Repealed
- R4-3-414. ~~Rehearing or review of decision~~ Repealed
- Table 1. ~~Time frames (Calendar Days)~~ Repealed

ARTICLE 1. EQUIPMENT Repealed

R4-3-101. The ring Repealed

~~The promoter is responsible for providing a safe ring in accordance with the following. The ring shall be 18 or 20 feet square and securely assembled. The floor shall be covered with shock absorbing padding, such as Ensolite or the equivalent. The padding shall be covered with tightly stretched clean canvas securely laced to the platform. Ring ropes shall be three or four in number, not less than one inch in diameter, and covered with soft material to avoid rope burns.~~

R4-3-102. Boxing gloves Repealed

~~The promoter is responsible for providing boxing gloves for contestants in accordance with the following. Gloves shall be eight ounces in weight for all divisions other than heavyweights, and ten ounces for heavyweights, and in sanitary, safe and good condition. The promoter shall keep on hand two extra sets of eight ounce gloves, and, when a heavyweight contest is scheduled, one extra set of ten ounce gloves. Gloves for main events shall be new and delivered to the Commission inspector with the packaging unbroken.~~

R4-3-103. Hand bandages Repealed

- A.** ~~Contestants shall use soft surgical bandage not over two inches wide, and up to ten yards long, for each hand, held in place by not more than three feet of surgeon's adhesive tape for each hand. Tape shall not be applied on the knuckle part of the first. No substance may be applied to bandages or tape.~~
- B.** ~~Bandages and tape shall be applied in the dressing room in the presence of a Commission representative. A contestant has the right, upon giving due notice to the Commission representative in charge, to have one of his seconds witness the bandaging of his opponent's hands.~~

R4-3-104. Contestant's equipment Repealed

~~Each contestant has the duty to provide himself with appropriate hand bandaging, boxing trunks, robe, boxing shoes, abdominal guard, mouthpiece, water bottle, bucket, and towel for use during a contest.~~

R4-3-105. Dressing rooms Repealed

~~The promoter is responsible to provide contestants with dressing rooms or areas which shall be equipped with showers, be sanitary, safe, ventilated, and have sufficient benches.~~

ARTICLE 2. WEIGH-IN AND EXAMINATION Repealed

R4-3-201. Weigh-in Repealed

~~The weigh-in shall be held on the day of the scheduled match between 8 and 12 hours before the first scheduled bout at a time and place approved by the Commission. It shall be supervised by a Commission representative. Promoters are required to contact the Commission at least 48 hours in advance of the weigh-in to make appropriate arrangements therefor.~~

R4-3-202. When contestants must appear Repealed

- A.** ~~Contestants must appear at the weigh-in and the failure to do so will disqualify a contestant from competing unless special circumstances exist.~~
- B.** ~~Contestants must appear at the arena at least one hour before the first scheduled contest on the card on which they will compete.~~
- C.** ~~Contestants scheduled to box ten rounds or more shall be present in the city of the scheduled contest at least 24 hours before the contest and make their presence known to the Commission.~~

R4-3-203. Physical examination, appearance, and weight Repealed

- A. ~~Contestants will be physically examined at the weigh in and will be re-examined within one hour before the first scheduled contest of the card on which they will compete. A contestant must satisfy the examining physician that he is in good physical condition and able to compete in the scheduled contest.~~
- B. ~~Facial hair must be trimmed by the time of the weigh in and must not be so long that it may create a hazard to safety or interfere with the conduct of the contest. Additional trimming may be required in the discretion of the Commission representative at the weigh in.~~
- C. ~~A contestant who exceeds by more than one pound the weight prescribed by contract when weighed in will be considered not to have complied with his contract. He will be permitted a second opportunity to make the weight within two hours if he has a reasonable excuse for not making the weight when first weighed.~~
- D. ~~Except in the heavyweight class, the following are impermissible differences in weight unless the approval of both contestants and the approval of the Commission is obtained: 10 pounds when the lighter contestant is more than 135 pounds, and 6 pounds when the lighter contestant is less than 135 pounds.~~

ARTICLE 3. CONDUCT OF CONTESTS Repealed

R4-3-301. Fair blows and fouls Repealed

- A. ~~The only fair blow is one delivered with the padded knuckle part of the glove on the front or sides of the head and body above the belt.~~
- B. ~~All blows that are not fair as described in subsection (A) above are fouls. The following practices are also classified as fouls:~~

 - 1. ~~Hitting an opponent who is down or in the process of getting up after being down.~~

2. ~~Holding an opponent with one hand and hitting with the other.~~
3. ~~Holding or maintaining a clinch after directed by the referee to break.~~
4. ~~Pushing or wrestling.~~
5. ~~Butting with the head or shoulder.~~
6. ~~Hitting on the break.~~
7. ~~Hitting after the bell has sounded ending the round.~~
8. ~~Any unsportsmanlike trick or action likely to cause injury to an opponent in the opinion of the referee.~~
9. ~~Refusal to obey the commands of the referee.~~
10. ~~Falling down intentionally.~~

R4-3-302. Intentional foul Repealed

- A. ~~The referee shall have discretion as to the penalty for fouling. He may direct the deduction of points and, in the case of persistent or major fouling, or where the foul incapacitates the victim of the foul from continuing, disqualify the wrongdoer. Normally, in the case of minor fouling, the referee should issue a warning before imposing a penalty. Penalties shall be imposed during or immediately after the round in which the foul occurs. The referee shall personally advise the corners and each judge of the points deducted immediately upon imposition of the penalty.~~
- B. ~~If a contestant is injured (e.g., cut) by an intentional foul but can continue, the referee shall notify the judges and the Commission representative at ringside that if the foul inflicted injury is subsequently aggravated to the point that the injured contestant cannot continue, a technical win will be rendered in favor of the injured contestant if he is ahead on points, or the points are even, and a technical draw will be rendered if he is behind on points.~~

R4-3-303. Accidental foul Repealed

- A.** ~~If a contestant is accidentally fouled (e.g., butted) so that he cannot continue, the referee shall stop the contest and a technical decision shall be rendered in favor of the contestant ahead on points. If the points are even, or if the butt occurs in the first three rounds, a technical draw shall be declared.~~
- B.** ~~If a contestant is injured (e.g., cut) by an accidental foul but can continue, the referee shall notify the judges and the Commission representative at ringside that if the foul inflicted injury is subsequently aggravated to the point that the injured contestant cannot continue, the contest will be stopped and a technical win will be rendered in favor of the contestant ahead on points. If the points are even, or if the stoppage occurs in the first three rounds, a technical draw shall be declared.~~

R4-3-304. Substances Repealed

- A.** ~~No drugs or stimulants may be given to a contestant within 24 hours preceding or during a contest.~~
- B.** ~~Only plain water may be administered to a contestant during a contest.~~
- C.** ~~Coagulants such as adrenalin 1/1000, and others expressly approved by the ringside physician, may be used between rounds to stop bleeding of cuts. "Iron type" coagulants, such as Monsel's solution are absolutely prohibited.~~
- D.** ~~Small amounts of vaseline may be used around the eyes.~~
- E.** ~~Upon specific request of the Commission, a contestant shall provide a urine sample before and/or after a contest.~~

R4-3-305. Referee Repealed

- ~~A. The referee shall have direction and control over contestants and their seconds during a contest subject to the governing laws and rules. He shall have final authority to decide if an injury is produced by a fair or foul blow and if an act is intentional or accidental. He shall have final authority to stop a contest when in his opinion a contestant is unfit to continue or otherwise cannot compete.~~
- ~~B. In the case of a cut or other injury which the referee believes may be incapacitating, the referee may consult with the ringside physician before making a decision and may interrupt a round and have the clock stopped for this purpose.~~
- ~~C. Where a contestant is incapacitated because of a foul, the referee has the discretion to interrupt a round and have the clock stopped to enable the contestant to recover.~~

R4-3-306. Knockdowns Repealed

- ~~A. When contestant is considered knocked down. A contestant is considered down when any part of his body but his feet is on the floor, or he is on the ropes and unable to stand on his own, or he is knocked out of the ring.~~
- ~~B. Counting. When the contestant is knocked down the referee shall order the opponent to the farthest neutral corner of the ring, pointing to the corner. The count shall begin by the timekeeper immediately upon the knockdown. The timekeeper, by audible counting and hand signaling, shall give the referee the correct one second interval for his count. The referee shall pick up and audibly announce the passing of the seconds, accompanying the count with appropriate hand motions. The referee's count is the official count.~~
- ~~C. Mandatory eight. A contestant who is knocked down shall not be allowed to resume boxing until the referee has finished counting eight. A contestant may take the count either on the floor or standing.~~

- D.** ~~Neutral corner. Should the contestant causing a knockdown fail to stay in the farthest neutral corner during the count, the referee shall cease counting until the contestant has returned to that corner. The referee shall than go on with the count from the point at which it was interrupted.~~
- E.** ~~Signaling. The referee shall wave both arms to indicate that a contestant has been counted out or cannot otherwise continue, and shall raise the hand of the opponent as the winner.~~
- F.** ~~No saving by bell. Except in the last round, there is no saving by the bell. If a contestant is knocked down during the last ten seconds of a round, the count shall continue after the end of the round as if the round was not ended. The one minute rest period will begin from the time he rises after the knockdown. If a contestant is knocked down during a round, and counted out after the end of a round, the knockout shall be considered as having taken place during the round which was last finished.~~
- G.** ~~Wipe gloves. Before a contestant resumes boxing after having been knocked, or having slipped, to the floor, the referee shall wipe any accumulated resin from the contestant's gloves before allowing the bout to resume.~~
- H.** ~~Three knockdowns. Except in championship contests, upon consent of both contestants and the Commission, when a contestant is knocked down for the third time in a round, the referee shall stop the contest and raise the hand of the opponent as the winner.~~
- I.** ~~Knocked out of ring. A contestant who is knocked or fallen out of the ring, may be helped back onto the ring apron by anyone except his manager or seconds. He has a total of 20 seconds to get into the ring and rise.~~
- J.** ~~Double knockout. A simultaneous double knockout shall be declared a technical draw.~~

R4-3-307. Conduct of seconds Repealed

- A.** A contestant may have up to three seconds and shall designate to the referee which of them is the chief second. The chief second is responsible for the conduct of the assistant seconds.
- B.** A second may not enter the ring or stand on the apron during the progress of a round. He may not administer aid to a contestant during a round. During an officially interrupted round, a second may stand on the apron only with the express permission of the referee.
- C.** Seconds must remain seated outside the ring between the progress of a round and must comport themselves in such a way as not to interfere with the progress of a round. The referee has the discretion to disqualify a second whose conduct is interfering with the contest.

R4-3-308. Method of judging Repealed

- A.** Three judges shall score all contests. Under special circumstances two judges and the referee may score. The method of judging shall be the 10 point must system. In this system the better contestant receives 10 points and his opponent proportionately less, but not less than 7 points. If the round is even, each contestant receives 10 pounds. A fraction of points may not be given. Points for each round shall be awarded immediately after the termination of the round and not subsequently changed. Judges shall sign their scorecards.
- B.** The referee shall pick up the scorecards of the judges and then deliver the cards to the Commission representative assigned to check them for the mathematical accuracy. When the Commission representative has completed his checking he shall advise the announcer of the decision, and the announcer shall then inform the audience of the decision over the speaker system. The Commission representative shall stand at the ring apron when checking the scorecards.

R4-3-309. Failure to resume boxing after rest period Repealed

~~The failure to resume boxing after a rest period shall be considered as if a knockout occurred in the next round.~~

R4-3-310. Mouthpiece Repealed

- ~~A. Mouthpieces knocked out or spit out during the course of a round shall not be replaced until it can be done without interfering with the advantage the aggressor may have. As soon as it can be properly replaced, the referee shall direct a second to wash the mouthpiece and the referee shall then replace it with all deliberate speed.~~
- ~~B. A contestant who intentionally spits out his mouthpiece in an apparent attempt to cause the progress of a round to be interrupted is subject to penalty to be determined by a referee.~~

ARTICLE 4. ADMINISTRATION Repealed

R4-3-401. Age and physical condition of boxer applying for license Repealed

- ~~A. All contestants must have attained their eighteenth birthday before being licensed. No boxer over 32 years of age shall be granted a license except by special action of the Commission considering an applicant's demonstrated competence, status as a boxer and physical condition.~~
- ~~B. Any boxer applying for a license or renewal thereof must be examined by a Commission physician and satisfy the Commission that he has the ability to compete.~~

R4-3-402. Boxers injured Repealed

- ~~A. At the conclusion of a contest, the ringside physician shall enter the ring and examine and tend to a contestant who has been knocked out or is otherwise injured. The seconds of the injured contestant must not interfere with the physician.~~
- ~~B. Contestants who have been knocked down and out shall be kept in a prone position until they have recovered.~~

- ~~C. A contestant who has been knocked out shall not be permitted to compete until 30 days has elapsed or until such later time as a Commission physician and the Commission shall determine. The term "knockout" as used herein includes technical knockout.~~
- ~~D. A boxer who has been knocked out three consecutive times within the twelve month period preceding a scheduled contest will not be permitted to compete. The term "knockout" as used herein includes technical knockout.~~

R4-3-403. Time between bouts Repealed

~~Unless special approval is obtained from the Commission, if a contestant has competed anywhere in a contest of six rounds or less, he shall not be allowed to box until five days have elapsed. Ten days must elapse after a bout of more than six rounds.~~

R4-3-404. Duty of matchmakers Repealed

- ~~A. Matchmakers are required to use due diligence to determine and report to the Commission in writing, on a form to be provided by the Commission, no later than 48 hours prior to a scheduled contest, the following information which is a predicate to licensing contestants and seconds:~~

 - ~~1. The true identity of contestants.~~
 - ~~2. The boxing record of contestants.~~
 - ~~3. The date and result of the last contest engaged in by the contestants.~~
 - ~~4. Whether contestants are under suspension from any boxing commission.~~
 - ~~5. The ability of the contestants to compete.~~
- ~~B. Matchmakers will be held responsible for the making of mismatches. For the protection of boxers and the public, the persistent making of mismatches is ground for the suspension or revocation of a matchmaker's license.~~

- C. ~~The cost of record checks to commissions in other states will be charged back to the promoter unless suitable provision therefor has been made in the Commission's budget or the promoter has supplied the Commission with the requisite information.~~

R4-3-405. Notice to the Commission of promotions; publicity ~~Repealed~~

- A. ~~A promoter's request to the Commission for reservation of a date shall be made as soon as possible and shall be deemed by the Commission to be a representation by the promoter of his good faith intention to actually hold the card on that date. A promoter is prohibited from requesting dates solely for the purpose of preempting the conduct of promotion by others on or near the scheduled date or for any other anti-competitive reason. A pattern of requesting and cancelling dates is prohibited.~~
- B. ~~The Commission's sanction of a card shall constitute a license to conduct, hold or give a boxing contest within the meaning of A.R.S. § 5-229.~~
- C. ~~The Commission will not sanction the conduct of a card scheduled to take place within 72 hours before a previously sanctioned card in the same county, unless the second promoter compensates the first promoter or special circumstances exist. In order for a promoter to have a date protected by the Commission in accordance with this rule, he must have a commitment for an arena and a main event, and have advanced funds with respect to his scheduled card.~~
- D. ~~Proof of contracts between main event contestants must be filed with the Commission at least 72 hours prior to the date of the contest and before such bout is given any publicity. Forty-eight hours notice to the Commission is required for preliminary events. Copies of all contracts, on a form approved by the Commission, must be complete and filed with the Commission no later than the weigh-in.~~

- ~~E. Publicity for a scheduled card must be factual and not misleading to the public. Tickets shall be priced and available as represented to the public.~~
- ~~F. The Commission will not sanction a scheduled card until the promoter discloses in writing all persons having a financial interest in the promotion and otherwise complies with these rules insofar as they apply to promoters.~~

R4-3-406. Payment of contestants Repealed

- ~~A. All contestants shall be paid in full according to their contracts, and no part or percentage of their remuneration may be withheld except by order of an official of the Commission, nor shall any part thereof be returned through arrangement with the boxer or his manager to any matchmaker or promoter.~~
- ~~B. Payment shall be made immediately after the contest or card under the supervision of a Commission representative.~~
- ~~C. In cases where the Commission does not require a promoter's bond, the promoter shall execute an assignment in favor of the Commission of box office proceeds to the extent necessary to secure the payment of purses. Such assignment is a condition to the sanctioning of a card. When all contestants have been paid, the assignment shall be returned to the promoter and he shall be released therefrom.~~

R4-3-407. Selection and payment of officials Repealed

- ~~A. The referee, judges, timekeepers, ringside physicians, and inspectors shall be selected by the Commission prior to the scheduled card and paid by a Commission representative, no later than immediately after the last scheduled contest in accordance with the Commission's fee schedule. The fee schedule shall be made known to the promoter before the scheduled card at such time as requested by the promoter.~~

- ~~B. A promoter or contestant may protest the assignment of officials only upon specific grounds submitted to the Commission in writing prior to the start of the scheduled card.~~
- ~~C. Referees shall be given a physician examination as determined by the ringside physician before officiating at a contest.~~

R4-3-408. Commission seating at contests Repealed

~~The promoter is to provide a table and contiguous front row seating for the three members of the Commission and the executive secretary in the middle of one side of the ring where no judge is seated. The promoter is also required to provide front row seating for three judges, two timekeepers (one counting for the knockdowns), and two ringside physicians. The promoter is further required to provide ten ringside seats selected by him in the area where the Commission is seated, and within eye view and earshot of the Commission, for deputies, inspectors, judges, referees, and other officials assigned to work the scheduled card.~~

R4-3-409. State championships Repealed

- ~~A. The Commission may sanction a contest as one for a State championship where:~~
 - ~~1. One of the contestants is a bona fide resident of Arizona and the other is either~~
 - ~~a. Also a bona fide resident of Arizona or,~~
 - ~~b. A resident of California, Nevada, Texas, Utah, Colorado, or New Mexico, who has fought in Arizona at least two times within the twelve month period prior to the time the Commission's sanction is requested.~~
 - ~~2. The contestants are qualified to fight for a State championship by virtue of demonstrated boxing ability and record.~~
 - ~~3. The contestants make the weight for the pertinent weight classification at the weigh in on the day of the contest.~~

- B.** ~~State championship contests shall be scheduled for twelve rounds.~~
- C.** ~~A contest may not be promoted as one for a State championship, or as a State championship elimination, without the prior consent of the Commission.~~
- D.** ~~State championships shall be defended in Arizona, as determined by the Commission, whenever a promoter shall offer a challenger qualified to fight under this rule and the purse offered to the champion is fair.~~
- E.** ~~The Commission may vacate a State championship title for violation of these rules.~~

R4-3-410. Insurance for contestants Repealed

~~A promoter is required to provide insurance for each contestant who competes on his card for medical, surgical and hospital care for injuries sustained in the ring in the amount of \$1,000, with \$10 deductible, payable to the contestant as beneficiary, and for life insurance in the amount of \$2,500 in case of accidental death, resulting from injuries in the ring, payable to the contestant's designated beneficiary.~~

R4-3-411. Grounds for disciplinary action Repealed

- A.** ~~Disciplinary action shall include suspension of license, revocation of license, and such other action as may be appropriate under the circumstances.~~
- B.** ~~Grounds for disciplinary action are:~~
 - 1.** ~~Violation of these rules, which a licensee is obliged to know, or an order of the Commission.~~
 - 2.** ~~Violation of any of the provisions of Arizona Revised Statutes, Title 5, which a licensee is obliged to know.~~
 - 3.** ~~Breach of a boxer promoter or boxer manager contract.~~

4. Where the licensee's conduct is lacking in honesty, ethics, or moral character so as to reflect discredit to boxing and thereby render disciplinary action consistent with the public interest and the purpose of Arizona Revised Statutes, Title 5, and these rules.

R4-3-412. Licensing Repealed

- A. A licensee is obliged to know that his license will expire on December 31 at midnight on the year of its issuance and he has the responsibility to apply for renewal prior to such expiration.
- B. A license will not be issued unless the applicant provides proof of his true identity, and other material information requested on the license application and otherwise required by the Commission.
- C. Expenses necessarily incurred by the Commission in the investigation of an applicant will be charged back to the applicant unless suitable provision therefor has been made in the Commission's budget.
- D. Absent special circumstances, there will be a minimum ten day waiting period prior to the approval of an application or a license as a promoter, matchmaker, or manager.
- E. A manager who is not a resident of Arizona, who comes into Arizona for the purpose of working the corner of his boxer, who is also not a resident of Arizona, need not obtain a manager's license. A second's license is sufficient.
- F. A licensed manager may act as a second.
- G. The licensing of the parties is a condition precedent to the making of a boxer manager and boxer promoter contract recognized by the Commission as valid. Such contracts shall be on a form approved by the Commission.

R4-3-412.01. Licensing Time-frames Repealed

- A.** ~~Overall time frame. The Commission shall issue or deny a license within the overall time frames listed in Table 1 after receipt of the complete application. The overall time frame is the total of the number of days provided for the administrative completeness review and the substantive review.~~
- B.** ~~Administrative completeness review.~~
 - 1. ~~The applicable administrative completeness review timeframe established in Table 1 begins on the date the Commission receives the application. The Commission shall notify the applicant in writing within the administrative completeness review time frame whether the application or request is incomplete. The notice shall specify what information is missing. If the Commission does not provide notice to the applicant, the license application shall be considered complete.~~
 - 2. ~~An applicant with an incomplete license application shall supply the missing information within the completion request period established in Table 1. The administrative completeness review time frame is suspended from the date the Commission mails the notice of missing information to the applicant until the date the Commission receives the information.~~
 - 3. ~~If the applicant fails to submit the missing information before expiration of the completion request period, the Commission shall close the file, unless the applicant requests an extension. An applicant whose file has been closed may obtain a license by submitting a new application.~~
- C.** ~~Substantive review. The substantive review time frame established in Table 1 begins after the application is administratively complete.~~

- ~~1. If the Commission makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review time frame is suspended from the date the Commission mails the request until the information is received by the Commission. If the applicant fails to provide the information identified in the written request the Commission shall consider the application withdrawn.~~
- ~~2. The Commission shall issue a written notice granting or denying a license within the substantive review timeframe. If the application is denied, the Commission shall send the applicant written notice explaining the reason for the denial with citations to supporting statutes or rules, the applicant's right to seek a fair hearing, and the time period in which the applicant may appeal the denial.~~

R4-3-413. Fees Repealed

- ~~A. Fees for the issuance of annual licenses for boxing and mixed martial arts shall be as follows:~~
 - ~~1. Promoters:~~
 - ~~a. Individual, \$200;~~
 - ~~b. Corporation, partnership or other business entity, \$400.~~
 - ~~2. Matchmakers, \$100.~~
 - ~~3. Managers, \$50.~~
 - ~~4. Inspectors, judges, referees, announcers, and ringside physicians, \$25.~~
 - ~~5. Timekeepers, boxers, professional mixed martial arts competitors and their trainers and seconds, \$25.~~

6. Amateur mixed martial arts competitors, \$20.

B. At the time an event request is submitted for Commission approval; the following fees for mixed martial arts and boxing events shall be paid to the Commission:

1. \$500.00 for non live televised events at a venue seating 5000 persons or less;

2. \$1000.00 for:

a. Non live televised events at a venue seating more than 5000 persons;

b. Events streamed live for a charge on Facebook or other equivalent Internet broadcast;

e. Live televised events on cable or satellite television. (e.g., Friday Night Fights on ESPN); and

3. \$1500.00 for live televised events on cable or satellite television that include a recognized world title bout (e.g., WBA, WBC, IBF, WBO, UFC, IBO).

4. \$2000.00 for live pay per view events on cable or satellite television (e.g., HBO, Showtime).

5. If an event has been previously approved by the Commission, at any time an event date change request is submitted for Commission approval, an additional fee of \$250.00 shall be paid to the Commission.

6. The Executive Director may establish a fee not to exceed \$2000.00 for an event that is not within the categories set forth in subsections (1) through (4). If a fee is initially paid for a type of event and that event type later changes to a higher fee category, the promoter shall pay the difference in fees prior to the event date.

R4-3-414. Rehearing or review of decision Repealed

- ~~A. Except as provided in subsection (G), any party in a contested case before the Arizona State Boxing Commission who is aggrieved by a decision rendered in such case may file with the Arizona State Boxing Commission, not later than ten days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor. For purposes of this subsection a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at his last known residence or place of business.~~
- ~~B. A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Arizona State Boxing Commission. A response may be filed within ten days after service of such motion or amended motion by any other party. The Arizona State Boxing Commission may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.~~
- ~~C. A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:~~

 - ~~1. Irregularity in the administrative proceedings of the agency or its hearing officer or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;~~
 - ~~2. Miseconduct of the Arizona State Boxing Commission or its hearing officer or the prevailing party;~~
 - ~~3. Accident or surprise which could not have been prevented by ordinary prudence;~~
 - ~~4. Newly discovered material evidence which 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;~~
 7. ~~That the decision is not justified by the evidence or is contrary to law.~~
- D.** ~~The Arizona State Boxing Commission may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.~~
- E.** ~~Not later than ten days after a decision is rendered, the Arizona State Boxing Commission may on its own initiative order a rehearing or review of its decision for any reason for which it might have granted a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Arizona State Boxing Commission may grant a motion for rehearing for a reason not stated in the motion. In either case the order granting such a rehearing shall specify the grounds therefor.~~
- F.** ~~When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may within ten days after such service serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days by the Arizona State Boxing Commission for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.~~
- G.** ~~If in a particular decision the Arizona State Boxing Commission makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health and safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may~~

~~be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Arizona State Boxing Commission's final decisions.~~

- ~~H. For purposes of this Section the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.~~
- ~~I. To the extent that the provisions of this rule are in conflict with the provisions of any Statute providing for rehearing of decisions of the Arizona State Boxing Commission, such statutory provisions shall govern.~~

Table 1. Time frames (Calendar days) Repealed

License	Statutory Authority (Title 4)	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
Promoter, Matchmaker, Corporation, Manager, Judge, Referee	A.R.S. § 5-228 R4-3-412	35	10	30	7	65
Boxer, Boxers' Seconds, Trainer, Ring Announcer, Timekeeper, Physician	A.R.S. § 5-228 R4-3-412	10	10	30	14	40

Arizona Boxing News & Notes with Don Smith:

Benavidez Protégé Valenzuela, Rules Response & More

Boxing Fans, I called Boxing trainer Jose Benavidez Sr. recently to get an update on his 2 boxing sons (David & Jose Jr.). Senior told me that his namesake is fighting on the Horn/Corcoran WBO Welterweight title tiff in Brisbane Australia on December 13 versus a yet to be determined opponent.

It has been 16 months since Jose last fought and his ring inactivity is a direct result of a severe wound suffered from a bizarre shooting incident in Phoenix. The former interim world boxing Champion (25-0-16 knockouts) returned to training 2 months ago and according to his handlers the 25 year old pugilist has shed a few pounds and will be fit as a fiddle and ready to go on December 13 when the 1st bell sounds. The plan is for the California born fighter (Arizona resident) to fight 3-4 times and then challenge for a world title if his team thinks he is ready.

WBC world super middleweight champion David Benavidez (19-0-17 knockouts) is nervously waiting to defend his title after winning the belt by defeating Ronald Gavril (18-2). Talk about a rematch with Gavril is ongoing and the target date appears to be in January or February, 2018. In the meantime, David is staying ready by sparring with light heavyweight title contender Vyacheslav Shabranskyy (19-1-16 knockouts) as he prepares to fight Sergey Kovalev on 11/25 for the vacant WBO world light heavyweight title. David and the light heavy have sparred several times in the past.

In addition to training his sons, Jose Sr. has taken on former amateur standout Jose Valenzuela (40-5-40 knockouts). The 18 year old southpaw will make his professional debut on 11/9 at the W.D. Jackson Armory in Portland Oregon. It is a miracle that the

teenager is physically able to box or even walk after a drunk driver ran over the then 3 year old; sending the child to a local hospital for emergency treatment in Los Mochas Sinaloa, Mexico. Doctors feared he wouldn't survive and called his survival "a Miracle". One important footnote, the drunk driver was arrested and charged accordingly.

The rehabilitation process was excruciating and in addition to learning to walk again, his face was crushed and had to be surgically reconstructed. Financially, it was a major struggle to survive in a financially disadvantaged neighborhood; so, his family decided to leave the impoverished town and relocate in Arizona where the family resided in Tempe and Mesa before moving to Washington State where the family remains. Jose has two older sisters.

His introduction to boxing came at age 10 in Bellingham Washington where his dad took him to a local gym after he became troubled over his son's inability to refrain from street fighting and hanging out with the wrong people. His father would drive him to the gym 3-4 times a week. As Jose's skills began to develop, father and son realized the aspiring boxer needed a more competitive and progressive program; so, dad & mom began driving him to the "Aztec Boxing Club" in Renton Washington, a 2 hour drive. His parents never complained about accommodating their son and the routine continued for 6 years until the family moved to Auburn, Washington, a city of 75,000 and situated between Seattle and Tacoma Washington.

His management team is putting the pedal to the medal in preparing Jose for his debut as noted by the caliber of his sparring partners including undefeated prospect Tramaine Williams (13-0-5 knockouts), title contender Oscar Negrete and the young pugilist will be exchanging blows with Irish heralded

Olympian Michael Conlan on Friday 11/10 at Legendz Boxing in Norwalk California not to be confused with Legends Boxing in Utah.

During our two brief telephone chats, he told me his favorite two fighters are Floyd Mayweather Jr. and Vasyl Lomachenko, two great ring role models to have. Trainer & manager Benavidez told me that the kid is very dedicated to the sport and has all the tools to become a champion. And he has learned from his mistakes in life that gives him a new lease on life. After hearing his story, it's hard not to root for him; big day for Jose on 12/9, stay tuned.

Casino Del Sol: I went to Tucson, Arizona on Halloween day to cover a Golden Boy weigh-in at Casino Del Sol followed by a 6 bout fight night on Thursday November 1. The Casino & Resort is rated 4 stars by Forbes and after a two day visit, I would suggest a five star rating and keep in mind, I rarely rave about the quality of my lodging; of course, I have stayed in some pretty shabby accommodations during my 40 plus years as a journalist. After being treated so royally, I may stay away from hostels.

My room rate was reasonable and the Buffet at the Fiesta Cafeteria was very good; but I wouldn't recommend the cheesecake. Maria my server, on 3 occasions, was excellent as were my servers at Moby's café in the casino.

I arrived at the Casino/Resort at 11:10 on weigh-in day and immediately headed for the site of the event (Paradiso Lounge) where I spotted Tucson fighter Christopher Gonzalez and his good natured team. I immediately joined Christopher and asked him about his opponent Jesus Arevalo (2-1) from Sierra Vista Arizona. Chris told me the two had sparred in the past when he was a different fighter and he was confident he would defeat

Arevalo. The Sierra Vista told me the same story and made the same prediction: victory!

Only one can win and the victor was Gonzales (1-0) who scored often enough with body shots to earn a unanimous decision over Arevalo who made the fight interesting.

I talked to Gonzalez after the fight and asked him the cuts (above the right eye) resulting from 2 head butts would alter his fight schedule and he said no. His manager asked me what I thought about his performance and we both agreed that the crowd loved the actin but the fight was a bit sloppy a C grade would be fair. I think Gonzales has good power but his defense was porous and he tired in the final 4th round. He will only get better and I like his demeanor outside the ring and his grit inside the ring. In a post-fight chat, the young fighter was asked to fight at the casino 7 more times at the venue, I couldn't verify the claim or the next Casino Del fight date; but a win is a good way to start a career.

After lunch, I was escorted to Cesar Alan Valenzuela's room and we had a 15 minute conversation about his next day fight with Ryan Garcia, the current Junior NABF super featherweight title holder and Cesar seemed confident at the time; but, his manager (Gilbert) dominated the conversation and predicted an upset. Unfortunately Garcia manhandled the likeable Valenzuela and the contest was stopped in the third after Garcia had his way with power shots from the right hand and several vicious left hooks. Garcia (12-0-11 knockouts) is the real deal and I expect the 19 year old to fight for a world title within 2 years. He does need to improve his head movement and develop more lateral movement. His speed and power is incredible.

On Thursday morning, fight day, I left my room early and headed for breakfast at Molby's Café where I spotted headliner Jesus Soto Karass (28-13-4)in a booth with his manager Francisco

Espinoza. I went over to wish Soto good luck and was invited by Soto to join him and his manager for breakfast. I wasn't allowed to pay for my breakfast even though I insisted, really!

Soto & Espinosa have been together since the beginning of his fighter's career and the two men interact well together. Both men are easy to talk to although Soto feels more comfortable speaking in Spanish. Francisco is a movie buff and enjoys westerns.

Somehow we began talking about that genre of film and he was able to recall scenes from movies and he also told me he owns a Mexican Fish Restaurant in Phoenix on 59th Avenue & Indian School. Francisco served in the US military and exercised his GI benefits to help his daughter who is very successful in her own right.

It was a very amicable conversation. Soto brought up his father's boxing career. Jose Luis Soto lost more than he won; but he did fight the great Salvador Sanchez and other champion caliber fighters. Soto told me his father let him make his own decisions about his career. I asked if his possible retirement would end the Soto boxing legacy and he said his youngest son (3 years old) showed boxing instincts but he wouldn't encourage or discourage him from boxing.

I asked him if the fight with Jesus Carlos Abreu (20-3-19 knockouts) was his last fight and he said all things must come to end and he told me he is already promoting fights so the knockout loss to Abreu won't end his involvement with boxing. He said he would take a few days off and addresses his ring future. Despite his loss, the veteran fighter was mobbed by fans seeking picture or autograph from the popular fighter who enjoys a cult like following although he has never won a world title.

Espinosa manages Antonio Margarito and I asked him about the rumors that the former world champion was broke and was

forced to fight to stave off bankruptcy by continuing to fight. Mr. Espinoza told me the allegations were false and Antonio was still fighting because he enjoys the sport.

I was ringside when Abreu knocked out Soto in the 8th round and within 5 feet of Abreu when the Dominican Republic fighter confirmed to a fan (near the hotel elevator) that he hurt his right hand early in the third round. He asked his corner what he should do and he was told he had two hands so use the left. He did score with both hands in the 8th and final stanza. It was a gutsy performance for the game but out muscled Soto.

In a very entertaining bout, Journeyman Germain Meraz (from Mexico) did everything to win except fill out the scoreboards in his ferocious battle with Rafael Gramajo (9-1-2). At the end the battle was scored a majority draw and the fans roared their disapproval. In a word, Meraz (58-45-2- 35 knockouts) was robbed.

Pedro Melo (17-18-1 (8 knockouts) made a fight of it four rounds until Cesar Diaz (7-0-5 knockouts) tagged Melo with a barrage of punches that prompted the referee to stop the contest at 1:10 in the 5th round.

Robert Garcia protégé Hector Tanajara Jr. scored a unanimous victory over super featherweight Jesus Serrano with scores of 60-72 x 2 and 79-73. It was a fun night of boxing and I thank Sergio Diaz (Showdown Promotions) and Paco Damian (Paco Presents Boxing) for their hospitality and help with my coverage. The next date for boxing at Casino Del Sol is pending.

Boxing News: Phoenix middleweight Andrew Hernandez is training in Oregon (near Portland) with Jose Benavidez Sr. who told me that Andrew is ready for his fight with Mike Gavronski (24-2-1-15 knockouts) in a title bout on Saturday November 18

in Tacoma, Washington at the Emerald Queen Hotel & Casino. There are 5-6 fights planned for the card. At stake is the WBA-NABA Super Middleweight Title. Their boxing duel is advertised as the "Battle at the Boat 113" in the I-5 Tacoma Showroom. Ticket prices range is: \$30.00, \$50.00, \$75.00 & \$100.00.....Former featherweight champion Yuriorkis Gamboa will fight Jason Sosa in the televised opener to Kovalev vs. Shabrankskyy at MSG in the Big Apple on 11/25 televised on HBO (10:00 p.m. ET/PT. He replaces Robinson Castellanos who suffered an injury. This corner picks Kovalev....Trainer Joel Diaz spoke to ABNN recently in Tucson about Phoenix welterweight Alfredo Escarcega (3-0), a young boxer under his tutelage. Joel said if the young fighter doesn't begin to show more power, Alfredo may be looking for another line of work. I think Alfredo is a fine prospect and the statement was a bit harsh but Diaz is known for candid remarks.Phoenix boxing trainer Danny Riddell and local announcer Ralph Velez Jr. were at Casino Del Sol in Tucson on 11/1 to watch boxing. Both men were in the house when nationally known trainer Robert Garcia was handcuffed and escorted out of the boxing venue. He was not arrested nor put in a holding cell. I was told that he was given a ticket for disorderly conduct after an altercation with a fan that was sporting a black eye resulting from punches thrown by members Garcia's team. Mr. Garcia denies throwing any punches and the existence of an issued ticket wasn't confirmed by Casino Del Sol.....Arizona welterweight Abel Ramos (18-2-13 knockouts) is scheduled to fight Eudy Bernardo (23-2-17 knockouts) in a 6 round contest at the Winnavegas Casino & Resort in Sloan Iowa, a suburb of Sioux City. The event can be viewed on Facebook & BeIN Sports. The show is promoted by Roy Jones JR. Promotions. Bantamweight Max Ornelas (9-0) is the headliner with Randy Moreno (10-1) featured in the Co-Main. Crowd favorites Nathaniel Gallimore (19-1-16 knockouts) and Joshua Greer Jr. (14-1-6 knockouts) are on the

undercard; on paper, good show. I think the Ramos vs. Bernardo fight should have been the main event; but it isn't my nickel; the legendary Roy Jones Jr. will make an appearance.

More Stuff: Phoenix fighters Ryan Riddell and Luis Espinoza are talking trash on Facebook and both have issued challenges even though they fight at different weights.....Sebastian Mitry (F-1 Boxing) won a first place trophy at the Disorder by the Border smoker in San Luis Arizona on 11/2. Mitry was the only fighter from Maricopa County to participate in the event.....Tucson Fighter Christopher Gonzalez and his team handled themselves very well very well at the Casino Del Sol weigh-in and post-fight interviews; great group of guys.....Richard Soto, Chief of officials, USA Boxing LBC-AZ, need help with the weigh-in process at the Gene Lewis Invitational (11/09/-10-11) and volunteers are asked to call 602-702-7053....Sonny's 2nd Annual Masters Tournament (11/17-18)will be held at Sonny's Boxing, 108 E Western Avenue in Goodyear Arizona. Master's Champion Geoff Ronning will not compete this year; instead he will help with registration, etc. If interested in becoming a participant, call Sonny's boxing at 623-806-2421. Sorry, we don't have more details such as entry fees and weight divisions; perhaps, forthcoming! Finally, we hear that there will be a new applicant for a Arizona Boxing Promoter's license and he/she will try to coax Jesus "El Martillo" Gonzales into fighting one more time on a show that will be presented in the spring of 2018; tentative titles being bandied about for the proposed are: Final Round & One More Time". Tucson fighter Christopher Gonzalez planned to wear the flag of the Pascua Yaqui on his trunks when he fought at the Casino Del Sol in Tucson on November 1. His grandmother sewed on upside down and his management team took it off and ran to find a needle and thread. They found the thread but in a rushed attempt to sew the

flag on, the needle broke. Chris promises to have the tribal flag on his trunks if and when he fights at the casino again.

Rules Response: The Arizona Boxing/MMA Commission has submitted proposed rule changes and the public is invited to go online to a link (listed on the Arizona Boxing/MMA Commission website) and read and critique the document. On November 29 at 10 a.m., members of the Arizona Boxing Community are invited to attend the Monthly Commission meeting (1110 W. Washington Street in Phoenix) and discuss the proposed changes. Any further questions on how and where to find the notice of proposed rulemaking vsn be directed to Aiden Fleming, Department of Gaming at 602-255-3879.

It was a very painstaking effort rules drafting team (almost a year) and I can understand the writing teams sensitivity to any criticism and I appreciate the Gaming Department's tolerance of all non-supportive responses of the draft. In all fairness, I have heard from a few reads who think the some of the proposals are needed. In reality, we are talking about the livelihood of athletes, promoters, etc. and any change could affect their long range future.

In my role as a journalist and boxing writer, I thought it would be prudent and didactic to ask a number of men and women working within the Arizona Boxing Industry to thoroughly read the 39 page document and give me their honest and professional take on the proposals. I told persons I approached that I wouldn't print any critique that contained vulgar language or attacked anyone working as a representative of the Arizona Boxing/MMA Commission.

I had several volunteers; but I chose the review from Harvey Prezant, a distinguished member of the Arizona Boxing Community for more than 4 decades. He has served as a coach,

Judge, Inspector and USA boxing official. His contributions to the Gene Lewis and Broadway Boxing Club programs have produced multiple trophies and a deep and genuine appreciation from the young men and women he has served. Harvey is literate and an accomplished businessman and his boxing credentials are well respected.

Here is his personal evaluation of the proposed rule changes. I asked Harvey to present his critique clearly, simply and concisely; so, everyone could decipher the text without calling an attorney.

Arizona Boxing News & Notes: "Thank you for sending the 39 pages with the "Notices of Proposed Rulemaking. What I will submit to you will pertain only to the sport of boxing, as I am not involved in any way with other martial arts listed.

Page 2998 simply covers the proposed repeal of the past rules. Why the "agency" simply repealed the entirety of the past rules, rather than make corrections as needed, I have no idea. Therefore, studying the existing rules for repeal serves no purpose.

On page 3000, below item 8c, it states "a brief summary of information included in the economic, small business and consumer impact statement is included. Paragraph one states that licensing fees for corporate promoters, cut men, professional unarmed combatants, trainers, and seconds will not be increased. How can such a statement be made without including financial information past and present, including income and expense? This part of the presentation, which is open for all to read and question is incomplete and only raises more questions.

On page 3001, 11, b, it states, "The proposed rules will make such physical examinations mandatory under (certain

circumstances". The term, certain circumstances, makes the entirety of the subject suspect to meaning.

On page 3003, item 10(4-11) it states that Event Bond "MAY BE REQUIRED BY THE COMMISSION". The bond is protection for the venue, officials, combatants, and Commission. Under what circumstances would the commission not ask for a bond from the promoter?

Page 3004, item D speaks to the contracts of the combatants. They are now separate, with each combatant signing his own contract. I spent 30 years in business and never saw a contract where each person did not sign the same contract with each receiving copies.

Page 3008, item B 6, states the amateur combatant fee is \$10.00. I have to assume this covers martial arts other than boxing, as the commission has no authority over Amateur Boxing in Arizona.

All coagulants approved by the physician should be in writing so trainers may be prepared for corner work without feeling they have violated regulations.

Page 3016, item V 2. This part states tape may be used on the skin of the wrist. This is against the present policy of no layering (gauze tape). If tape is on the wrist, why not the back of hand to support bones and tendons that are often broken and torn in that location? I am in favor of tape put directly on the hand or over a pre-wrap product to protect the skin. Layering is not a problem nor is the amount of gauze or tape. Neither makes a boxer punch harder or endangers the opponent.

Page 3027 states the amount of gauze and tape allowed for all combatants. This needs to be adjusted as there is a huge difference between a 108 pounders hand and a 250 pound

heavyweight hands. This would appear to be quite obvious. The agency writing this needs to have experienced participants involved, along with a physician. Clearly, that is not the case here.

Page 3016, R19-2-D602. Boxing, item A 1. The ring shall be four sided, between 16 and 20 feet per side, with two feet outside the ropes. I personally have never seen a 16 foot long inside the ropes used. This size ring and a soft cover would be one sided in favor of the puncher as opposed to the boxer.

Page 3017, item D. Weight classes. Why is there no junior weight classes listed?

Page 3018, item 1. Method of judging. This speaks to the 10 point must system and includes information on "even" rounds. Personally, I judged a professional bout here in Arizona and called an even round. I was questioned by the Executive Director of the commission and told there should be no even rounds and that I had to change my score accordingly. How is the commission legally allowed to go directly against its' own rules and tell a judge what his score must be. In a commission meeting of officials, there were some who agreed that there should never be an even round. If that be the case, why have rules, if the commission and its' assignees have the right to ignore them.

The members of the agency writing this needs to be made up of experienced individuals directly involved in boxing, such as, managers, trainers, cut men, seconds and physicians.

I am paraphrasing, but utilizing words like "unless the commission feels otherwise" gives them carte blanche and makes the entire document appear weak".....Harvey Prezant! **Until Next Time!**

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 3. STATE BOXING AND MIXED MARTIAL ARTS

1. Identification of the proposed rulemaking

By statute, the Boxing and Mixed Martial Arts Commission is responsible for regulating certain unarmed-combat sports, including boxing, mixed martial arts, kickboxing, Muay Thai, and Toughman contests. Boxing regulations are currently split between Title 19, Chapter 2, Article 6, and Title 4, Chapter 3, Articles 1 through 4. Rules for regulation of unarmed combat disciplines other than boxing have not been adopted previously. Instead, there has been adoption of a substantive policy statement establishing rules for mixed martial arts. The proposed rules are a reengineered blueprint for consolidating the regulation of all forms of unarmed combat into one Title, Chapter, and Article of the Administrative Code. In Title 19, Chapter 2, the title of Article 6 will be amended from “State Boxing Administration” to “State Boxing and Mixed Martial Arts Commission: Administration of Unarmed Combat Sports,” to more correctly describe the authority of the Commission and the purpose of the rules. Parts will be introduced to separate areas of regulation. The proposed rules are designed to improve and clarify the Agency’s regulation of each unarmed-combat sport, with primary emphasis on the safety of unarmed combatants. For example, the proposed rules will add concussion-testing protocols and refine anti-doping regulations. The proposed rules are additionally designed to clarify administrative requirements for licensing and to comply with statutory requirements to adopt rules consistent with New Jersey’s rules governing the conduct of mixed martial arts.

Rules in Title 4, Chapter 3, Articles 1 through 4 (specifically R4-3-101 to R4-3-414 and Table 1) will be repealed in their entirety, with content being renumbered, amended, and consolidated into Title 19, Chapter 2, Article 6.

The amended rules will also increase licensing and event fees. Currently, the economic impact of laws and rules for the regulation of boxing and mixed martial arts include: licensing fees borne by contestants, promoters, trainers, seconds, matchmakers and various officials; regulatory fees pursuant to intergovernmental agreements with Native American communities; the cost of annual physicals, eye exams and blood tests paid by contestants; the costs of medical and accidental death insurance and annual surety bonds paid by boxing promoters; the officials' fees paid by promoters; and a 4% gross receipts sales tax on ticket sales for events held on non-Tribal lands. The 4% gross receipts sales tax provisions are found in the current Title 19, Chapter 2, Article 6.

All participants in unarmed combat sports, including promoters, trainers, managers, combatants, seconds, cutmen, referees, judges, timekeepers, and ringside physicians, must be licensed in Arizona under A.R.S. §§ 5-221 *et. seq.* The proposed rulemaking will not change this requirement, although the parameters for licensing will be clarified for the benefit of the regulated individuals. Under the proposed rulemaking, license fees will be slightly increased for several categories of licensees, because the fees currently charged are out-of-date and not in line with national standards. Event fees will be increased for the same reasons. For some licensees, license fees will either remain the same or will be reduced. Licensing fees for initial applicants will be waived if their income and other circumstances allow them to qualify for exemption. A new license fee for amateur Muay Thai sanctioning bodies is added to help govern amateur Muay Thai sanctioning bodies. Exhibitions are allowed by statute, but the Commission had not previously implemented rules to govern them. The new rules will enable the conduct of exhibitions and will set a new event fee for exhibitions.

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

The Commission and some licensees of the Commission will be directly affected by the proposed rulemaking. The public may be indirectly affected.

With regard to the direct impact of economic factors, the proposed rulemaking contemplates the following:

Title 4, Chapter 3, Articles 1 through 4:

All substantive content of the rules will be amended and incorporated into Title 19, Chapter 2, Article 6. Once that is accomplished, rules under Title 4, Chapter 3, Articles 1 through 4, will be repealed. There will be no economic impact arising from Title 4, Chapter 3, Articles 1 through 4, after the proposed rulemaking.

Title 19, Chapter 2, Article 6:

Once the proposed rulemaking is finalized, the following economic impacts will be in place:

- All promoters will now pay the same license fee of \$400, resulting in an increase of \$200 for individual promoters, but no increase for corporate promoters;
- The license fee for matchmakers is increased from \$100 to \$125;
- The license fee for managers is increased from \$50 to \$100;
- The license fee for inspectors, judges, referees, timekeepers, announcers and ringside physicians will increase from \$25 to \$30;
- The license fee for cutmen, professional unarmed combatants, trainers and seconds will stay the same, at \$25;
- The license fee for amateur unarmed combatants will be reduced from \$20 to \$10;
- The cost of medical exams of combatant licensees will be increased due to the new requirement for concussion baseline and review testing;
- A one-time licensing fee waiver will be allowed for all licensees whose yearly income falls below federal poverty levels;
- The event permit fees will be impacted as follows:

§ The event fee for non-live televised events with attendance of less than 5000

- persons will increase from \$500 to \$750;
- § The event fee for non-live televised events with attendance with more than 5000 persons, events that are streamed live on Internet broadcasts, or events that are live televised events, will increase from \$1000 to \$1500;
- § The event fee for events that are live televised events on cable or satellite television that include a recognized world title bout will increase from \$1500 to \$2000;
- § The event fee for events that are live pay-per-view events will increase from \$2000 to \$4000;
- A new fee of \$1000 has been added to approve Muay Thai sanctioning bodies.
 - A new fee of \$1000 has been added to approve Exhibitions.

3. Cost-benefit Analysis.

This analysis covers the costs and benefits of the proposed rulemaking affecting Title 4, Chapter 3, Articles 1 through 4 and Title 19, Chapter 2, Article 6.

Annual cost/benefit changes are designated as minimal when more than \$0 and less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater. A cost or benefit is listed as significant when meaningful or important and not readily subject to quantification.

Cost Benefit Analysis Matrix

Affected Person or Entity/Proposed Rule	Benefit	Cost	Description (Analysis based on FY2017 statistics)
<u>Commission/Racing Division</u> R19-2-C-603. License Fees	\$10,020	\$0	Substantial combined benefit - Estimated combined increase in revenue from additional licensing and event fees, resulting in a decrease in the subsidy from the racing industry. Figure obtained by multiplying affected licensees by proposed increases or decreases. See Section 6 and calculations below.

<u>Licensees</u> R19-2-C-603. License Fees (for Events)	\$0	\$7,500	Moderate combined cost and minimal individual cost - Estimated combined increase in event fees based on individual: <ul style="list-style-type: none"> • Increase in 24 promoters' event fees of \$250; • Increase in 3 promoters' event fees of \$500.
<u>Licensees</u> R19-2-C-603. License Fees	\$0	\$520	Minimal combined and individual cost - Estimated combined increase in licensing fees based on individual: <ul style="list-style-type: none"> • Increase of \$200 each in 4 promoters' licensing fees; • Increase of \$50 each in 3 managers' licensing fees; • Increase of \$25 each in 9 matchmakers' licensing fees; • Increase of \$5 each in the licensing fees of 67 inspectors, judges, referees, timekeepers, announcers, and physicians; and • Decrease of \$10 each in 99 amateurs' licensing fees.
<u>Licensees</u> R19-2-C609. Registration of Amateur Sanctioning Organizations: Requirements; Application; Fees; Revocation, Suspension or Setting Conditions	\$0	\$2000	Moderate combined and individual cost - Estimated combined increase representing individual addition of approval/registration fee of \$1000 each for 2 current amateur Muay Thai sanctioning bodies.
<u>Licensees</u> R19-2-D607. Exhibitions; Fee	\$0	\$0	Significant potential benefit to Commission and cost to promoters. No quantification can be estimated at this time of exhibition event fee. The Commission has no means to predict whether promoters will take advantage of this new income opportunity.
<u>Licensees</u> R19-2-C604. Licensing Requirements Related to Ability and Fitness	\$0	\$8,275	Moderate combined cost and minimal individual cost - potential combined cost to unarmed combatant licensees to cover baseline concussion testing, based on 331 individual licensees and an individual cost of \$25 each. Post-fight concussion testing cost may be higher, however, medical insurance provided by promoters should cover some of the cost of additional testing.

Totals	\$10,020.00	\$18,295.00
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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 rules.

It is predicted that there will be no direct increase in costs for the Commission, primarily because the proposed rules do not vary greatly from the existing rules with regard to licensing, processing of events, or conduct of boxing. The agency has already been implementing the proposed mixed martial arts rules under a substantive policy statement, so there will not be substantial change there.

The proposed rulemaking will not significantly increase the Commission's duties.

The Commission has two full-time employees dedicated to regulation of unarmed combat sports. It is not expected that additional personnel will be needed to implement and enforce the proposed rules, unless an increase in number of events is extreme. On the contrary, it is expected that the proposed regulations will assist the Commission staff to be able to regulate in a more efficient and effective manner.

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

Increases in licensing and event fees may slightly increase revenues to the state. The activities of the Commission produced revenue for the state in fiscal year 2017 in the approximate amount of \$143,000. It is estimated that the proposed rulemaking will result in approximately \$10,020 additional revenue to the state. The proposed rulemaking may beneficially affect the Racing Division, which is required to fund the Commission. If additional revenues are generated by the Commission, there will be a reduced financial burden on the Racing Division.

c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditure of employers who are

subject to the proposed rulemaking.

Businesses impacted by these rules will most likely be promoters who organize unarmed combat events or matchmakers who arrange pairings of contestants. Both promoters and matchmakers will be directly affected by increases in event and licensing fees, but should not experience significant effects on overall revenue or employment expense. These businesses have the capability of recouping any increased costs through sale of admission to events and sale of broadcasting rights. The general impact of more predictable regulation in unarmed combat sports should be positive for all licensees, including small businesses. The proposed amendments should improve efficiency and provide better predictability, uniformity, and ease of compliance as compared to the existing rules and practices. Feedback has been received to indicate that at least one promoter is reluctant to organize events in Arizona because of the lack of effective regulation of Muay Thai promoters and events. The proposed rulemaking will address this issue. Adding the availability of promoting exhibitions will provide another avenue for industry businesses to generate income.

d. Summary of Costs and Benefits.

The direct monetary benefits of the proposed regulations will flow primarily to the Commission, which is tasked with maintaining safety and integrity of the unarmed combat industry with the minimum number of staff. Amateur combatants will also receive monetary benefit from the proposed rulemaking, with a 50% reduction for amateur combatants' license fees.

The direct monetary cost is spread among licensees and will fall primarily on: (1) officials who are paid for their services, such as referees, inspectors, judges, timekeepers, announcers, and physicians; and (2) promoters, who can easily recapture the increases from sales of admission to events and sales of broadcasting rights. The increased cost of safety of combatants is designed by the proposed rulemaking to be borne by participants in the industry and not by the Commission. The Commission currently regulates 947 licensees. If the industry-wide cost increases listed in the Cost Benefit Analysis Matrix above (\$18,295) were apportioned, the cost increase per licensee

would amount to an approximate average expenditure of less than \$20, which the Commission proposes is an acceptable increase to achieve greater safety and more effective regulation.

It is difficult to assign a monetary figure to the benefits of increased safety and control of the conduct of contests, but the avoidance of the individual and public cost of long-term care for just one unarmed combatant who suffers a brain injury can be predicted to justify all of the increases proposed by the rulemaking.

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

Every unarmed combat event generates a great deal of general economic impact. Appropriate venues must be paid for. Event venues need box office, security, concessions, and facilities personnel. Revenues are generated by sales of admissions and sales of broadcasting rights. Events may spur an increase in hotel stays and sales of gasoline, merchandise, and food. Clearly, the effect on the local economy exists, but the proposed rulemaking is not expected to have any identifiable impact on private and public employment that was not already present under the current rules, unless the frequency of events increases under the new rules.

5. Probable impact of the proposed rulemaking on small business.

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

Some promoters who organize unarmed combat events and matchmakers who arranged pairings of fighters may qualify as small businesses, defined as “a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year.” A.R.S. § 41-1001. These businesses will be directly impacted by increases in event and/or licensing fees. The increases are in line with national averages and are justified by the goal of increased safety and clarity of regulation. *See Appendices A and B.*

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

It is not anticipated that any additional administrative costs will be incurred by businesses, but any compliance, such as increases in license and event fees, will impact all businesses, including small businesses.

c. A description of methods that may be used to reduce the impact on small businesses and reasons for the agency's decision to use or not use each method.

(i) *Less Stringent Compliance or Reporting Requirements.* With the exception of increased event and licensing fees, the proposed rulemaking is not designed to change the compliance and reporting requirements that already exist under the current rules. However, the following concessions were made:

- The event fee increase for smaller promoters is much less;
- The Commission may waive some requirements or approve variations from the rules under certain limited circumstances, which will help to protect against any unwarranted impact. Examples would be: waiver of medical examinations if the previous examinations have occurred recently; waiver of provision of a paramedic unit if adequate alternative medical facilities are readily accessible; and waiver of fees for initial applicants who demonstrate financial hardship and qualify for the exemption.

(ii) *Less Stringent Schedules and Deadlines.* Under the proposed rulemaking, provision has been made for waiver of deadline requirements if the Commission can accommodate a request for waiver.

(iii) *Consolidate or Simplify the Rule's Compliance and Reporting Requirements.* The proposed rulemaking is not designed to change the compliance and reporting requirements that already exist under the current rules. There has not been demonstrated any hardship for small businesses in following the current compliance and reporting requirements, and feedback has been received that indicates the Arizona system is preferred by industry participants over other jurisdictions.

(iv) *Establish performance standards for small businesses to replace design or operational standards in the rule.* This criteria does not apply to the regulation of unarmed combat sports. Any “performance standards” would be related to safety of combatants and the fairness of contests and those standards could not be waived.

(v) *Exempt small businesses from any or all requirements of the law.* The proposed rulemaking is designed to protect the integrity and fairness of the unarmed combat industry, and the safety of participants in that industry. The rules are not designed to burden any regulated person, including small businesses, with artificial and unnecessary requirements. Licensing is dependent on the fitness and integrity of the applicants. Approval of events is based on safety. The law governing the Commission does not even consider a prior criminal conviction to be an excluding factor for a license applicant unless the conviction is related to an unarmed combat sport and would affect the integrity of the industry. The Commission does not believe concessions can be made in its regulations that would reduce the requirements of safety and appropriate conduct. Further, the Commission does not believe it is feasible to allow licensing and event fees to remain at their current level. The current licensing and event fees are not in line with industry standards, and the Commission needs to work toward self-sufficiency, or at minimum, less dependency on the revenues produced by the racing industry. The budget of the Racing Division has been significantly cut. The proposed increase in licensing and event fees and medical expenses is modest and necessary. Further, the rules are designed to shift the burden of increased fees to those licensees who can best tolerate it. For example, one of the biggest impacts of the proposed rulemaking is the elimination of 50% of the amateur licensing fees.

An alternative possible method of raising revenue, which has been used by other jurisdictions to increase revenues, would be to impose a pay-per-view tax. This method cannot be adopted in the proposed rules because of lack of statutory authority. In addition, Arizona has not attracted a pay-per-view event to date, primarily because there are no venues in the area that are large enough to

support one.

A second alternative would be to increase the tax levy on attendance at unarmed-combat events. The current tax rate established by statute is 4% of the gross receipts of an event. A.R.S. § 5-104.02. This alternative also could not be implemented by regulatory rules. It would require statutory amendment, but if passed, it is contemplated that any increased costs would be passed on to the unarmed-combat consumer.

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

Increases in licensing and event fees may result in increases in the prices charged for admission to unarmed combat events for consumers or the general public. However, private persons and consumers will benefit from consistent regulation that ensures the integrity and safety of unarmed combat sports. One common complaint by the public is the lack of consistency or predictability in contest decisions. The proposed rulemaking will provide clear rules of conduct that detail how bouts should be scored.

6. Probable effect on state revenues.

This rulemaking is not anticipated to have a significant impact on state revenues or expenses. However, increases in event and licensing fees may provide slight additional revenue to the state. Based on the data from the 2017 fiscal year and taking into account planned increases and reductions for licensees, licensing revenues would only experience a net increase of approximately \$2,520. Most licensing fees come from professional and amateur unarmed combatants, trainers, and seconds. Those licensing fees are not scheduled to change or, in the case of amateurs, will be reduced.

Greater impact will be experienced as a result of event fee increases. Event fees for the 2017 fiscal year totaled approximately \$17,000. The same events if repeated under the proposed rules would

result in an increase of approximately \$7,500. That amount could be higher if promoters begin to utilize the ability to conduct exhibitions or pay-per-view events.

7. Less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

With the exception of statutory changes that might allow additional or new taxes on events, as discussed above, the Commission is unaware of any other less intrusive or less costly methods for achieving the purpose of the rulemaking. Because events result in much greater profits for promoters, the Commission increased event fees to a greater extent than licensing fees, which is less intrusive than raising licensing fees.

Both licensing and event fees must be kept current to maintain the needed degree of regulation. The proposed rulemaking will be consistent with fee standards throughout the unarmed combat industry. Unarmed combat sports are generally highly regulated in all jurisdictions in order to preserve the integrity of the sports, the safety of participants, and the protection of the public. Such regulation necessarily entails economic impact.

8. Description of any data on which the rule is based.

The Commission studied other jurisdictions to determine the industry standards for licensing fees.

See Appendices A and B.

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ARTICLE 1. EQUIPMENT

R4-3-101. The ring

The promoter is responsible for providing a safe ring in accordance with the following. The ring shall be 18 or 20 feet square and securely assembled. The floor shall be covered with shock absorbing padding, such as Ensolite or the equivalent. The padding shall be covered with tightly stretched clean canvas securely laced to the platform. Ring ropes shall be three or four in number, not less than one inch in diameter, and covered with soft material to avoid rope burns.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-102. Boxing gloves

The promoter is responsible for providing boxing gloves for contestants in accordance with the following. Gloves shall be eight ounces in weight for all divisions other than heavyweights, and ten ounces for heavyweights, and in sanitary, safe and good condition. The promoter shall keep on hand two extra sets of eight ounce gloves, and, when a heavyweight contest is scheduled, one extra set of ten ounce gloves. Gloves for main events shall be new and delivered to the Commission inspector with the packaging unbroken.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1)

R4-3-103. Hand bandages

- A. Contestants shall use soft surgical bandage not over two inches wide, and up to ten yards long, for each hand, held in place by not more than three feet of surgeon's adhesive tape for each hand. Tape shall not be applied on the knuckle part of the first. No substance may be applied to bandages or tape.
- B. Bandages and tape shall be applied in the dressing room in the presence of a Commission representative. A contestant has the right, upon giving due notice to the Commission representative in charge, to have one of his seconds witness the bandaging of his opponent's hands.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-104. Contestant's equipment

Each contestant has the duty to provide himself with appropriate hand bandaging, boxing trunks, robe, boxing shoes, abdominal guard, mouthpiece, water bottle, bucket, and towel for use during a contest.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-105. Dressing rooms

The promoter is responsible to provide contestants with dressing rooms or areas which shall be equipped with showers, be sanitary, safe, ventilated, and have sufficient benches.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

ARTICLE 2. WEIGH-IN AND EXAMINATION

R4-3-201. Weigh-in

The weigh-in shall be held on the day of the scheduled match between 8 and 12 hours before the first scheduled bout at a time and place approved by the Commission. It shall be supervised by a Commission representative. Promoters are required to contact the Commission at least 48 hours in advance of the weigh-in to make appropriate arrangements therefor.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-202. When contestants must appear

- A. Contestants must appear at the weigh-in and the failure to do so will disqualify a contestant from competing unless special circumstances exist.
- B. Contestants must appear at the arena at least one hour before the first scheduled contest on the card on which they will compete.
- C. Contestants scheduled to box ten rounds or more shall be present in the city of the scheduled contest at least 24 hours before the contest and make their presence known to the Commission.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-203. Physical examination, appearance, and weight

- A. Contestants will be physically examined at the weigh-in and will be re-examined within one hour before the first scheduled contest of the card on which they will compete. A contestant must satisfy the examining physician that he is in good physical condition and able to compete in the scheduled contest.

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- B.** Facial hair must be trimmed by the time of the weigh-in and must not be so long that it may create a hazard to safety or interfere with the conduct of the contest. Additional trimming may be required in the discretion of the Commission representative at the weigh-in.
- C.** A contestant who exceeds by more than one pound the weight prescribed by contract when weighed-in will be considered not to have complied with his contract. He will be permitted a second opportunity to make the weight within two hours if he has a reasonable excuse for not making the weight when first weighed.
- D.** Except in the heavyweight class, the following are impermissible differences in weight unless the approval of both contestants and the approval of the Commission is obtained: 10 pounds when the lighter contestant is more than 135 pounds, and 6 pounds when the lighter contestant is less than 135 pounds.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

ARTICLE 3. CONDUCT OF CONTESTS

R4-3-301. Fair blows and fouls

- A.** The only fair blow is one delivered with the padded knuckle part of the glove on the front or sides of the head and body above the belt.
- B.** All blows that are not fair as described in subsection (A) above are fouls. The following practices are also classified as fouls:
 1. Hitting an opponent who is down or in the process of getting up after being down.
 2. Holding an opponent with one hand and hitting with the other.
 3. Holding or maintaining a clinch after directed by the referee to break.
 4. Pushing or wrestling.
 5. Butting with the head or shoulder.
 6. Hitting on the break.
 7. Hitting after the bell has sounded ending the round.
 8. Any unsportsmanlike trick or action likely to cause injury to an opponent in the opinion of the referee.
 9. Refusal to obey the commands of the referee.
 10. Falling down intentionally.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-302. Intentional foul

- A.** The referee shall have discretion as to the penalty for fouling. He may direct the deduction of points and, in the case of persistent or major fouling, or where the foul incapacitates the victim of the foul from continuing, disqualify the wrongdoer. Normally, in the case of minor fouling, the referee should issue a warning before imposing a penalty. Penalties shall be imposed during or immediately after the round in which the foul occurs. The referee shall personally advise the corners and each judge of the points deducted immediately upon imposition of the penalty.
- B.** If a contestant is injured (e.g., cut) by an intentional foul but can continue, the referee shall notify the judges and the Commission representative at ringside that if the foul-inflicted injury is subsequently aggravated to the point that the injured contestant cannot continue, a technical win will be rendered in favor of the injured contestant if he is ahead on points, or the points are even, and a technical draw will be rendered if he is behind on points.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-303. Accidental foul

- A.** If a contestant is accidentally fouled (e.g., butted) so that he cannot continue, the referee shall stop the contest and a technical decision shall be rendered in favor of the contestant ahead on points. If the points are even, or if the butt occurs in the first three rounds, a technical draw shall be declared.
- B.** If a contestant is injured (e.g., cut) by an accidental foul but can continue, the referee shall notify the judges and the Commission representative at ringside that if the foul-inflicted injury is subsequently aggravated to the point that the injured contestant cannot continue, the contest will be stopped and a technical win will be rendered in favor of the contestant ahead on points. If the points are even, or if the stoppage occurs in the first three rounds, a technical draw shall be declared.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-304. Substances

- A.** No drugs or stimulants may be given to a contestant within 24 hours preceding or during a contest.
- B.** Only plain water may be administered to a contestant during a contest.
- C.** Coagulants such as adrenalin 1/1000, and others expressly approved by the ringside physician, may be used between rounds to stop bleeding of cuts. "Iron type" coagulants, such as Monsel's solution are absolutely prohibited.
- D.** Small amounts of vaseline may be used around the eyes.
- E.** Upon specific request of the Commission, a contestant shall provide a urine sample before and/or after a contest.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

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R4-3-305. Referee

- A. The referee shall have direction and control over contestants and their seconds during a contest subject to the governing laws and rules. He shall have final authority to decide if an injury is produced by a fair or foul blow and if an act is intentional or accidental. He shall have final authority to stop a contest when in his opinion a contestant is unfit to continue or otherwise cannot compete.
- B. In the case of a cut or other injury which the referee believes may be incapacitating, the referee may consult with the ringside physician before making a decision and may interrupt a round and have the clock stopped for this purpose.
- C. Where a contestant is incapacitated because of a foul, the referee has the discretion to interrupt a round and have the clock stopped to enable the contestant to recover.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-306. Knockdowns

- A. When contestant is considered knocked down. A contestant is considered down when any part of his body but his feet is on the floor, or he is on the ropes and unable to stand on his own, or he is knocked out of the ring.
- B. Counting. When the contestant is knocked down the referee shall order the opponent to the farthest neutral corner of the ring, pointing to the corner. The count shall begin by the timekeeper immediately upon the knockdown. The timekeeper, by audible counting and hand signaling, shall give the referee the correct one-second interval for his count. The referee shall pick up and audibly announce the passing of the seconds, accompanying the count with appropriate hand motions. The referee's count is the official count.
- C. Mandatory eight. A contestant who is knocked down shall not be allowed to resume boxing until the referee has finished counting eight. A contestant may take the count either on the floor or standing.
- D. Neutral corner. Should the contestant causing a knockdown fail to stay in the farthest neutral corner during the count, the referee shall cease counting until the contestant has returned to that corner. The referee shall then go on with the count from the point at which it was interrupted.
- E. Signaling. The referee shall wave both arms to indicate that a contestant has been counted out or cannot otherwise continue, and shall raise the hand of the opponent as the winner.
- F. No saving by bell. Except in the last round, there is no saving by the bell. If a contestant is knocked down during the last ten seconds of a round, the count shall continue after the end of the round as if the round was not ended. The one minute rest period will begin from the time he rises after the knockdown. If a contestant is knocked down during a round, and counted out after the end of a round, the knockout shall be considered as having taken place during the round which was last finished.
- G. Wipe gloves. Before a contestant resumes boxing after having been knocked, or having slipped, to the floor, the referee shall wipe any accumulated resin from the contestant's gloves before allowing the bout to resume.
- H. Three knockdowns. Except in championship contests, upon consent of both contestants and the Commission, when a contestant is knocked down for the third time in a round, the referee shall stop the contest and raise the hand of the opponent as the winner.
- I. Knocked out of ring. A contestant who is knocked or fallen out of the ring, may be helped back onto the ring apron by anyone except his manager or seconds. He has a total of 20 seconds to get into the ring and rise.
- J. Double knockout. A simultaneous double knockout shall be declared a technical draw.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-307. Conduct of seconds

- A. A contestant may have up to three seconds and shall designate to the referee which of them is the chief second. The chief second is responsible for the conduct of the assistant seconds.
- B. A second may not enter the ring or stand on the apron during the progress of a round. He may not administer aid to a contestant during a round. During an officially interrupted round, a second may stand on the apron only with the express permission of the referee.
- C. Seconds must remain seated outside the ring between the progress of a round and must comport themselves in such a way as not to interfere with the progress of a round. The referee has the discretion to disqualify a second whose conduct is interfering with the contest.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-308. Method of judging

- A. Three judges shall score all contests. Under special circumstances two judges and the referee may score. The method of judging shall be the 10-point must system. In this system the better contestant receives 10 points and his opponent proportionately less, but not less than 7 points. If the round is even, each contestant receives 10 pounds. A fraction of points may not be given. Points for each round shall be awarded immediately after the termination of the round and not subsequently changed. Judges shall sign their scorecards.
- B. The referee shall pick up the scorecards of the judges and then deliver the cards to the Commission representative assigned to check them for the mathematical accuracy. When the Commission representative has completed his checking he shall advise the announcer of the decision, and the announcer shall then inform the audience of the decision over the speaker system. The Commission representative shall stand at the ring apron when checking the scorecards.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

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R4-3-309. Failure to resume boxing after rest period

The failure to resume boxing after a rest period shall be considered as if a knockout occurred in the next round.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-310. Mouthpiece

- A. Mouthpieces knocked out or spit out during the course of a round shall not be replaced until it can be done without interfering with the advantage the aggressor may have. As soon as it can be properly replaced, the referee shall direct a second to wash the mouthpiece and the referee shall then replace it with all deliberate speed.
- B. A contestant who intentionally spits out his mouthpiece in an apparent attempt to cause the progress of a round to be interrupted is subject to penalty to be determined by a referee.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

ARTICLE 4. ADMINISTRATION

R4-3-401. Age and physical condition of boxer applying for license

- A. All contestants must have attained their eighteenth birthday before being licensed. No boxer over 32 years of age shall be granted a license except by special action of the Commission considering an applicant's demonstrated competence, status as a boxer and physical condition.
- B. Any boxer applying for a license or renewal thereof must be examined by a Commission physician and satisfy the Commission that he has the ability to compete.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1). Amended subsection A. effective December 31, 1984 (Supp. 84-6).

R4-3-402. Boxers injured

- A. At the conclusion of a contest, the ringside physician shall enter the ring and examine and tend to a contestant who has been knocked out or is otherwise injured. The seconds of the injured contestant must not interfere with the physician.
- B. Contestants who have been knocked down and out shall be kept in a prone position until they have recovered.
- C. A contestant who has been knocked out shall not be permitted to compete until 30 days has elapsed or until such later time as a Commission physician and the Commission shall determine. The term "knockout" as used herein includes technical knockout.
- D. A boxer who has been knocked out three consecutive times within the twelve month period preceding a scheduled contest will not be permitted to compete. The term "knockout" as used herein includes technical knockout.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-403. Time between bouts

Unless special approval is obtained from the Commission, if a contestant has competed anywhere in a contest of six rounds or less, he shall not be allowed to box until five days have elapsed. Ten days must elapse after a bout of more than six rounds.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-404. Duty of matchmakers

- A. Matchmakers are required to use due diligence to determine and report to the Commission in writing, on a form to be provided by the Commission, no later than 48 hours prior to a scheduled contest, the following information which is a predicate to licensing contestants and seconds:
 1. The true identity of contestants.
 2. The boxing record of contestants.
 3. The date and result of the last contest engaged in by the contestants.
 4. Whether contestants are under suspension from any boxing commission.
 5. The ability of the contestants to compete.
- B. Matchmakers will be held responsible for the making of mismatches. For the protection of boxers and the public, the persistent making of mismatches is ground for the suspension or revocation of a matchmaker's license.
- C. The cost of record checks to commissions in other states will be charged back to the promoter unless suitable provision therefor has been made in the Commission's budget or the promoter has supplied the Commission with the requisite information.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-405. Notice to the Commission of promotions; publicity

- A. A promoter's request to the Commission for reservation of a date shall be made as soon as possible and shall be deemed by the Commission to be a representation by the promoter of his good faith intention to actually hold the card on that date. A promoter is prohibited from requesting dates solely for the purpose of preempting the conduct of promotion by others on or near the scheduled date or for any other anti-competitive reason. A pattern of requesting and cancelling dates is prohibited.

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- B. The Commission's sanction of a card shall constitute a license to conduct, hold or give a boxing contest within the meaning of A.R.S. § 5-229.
- C. The Commission will not sanction the conduct of a card scheduled to take place within 72 hours before a previously sanctioned card in the same county, unless the second promoter compensates the first promoter or special circumstances exist. In order for a promoter to have a date protected by the Commission in accordance with this rule, he must have a commitment for an arena and a main event, and have advanced funds with respect to his scheduled card.
- D. Proof of contracts between main event contestants must be filed with the Commission at least 72 hours prior to the date of the contest and before such bout is given any publicity. Forty-eight hours notice to the Commission is required for preliminary events. Copies of all contracts, on a form approved by the Commission, must be complete and filed with the Commission no later than the weigh-in.
- E. Publicity for a scheduled card must be factual and not misleading to the public. Tickets shall be priced and available as represented to the public.
- F. The Commission will not sanction a scheduled card until the promoter discloses in writing all persons having a financial interest in the promotion and otherwise complies with these rules insofar as they apply to promoters.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-406. Payment of contestants

- A. All contestants shall be paid in full according to their contracts, and no part or percentage of their remuneration may be withheld except by order of an official of the Commission, nor shall any part thereof be returned through arrangement with the boxer or his manager to any matchmaker or promoter.
- B. Payment shall be made immediately after the contest or card under the supervision of a Commission representative.
- C. In cases where the Commission does not require a promoter's bond, the promoter shall execute an assignment in favor of the Commission of box office proceeds to the extent necessary to secure the payment of purses. Such assignment is a condition to the sanctioning of a card. When all contestants have been paid, the assignment shall be returned to the promoter and he shall be released therefrom.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-407. Selection and payment of officials

- A. The referee, judges, timekeepers, ringside physicians, and inspectors shall be selected by the Commission prior to the scheduled card and paid by a Commission representative, no later than immediately after the last scheduled contest in accordance with the Commission's fee schedule. The fee schedule shall be made known to the promoter before the scheduled card at such time as requested by the promoter.
- B. A promoter or contestant may protest the assignment of officials only upon specific grounds submitted to the Commission in writing prior to the start of the scheduled card.
- C. Referees shall be given a physician examination as determined by the ringside physician before officiating at a contest.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-408. Commission seating at contests

The promoter is to provide a table and contiguous front row seating for the three members of the Commission and the executive secretary in the middle of one side of the ring where no judge is seated. The promoter is also required to provide front row seating for three judges, two timekeepers (one counting for the knockdowns), and two ringside physicians. The promoter is further required to provide ten ringside seats selected by him in the area where the Commission is seated, and within eye view and earshot of the Commission, for deputies, inspectors, judges, referees, and other officials assigned to work the scheduled card.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-409. State championships

- A. The Commission may sanction a contest as one for a State championship where:
 1. One of the contestants is a bona fide resident of Arizona and the other is either
 - a. Also a bona fide resident of Arizona or,
 - b. A resident of California, Nevada, Texas, Utah, Colorado, or New Mexico, who has fought in Arizona at least two times within the twelve month period prior to the time the Commission's sanction is requested.
 2. The contestants are qualified to fight for a State championship by virtue of demonstrated boxing ability and record.
 3. The contestants make the weight for the pertinent weight classification at the weigh-in on the day of the contest.
- B. State championship contests shall be scheduled for twelve rounds.
- C. A contest may not be promoted as one for a State championship, or as a State championship elimination, without the prior consent of the Commission.
- D. State championships shall be defended in Arizona, as determined by the Commission, whenever a promoter shall offer a challenger qualified to fight under this rule and the purse offered to the champion is fair.
- E. The Commission may vacate a State championship title for violation of these rules.

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Historical Note
Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-410. Insurance for contestants

A promoter is required to provide insurance for each contestant who competes on his card for medical, surgical and hospital care for injuries sustained in the ring in the amount of \$1,000, with \$10 deductible, payable to the contestant as beneficiary, and for life insurance in the amount of \$2,500 in case of accidental death, resulting from injuries in the ring, payable to the contestant's designated beneficiary.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-411. Grounds for disciplinary action

- A. Disciplinary action shall include suspension of license, revocation of license, and such other action as may be appropriate under the circumstances.
- B. Grounds for disciplinary action are:
 1. Violation of these rules, which a licensee is obliged to know, or an order of the Commission.
 2. Violation of any of the provisions of Arizona Revised Statutes, Title 5, which a licensee is obliged to know.
 3. Breach of a boxer-promoter or boxer-manager contract.
 4. Where the licensee's conduct is lacking in honesty, ethics, or moral character so as to reflect discredit to boxing and thereby render disciplinary action consistent with the public interest and the purpose of Arizona Revised Statutes, Title 5, and these rules.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-412. Licensing

- A. A licensee is obliged to know that his license will expire on December 31 at midnight on the year of its issuance and he has the responsibility to apply for renewal prior to such expiration.
- B. A license will not be issued unless the applicant provides proof of his true identity, and other material information requested on the license application and otherwise required by the Commission.
- C. Expenses necessarily incurred by the Commission in the investigation of an applicant will be charged back to the applicant unless suitable provision therefor has been made in the Commission's budget.
- D. Absent special circumstances, there will be a minimum ten day waiting period prior to the approval of an application or a license as a promoter, matchmaker, or manager.
- E. A manager who is not a resident of Arizona, who comes into Arizona for the purpose of working the corner of his boxer, who is also not a resident of Arizona, need not obtain a manager's license. A second's license is sufficient.
- F. A licensed manager may act as a second.
- G. The licensing of the parties is a condition precedent to the making of a boxer-manager and boxer-promoter contract recognized by the Commission as valid. Such contracts shall be on a form approved by the Commission.

Historical Note

Adopted effective January 21, 1981 (Supp. 81-1).

R4-3-412.01. Licensing Time-frames

- A. Overall time-frame. The Commission shall issue or deny a license within the overall time-frames listed in Table 1 after receipt of the complete application. The overall time-frame is the total of the number of days provided for the administrative completeness review and the substantive review.
- B. Administrative completeness review.
 1. The applicable administrative completeness review time-frame established in Table 1 begins on the date the Commission receives the application. The Commission shall notify the applicant in writing within the administrative completeness review time-frame whether the application or request is incomplete. The notice shall specify what information is missing. If the Commission does not provide notice to the applicant, the license application shall be considered complete.
 2. An applicant with an incomplete license application shall supply the missing information within the completion request period established in Table 1. The administrative completeness review time-frame is suspended from the date the Commission mails the notice of missing information to the applicant until the date the Commission receives the information.
 3. If the applicant fails to submit the missing information before expiration of the completion request period, the Commission shall close the file, unless the applicant requests an extension. An applicant whose file has been closed may obtain a license by submitting a new application.
- C. Substantive review. The substantive review time-frame established in Table 1 begins after the application is administratively complete.
 1. If the Commission makes a comprehensive written request for additional information, the applicant shall submit the additional information identified by the request within the additional information period provided in Table 1. The substantive review time-frame is suspended from the date the Commission mails the request until the information is received by the Commission. If the applicant fails to provide the information identified in the written request the Commission shall consider the application withdrawn.
 2. The Commission shall issue a written notice granting or denying a license within the substantive review time-frame. If the application is denied, the Commission shall send the applicant written notice explaining the reason for the denial with citations to

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supporting statutes or rules, the applicant's right to seek a fair hearing, and the time period in which the applicant may appeal the denial.

Historical Note

Adopted effective October 8, 1998 (Supp. 98-4).

R4-3-413. Fees

- A.** Fees for the issuance of annual licenses for boxing and mixed martial arts shall be as follows:
1. Promoters:
 - a. Individual, \$200;
 - b. Corporation, partnership or other business entity, \$400.
 2. Matchmakers, \$100.
 3. Managers, \$50.
 4. Inspectors, judges, referees, announcers, and ringside physicians, \$25.
 5. Timekeepers, boxers, professional mixed martial arts competitors and their trainers and seconds, \$25.
 6. Amateur mixed martial arts competitors, \$20.
- B.** At the time an event request is submitted for Commission approval; the following fees for mixed martial arts and boxing events shall be paid to the Commission:
1. \$500.00 for non-live televised events at a venue seating 5000 persons or less;
 2. \$1000.00 for:
 - a. Non-live televised events at a venue seating more than 5000 persons;
 - b. Events streamed live for a charge on Facebook or other equivalent Internet broadcast;
 - c. Live televised events on cable or satellite television. (e.g., Friday Night Fights on ESPN); and
 3. \$1500.00 for live televised events on cable or satellite television that include a recognized world title bout (e.g., WBA, WBC, IBF, WBO, UFC, IBO).
 4. \$2000.00 for live pay-per-view events on cable or satellite television (e.g., HBO, Showtime).
 5. If an event has been previously approved by the Commission, at any time an event date change request is submitted for Commission approval, an additional fee of \$250.00 shall be paid to the Commission.
 6. The Executive Director may establish a fee not to exceed \$2000.00 for an event that is not within the categories set forth in subsections (1) through (4). If a fee is initially paid for a type of event and that event type later changes to a higher fee category, the promoter shall pay the difference in fees prior to the event date.

Historical Note

Former Section R4-3-43 adopted effective January 16, 1981 now renumbered as Section R4-3-413 effective January 21, 1981 (Supp. 81-1). Amended by exempt rulemaking at 17 A.A.R. 1483, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 19 A.A.R. 3578, effective September 12, 2013 (Supp. 13-4).

R4-3-414. Rehearing or review of decision

- A.** Except as provided in subsection (G), any party in a contested case before the Arizona State Boxing Commission who is aggrieved by a decision rendered in such case may file with the Arizona State Boxing Commission, not later than ten days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor. For purposes of this subsection a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at his last known residence or place of business.
- B.** A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Arizona State Boxing Commission. A response may be filed within ten days after service of such motion or amended motion by any other party. The Arizona State Boxing Commission may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- C.** A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:
1. Irregularity in the administrative proceedings of the agency or its hearing officer or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
 2. Misconduct of the Arizona State Boxing Commission or its hearing officer or the prevailing party;
 3. Accident or surprise which could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence which 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;
 7. That the decision is not justified by the evidence or is contrary to law.
- D.** The Arizona State Boxing Commission may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
- E.** Not later than ten days after a decision is rendered, the Arizona State Boxing Commission may on its own initiative order a rehearing or review of its decision for any reason for which it might have granted a rehearing on motion of a party. After giving the parties or

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their counsel notice and an opportunity to be heard on the matter, the Arizona State Boxing Commission may grant a motion for rehearing for a reason not stated in the motion. In either case the order granting such a rehearing shall specify the grounds therefor.

- F. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may within ten days after such service serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days by the Arizona State Boxing Commission for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.
- G. If in a particular decision the Arizona State Boxing Commission makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health and safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Arizona State Boxing Commission's final decisions.
- H. For purposes of this Section the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.
- I. To the extent that the provisions of this rule are in conflict with the provisions of any Statute providing for rehearing of decisions of the Arizona State Boxing Commission, such statutory provisions shall govern.

Historical Note

Adopted effective July 27, 1981 (Supp. 81-4).

Editor's Note: The following Section was adopted pursuant to an exemption from A.R.S. Title 41, Chapter 6 as specified in Laws 1992, Ch. 337, § 12. Exemption from Title 41, Chapter 6 means that the agency did not submit these rules for publication of notice of proposed rulemaking; the Governor's Regulatory Review Council did not review these rules; the agency was not required to hold public hearings on these rules; and the Attorney General has not certified these rules.

Table 1. Time-frames (Calendar days)

License	Statutory Authority (Title 4)	Administrative Completeness Review	Response to Completion Request	Substantive Completeness Review	Response to Additional Information	Overall Time-frame
Promoter, Matchmaker, Corporation, Manager, Judge, Referee	A.R.S. § 5-228 R4-3-412	35	10	30	7	65
Boxer, Boxers' Seconds, Trainer, Ring Announcer, Timekeeper, Physician	A.R.S. § 5-228 R4-3-412	10	10	30	14	40

Historical Note

Adopted effective October 8, 1998 (Supp. 98-4).

**GENERAL AND SPECIFIC STATUTES AUTHORIZING THE RULEMAKING
REGARDING THE TITLE 19 RULES, INCLUDING STATUTORY DEFINITIONS**

ARIZONA STATUTES

5-104. Arizona racing commission; director; department; powers and duties

A. The commission shall:

1. Issue racing dates.
2. Prepare and adopt complete rules to govern the racing meetings as may be required to protect and promote the safety and welfare of the animals participating in racing meetings, to protect and promote public health, safety and the proper conduct of racing and pari-mutuel wagering and any other matter pertaining to the proper conduct of racing within this state.
3. Conduct hearings on applications for permits and approve permits and shall conduct rehearings on licensing and regulatory decisions made by the director as required pursuant to rules adopted by the commission.
4. Conduct all reviews of applications to construct capital improvements at racetracks as provided in this chapter.
5. Adopt rules governing the proper and humane methods for the disposition and transportation of dogs by breeders, kennels or others.

B. The director shall license personnel and shall regulate and supervise all racing meetings held and pari-mutuel wagering conducted in this state and cause the various places where racing meetings are held and wagering is conducted to be visited and inspected on a regular basis. The director may delegate to stewards any of the director's powers and duties as are necessary to fully carry out and effectuate the purposes of this chapter. The director shall exercise immediate supervision over the department. The director is subject to ongoing supervision by the commission, and the commission may approve or reject decisions of the director in accordance with rules established by the commission.

C. The commission or the department is authorized to allow stewards, with the written approval of the director, to require a jockey, apprentice jockey, sulky driver, groom, horseshoer, outrider, trainer, assistant trainer, exercise rider, pony rider, starter, assistant starter, jockey's agent, veterinarian, assistant veterinarian, cool-out, security or maintenance worker, official or individual licensed in an occupational category whose role requires direct hands-on contact with horses, while on the grounds of a permittee, to submit to a test if the stewards have reason to believe the licensee is under the influence of or unlawfully in possession of any prohibited substance regulated by title 13, chapter 34.

D. The department shall employ the services of the office of administrative hearings to conduct hearings on matters requested to be heard by the director or the commission for the department except for those rehearings that are required by the terms of this chapter to be conducted by the

commission. Any person adversely affected by a decision of a steward or by any other decision of the department may request a hearing on the decision. The decision of the administrative law judge becomes the decision of the director unless rejected or modified by the director within thirty days. The commission may hear any appeal of a decision of the director in accordance with title 41, chapter 6, article 10.

E. The department may visit and investigate the offices, tracks or places of business of any permittee and place in those offices, tracks or places of business expert accountants and other persons as it deems necessary for the purpose of ascertaining that the permittee or any licensee is in compliance with the rules adopted pursuant to this article.

F. The department shall establish and collect the following licensing fees and regulatory assessments, which shall not be reduced for capital improvements pursuant to section 5-111.02:

1. For each racing license issued, a license fee.

2. From the purse accounts provided for in section 5-111, a regulatory assessment to pay for racing animal medication testing, animal safety and welfare.

3. From each permittee, a regulatory assessment for each day of dark day simulcasting conducted in excess of the number of live racing days conducted by the permittee.

4. From each commercial racing permittee, a regulatory assessment payable from amounts deducted from pari-mutuel pools by the permittee, in addition to the amounts the permittee is authorized to deduct pursuant to section 5-111, subsection B from amounts wagered on live and simulcast races from in-state and out-of-state wagering handled by the permittee.

G. The commission shall establish financial assistance procedures for promoting adoption of retired racehorses. The provision of financial assistance to nonprofit enterprises for the purpose of promoting adoption of retired racehorses is contingent on a finding by the commission that the program presented by the enterprise is in the best interest of the racing industry and this state. On a finding by the commission, the commission is authorized to make grants to nonprofit enterprises whose programs promote adoption of retired racehorses. The commission shall develop an application process. The commission shall require an enterprise to report to the commission on the use of grants under this subsection. Financial assistance for nonprofit enterprises that promote adoption of retired racehorses under this subsection shall not exceed the amount of retired racehorse adoption surcharges collected pursuant to this subsection. The commission shall collect a retired racehorse adoption surcharge in addition to each civil penalty assessed in connection with horse or harness racing pursuant to this article. The amount of the retired racehorse adoption surcharge shall be five percent of the amount collected for each applicable civil penalty.

H. A license is valid for the period established by the commission, but not to exceed three years, except for a temporary license issued pursuant to section 5-107.01, subsection F. The licensing period shall begin July 1.

I. On application in writing by an objector to any decision of track stewards, made within three days after the official notification to the objector of the decision complained of, the department

or administrative law judge shall review the objection. In the case of a suspension of a license by the track stewards, the suspension shall run for a period of not more than six months. Before the end of this suspension period, filing an application for review is not cause for reinstatement. If at the end of this suspension period the department or administrative law judge has not held a hearing to review the decision of the stewards, the suspended license shall be reinstated until the department or administrative law judge holds a hearing to review the objection. Except as provided in section 41-1092.08, subsection H, a final decision of the commission is subject to judicial review pursuant to title 12, chapter 7, article 6.

J. The commission or the director may issue subpoenas for the attendance of witnesses and the production of books, records and documents relevant and material to a particular matter before the commission or department and the subpoenas shall be served and enforced in accordance with title 41, chapter 6, article 10.

K. Any member of the commission, the administrative law judge or the director or the director's designee may administer oaths, and the oaths shall be administered to any person who appears before the commission to give testimony or information pertaining to matters before the commission.

L. The commission shall adopt rules that require permittees to retain for three months all official race photographs and videotapes. The department shall retain all photographs and videotapes that are used as evidence in an administrative proceeding until the conclusion of the proceeding and any subsequent judicial proceeding. All photographs and videotapes must be available to the public on request, including photographs and videotapes of races concerning which an objection is made, regardless of whether the objection is allowed or disallowed.

M. The director may establish a management review section for the development, implementation and operation of a system of management reports and controls in major areas of department operations, including licensing, work load management and staffing, and enforcement of this article and the rules of the commission.

N. In cooperation with the department of public safety, the director shall establish a cooperative fingerprint registration system. Each applicant for a license or permit under this article or any other person who has a financial interest in the business or corporation making the application shall submit to fingerprint registration as part of the background investigation conducted pursuant to section 5-108. The cooperative fingerprint registration system shall be maintained in an updated form using information from available law enforcement sources and shall provide current information to the director on request as to the fitness of each racing permittee and each racing licensee to engage in the racing industry in this state.

O. The director shall develop and require department staff to use uniform procedural manuals in the issuance of any license or permit under this article and in the enforcement of this article and the rules adopted under this article.

P. The director shall submit an annual report containing operational and economic performance information as is necessary to evaluate the department's budget request for the forthcoming fiscal year to the governor, the speaker of the house of representatives, the president of the senate

and the Arizona state library, archives and public records no later than September 30 each year. The annual report shall be for the preceding fiscal year and shall contain performance information as follows:

1. The total state revenues for the previous fiscal year from the overall pari-mutuel handle with an itemization for each horse racing meeting, each harness racing meeting, each advanced deposit wagering permittee and each additional wagering facility.
2. The total state revenues for the previous fiscal year from the regulation of racing, including licensing fees assessed pursuant to subsection F of this section and monetary penalties assessed pursuant to section 5-108.02.
3. The amount and use of capital improvement funds pursuant to section 5-111.02 that would otherwise be state revenues.
4. The number of licenses and permits issued, renewed, pending and revoked during the previous fiscal year.
5. The investigations conducted during the previous fiscal year and any action taken as a result of the investigations.
6. The department budget for the immediately preceding three fiscal years, including the number of full-time, part-time, temporary and contract employees, a statement of budget needs for the forthcoming fiscal year and a statement of the minimum staff necessary to accomplish these objectives.
7. Revenues generated for this state for the preceding fiscal year by persons holding racing meeting and advanced deposit wagering permits.
8. Recommendations for increasing state revenues from the regulation of the racing industry while maintaining the financial health of the industry and protecting the public interest.

Q. The commission may certify animals as Arizona bred or as Arizona stallions. The commission may delegate this authority to a breeders' association it contracts with for these purposes. The commission may authorize the association, racing organization or department to charge and collect a reasonable fee to cover the cost of breeding or ownership certification or transfer of ownership for racing purposes.

R. The department has responsibility for the collection and accounting of revenues for the state boxing and mixed martial arts commission, including licensing fees required by section 5-230, the levy of the tax on gross receipts imposed by section 5-104.02 and cash deposited pursuant to section 5-229. All revenues collected pursuant to this subsection, from whatever source, shall be reported and deposited pursuant to section 5-104.02, subsection C, except that licensing fees required by section 5-230 shall be deposited in the racing regulation fund established by section 5-113.01. The director shall adopt rules as necessary to accomplish the purposes of this subsection and chapter 2, article 2 of this title.

S. The commission may obtain the services of the office of administrative hearings on any matter that the commission is empowered to hear.

T. The department may adopt rules pursuant to title 41, chapter 6 to carry out the purposes of this article, ensure the safety and integrity of racing in this state and protect the public interest.

5-221. Definitions

In this article, unless the context otherwise requires:

1. “Boxing” means the act of attack and defense with the fists, using padded gloves, that is practiced as a sport. Where applicable, boxing includes kickboxing.
2. “Commission” means the Arizona state boxing and mixed martial arts commission.
3. “Contest” means any boxing or mixed martial arts bout, event, contest, match or exhibition between two persons.
4. “Department” means the department of gaming.
5. “Director” means the director of the department of gaming.
6. “Executive director” means the executive director of the commission.
7. “Kickboxing” means a form of boxing, including muay thai pursuant to rules and regulations of the United States muay thai association or another muay thai sanctioning body that is approved by the commission, in which blows are delivered with any part of the arm below the shoulder, including the hand, and any part of the leg below the hip, including the foot.
8. “Mixed martial arts” means any form of competition or contest, other than boxing or kickboxing, in which blows are delivered and in which the competitors use any combination of tactics including boxing, wrestling, striking, kicking, martial arts and submission techniques.
9. “Professional” means any person who competes for any money prize or a prize that exceeds the value of thirty-five dollars or teaches or pursues or assists in the practice of boxing or mixed martial arts as a means of obtaining a livelihood or pecuniary gain.
10. “Tough man contest” means any boxing match consisting of one minute rounds, between two or more persons who use their hands, wearing padded gloves that weigh at least twelve ounces, or their feet, or both, in any manner. Tough man contest does not include kickboxing or any recognized martial arts competition.

5-222. Application of this chapter

A. This chapter does not apply to any amateur boxing or mixed martial arts contest conducted by the following:

1. Any school, community college, college or university or an association or organization composed exclusively of schools, community colleges, colleges or universities when each contestant is a student enrolled in a school, community college, college or university. As used in this section, "school, community college, college or university" means every school, community college, college or university and every other school, community college, college or university determined by the state board of education, community college districts as defined in section 15-1401 or the Arizona board of regents to be maintained primarily for the giving of general academic education.
 2. A government unit or agency of the United States, this state or a subdivision of this state or a unit of the United States armed forces or the national guard if all contestants are members of that unit of the armed forces or the national guard.
 3. An amateur athletic program that is authorized by and sanctioned under the rules, regulations and policies of a national governing body that is recognized by the United States Olympic committee in which all contestants are amateur contestants.
 4. Kickboxing events that are sanctioned by and conducted under the direct supervision of the United States muay thai association or another muay thai sanctioning body that is approved by the commission if all contestants are amateur contestants.
 5. Any bona fide private school whose primary purpose is instruction and training in the martial arts, if:
 - (a) The contests held in conjunction with the instruction and training are amateur.
 - (b) The contests are of a sparring nature with no official decisions awarded.

© At least one contestant in each contest has been a member in good standing of the sponsoring private school for at least sixty continuous days before the contest.
 - (d) An admission fee or a mandatory donation or other form of payment is not charged for attendance.
 6. Any bona fide private school whose primary purpose is instruction in karate, if the contests held in conjunction with the instruction are amateur.
- B. An amateur mixed martial arts competitor shall not be licensed as a professional mixed martial arts competitor until the person has completed five or more verified amateur contests that are regulated by the commission or by a sanctioning body that is approved by the commission.

The five-contest requirement prescribed by this subsection may be waived by the commission or by the executive director.

5-224. Division of boxing and mixed martial arts regulation; powers and duties

A. A division of boxing and mixed martial arts regulation is established in the department to provide staff support for the Arizona state boxing and mixed martial arts commission. Subject to title 41, chapter 4, article 4, the director of the department shall appoint an executive director to perform the duties prescribed in this article. The resources for the Arizona state boxing and mixed martial arts commission shall come from monies appropriated to the department from the racing regulation fund established by section 5-113.01 or from other sources prescribed in section 5-225, subsection D.

B. The commission shall obtain from a physician licensed to practice in this state rules and standards for the physical examination of boxers and referees. A schedule of fees to be paid physicians by the promoter or matchmaker for the examination shall be set by the commission.

C. The commission may adopt and issue rules pursuant to title 41, chapter 6 to carry out the purposes of this chapter.

D. The commission shall hold regular meetings at least quarterly and in addition may hold special meetings. Except as provided in section 5-223, subsection B, all meetings of the commission shall be open to the public and reasonable notice of the meetings shall be given pursuant to title 38, chapter 3, article 3.1.

E. The commission shall:

1. Make and maintain a record of the acts of the division, including the issuance, denial, renewal, suspension or revocation of licenses.

2. Keep records of the commission open to public inspection at all reasonable times.

3. Assist the director in the development of rules to be implemented pursuant to section 5-104, subsection T.

4. Conform to the rules adopted pursuant to section 5-104, subsection T.

F. The commission may enter into intergovernmental agreements with Indian tribes, tribal councils or tribal organizations to provide for the regulation of boxing and mixed martial arts contests on Indian reservations. Nothing in this chapter shall be construed to diminish the authority of the department.

5-225. Regulation of boxing contests, tough man contests and mixed martial arts

A. All boxing contests are subject to the provisions of this chapter and to rules adopted pursuant to this chapter. The commission shall for every contest that is subject to regulation by the commission:

1. Direct a person authorized by the commission or by the executive director to be present.
2. Direct the person authorized to report results, including suspensions, to a national registry.

B. All tough man contests, including amateur tough man contests, are subject to the provisions of this chapter. Every contestant in a tough man contest shall wear headgear approved by the commission.

C. Mixed martial arts, including amateur mixed martial arts, are subject to the provisions of this chapter and to rules adopted pursuant to this chapter, including rules adopted for boxing that are not inconsistent with specific mixed martial arts contest provisions and rules. Contestants in mixed martial arts shall not strike other contestants in the spinal column or in the back of the head. The commission shall use rules for mixed martial arts that are consistent with the mixed martial arts unified rules adopted by the New Jersey state athletic control board under New Jersey administrative code title 13, chapter 46, subchapter 24A, except that a cage may have one entry door and have a vinyl or rubberized floor covering if approved by a representative of the commission. Nothing in this subsection prevents a promoter of a mixed martial arts event in this state from adopting more restrictive rules for that particular event than would otherwise be allowed. In addition to the applicable provisions of the mixed martial arts unified rules adopted by the New Jersey state athletic control board under New Jersey administrative code title 13, chapter 46, subchapter 24A, amateur mixed martial arts bouts shall consist of three rounds of three minutes per round and the amateur contestants shall not strike with elbows to the head of a grounded opponent, use twisting leg submissions, use linear kicks to the knee joint or use foot stomps. Amateur mixed martial arts bouts shall be clearly designated as such in all promotional materials and at the event.

D. The commission may establish a uniform nonrefundable fee for mixed martial arts and boxing events in an amount determined by the commission that shall be paid to the commission by a promoter when submitting an event application. In determining the amount of the fee, the executive director may consider factors including whether the event is televised, whether the event will be transmitted on pay-per-view, the amount of time likely to be expended in processing the event application and the complexity of the application. The commission may establish a nonrefundable fee that shall be paid to the commission by a promoter if the promoter submits a request to change a previously approved event date. Monies that are derived from the fees charged pursuant to this subsection and monies derived from intergovernmental tribal agreements shall be available to the commission for the administration and regulation of mixed martial arts and boxing, and those monies are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

E. Weigh-ins for all contests shall not be more than twenty-four hours before the scheduled time of the event or less than three hours before the scheduled time of the event. A representative of the commission shall attend and supervise all weigh-ins. The weigh-in period shall be one hour.

5-227. Jurisdiction of commission

A. The commission shall:

1. Except for the financial and accounting functions delegated to the director pursuant to section 5-104, have sole direction, management, control and jurisdiction over all boxing and mixed martial arts contests held within this state unless exempt from the application of this chapter by section 5-222.

2. Have sole control, authority and jurisdiction over all licenses required by this chapter.

B. The commission shall grant a license to an applicant if in the judgment of the commission the financial responsibility, experience, character and general fitness of the applicant are such that his participation is consistent with the public interest, convenience or necessity and the best interests of boxing and in conformity with the purposes of this chapter. The commission may delegate the commission's licensing authority to the commission's executive director.

5-228. Persons required to procure licenses; requirements; background information; fee; bond

A. All referees, judges, matchmakers, promoters, trainers, ring announcers, timekeepers, ringside physicians, inspectors, mixed martial arts contestants, boxers, managers and seconds are required to be licensed by the commission. The commission shall not permit any of these persons to participate in the holding of any contest unless the person has first procured a license.

B. Before participating in the holding of any boxing or mixed martial arts contest, a corporation, its officers and directors and any person holding twenty-five per cent or more of the ownership of the corporation shall obtain a license from the commission. Such a corporation must be authorized to do business under the laws of this state.

C. The commission shall require referees, judges, matchmakers, promoters and managers to furnish fingerprints and background information pursuant to section 41-1750, subsection G before licensure. The commission shall charge a fee for fingerprints and background information in an amount determined by the commission. The commission may require referees, judges, matchmakers, promoters and managers to furnish fingerprints and background information pursuant to section 41-1750, subsection G before license renewal if the commission determines the fingerprints and background information are necessary. The fee may include a reasonable charge for expenses incurred by the commission or the department of public safety. For such purpose the commission and the department of public safety may enter into an intergovernmental

agreement pursuant to title 11, chapter 7, article 3. The fee shall be credited pursuant to sections 35-148 and 41-1750.

D. Before the commission issues a license to a promoter, matchmaker or corporation, the applicant shall:

1. Provide the commission with a copy of any agreement between any contestant and the applicant that binds the applicant to pay the contestant a certain fixed fee or percentage of the gate receipts.
2. Show on the application the owner or owners of the applicant entity and the per cent interest if they hold twenty-five per cent or more interest in the applicant.
3. Provide the commission with a copy of the latest financial statement of the entity.
4. Provide the commission with a copy of the insurance contract required by this chapter.

E. Before the commission issues a license to a promoter, the applicant shall deposit with the department a cash bond or surety bond in an amount set by the commission. The bond shall be executed in favor of this state and shall be conditioned on the faithful performance by the promoter of the promoter's obligations pursuant to this chapter and the rules adopted pursuant to this chapter.

F. Before the commission issues a license to a boxer or a mixed martial arts contestant, the applicant shall submit to the commission the results of a current medical examination performed by a physician licensed pursuant to title 32, chapter 13 or 17 on forms furnished or approved by the commission. In addition to the medical examination, the following information must be submitted:

1. The results of an ophthalmological examination that is recorded on forms furnished or approved by the commission.
2. Negative test results for the human immunodeficiency virus, the hepatitis B surface antigen and the hepatitis C antibody.
3. For persons over the age of thirty-six years, the results of a stress test that is administered by a physician licensed pursuant to title 32, chapter 13 or 17 accompanied by a clearance letter and the results of an electrocardiogram that demonstrates normal cardiovascular function. These results shall be completed within twenty-four months before the person submits the license application.
4. For persons over forty years of age, if recommended by an examining physician, the results of a brain magnetic resonance imaging scan.

5. For female contestants, a pregnancy test that demonstrates a negative result. A pregnancy test that demonstrates a negative result shall also be submitted to the commission by a female contestant before each weigh-in.

6. Any other examination or testing ordered by the commission.

G. Unless otherwise prescribed in subsection F of this section, the medical examinations and tests prescribed in subsection F of this section must be completed after December 15 of the year before the year that the license is issued or before December 15 of the same year that the license is issued. All medical examinations and tests, license applications, national identification card applications, photographs and any other required documents must be completed and received by the commission staff no later than 4:30 p.m. on the day that begins forty-eight hours before the scheduled event. An exception to the forty-eight hour requirement prescribed in this subsection may be granted by the executive director if a person is a late substitute or is traveling from outside this state and demonstrates good cause for not meeting the forty-eight hour requirement.

5-229. Promoters; licenses; bond; proof of financial responsibility

A. The commission may in its discretion withhold the granting of a license to a promoter until the applicant furnishes proof of his financial responsibility to promote contests in accordance with section 5-104.02, subsection B and the rules adopted by the director. The commission may issue a license to conduct, hold or give boxing contests to any qualified person or to a corporation duly authorized to do business under the laws of this state.

B. In addition to the cash bond or surety bond required pursuant to section 5-228, subsection E, the commission may require a promoter to deposit with the department prior to each contest a cash bond or surety bond in an amount set by the commission as a guarantee for the fulfillment of the promoter's contract obligations for that contest, the payment of licenses and taxes on gross receipts of that contest and reimbursement to ticket purchasers if the contest is not held as advertised.

5-230. License fees; expiration; renewal

A. The commission may establish and issue annual licenses and may establish and collect fees for those licenses.

B. A license expires December 31 at midnight in the year of its issuance and may be renewed on filing an application for renewal of a license with the commission and payment of the license fee prescribed in subsection A. The application for renewal of a license shall be on a form provided by the commission. There is a thirty day grace period during which a license may be renewed if a late filing penalty fee equal to the license fee is submitted with the regular license fee. A licensee that files late shall not conduct any activity regulated by this chapter until the commission has

renewed the license. If the licensee fails to apply to the commission within the thirty day grace period the licensee must apply for a new license pursuant to subsection A.

5-231. Financial interest in boxer prohibited

A person shall not have, either directly or indirectly, any financial ownership interest in a boxer competing on premises owned or leased by the person, or in which the person is otherwise interested.

5-232. Age of participants

A person who is under eighteen years of age shall not participate in any boxing or mixed martial arts contest.

5-233. Contestants and referees; physical examination; attendance of physician; payment of fees; insurance

A. All boxers, mixed martial arts contestants and referees shall be examined by a physician licensed pursuant to title 32, chapter 13 or 17 before entering the ring, and the examining physician shall immediately file with the commission a written report of the examination. The physician's report of the examination shall include specific mention as to the condition of the boxer's or mixed martial arts contestant's heart and general physical condition. The physician's report may include specific mention as to the condition of the boxer's or mixed martial arts contestant's nerves and brain as required by the commission. The cost of the examination is payable by the person conducting the contest or exhibition. All boxers and mixed martial arts contestants shall receive a post-bout physical examination from a physician licensed pursuant to title 32, chapter 13 or 17 and may be suspended from participation in additional contests for a period of time based on the evaluation by the examining physician.

B. Every person holding or sponsoring any contest shall have in attendance at every contest regulated by the commission at least one physician who is licensed pursuant to title 32, chapter 13 or 17 and who is assigned by the commission or the executive director. The commission may establish a schedule of fees to be paid to each physician by the person or by the promoter.

C. The commission shall:

1. Require insurance coverage for a boxer to provide for medical, surgical and hospital care for injuries sustained in the ring in an amount of twenty thousand dollars with twenty-five dollars deductible and payable to the boxer as beneficiary.

2. Require life insurance for a boxer in the amount of fifty thousand dollars payable in case of accidental death resulting from injuries sustained in the ring.

D. The cost of the insurance required by this section and any deductible amount that exceeds twenty-five dollars is payable by the promoter.

5-235.01. Disciplinary action; grounds; civil penalty; emergency suspension; injunction

A. The commission may take any one or a combination of the following disciplinary actions:

1. Revoke a license.

2. Suspend a license.

3. Impose a civil penalty in an amount of not to exceed one thousand dollars per violation of this chapter.

B. The commission may take disciplinary action or refuse to issue or renew a license for any of the following causes:

1. Committing an act involving dishonesty, fraud or deceit with the intent to substantially benefit oneself or another or substantially injure another.

2. Advertising by means of known false, misleading, deceptive or fraudulent statements through any communication medium.

3. Violating this chapter or any rule adopted pursuant to this chapter.

4. Making oral or written false statements to the commission.

5. Failing to complete the license application as prescribed by the commission.

C. The commission may conduct tests for the use of alcohol and drugs determined by the commission to impair contestants. Notwithstanding any other provision of this article, the commission may immediately suspend the license, immediately revoke the license or immediately impose a civil penalty not to exceed five hundred dollars, or any combination of these actions, against a contestant who tests positive for alcohol and drugs, who refuses or fails to take a test for alcohol and drugs under rules adopted by the commission or who refuses or fails to take a test for alcohol and drugs after a test is requested by the commission or the executive director. All civil penalties assessed pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund. The rules adopted pursuant to this subsection may include appropriate definitions for drugs determined by the commission to impair contestants.

D. In case of emergency, a member of the commission, on his own motion or on the verified complaint of any person charging a violation of this chapter or of the rules promulgated by the commission, may suspend for a period of not to exceed ten days any license until final determination by the commission, if in his opinion the action is necessary to protect the public welfare and the best interests of boxing.

E. The commission, the attorney general or a county attorney may apply to the superior court in the county in which acts or practices of any person that constitute a violation of this chapter or the rules adopted pursuant to this chapter are alleged to have occurred for an order enjoining those acts or practices.

5-236. Violation; classification

A person is guilty of a class 2 misdemeanor and may be subject to license revocation, denial or suspension if the person:

1. Conducts, holds, sponsors, sanctions or gives boxing or other contests that are subject to regulation by the commission or participates in any contest that is subject to regulation by the commission without first having procured an appropriate license or approval as prescribed in this article.
2. Violates any provision of this chapter or any rule or regulation adopted pursuant to this chapter.

5-237. Selection of referees

The commission shall select and assign referees. The matchmaker may protest the assignment of a referee and in such event the commission shall furnish a list of all licensed referees within the state to the protesting matchmaker. The protesting matchmaker shall have the right to select another referee from such list.

5-238. Sham boxing; withholding a purse

A. The commission may withhold all or part of a purse or other monies payable to any contestant, manager or second if in the judgment of the commission a boxing contestant is participating in a sham or fake boxing contest or is otherwise not competing honestly or to the best of his ability.

B. If the commission withholds a purse or part of a purse or other monies the commission shall give notice to all interested parties and hold a hearing upon the matter within ten days.

C. If the commission determines that a contestant, manager or second is not entitled to a purse, part of a purse or other monies the promoter shall turn such monies over to the director to be applied pursuant to section 5-104.02, subsection C.

5-239. Judicial review

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

5-240. Reciprocity

Notwithstanding section 5-228, a person is entitled to receive a license under this chapter if he complies with the requirements of each of the following:

1. Submits to the commission under oath an application for a license on a form supplied by the commission.
2. Is licensed in another state in which the licensing requirements are at least substantially equivalent to those of this state and which grants similar reciprocal privileges to persons licensed under this chapter.
3. Pays the prescribed fees.

FEDERAL STATUTES

15 U.S.C.A. § 6301

§ 6301. Definitions

For purposes of this chapter:

(1) Boxer

The term “boxer” means an individual who fights in a professional boxing match.

(2) Boxing commission

(A)1 The term “boxing commission” means an entity authorized under State law to regulate professional boxing matches.

(3) Boxer registry

The term “boxer registry” means any entity certified by the Association of Boxing Commissions for the purposes of maintaining records and identification of boxers.

(4) Licensee

The term “licensee” means an individual who serves as a trainer, second, or cut man for a boxer.

(5) Manager

The term “manager” means a person who receives compensation for service as an agent or representative of a boxer.

(6) Matchmaker

The term “matchmaker” means a person that proposes, selects, and arranges the boxers to participate in a professional boxing match.

(7) Physician

The term “physician” means a doctor of medicine legally authorized to practice medicine by the State in which the physician performs such function or action.

(8) Professional boxing match

The term “professional boxing match” means a boxing contest held in the United States between individuals for financial compensation. Such term does not include a boxing contest that is regulated by an amateur sports organization.

(9) Promoter

The term “promoter” means the person primarily responsible for organizing, promoting, and producing a professional boxing match. The term “promoter” does not include a hotel, casino, resort, or other commercial establishment hosting or sponsoring a professional boxing match unless--

(A) the hotel, casino, resort, or other commercial establishment is primarily responsible for organizing, promoting, and producing the match; and

(B) there is no other person primarily responsible for organizing, promoting, and producing the match.

(10) State

The term “State” means each of the 50 States, Puerto Rico, the District of Columbia, and any territory or possession of the United States, including the Virgin Islands.

(11) Effective date of the contract

The term “effective date of the contract” means the day upon which a boxer becomes legally bound by the contract.

(12) Boxing service provider

The term “boxing service provider” means a promoter, manager, sanctioning body, licensee, or matchmaker.

(13) Contract provision

The term “contract provision” means any legal obligation between a boxer and a boxing service provider.

(14) Sanctioning organization

The term “sanctioning organization” means an organization that sanctions professional boxing matches in the United States--

(A) between boxers who are residents of different States; or

(B) that are advertised, otherwise promoted, or broadcast (including closed circuit television) in interstate commerce.

(15) Suspension

The term “suspension” includes within its meaning the revocation of a boxing license.

15 U.S.C.A. § 6302

§ 6302. Purposes

The purposes of this chapter are--

(1) to improve and expand the system of safety precautions that protects the welfare of professional boxers; and

(2) to assist State boxing commissions to provide proper oversight for the professional boxing industry in the United States.

15 U.S.C.A. § 6303

§ 6303. Boxing matches in States without boxing commissions

(a) No person may arrange, promote, organize, produce, or fight in a professional boxing match held in a State that does not have a boxing commission unless the match is supervised by a

boxing commission from another State and subject to the most recent version of the recommended regulatory guidelines certified and published by the Association of Boxing Commissions as well as any additional relevant professional boxing regulations and requirements of such other State.

(b) For the purpose of this chapter, if no State commission is available to supervise a boxing match according to subsection (a), then

(1) the match may not be held unless it is supervised by an association of boxing commissions to which at least a majority of the States belong; and

(2) any reporting or other requirement relating to a supervising commission allowed under this section shall be deemed to refer to the entity described in paragraph (1).

15 U.S.C.A. § 6304

§ 6304. Safety standards

No person may arrange, promote, organize, produce, or fight in a professional boxing match without meeting each of the following requirements or an alternative requirement in effect under regulations of a boxing commission that provides equivalent protection of the health and safety of boxers:

(1) A physical examination of each boxer by a physician certifying whether or not the boxer is physically fit to safely compete, copies of which must be provided to the boxing commission.

(2) Except as otherwise expressly provided under regulation of a boxing commission promulgated subsequent to October 9, 1996, an ambulance or medical personnel with appropriate resuscitation equipment continuously present on site.

(3) A physician continuously present at ringside.

(4) Health insurance for each boxer to provide medical coverage for any injuries sustained in the match.

15 U.S.C.A. § 6305

§ 6305. Registration

(a) Requirements

Each boxer shall register with--

(1) the boxing commission of the State in which such boxer resides; or

(2) in the case of a boxer who is a resident of a foreign country, or a State in which there is no boxing commission, the boxing commission of any State that has such a commission.

(b) Identification card

(1) Issuance

A boxing commission shall issue to each professional boxer who registers in accordance with subsection (a), an identification card that contains each of the following:

- (A) A recent photograph of the boxer.
- (B) The social security number of the boxer (or, in the case of a foreign boxer, any similar citizen identification number or professional boxer number from the country of residence of the boxer).
- (C) A personal identification number assigned to the boxer by a boxing registry.

(2) Renewal

Each professional boxer shall renew his or her identification card at least once every 4 years.

(3) Presentation

Each professional boxer shall present his or her identification card to the appropriate boxing commission not later than the time of the weigh-in for a professional boxing match.

(c) Health and safety disclosures

It is the sense of the Congress that a boxing commission should, upon issuing an identification card to a boxer under subsection (b)(1), make a health and safety disclosure to that boxer as that commission considers appropriate. The health and safety disclosure should include the health and safety risks associated with boxing, and, in particular, the risk and frequency of brain injury and the advisability that a boxer periodically undergo medical procedures designed to detect brain injury.

15 U.S.C.A. § 6306

§ 6306. Review

(a) Procedures

Each boxing commission shall establish each of the following procedures:

- (1) Procedures to evaluate the professional records and physician's certification of each boxer participating in a professional boxing match in the State, and to deny authorization for a boxer to fight where appropriate.

(2) Procedures to ensure that, except as provided in subsection (b), no boxer is permitted to box while under suspension from any boxing commission due to--

- (A) a recent knockout or series of consecutive losses;
- (B) an injury, requirement for a medical procedure, or physician denial of certification;
- (C) failure of a drug test;
- (D) the use of false aliases, or falsifying, or attempting to falsify, official identification cards or documents; or
- (E) unsportsmanlike conduct or other inappropriate behavior inconsistent with generally accepted methods of competition in a professional boxing match.

(3) Procedures to review a suspension where appealed by a boxer, licensee, manager, matchmaker, promoter, or other boxing service provider, including an opportunity for a boxer to present contradictory evidence.

(4) Procedures to revoke a suspension where a boxer--

- (A) was suspended under subparagraph (A) or (B) of paragraph (2) of this subsection, and has furnished further proof of a sufficiently improved medical or physical condition; or
- (B) furnishes proof under subparagraph (C) or (D) of paragraph (2) that a suspension was not, or is no longer, merited by the facts.

(b) Suspension in another State

A boxing commission may allow a boxer who is under suspension in any State to participate in a professional boxing match--

- (1) for any reason other than those listed in subsection (a) if such commission notifies in writing and consults with the designated official of the suspending State's boxing commission prior to the grant of approval for such individual to participate in that professional boxing match; or
- (2) if the boxer appeals to the Association of Boxing Commissions, and the Association of Boxing Commissions determines that the suspension of such boxer was without sufficient grounds, for an improper purpose, or not related to the health and safety of the boxer or the purposes of this chapter.

15 U.S.C.A. § 6307

§ 6307. Reporting

Not later than 48 business hours after the conclusion of a professional boxing match, the supervising boxing commission shall report the results of such boxing match and any related suspensions to each boxer registry.

15 U.S.C.A. § 6307a

§ 6307a. Contract requirements

Within 2 years after May 26, 2000, the Association of Boxing Commissions (ABC) shall develop and shall approve by a vote of no less than a majority of its member State boxing commissioners, guidelines for minimum contractual provisions that should be included in bout agreements and boxing contracts. It is the sense of the Congress that State boxing commissions should follow these ABC guidelines.

15 U.S.C.A. § 6307b

§ 6307b. Protection from coercive contracts

(a) General rule

(1)(A) A contract provision shall be considered to be in restraint of trade, contrary to public policy, and unenforceable against any boxer to the extent that it--

(i) is a coercive provision described in subparagraph (B) and is for a period greater than 12 months; or

(ii) is a coercive provision described in subparagraph (B) and the other boxer under contract to the promoter came under that contract pursuant to a coercive provision described in subparagraph (B).

(B) A coercive provision described in this subparagraph is a contract provision that grants any rights between a boxer and a promoter, or between promoters with respect to a boxer, if the boxer is required to grant such rights, or a boxer's promoter is required to grant such rights with respect to a boxer to another promoter, as a condition precedent to the boxer's participation in a professional boxing match against another boxer who is under contract to the promoter.

(2) This subsection shall only apply to contracts entered into after May 26, 2000.

(3) No subsequent contract provision extending any rights or compensation covered in paragraph (1) shall be enforceable against a boxer if the effective date of the contract containing such

provision is earlier than 3 months before the expiration of the relevant time period set forth in paragraph (1).

(b) Promotional rights under mandatory bout contracts

No boxing service provider may require a boxer to grant any future promotional rights as a requirement of competing in a professional boxing match that is a mandatory bout under the rules of a sanctioning organization.

(c) Protection from coercive contracts with broadcasters

Subsection (a) of this section applies to any contract between a commercial broadcaster and a boxer, or granting any rights with respect to that boxer, involving a broadcast in or affecting interstate commerce, regardless of the broadcast medium. For the purpose of this subsection, any reference in subsection (a)(1)(B) to "promoter" shall be considered a reference to "commercial broadcaster".

15 U.S.C.A. § 6307c

§ 6307c. Sanctioning organizations

(a) Objective criteria

Within 2 years after May 26, 2000, the Association of Boxing Commissions shall develop and shall approve by a vote of no less than a majority of its member State boxing commissioners, guidelines for objective and consistent written criteria for the ratings of professional boxers. It is the sense of the Congress that sanctioning bodies and State boxing commissions should follow these ABC guidelines.

(b) Appeals process

A sanctioning organization shall not be entitled to receive any compensation, directly or indirectly, in connection with a boxing match, until it provides the boxers with notice that the sanctioning organization shall, within 7 days after receiving a request from a boxer questioning that organization's rating of the boxer--

(1) provide to the boxer a written explanation of the organization's criteria, its rating of the boxer, and the rationale or basis for its rating (including a response to any specific questions submitted by the boxer); and

(2) submit a copy of its explanation to the Association of Boxing Commissions.

(c) Notification of change in rating

A sanctioning organization shall not be entitled to receive any compensation, directly or indirectly, in connection with a boxing match, until, with respect to a change in the rating of a boxer previously rated by such organization in the top 10 boxers, the organization--

(1) posts a copy, within 7 days of such change, on its Internet website or home page, if any, including an explanation of such change, for a period of not less than 30 days; and

(2) provides a copy of the rating change and explanation to an association to which at least a majority of the State boxing commissions belong.

(d) Public disclosure

(1) Federal Trade Commission filing

A sanctioning organization shall not be entitled to receive any compensation directly or indirectly in connection with a boxing match unless, not later than January 31 of each year, it submits to the Federal Trade Commission and to the ABC--

(A) a complete description of the organization's ratings criteria, policies, and general sanctioning fee schedule;

(B) the bylaws of the organization;

(C) the appeals procedure of the organization for a boxer's rating; and

(D) a list and business address of the organization's officials who vote on the ratings of boxers.

(2) Format; updates

A sanctioning organization shall--

(A) provide the information required under paragraph (1) in writing, and, for any document greater than 2 pages in length, also in electronic form; and

(B) promptly notify the Federal Trade Commission of any material change in the information submitted.

(3) Federal Trade Commission to make information available to public

The Federal Trade Commission shall make information received under this subsection available to the public. The Commission may assess sanctioning organizations a fee to offset the costs it incurs in processing the information and making it available to the public.

(4) Internet alternative

In lieu of submitting the information required by paragraph (1) to the Federal Trade Commission, a sanctioning organization may provide the information to the public by maintaining a website on the Internet that--

- (A) is readily accessible by the general public using generally available search engines and does not require a password or payment of a fee for full access to all the information;
- (B) contains all the information required to be submitted to the Federal Trade Commission by paragraph (1) in an easy to search and use format; and
- (C) is updated whenever there is a material change in the information.

15 U.S.C.A. § 6307d

§ 6307d. Required disclosures to State boxing commissions by sanctioning organizations

A sanctioning organization shall not be entitled to receive any compensation directly or indirectly in connection with a boxing match until it provides to the boxing commission responsible for regulating the match in a State a statement of--

- (1) all charges, fees, and costs the organization will assess any boxer participating in that match;
- (2) all payments, benefits, complimentary benefits, and fees the organization will receive for its affiliation with the event, from the promoter, host of the event, and all other sources; and
- (3) such additional information as the commission may require.

15 U.S.C.A. § 6307e

§ 6307e. Required disclosures for promoters

(a) Disclosures to the boxing commissions

A promoter shall not be entitled to receive any compensation directly or indirectly in connection with a boxing match until it provides to the boxing commission responsible for regulating the match in a State a statement of--

- (1) a copy of any agreement in writing to which the promoter is a party with any boxer participating in the match;
- (2) a statement made under penalty of perjury that there are no other agreements, written or oral, between the promoter and the boxer with respect to that match; and
- (3)(A) all fees, charges, and expenses that will be assessed by or through the promoter on the boxer pertaining to the event, including any portion of the boxer's purse that the promoter will receive, and training expenses;
- (B) all payments, gifts, or benefits the promoter is providing to any sanctioning organization affiliated with the event; and

(C) any reduction in a boxer's purse contrary to a previous agreement between the promoter and the boxer or a purse bid held for the event.

(b) Disclosures to the boxer

A promoter shall not be entitled to receive any compensation directly or indirectly in connection with a boxing match until it provides to the boxer it promotes--

(1) the amounts of any compensation or consideration that a promoter has contracted to receive from such match;

(2) all fees, charges, and expenses that will be assessed by or through the promoter on the boxer pertaining to the event, including any portion of the boxer's purse that the promoter will receive, and training expenses; and

(3) any reduction in a boxer's purse contrary to a previous agreement between the promoter and the boxer or a purse bid held for the event.

(c) Information to be available to State Attorney General

A promoter shall make information required to be disclosed under this section available to the chief law enforcement officer of the State in which the match is to be held upon request of such officer.

15 U.S.C.A. § 6307f

§ 6307f. Required disclosures for judges and referees

A judge or referee shall not be entitled to receive any compensation, directly or indirectly, in connection with a boxing match until it provides to the boxing commission responsible for regulating the match in a State a statement of all consideration, including reimbursement for expenses, that will be received from any source for participation in the match.

15 U.S.C.A. § 6307g

§ 6307g. Confidentiality

(a) In general

Neither a boxing commission or1 an Attorney General may disclose to the public any matter furnished by a promoter under section 6307e of this title except to the extent required in a legal, administrative, or judicial proceeding.

(b) Effect of contrary State law

If a State law governing a boxing commission requires that information that would be furnished by a promoter under section 6307e of this title shall be made public, then a promoter is not required to file such information with such State if the promoter files such information with the ABC.

15 U.S.C.A. § 6307h

§ 6307h. Judges and referees

No person may arrange, promote, organize, produce, or fight in a professional boxing match unless all referees and judges participating in the match have been certified and approved by the boxing commission responsible for regulating the match in the State where the match is held.

15 U.S.C.A. § 6308

§ 6308. Conflicts of interest

(a) Regulatory personnel

No member or employee of a boxing commission, no person who administers or enforces State boxing laws, and no member of the Association of Boxing Commissions may belong to, contract with, or receive any compensation from, any person who sanctions, arranges, or promotes professional boxing matches or who otherwise has a financial interest in an active boxer currently registered with a boxer registry. For purposes of this section, the term "compensation" does not include funds held in escrow for payment to another person in connection with a professional boxing match. The prohibition set forth in this section shall not apply to any contract entered into, or any reasonable compensation received, by a boxing commission to supervise a professional boxing match in another State as described in section 6303 of this title.

(b) Firewall between promoters and managers

(1) In general

It is unlawful for--

(A) a promoter to have a direct or indirect financial interest in the management of a boxer; or

(B) a manager--

(i) to have a direct or indirect financial interest in the promotion of a boxer; or

(ii) to be employed by or receive compensation or other benefits from a promoter, except for amounts received as consideration under the manager's contract with the boxer.

(2) Exceptions

Paragraph (1)--

- (A) does not prohibit a boxer from acting as his own promoter or manager; and
- (B) only applies to boxers participating in a boxing match of 10 rounds or more.

(c) Sanctioning organizations

(1) Prohibition on receipts

Except as provided in paragraph (2), no officer or employee of a sanctioning organization may receive any compensation, gift, or benefit, directly or indirectly, from a promoter, boxer, or manager.

(2) Exceptions

Paragraph (1) does not apply to--

- (A) the receipt of payment by a promoter, boxer, or manager of a sanctioning organization's published fee for sanctioning a professional boxing match or reasonable expenses in connection therewith if the payment is reported to the responsible boxing commission; or
- (B) the receipt of a gift or benefit of de minimis value.

15 U.S.C.A. § 6309

§ 6309. Enforcement

(a) Injunctions

Whenever the Attorney General of the United States has reasonable cause to believe that a person is engaged in a violation of this chapter, the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order, against the person, as the Attorney General determines to be necessary to restrain the person from continuing to engage in, sanction, promote, or otherwise participate in a professional boxing match in violation of this chapter.

(b) Criminal penalties

(1) Managers, promoters, matchmakers, and licensees

Any manager, promoter, matchmaker, and licensee who knowingly violates, or coerces or causes any other person to violate, any provision of this chapter, other than section 6307a(b), 6307b, 6307c, 6307d, 6307e, 6307f, or 6307h of this title, shall, upon conviction, be imprisoned for not more than 1 year or fined not more than \$20,000, or both.

(2) Violation of antiexploitation, sanctioning organization, or disclosure provisions

Any person who knowingly violates any provision of section 6307a(b), 6307b, 6307c, 6307d, 6307e, 6307f, or 6307h of this title shall, upon conviction, be imprisoned for not more than 1 year or fined not more than--

(A) \$100,000; and

(B) if a violation occurs in connection with a professional boxing match the gross revenues for which exceed \$2,000,000, an additional amount which bears the same ratio to \$100,000 as the amount of such revenues compared to \$2,000,000, or both.

(3) Conflict of interest

Any member or employee of a boxing commission, any person who administers or enforces State boxing laws, and any member of the Association of Boxing Commissions who knowingly violates section 6308(a) of this title shall, upon conviction, be imprisoned for not more than 1 year or fined not more than \$20,000, or both.

(4) Boxers

Any boxer who knowingly violates any provision of this chapter shall, upon conviction, be fined not more than \$1,000.

(c) Actions by States

Whenever the chief law enforcement officer of any State has reason to believe that a person or organization is engaging in practices which violate any requirement of this chapter, the State, as *parens patriae*, may bring a civil action on behalf of its residents in an appropriate district court of the United States--

- (1) to enjoin the holding of any professional boxing match which the practice involves;
- (2) to enforce compliance with this chapter;
- (3) to obtain the fines provided under subsection (b) or appropriate restitution; or
- (4) to obtain such other relief as the court may deem appropriate.

(d) Private right of action

Any boxer who suffers economic injury as a result of a violation of any provision of this chapter may bring an action in the appropriate Federal or State court and recover the damages suffered, court costs, and reasonable attorneys fees and expenses.

(e) Enforcement against Federal Trade Commission, State Attorneys General, etc.

Nothing in this chapter authorizes the enforcement of--

- (1) any provision of this chapter against the Federal Trade Commission, the United States Attorney General, or the chief legal officer of any State for acting or failing to act in an official capacity;
- (2) subsection (d) of this section against a State or political subdivision of a State, or any agency or instrumentality thereof; or
- (3) section 6307b of this title against a boxer acting in his capacity as a boxer.

15 U.S.C.A. § 6310

§ 6310. Notification of supervising boxing commission

Each promoter who intends to hold a professional boxing match in a State that does not have a boxing commission shall, not later than 14 days before the intended date of that match, provide written notification to the supervising boxing commission designated under section 6303 of this title. Such notification shall contain each of the following:

- (1) Assurances that, with respect to that professional boxing match, all applicable requirements of this chapter will be met.
- (2) The name of any person who, at the time of the submission of the notification--
 - (A) is under suspension from a boxing commission; and
 - (B) will be involved in organizing or participating in the event.
- (3) For any individual listed under paragraph (2), the identity of the boxing commission that issued the suspension described in paragraph (2)(A).

15 U.S.C.A. § 6311

§ 6311. Studies

(a) Pension

The Secretary of Labor shall conduct a study on the feasibility and cost of a national pension system for boxers, including potential funding sources.

(b) Health, safety, and equipment

The Secretary of Health and Human Services shall conduct a study to develop recommendations for health, safety, and equipment standards for boxers and for professional boxing matches.

(c) Reports

Not later than one year after October 9, 1996, the Secretary of Labor shall submit a report to the Congress on the findings of the study conducted pursuant to subsection (a). Not later than 180 days after October 9, 1996, the Secretary of Health and Human Services shall submit a report to the Congress on the findings of the study conducted pursuant to subsection (b).

15 U.S.C.A. § 6312

§ 6312. Professional boxing matches conducted on Indian reservations

(a) Definitions

For purposes of this section, the following definitions shall apply:

(1) Indian tribe

The term “Indian tribe” has the same meaning as in section 5304(e) of Title 25.

(2) Reservation

The term “reservation” means the geographically defined area over which a tribal organization exercises governmental jurisdiction.

(3) Tribal organization

The term “tribal organization” has the same meaning as in section 5304(l) of Title 25.

(b) Requirements

(1) In general

Notwithstanding any other provision of law, a tribal organization of an Indian tribe may, upon the initiative of the tribal organization--

(A) regulate professional boxing matches held within the reservation under the jurisdiction of that tribal organization; and

(B) carry out that regulation or enter into a contract with a boxing commission to carry out that regulation.

(2) Standards and licensing

If a tribal organization regulates professional boxing matches pursuant to paragraph (1), the tribal organization shall, by tribal ordinance or resolution, establish and provide for the implementation of health and safety standards, licensing requirements, and other requirements relating to the conduct of professional boxing matches that are at least as restrictive as--

(A) the otherwise applicable standards and requirements of a State in which the reservation is located; or

(B) the most recently published version of the recommended regulatory guidelines certified and published by the Association of Boxing Commissions.

15 U.S.C.A. § 6313

§ 6313. Relationship with State law

Nothing in this chapter shall prohibit a State from adopting or enforcing supplemental or more stringent laws or regulations not inconsistent with this chapter, or criminal, civil, or administrative fines for violations of such laws or regulations.

G-1

DEPARTMENT OF ENVIRONMENTAL QUALITY (F-18-0106)

Title 18, Chapter 2, Articles 6, Emissions from Existing and New Nonpoint Sources; Article 8, Emissions from Mobile Sources (New and Existing); Article 12, Emissions Bank



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – FIVE-YEAR REVIEW REPORT

MEETING DATE: January 9, 2017

AGENDA ITEM: G-1

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

FROM: Council Staff

DATE : December 19, 2017

SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY (F-18-0106)
Title 18, Chapter 2, Articles 6, Emissions from Existing and New Nonpoint Sources; Article 8, Emissions from Mobile Sources (New and Existing); Article 12, Emissions Bank

COMMENTS ON THE FIVE-YEAR REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year review report from the Arizona Department of Environmental Quality (Department) covers 34 rules in A.A.C. Title 18, Chapter 2, Articles 6, 8, and 12. Article 6, related to emissions from existing and new nonpoint sources, contains 21 rules. Article 8, related to emissions from mobile sources, contains five rules. Article 12, related to the Emissions Bank, contains eight rules.

The Department indicates that the Article 6 and Article 8 rules are necessary to adhere to the Federal Clean Air Act (CAA), which requires states to enforce emission limitations for compliance with the National Ambient Air Quality Standards (NAAQS). According to the Department, the purpose of Article 6 is to classify and regulate any source of air contaminants that cannot be identified as a point source due to lack of an identifiable emission point or plume, while the purpose of Article 8 is to classify and regulate mobile sources which either move while emitting air contaminants or are frequently moved during the course of their utilization but are not classified as a motor vehicle, agricultural vehicle, or agricultural equipment.

The Department states that the Article 12 rules are necessary to comply with portions of the CAA that require states to implement a New Source Review (NSR) permitting program for the Prevention of Significant Deterioration (PSD) of ambient air quality from new major sources or major modifications to existing sources of a regulated pollutant. According to the Department, the purpose of the Emissions Bank is to provide a forum and administration for the generation, certification, utilization, and withdrawal of emissions bank credits among these sources.

In its 2012 five-year review report, the Department proposed action on many of the rules. Such actions were completed on two of the rules, Sections 610 and 610.01. Other actions have not been completed, either because of competing Department rulemaking priorities or because the Department has determined that some of the proposed actions are now unnecessary and/or improper.

Proposed Action

The Department intends to amend the following rules by December 2018:

- Section 602 – *Unlawful Open Burning*: Language should be added to improve consistency with federal rules.
- Section 604 – *Open Areas, Dry Washes, or Riverbeds*: Clarity, conciseness, and understandability issues should be addressed.
- Sections 605-609: A definition for “reasonable precautions” should be added.
- Section 609 – *Agricultural Practices*: A definition for “reasonable means” should be added.
- Section 610 – *Definitions for R18-2-610.01, R18-2-610.02, and R18-2-610.03*: Clarity, conciseness, and understandability issues should be addressed.
- Section 611 – *Definitions for R18-2-611.01, R18-2-611.02, and R18-2-611.03*: Clarity, conciseness, and understandability issues should be addressed.
- Section 612 – *Definitions for R18-2-612.01*: Clarity, conciseness, and understandability issues should be addressed.
- Section 613 – *Definitions for R18-2-613.01*: Clarity, conciseness, and understandability issues should be addressed.
- Sections 801 and 802: The EPA published a limited approval of the State Implementation Plan (SIP) submitted July 15, 1998 with deficiencies identified in R18-2-801 regarding restrictions on nonroad engines. The Department indicates that it is currently investigating to determine whether federal law preempts the language in the rules. The Department states that the Article 8 rules are still enforceable and there is no risk of a sanction under the CAA for a SIP.
- Section 804 – *Roadway and Site Cleaning Machinery*: Clarity, conciseness, and understandability issues should be addressed.
- Section 805 – *Asphalt or Tar Kettles*: Clarity, conciseness, and understandability issues should be addressed.
- Article 12: In 2017, pursuant to HB 2152, the legislature amended the existing emissions bank statute, A.R.S. § 49-410, to allow for new types of emission reduction credits to be deposited in the bank. The Department intends to adopt rules implementing these changes.

The Department intends to amend the following rules by December 2019:

- Sections 610.01, 610.02, 610.03, 611.01, 611.02, 611.03: Language should be added to make the rules more consistent with Maricopa County Rule 310.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to both general and specific authority for the rules. Of particular significance is A.R.S. § 49-422(B), which provides, in relevant part, that the Department “shall adopt rules requiring sources of air contaminants to monitor, sample or otherwise quantify their emissions of air pollution that may reasonably be attributable to such sources for air contaminants for which ambient air quality standards or emission standards or design, equipment, work practice or operational standards have been adopted....”

2. Summary of the agency’s economic impact comparison and identification of stakeholders:

The Department is the state agency responsible for protecting and enhancing public health and the environment in Arizona. The Department administers the state’s environmental laws and delegates federal programs to prevent air, water and land pollution and ensure cleanup.

The Department determines that the economic impacts of the most recent rule changes do not differ significantly from those described in the original economic impact statement. Furthermore, the Department determines that, overall, the rules are effective, clear, and minimally intrusive. Key stakeholders include the Department, the public, and businesses that are involved in construction, material handling, and large machinery.

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

The Department determined that the rules impose the least burden and costs to the regulated public to achieve the underlying regulatory objective.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Department indicates that it has not received any written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules’ clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. The Department indicates that, as noted above, Sections 604, 605, 606, 607, 608, 609, 610, 611, 611.01, 612, 613, 802, 804, and 805 are not fully clear, concise, and understandable.

In addition, as noted above, the Department indicates that Sections 801 and 802 may not be fully consistent with federal law, and Sections 602, 610.01, 610.02, 610.03, 611.01, 611.02, and 611.03 may not be fully consistent with Maricopa County rules.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Department indicates that the rules are enforced as written.

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

No. The Department indicates that the rules are not more stringent than any corresponding federal law.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Yes. The Department indicates that the rules that require the issuance of a regulatory permit, license or agency authorization comply with A.R.S. § 41-1037 because they are issued pursuant to Title V of the CAA. See A.R.S. § 41-1037(A)(6).

9. Conclusion

The Department intends to amend most of the rules in Articles 6 and 8 by December 2019. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends that the report be approved.



ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY



Douglas A. Ducey
Governor

Misael Cabrera
Director

November 28, 2017

Ms. Nicole A. Ong Colyer
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007

Re: Five-year Review Report for A.A.C. Title 18, Chapter 2, Articles 6, 8, and 12

Dear Nicole,

Pursuant to A.R.S. §41-1056 and A.A.C. R1-6-301, the Arizona Department of Environmental Quality (ADEQ) submits this five-year review report of Arizona Administrative Code (A.C.C.) Title 18, Chapter 2, Articles 6, 8, and 12 to the Arizona Governor's Regulatory Review Council (GRRC).

ADEQ proposes to take the following actions prior to the next five-year review report:

- Amend R18-2-602 to be more consistent with the Code of Federal Regulations (CFR) Title 40 §§ 60.2970 through 60.2974.
- Amend R18-2-610.01, -610.02, -610.03, -611.01, -611.02, and -611.03 to clarify jurisdictional authority over cleanup of track-out from agricultural operations onto Maricopa County roads.
- Amend R18-2-801, and -802 to be more consistent with Section 209(e) of the Federal Clean Air Act.
- Amend A.A.C. Title 18, Chapter 2, Article 12 to be more consistent with A.R.S. 49-410.

A more detailed description of proposed amendments is included in the enclosed five-year rule report. If you have any questions please contact Matt Ivers, Air Quality Division, at 602-771-6723, or at Ivers.Matthew@azdeq.gov.

Sincerely,

A blue ink signature of Bret H. Parke.

Bret H. Parke
Deputy Director

Enclosures (2)

FIVE-YEAR REVIEW REPORT FOR ARIZONA ADMINISTRATIVE CODE (A.A.C.),

TITLE 18, CHAPTER 2, ARTICLES 6, 8, & 12

(See A.R.S. § 41-1056 and A.A.C. R1-6-301)

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR POLLUTION CONTROL

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OVERVIEW OF THE FIVE-YEAR-REVIEW REPORT FOR A.A.C., TITLE 18, CHAPTER 2, ARTICLES 6, 8, & 12

Introduction

Pursuant to A.R.S. §41-1056 and A.A.C. R1-6-301, the Arizona Department of Environmental Quality (ADEQ) submits this five-year review report of Arizona Administrative Code (A.C.C.) Title 18, Chapter 2, Articles 6, 8, and 12 to the Arizona Governor's Regulatory Review Council (GRRC).

Articles 6 and 8 were originally promulgated by the Department of Health Services in 1979 under A.A.C. Title 9. Authority over these articles transferred to ADEQ in 1987 under A.A.C. Title 18. In 1993 Articles 6 and 8 were renumbered to their present location. These articles pertain to emissions from Nonpoint Sources (i.e., sources lacking an identifiable emission point) and Mobile Sources. Article 12 was promulgated in 2002 and pertains to the Emissions Bank.

ADEQ submitted the most recent five-year review report of Articles 6, 8, and 12 to GRRC on November 29, 2012. This five-year review report covers all new and updated rule information for Articles 6, 8, and 12 promulgated within the last five years.

Copies of the rule language, authorizing statutes, and the Economic Impact Statement (EIS) for Articles 6, 8, and 12 are attached.

Brief Summary of Reviewed Articles

Article 6, Emissions from Existing and New Nonpoint Sources, is necessary comply with Federal Clean Air Act §110(a)(2)(C) which requires states to enforce emission limitations in order to comply with the National Ambient Air Quality Standards (NAAQS). The purpose of Article 6 is to classify and regulate any source of air contaminants that cannot be identified as a point source due to lack of an identifiable emission point or plume.

Article 8, Emissions from Mobile Sources (New and Existing), is necessary comply with Federal Clean Air Act §110(a)(2)(C) which requires states to enforce emission limitations in order to comply with the National Ambient Air Quality Standards (NAAQS). The purpose of this article is to classify and regulate mobile sources which either move while emitting air contaminants or

are frequently moved during the course of their utilization but are not classified as a motor vehicle, agricultural vehicle, or agricultural equipment.

Article 12, Emissions Bank, exists to comply with Federal Clean Air Act §§ 110(a)(2)(A), 164, 165, 166, 167, 168, and 173, which require states to implement a New Source Review (NSR) permitting program for the Prevention of Significant Deterioration (PSD) of ambient air quality from new major sources or major modifications to existing sources of a regulated pollutant. The purpose of the Emissions Bank is to provide a forum and administration for the generation, certification, utilization, and withdrawal of emissions bank credits among these sources.

ARTICLE 6. EMISSIONS FROM EXISTING AND NEW NONPOINT SOURCES

A. Information that Is Identical for All Rules in A.A.C. Title 18, Chapter 2, Article 6, unless otherwise stated:

- 1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

The rules in A.A.C. Title 18, Chapter 2, Article 6 are authorized generally by §§ 49-104(A)(1), (10), 49-401, 49-404, 49-422(B), 49-424(4), and 49-425. Specific authorization for the rules are found at 49-457 and 49-501.

- 3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The rules in A.A.C. Title 18, Chapter 2, Article 6 are effective in achieving their individual objectives.

- 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.**

ADEQ believes the rules in A.A.C. Title 18, Chapter 2, Article 6 are consistent with state and federal statutes and other rules made by the agency. The statutes or rules used in determining consistency are as follows:

40 C.F.R. Part 51

Federal statute of SIP requirements.

A.R.S. §§ 49-104(A)(1), (10),
49-401, 49-404, 49-422(B), 49-

State statutes authorizing adoption of rules
and standards.

424(4), 49-425, 49-457, and
49-501.

A.R.S. § 49-104(A)(17)

State regulations adopted under Title 49 are “to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter” unless authorized by the legislature.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

ADEQ has analyzed the enforceability of its rules and believes the rules in A.A.C. Title 18, Chapter 2, Article 6 are being enforced and there are no major problems with enforcement.

6. Clarity, conciseness, and understandability of the rule.

ADEQ has analyzed the clarity, conciseness, and understandability of its rules, and unless otherwise stated in an individual rule analysis, concludes that the rules in A.A.C. Title 18, Chapter 2, Article 6 are clear, concise, and understandable. ADEQ has determined that minor technical fixes could be made to some of the rules as identified in Section B below.

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 rule is based on valid scientific or reliable principles or methods, and written allegations made in litigation or 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 result of the litigation or administrative proceedings.

No written criticisms were submitted to ADEQ for any of the rules in A.A.C. Title 18, Chapter 2, Article 6 within the last five years.

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.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 below for more information.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

No such analysis was submitted to ADEQ for any of the rules in A.A.C. Title 18, Chapter 2, Article 6 within the last five years.

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.

ADEQ conducted an internal survey and concluded that the benefits of the rules in A.A.C. Title 18, Chapter 2, Article 6 outweigh, within the State, the costs of the rules and impose the least burden and cost to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying regulatory objectives. The Ag BMP program, for example, requires the implementation of certain practices by commercial farming operations to control the amount of PM being admitted into the ambient air. The rules are designed to, and generally effective in, controlling emissions of the “criteria” pollutants subject to the NAAQS (or their precursors): particulate matter, nitrogen oxides, sulfur oxides, ozone, lead, and carbon monoxide. These pollutants require control because concentrations of the pollutants in the ambient air are known to cause serious health effects, including premature mortality, cardiovascular disease, and aggravated asthma. They are also known to cause serious public welfare effects such as crop deterioration, harm to wildlife and natural vegetation, and damage to man-made materials. ADEQ is not aware of any less costly or burdensome alternatives to satisfy the rules underlying objectives.

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.

No rule or definition in A.A.C. Title 18, Chapter 2, Article 6 is more stringent than corresponding federal law.

13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rules in A.A.C. Title 18, Chapter 2, Article 6 requiring the issuance of a regulatory permit, license, or agency authorization comply with A.R.S. §41-1037 because they qualify as an exception under A.R.S. §41-1037(A)(6).

B. Section by Section Analysis of Rules

R18-2-601. General

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

The objective of this rule is to establish the criteria necessary for the application of Article 6 to existing and new nonpoint sources.

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.

This rule does not generate any economic impact, in and of itself; therefore, no economic impacts have resulted from this section to date.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicated in the agency's previous five-year review report.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a

new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

No course of action is necessary for this rule at this time.

R18-2-602. Unlawful Open Burning

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

The objective of this rule is to define terms, determine the types of open burning that are unlawful, require a permit or annual report, create exemptions, and to establish the criteria for delegation of authority to other entities to issue open burning permits.

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.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to add a cross-reference to Article 3 and Article 5 and to possibly add language to be more consistent with the Code of Federal Regulations Title 40 §§ 60.2970 through 60.2974. Due to other rulemaking priorities and limited resources, ADEQ did not amend this rule.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a

new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ plans to submit final rulemaking to GRRC by the end of December, 2018 to add language to be more consistent the Code of Federal Regulations Title 40 §§ 60.2970 through 60.2974.

R18-2-603. Repealed

In October 1996, this section was deleted and replaced with Chapter 2, Article 15, Forest and Range Management Burns.

R18-2-604. Open Areas, Dry Washes, or Riverbeds

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

The objective of this rule is establish general standards for particulate matter emissions that are legally and practically enforceable from various activities performed in or related to open areas, vacant lots, dry washes or river beds.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable. However, this rule could be improved by changing the language from “or other acceptable means” to “or other means deemed acceptable by the Director” and providing definitions for “reasonable precautions” and “excessive amount of particulate matter.”

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.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to publish a Notice of Rulemaking Docket Opening (NDO) in March 2008 for R18-2-604, -605, -606, -607, -608, and -609, to correct apparent deficiencies in its own rules. This has not been done because after further evaluation ADEQ now believes the changes proposed in the previous five-year review are not necessary as the rules are still enforceable and there is no risk of a sanctions clock under the Federal Clean Air Act (CAA) §179(b) for State Implementation Plans.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2, Article 6, ADEQ will address the minor clarity issues noted above in the next rulemaking.

R18-2-605. Roadways and Streets

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

The objective of this rule is to establish the requirements necessary to reduce emission from dust-producing activities performed on roadways and streets that are legally and practically enforceable.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but could be improved by providing a definition for “reasonable precautions.”

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.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to publish a Notice of Rulemaking Docket Opening (NDO) in March 2008 for R18-2-604, -605, -606, -607, -608, and -609, to correct apparent deficiencies in its own rules. This has not been done because after further evaluation ADEQ now believes the changes proposed in the previous five-year review are not necessary as the rules are still enforceable and there is no risk of a sanctions clock under the Federal Clean Air Act (CAA) §179(b) for State Implementation Plans.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2, Article 6, ADEQ will address the minor clarity issues noted above in the next rulemaking.

R18-2-606. Material Handling

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

The objective of this rule is to establish work practice standards for activities related to the handling of materials that are likely to result in airborne dust.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but could be improved by providing a definition for “reasonable precautions.”

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.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to publish a Notice of Rulemaking Docket Opening (NDO) in March 2008 for R18-2-604, -605, -606, -607, -608, and -609, to correct apparent deficiencies in its own rules. This has not been done because after further evaluation ADEQ now believes the changes proposed in the previous five-year review are not necessary as the rules are still enforceable and there is no risk of a sanctions clock under the Federal Clean Air Act (CAA) §179(b) for State Implementation Plans.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2, Article 6, ADEQ will address the minor clarity issues noted above in the next rulemaking.

R18-2-607. Storage Piles

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

The objective of this rule is to establish work practice standards for activities involving storage piles.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but could be improved by providing a definition for “reasonable precautions.”

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.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to publish a Notice of Rulemaking Docket Opening (NDO) in March 2008 for R18-2-604, -605, -606, -607, -608, and -609, to correct apparent deficiencies in its own rules. This has not been done because after further evaluation ADEQ now believes the changes proposed in the previous five-year review are not necessary as the rules are still enforceable and there is no risk of a sanctions clock under the Federal Clean Air Act (CAA) §179(b) for State Implementation Plans.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2, Article 6, ADEQ will address the minor clarity issues noted above in the next rulemaking.

R18-2-608. Mineral Tailings

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

The objective of this rule is to establish a general work practice standard for particulate matter emissions from mineral tailing piles.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but could be improved by clarifying “reasonable precautions.”

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.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to publish a Notice of Rulemaking Docket Opening (NDO) in March 2008 for R18-2-604, -605, -606, -607, -608, and -609, to correct apparent deficiencies in its own rules. This has not been done because after further evaluation ADEQ now believes the changes proposed in the previous five-year review are not necessary as the rules are still enforceable and there is no risk of a sanctions clock under the Federal Clean Air Act (CAA) §179(b) for State Implementation Plans.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2,

Article 6, ADEQ will address the minor clarity issues noted above in the next rulemaking.

R18-2-609. Agricultural Practices

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

The objective of this rule is to establish a general work practice standard for regulating particulate matter emissions from agricultural activities outside the Phoenix metro and Yuma PM₁₀ planning areas.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but could be improved by clarifying “reasonable precautions” and “reasonable means.”

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.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to publish a Notice of Rulemaking Docket Opening (NDO) in March 2008 for R18-2-604, -605, -606, -607, -608, and -609, to correct apparent deficiencies in its own rules. This has not been done because after further evaluation ADEQ now believes the changes proposed in the previous five-year review are not necessary as the rules are still enforceable and there is no risk of a sanctions clock under the Federal Clean Air Act (CAA) §179(b) for State Implementation Plans.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a

new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2, Article 6, ADEQ will address the minor clarity issues noted above in the next rulemaking.

R18-2-610. Definitions for R18-2-610.01, R18-2-610.02, and R18-2-610.03

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

The objective of this rule is to establish the definitions necessary to implement R18-2-610.01, R18-2-610.02, and R18-2-610.03.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but could be improved by providing a measurable limit on the amount of dust allowed from agricultural activities and by limiting the amount of time a field qualifies as fallow before being required to be placed back into agricultural production. This rule could also be improved by clarifying whether an Agricultural Best Management Practice applies to an entire agricultural operation or to individual parts of an operation.

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.

This rule does not generate any economic impact, in and of itself; therefore, no economic impacts have resulted from this section to date.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ completed amendments to this rule pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 to address SB 1408 (Forty-ninth Legislature, Second Regular Session, 2010, Chapter 82, Section 1), which required the addition of best management practices for facilities under jurisdiction and control of an irrigation

district, including practices related to unpaved operation and maintenance roads, canals, and unpaved utility access roads.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2, Article 6, ADEQ will address the minor clarity issues noted above in the next rulemaking.

R18-2-610.01. Agriculture PM General Permit for Crop Operations; Maricopa County PM Nonattainment Area

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

The objective of this rule is to establish the agricultural Particulate Matter (PM) general permit and Agricultural Best Management Practices (Ag BMP) for regulated crop operations engaged in agricultural activities within the Maricopa County PM Nonattainment Area.

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.

This rule is generally consistent with state and federal statutes and other rules made by ADEQ. However, this rule could be more consistent with Maricopa County Rule 610.01 by clarifying jurisdictional authority over clean-up of track-out from agricultural operations onto Maricopa County roads.

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 most recent rulemaking for these rules was exempt from the provisions of Title 41, Chapter 6, Article 3 under session law at Laws 2011, Chapter 214 §4, at 21

A.A.R. 1156, effective July 2, 2015 and did not include an Economic, Small Business, and Consumer Impact Statement. This rulemaking changed the rule to only be applicable to the Maricopa County PM nonattainment area and made changes to the recordkeeping requirements. These changes may result in minor increases in costs applicable to commercial farmers but are unlikely to have any significant impact since commercial farmers were required to implement these practices and keep these types of records prior to the most recent rulemaking. The department presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached Economic Impact Statement as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ completed amendments to this rule pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 to address SB 1408 (Forty-ninth Legislature, Second Regular Session, 2010, Chapter 82, Section 1), which required the addition of best management practices for facilities under jurisdiction and control of an irrigation district, including practices related to unpaved operation and maintenance roads, canals, and unpaved utility access roads.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ plans to submit final rulemaking to GRRC by the end of December, 2019 to add language to be more consistent with Maricopa County Rule 310.

R18-2-610.02. Agricultural PM General Permit for Crop Operations; Moderate PM Nonattainment Areas, Designated After June 1, 2009

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

The objective of this rule is to establish the agricultural Particulate Matter (PM) general permit and Agricultural best Management Practices (Ag BMP) for regulated crop operations engaged in agricultural activities within moderate PM nonattainment areas, designated after June 1, 2009.

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.

This rule is generally consistent with state and federal statutes and other rules made by ADEQ. However, this rule could be more consistent with Maricopa County Rule 610.01 by clarifying jurisdictional authority over clean-up of track-out from agricultural operations onto Maricopa County roads

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 rulemaking for these rules was exempt from the provisions of Title 41, Chapter 6, Article 3 under session law at Laws 2011, Chapter 214 §4, at 21 A.A.R. 1156, effective July 2, 2015 and did not include an Economic, Small Business, and Consumer Impact Statement. This rulemaking changed the rule to only be applicable to the Maricopa County PM nonattainment area and made changes to the recordkeeping requirements. These changes may result in minor increases in costs applicable to commercial farmers but are unlikely to have any significant impact since commercial farmers were required to implement these practices and keep these types of records prior to the most recent rulemaking. The department presented an economic impact discussion when it submitted a Five-Year Review Report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached Economic Impact Statement (EIS) as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicated in the agency's previous five-year review report because this rule became effective after the previous five-year review report.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ plans to submit final rulemaking to GRRC by the end of December, 2019 to add language to be more consistent with Maricopa County Rule 310.

R18-2-610.03. Agricultural PM General permit for Crop Operations; Pinal County PM Nonattainment Area

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

The objective of this rule is to establish the agricultural particulate matter (PM) general permit and agricultural best management practices (Ag BMPs) for regulated crop operations engaged in agricultural activities within the Pinal County PM Nonattainment Area.

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 rulemaking for these rules was exempt from the provisions of Title 41, Chapter 6, Article 3 under session law at Laws 2011, Chapter 214 §4, at 21 A.A.R. 1156, effective July 2, 2015 and did not include an Economic, Small Business, and Consumer Impact Statement. This rulemaking changed the rule to only be applicable to the Pinal County PM nonattainment area and made changes to the recordkeeping requirements. These changes may result in minor increases in costs applicable to commercial farmers but are unlikely to have any significant impact since commercial

farmers were required to implement these practices and keep these types of records prior to the most recent rulemaking. The department presented an economic impact discussion when it submitted a Five-Year Review Report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached Economic Impact Statement (EIS) as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicated in the agency's previous five-year review report because this rule became effective after the previous five-year review report.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ plans to submit final rulemaking to GRRC by the end of December, 2019 to add language to be more consistent with Maricopa County Rule 310.

R18-2-611. Definitions for R18-2-611.01, R18-2-611.02, and R18-2-611.03

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

The objective of this rule is to establish the definitions necessary to implement R18-2-611.01, R18-2-611.02, and R18-2-611.03.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but could be improved by providing a measurable limit on the amount of dust allowed from agricultural activities and by clarifying whether an Agricultural Best Management Practice applies to an entire agricultural operation or to individual parts of an operation.

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.

This rule does not generate any economic impact, in and of itself; therefore, no economic impacts have resulted from this section to date.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicated in the agency's previous five-year review report.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2, Article 6, ADEQ will address the minor clarity issues noted above in the next rulemaking.

R18-2-611.01. Agricultural PM General Permit for Animal Operations; Maricopa County Serious PM Nonattainment Areas

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

The objective of this rule is to establish the agricultural Particulate Matter (PM) general permit and Agricultural Best Management Practices (Ag BMP) for regulated animal operations engaged in agricultural activities within the Maricopa County Serious PM Nonattainment Areas.

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.

This rule is generally consistent with state and federal statutes and other rules made by ADEQ. However, this rule could be more consistent with Maricopa County Rule 610.01 by clarifying jurisdictional authority over clean-up of track-out from agricultural operations onto Maricopa County roads.

6. Clarity, conciseness, and understandability of the rule.

This rule could also be improved by removing the rotary dryer operational requirements from the definition in R18-2-611(4)(u) and placing them in R18-2-611.01(D)(2)(l).

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 rulemaking for these rules was exempt from the provisions of Title 41, Chapter 6, Article 3 under session law at Laws 2011, Chapter 214 §4, at 21 A.A.R. 1156, effective July 2, 2015 and did not include an Economic, Small Business, and Consumer Impact Statement. This rulemaking changed the rule to only be applicable to commercial animal operators implementing Ag BMPs in moderate PM nonattainment areas and made changes to the recordkeeping requirements. These changes may result in minor increases in costs applicable to commercial farmers but are unlikely to have any significant impact since commercial farmers were required to implement these practices and keep these types of records prior to the most recent rulemaking. The department presented an economic impact discussion when it submitted a Five-Year Review Report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached Economic Impact Statement (EIS) as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicated in the agency's previous five-year review report.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a

new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ plans to submit final rulemaking to GRRC by the end of December, 2019 to add language to be more consistent with Maricopa County Rule 310 and address the minor clarity issues noted above in the next rulemaking.

R18-2-611.02. Agricultural PM General Permit for Animal Operations; Moderate PM Nonattainment Areas Designated After June 1, 2009, Except Pinal County PM Nonattainment Area

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

The objective of this rule is to establish the agricultural Particulate Matter (PM) general permit and Agricultural Best Management Practices (Ag BMP) for regulated animal operations engaged in agricultural activities within Moderate PM Nonattainment Areas Designated After June 1, 2009, except the Pinal County PM Nonattainment Area.

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.

This rule is generally consistent with state and federal statutes and other rules made by ADEQ. However, this rule could be more consistent with Maricopa County Rule 610.01 by clarifying jurisdictional authority over clean-up of track-out from agricultural operations onto Maricopa County roads.

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 rulemaking for these rules was exempt from the provisions of Title 41, Chapter 6, Article 3 under session law at Laws 2011, Chapter 214 §4, at 21 A.A.R. 1156, effective July 2, 2015 and did not include an Economic, Small Business, and Consumer Impact Statement. This rulemaking changed the rule to only be applicable to commercial animal operators implementing Ag BMPs in moderate PM nonattainment areas designated after June 1, 2009, except in the Pinal County PM

nonattainment area. The rulemaking also made changes to recordkeeping requirements. These changes may result in minor increases in costs applicable to commercial farmers but are unlikely to have any significant impact since commercial farmers were required to implement these practices and keep these types of records prior to the most recent rulemaking. The department presented an economic impact discussion when it submitted a Five-Year Review Report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached Economic Impact Statement (EIS) as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicated in the agency's previous five-year review report because this rule became effective after the previous five-year review report.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ plans to submit final rulemaking to GRRC by the end of December, 2019 to add language to be more consistent with Maricopa County Rule 310.

R18-2-611.03. Agricultural PM General Permit for Animal Operations; Pinal County PM Nonattainment Area

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

The objective of this rule is to establish the agricultural Particulate Matter (PM) general permit and Agricultural Best Management Practices (Ag BMP) for regulated animal operations engaged in agricultural activities within the Pinal County PM Nonattainment Area.

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.

This rule is generally consistent with state and federal statutes and other rules made by ADEQ. However, this rule could be more consistent with Maricopa County Rule 610.01 by clarifying jurisdictional authority over clean-up of track-out from agricultural operations onto Maricopa County roads.

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 rulemaking for these rules was exempt from the provisions of Title 41, Chapter 6, Article 3 under session law at Laws 2011, Chapter 214 §4, at 21 A.A.R. 1156, effective July 2, 2015 and did not include an Economic, Small Business, and Consumer Impact Statement. This rulemaking changed the rule to only be applicable to commercial animal operators implementing Ag BMPs in the Pinal County PM nonattainment area and made changes to the recordkeeping requirements. These changes may result in minor increases in costs applicable to commercial farmers but are unlikely to have any significant impact since commercial farmers were required to implement these practices and keep these types of records prior to the most recent rulemaking. The department presented an economic impact discussion when it submitted a Five-Year Review Report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached Economic Impact Statement (EIS) as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicated in the agency's previous five-year review report because this rule became effective after the previous five-year review report.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the

agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ plans to submit final rulemaking to GRRC by the end of December, 2019 to add language to be more consistent with Maricopa County Rule 310.

R18-2-612. Definitions for R18-2-612.01

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

The objective of this rule is to establish the definitions necessary to implement R18-2-612.01.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but could be improved by providing a measurable limit on the amount of dust allowed from agricultural activities and by clarifying whether an Agricultural Best Management Practice applies to an entire agricultural operation or to individual parts of an operation.

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.

This rule does not generate any economic impact, in and of itself; therefore, no economic impacts have resulted from this section to date.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicated in the agency's previous five-year review report because rulemaking 21 A.A.R. 1156, effective July 2, 2015 repealed the definitions for the Yuma Ag BMP rule from R18-2-612, and added a new R18-2-612 for definitions for new section R18-2-612.01.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a

new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2, Article 6, ADEQ will address the minor clarity issues noted above in the next rulemaking.

R18-2-612.01. Agricultural PM General Permit for Irrigation Districts; PM Nonattainment Areas Designated After June 1, 2009

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

The objective of this rule is to establish the agricultural Particulate Matter (PM) general permit and Agricultural Best Management Practices (Ag BMP) for regulated Irrigation Districts within PM Nonattainment Areas Designated after June 1, 2009.

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 rulemaking for these rules was exempt from the provisions of Title 41, Chapter 6, Article 3 under session law at Laws 2011, Chapter 214 §4, at 21 A.A.R. 1156, effective July 2, 2015 and did not include an Economic, Small Business, and Consumer Impact Statement. This rulemaking added this new section to implement Ag BMPs for Irrigation Districts located in moderate nonattainment areas designated after June 1, 2009, including the Pinal County nonattainment area. These changes may result in minor increases in costs applicable to irrigation districts but are unlikely to have any significant economic impact. The department presented an economic impact discussion when it submitted a Five-Year Review Report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached Economic Impact Statement (EIS) as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicated in the agency's previous five-year review report because this rule became effective after the previous five-year review report.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

No course of action is necessary for this rule at this time.

R18-2-613. Definitions for R18-2-613.01

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

The objective of this rule is to set forth the definitions necessary to implement R18-2-613.01.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but could be improved by providing a measurable limit on the amount of dust allowed from agricultural activities and by clarifying whether an Agricultural Best Management Practice applies to an entire agricultural operation or to individual parts of an operation.

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.

This rule does not generate any economic impact, in and of itself; therefore, no economic impacts have resulted from this section to date.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicated in the agency's previous five-year review report because rulemaking 21 A.A.R. 1156, effective July 2, 2015 repealed the Yuma Ag BMP rule at R18-2-613, and added a new section R18-2-613 to provide definitions for the Yuma Ag BMP rule R18-2-613.01. No changes were made to the rule text.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2, Article 6, ADEQ will address the minor clarity issues noted above in the next rulemaking.

R18-2-613.01. Yuma PM₁₀ Nonattainment Area; Agricultural Best Management Practices

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

The objective of this rule is to establish the agricultural Particulate Matter (PM) general permit and Agricultural Best Management Practices (Ag BMP) for regulated crop operations engaged in agricultural activities within the Yuma PM₁₀ Nonattainment Area.

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 rulemaking for these rules was exempt from the provisions of Title 41, Chapter 6, Article 3 under session law at Laws 2011, Chapter 214 §4, at 21 A.A.R. 1156, effective July 2, 2015 and did not include an Economic, Small Business, and

Consumer Impact Statement. This rulemaking added this new section for the Yuma Ag BMP rule, which was repealed from R18-2-613. No changes were made to the rule text and therefore will not result in any increase costs since commercial farmers were required to implement these practices and keep these types of records prior to the most recent rulemaking. The department presented an economic impact discussion when it submitted a Five-Year Review Report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached Economic Impact Statement (EIS) as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicated in the agency's previous five-year review report because this rule became effective after the previous five-year review report.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

No course of action is necessary for this rule at this time.

R18-2-614. Evaluation of Nonpoint Sources Emissions

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

The objective of this rule is to establish a 40% opacity standard for any nonpoint sources and to specify the test method to be used for reading visible emissions as applicable to Article 6, and to exempt R18-2-602 (open burning permits) or Article 15 (prescribed burning) from this requirement.

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.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to improve consistency and clarity within the rules and after evaluating technical advances and examining the ability of the agency to reduce the opacity standard from 40% to 20%. ADEQ examined the ability to reduce the opacity standard but found no federal requirement to do so. ADEQ has determined that a change in the opacity standard is not necessary at this time. Therefore, ADEQ did not seek a rulemaking to reduce the opacity standard from 40% to 20%.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

No course of action is necessary for this rule at this time.

ARTICLE 8. EMISSIONS FROM MOBILE SOURCES (NEW AND EXISTING)

A. Information that Is Identical for All Rules in A.A.C. Title 18, Chapter 2, Article 8, unless otherwise stated:

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

The rules in A.A.C. Title 18, Chapter 2, Article 8 are authorized generally by §§ 49-104(A)(1), (10), 49-401, 49-404, 49-422(B), 49-424(4), and 49-425.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rules in A.A.C. Title 18, Chapter 2, Article 8 are effective in achieving their individual objectives.

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.

Unless specified below in Section B, ADEQ believes the rules in A.A.C. Title 18, Chapter 2, Article 8 are consistent with state and federal statutes and other rules made by the agency. The statutes or rules used in determining consistency are as follows:

40 C.F.R. Part 51	Federal statute of SIP requirements.
A.R.S. §§ 49-104(A)(1), (10), 49-401, 49-404, 49-422(B), 49- 424(4), 49-425, 49-457, and 49-501.	State statutes authorizing adoption of rules and standards.
A.R.S. § 49-104(A)(17)	State regulations adopted under Title 49 are “to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter” unless authorized by the legislature.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

ADEQ has analyzed the enforceability of the rules in A.A.C. Title 18, Chapter 2, Article 8, and believes the rules are being enforced and there are no problems with enforcement.

6. Clarity, conciseness, and understandability of the rule.

ADEQ has analyzed the clarity, conciseness, and understandability of the rules in A.A.C. Title 18, Chapter 2, Article 8, and believes the rules are generally clear, concise and understandable. ADEQ has determined that minor technical fixes could be made to R18-2-802; 804, and 805.

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 rule is based on valid scientific or reliable principles or methods, and written allegations made in litigation or 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 result of the litigation or administrative proceedings.

There have been no written criticisms of the rules in A.A.C. Title 18, Chapter 2, Article 8 submitted to ADEQ within the last five years.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

No such analysis was submitted for any of the rules in A.A.C. Title 18, Chapter 2, Article 8 within the last five years.

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.

ADEQ conducted an internal survey and concluded that the benefits of the rules in A.A.C. Title 18, Chapter 2, Article 8 outweigh, within the State, the costs of the rules and impose the least burden and cost to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying regulatory objectives. The rules in Article 8 help identify and regulate sources that are not classified as a motor vehicle, agricultural vehicle, or agricultural equipment and would otherwise go unregulated. The rules are designed to, and generally effective in, controlling emissions of the "criteria" pollutants subject to the NAAQS (or their precursors): particulate matter, nitrogen oxides, sulfur oxides, ozone, lead, and carbon monoxide. These pollutants require control because concentrations of the pollutants in the ambient air are known to cause serious health effects, including premature mortality, cardiovascular disease, and aggravated asthma. They are also known to cause serious public welfare effects such as crop deterioration, harm to wildlife and natural vegetation, and damage to man-made materials. ADEQ is not aware of any less costly or burdensome alternatives to satisfy the rules underlying objectives.

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.

ADEQ believes that no rule or definitions in A.A.C. Title 18, Chapter 2, Article 8 is more stringent than corresponding federal law.

13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rules in A.A.C. Title 18, Chapter 2, Article 8 requiring the issuance of a regulatory permit, license, or agency authorization comply with A.R.S. §41-1037 because they qualify as an exception under A.R.S. §41-1037(A)(6).

B. Section by Section Analysis of Rules

R18-2-801. Classification of Mobile Sources

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

The objective of this rule is to establish mobile source categories applicable to Article 8, and to set forth the opacity level.

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.

ADEQ previously identified R18-2-801 as being inconsistent with federal statutes and rules because EPA published a limited approval of the State Implementation Plan (SIP) submitted July 15, 1998 with deficiencies identified in R18-2-801 regarding restrictions on nonroad engines. ADEQ is currently investigating to determine whether federal law preempts the language in R18-2-801. The rules are still enforceable and there is no risk of a sanctions under the Federal Clean Air Act (CAA) §179(b) for State Implementation Plans. ADEQ will address the issues noted above once a determination has been made in a rulemaking by the end of December, 2018.

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.

This rule does not generate any economic impact, in and of itself; therefore, no economic impacts have resulted from this section to date.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to improve consistency and clarity within the rules and after evaluating technical advances and examining the ability of the agency to reduce the opacity standard from 40% to 20%. ADEQ examined the ability to reduce the opacity standard but found no federal requirement to do so. As such, A.R.S. 49-104(A)(17) requires rules adopted by ADEQ “to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter.” Therefore, ADEQ did not seek a rulemaking to reduce the opacity standard from 40% to 20%.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ will amend this rule based on the consistency issue noted above. When material changes are made to A.A.C. R18-2-801, ADEQ will address the minor clarity issues noted above by the end of December, 2018.

R18-2-802. Off-road Machinery

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

The objective of this rule is to define the term “off-road machinery” and establish a specific opacity standard for the category.

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.

ADEQ previously identified R18-2-802 as being inconsistent with federal statutes and rules because EPA published a limited approval of the State Implementation Plan (SIP) submitted July 15, 1998 with deficiencies identified in R18-2-801 regarding

restrictions on nonroad engines. ADEQ is currently investigating to determine whether federal law preempts the language in R18-2-802. The rules are still enforceable and there is no risk of a sanctions clock under the Federal Clean Air Act (CAA) §179(b) for State Implementation Plans. ADEQ will address the issues noted above once a determination has been made in a rulemaking by the end of December, 2018.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but the rule could be improved by changing the language to remove the 10 second test and replacing it with EPA Method 9 in order to be consistent with permitting language.

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.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to improve consistency and clarity within the rules and after evaluating technical advances and examining the ability of the agency to reduce the opacity standard from 40% to 20%. ADEQ examined the ability to reduce the opacity standard but found no federal requirement to do so. As such, A.R.S. 49-104(A)(17) requires rules adopted by ADEQ “to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter.” Therefore, ADEQ did not seek a rulemaking to reduce the opacity standard from 40% to 20%.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a

new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

ADEQ will amend this rule based on the consistency issue noted above. When material changes are made to A.A.C. R18-2-802, ADEQ will address the minor clarity issues noted above by the end of December, 2018.

R18-2-803. Heater-plaster Units

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

The objective of this rule is to establish the opacity limitation for heater-planters and to provide an exception.

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.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to improve consistency and clarity within the rules and after evaluating technical advances and examining the ability of the agency to reduce the opacity standard from 40% to 20%. ADEQ examined the ability to reduce the opacity standard but found no federal requirement to do so. As such, A.R.S. 49-104(A)(17) requires rules adopted by ADEQ “to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter.” Therefore, ADEQ did not seek a rulemaking to reduce the opacity standard from 40% to 20%.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a

new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

No course of action is necessary for this rule at this time.

R18-2-804. Roadway and Site Cleaning Machinery

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

The objective of this rule is to establish an opacity standard and an exemption for roadway and site cleaning machinery and establish reasonable precautions to prevent Particulate Matter (PM) from becoming airborne.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but the rule could be improved by changing the language to remove the 10 second test and replacing it with EPA Method 9 in order to be consistent with permitting language. The rule could also be improved by providing a definition for “reasonable precautions.”

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.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to improve consistency and clarity within the rules and after evaluating technical advances and examining the ability of the agency to reduce the opacity standard from 40% to 20%. ADEQ examined the ability to reduce the opacity standard but found no federal requirement to do so. As such, A.R.S. 49-104(A)(17) requires rules adopted by ADEQ “to be consistent with and no more stringent than

the corresponding federal law that addresses the same subject matter.” Therefore, ADEQ did not seek a rulemaking to reduce the opacity standard from 40% to 20%.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2, Article 8, ADEQ will address the minor clarity issues noted above in the next rulemaking.

R18-2-805. Asphalt or Tar Kettles

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

The objective of this rule is to establish an opacity standard and operating procedures applicable to asphalt or tar kettles.

6. Clarity, conciseness, and understandability of the rule.

This rule is generally clear, concise, and understandable but the rule could be improved by changing the language to remove the 10 second test and replacing it with EPA Method 9 in order to be consistent with permitting language.

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.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

ADEQ proposed to improve consistency and clarity within the rules and after evaluating technical advances and examining the ability of the agency to reduce the opacity standard from 40% to 20%. ADEQ examined the ability to reduce the opacity standard but found no federal requirement to do so. As such, A.R.S. 49-104(A)(17) requires rules adopted by ADEQ “to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter.” Therefore, ADEQ did not seek a rulemaking to reduce the opacity standard from 40% to 20%.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

Due to other rulemaking priorities, ADEQ does not plan to amend this rule in the near future; however, if any material changes are made to A.A.C. Title 18, Chapter 2, Article 8, ADEQ will address the minor clarity issues noted above in the next rulemaking.

ARTICLE 12. EMISSIONS BANK

A. Information that Is Identical for All Rules in A.A.C. Title 18, Chapter 2, Article 12, unless otherwise stated:

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

The rules in A.A.C. Title 18, Chapter 2, Article 12 are authorized generally by §§ 49-104(A)(1), (10), 49-401, 49-404, 49-422(B), 49-424(4), and 49-425. Specific authorization for the rules is found at 49-410.

3. Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.

The rules in A.A.C. Title 18, Chapter 2, Article 12 are effective in achieving their individual objectives.

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.

ADEQ believes the rules in A.A.C. Title 18, Chapter 2, Article 12 are consistent with state and federal statutes and other rules made by the agency. The statutes or rules used in determining consistency are as follows:

40 C.F.R. 51.165

Federal statute establishing SIP requirements.

40 C.F.R. 51, App. S

A.R.S. §§ 49-104(A)(1), (10),
49-401, 49-404, 49-422(B), 49-
424(4), 49-425, 49-457, and
49-501.

State statutes authorizing adoption of rules and standards.

A.R.S. § 49-104(A)(17)

State regulations adopted under Title 49 are “to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter” unless authorized by the legislature.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

Participation in the Emissions Bank program is currently on a voluntary basis.

However, the rules in Article 12 are currently being enforced when applicable.

6. Clarity, conciseness, and understandability of the rule.

ADEQ has analyzed the clarity, conciseness, and understandability of the rules in A.A.C. Title 18, Chapter 2, Article 12, and believes the rules are generally clear, concise and understandable.

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 rule is based on valid scientific or reliable principles or methods, and written allegations made in litigation or 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 result of the litigation or administrative proceedings.

There have been no written criticisms of the rules in A.A.C. Title 18, Chapter 2, Article 12 submitted to ADEQ within the last five years.

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.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 below for more information.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.

No such analysis was submitted for any of the rules in A.A.C. Title 18, Chapter 2, Article 12 within the last five years.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not Applicable. No course of action was indicated in the agency's previous five-year review report.

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.

ADEQ conducted an internal survey and concluded that the benefits of the rules in Article 12 outweigh, within the State, the costs of the rules and impose the least burden and cost to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying regulatory objectives. The New Source Review (NSR) permitting program, for example, allows for a cap and trade

market-based approach to controlling air pollution by providing economic incentives for achieving reductions in the emissions of pollutants. The rules are designed to, and generally effective in, controlling emissions of the “criteria” pollutants subject to the NAAQS (or their precursors): particulate matter, nitrogen oxides, sulfur oxides, ozone, lead, and carbon monoxide. These pollutants require control because concentrations of the pollutants in the ambient air are known to cause serious health effects, including premature mortality, cardiovascular disease, and aggravated asthma. They are also known to cause serious public welfare effects such as crop deterioration, harm to wildlife and natural vegetation, and damage to man-made materials. ADEQ is not aware of any less costly or burdensome alternatives to satisfy the rules underlying objectives.

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.

ADEQ believes that no rule or definitions in A.A.C. Title 18, Chapter 2, Article 12 is more stringent than corresponding federal law.

13. For a rule adopted after July 29, 2010, that requires issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rules in Article 12 that require the issuance of a regulatory permit, license or agency authorization comply with A.R.S. §41-1037 because they qualify as an exception under A.R.S. §41-1037(A)(6).

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

On May 1, 2017, pursuant to House Bill (HB) 2152 (Fifty-third Legislature, First Regular Session, 2017, Chapter 225, Section 1) the legislature amended the existing emissions bank statute A.R.S. Section 49-410 to allow for new types of emission reduction credits to be deposited in the bank. These amendments directed ADEQ to adopt rules implementing these changes. ADEQ intends to amend the rules in Article 12 to implement these changes by the end of December 2018.

B. Section by Section Analysis of Rules

R18-2-1201. Definitions

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

The objective of this rule is to establish the definitions necessary to implement Article 12.

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.

This rule does not generate any economic impact, in and of itself; therefore, no economic impacts have resulted from this rule to date.

R18-2-1202. Applicability

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

The objective of this rule is to establish criteria for the applicability of Article 12 to sources that emit particulate matter, sulfur dioxide, carbon monoxide, nitrogen oxides, or volatile organic compounds, and to exempt sources granted authority to operate under 18 A.A.C. 2, Article 5.

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.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

R18-2-1203. Emissions Bank Administration

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

The objective of this rule is to establish the responsibilities of the Director related to the administration of the bank.

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.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

R18-2-1204. Credit Generation

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

The objective of this rule is to establish the requirements to generate emission reduction credits.

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.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

R18-2-1205. Credit Certification

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

The objective of this rule is to establish the requirements to certify an emission reduction credit.

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.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

R18-2-1206. Credit Utilization

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

The objective of this rule is to establish the requirements to utilize a certified emission credit.

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.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

R18-2-1207. Credit Withdrawal

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

The objective of this rule is to establish the requirements to retire or withdrawal a certified emissions credit.

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.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

R18-2-1208. Fees

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

The objective of this rule is to outline the fees involved in the administration of the bank.

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.

ADEQ presented an Economic Impact Statement (EIS) when it submitted a five-year review report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. Please see the attached EIS as well as number 11 in Section A above for more information.

ARTICLE 6. EMISSIONS FROM EXISTING AND NEW NONPOINT SOURCES**R18-2-601. General**

For purposes of this Article, any source of air contaminants which due to lack of an identifiable emission point or plume cannot be considered a point source, shall be classified as a nonpoint source. In applying this criteria, such items as air-curtain destructors, heater-planners, and conveyor transfer points shall be considered to have identifiable plumes. Any affected facility subject to regulation under Article 7 of this Chapter or Title 18, Chapter 2, Article 9, shall not be subject to regulation under this Article.

Historical Note

Former Section R9-3-601 repealed, new Section R9-3-601 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-601 renumbered without change as Section R18-2-601 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-601 renumbered to R18-2-801, new Section R18-2-601 renumbered from R18-2-401 and amended effective November 15, 1993 (Supp. 93-4). Section updated to reflect corrected citation reference (Supp. 08-1).

R18-2-602. Unlawful Open Burning

A. In addition to the definitions contained in A.R.S. § 49-501, in this Section:

1. “Agricultural burning” means burning vegetative materials related to producing and harvesting crops and raising animals for the purpose of marketing for profit, or providing a livelihood, but does not include burning of household waste or prohibited materials. A person may conduct agricultural burns in fields, piles, ditch banks, fence rows, or canal laterals for purposes such as weed control, waste disposal, disease and pest prevention, or site preparation.
 2. “Approved waste burner” means an incinerator constructed of fire resistant material with a cover or screen that is closed when in use, and has openings in the sides or top no greater than one inch in diameter.
 3. “Class I Area” means any one of the Arizona mandatory federal Class I areas defined in A.R.S. § 49-401.01.
 4. “Construction burning” means burning wood or vegetative material from land clearing, site preparation, or fabrication, erection, installation, demolition, or modification of any buildings or other land improvements, but does not include burning household waste or prohibited material.
 5. “Dangerous material” means any substance or combination of substances that is capable of causing bodily harm or property loss unless neutralized, consumed, or otherwise disposed of in a controlled and safe manner.
 6. “Delegated authority” means any of the following:
 - a. A county, city, town, air pollution control district, or fire district that has been delegated authority to issue open burning permits by the Director under A.R.S. § 49-501(E); or
 - b. A private fire protection service provider that has been assigned authority to issue open burning permits by one of the authorities in subsection (A)(6)(a).
 7. “Director” means the Director of the Department of Environmental Quality, or designee.
 8. “Emission reduction techniques” means methods for controlling emissions from open outdoor fires to minimize the amount of emissions output per unit of area burned.
 9. “Flue,” as used in this Section, means any duct or passage for air or combustion gases, such as a stack or chimney.
 10. “Household waste” means any solid waste including garbage, rubbish, and sanitary waste from a septic tank that is generated from households including single and multiple family residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas, but does not include construction debris, landscaping rubble, or demolition debris.
 11. “Independent authority to permit fires” means the authority of a county to permit fires by a rule adopted under Arizona Revised Statutes, Title 49, Chapter 3, Article 3, and includes only Maricopa, Pima, and Pinal counties.
 12. “Open outdoor fire or open burning” means the combustion of material of any type, outdoors and in the open, where the products of combustion are not directed through a flue. Open outdoor fires include agricultural, residential, prescribed, and construction burning, and fires using air curtain destructors.
 13. “Prohibited materials” means nonpaper garbage from the processing, storage, service, or consumption of food; chemically treated wood; lead-painted wood; linoleum flooring, and composite counter-tops; tires; explosives or ammunition; oleanders; asphalt shingles; tar paper; plastic and rubber products, including bottles for household chemicals; plastic grocery and retail bags; waste petroleum products, such as waste crankcase oil, transmission oil, and oil filters; transformer oils; asbestos; batteries; anti-freeze; aerosol spray cans; electrical wire insulation; thermal insulation; polyester products; hazardous waste products such as paints, pesticides, cleaners and solvents, stains and varnishes, and other flammable liquids; plastic pesticide bags and containers; and hazardous material containers including those that contained lead, cadmium, mercury, or arsenic compounds.
 14. “Residential burning” means open burning of vegetative materials conducted by or for the occupants of residential dwellings, but does not include burning household waste or prohibited material.
 15. “Prescribed burning” has the same meaning as in R18-2-1501.
- B. Unlawful open burning. Notwithstanding any other rule in this Chapter, a person shall not ignite, cause to be ignited, permit to be ignited, allow, or maintain any open outdoor fire in a county without independent authority to permit fires except as provided in A.R.S. § 49-501 and this Section.
- C. Open outdoor fires exempt from a permit. The following fires do not require an open burning permit from the Director or a delegated authority:
1. Fires used only for:
 - a. Cooking of food,
 - b. Providing warmth for human beings,

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- c. Recreational purposes,
 - d. Branding of animals,
 - e. Orchard heaters for the purpose of frost protection in farming or nursery operations, and
 - f. The proper disposal of flags under 4 U.S.C. 1, § 8.
2. Any fire set or permitted by any public officer in the performance of official duty, if the fire is set or permission given for the following purpose:
 - a. Control of an active wildfire; or
 - b. Instruction in the method of fighting fires, except that the person setting these fires must comply with the reporting requirements of subsection (D)(3)(f).
 3. Fire set by or permitted by the Director of Department of Agriculture for the purpose of disease and pest prevention in an organized, area-wide control of an epidemic or infestation affecting livestock or crops.
 4. Prescribed burns set by or assisted by the federal government or any of its departments, agencies, or agents, or the state or any of its agencies, departments, or political subdivisions, regulated under Article 15 of this Chapter.
- D. Open outdoor fires requiring a permit.**
1. The following open outdoor fires are allowed with an open burning permit from the Director or a delegated authority:
 - a. Construction burning;
 - b. Agricultural burning;
 - c. Residential burning;
 - d. Prescribed burns conducted on private lands without the assistance of a federal or state land manager as defined under R18-2-1501;
 - e. Any fire set or permitted by a public officer in the performance of official duty, if the fire is set or permission given for the purpose of weed abatement, or the prevention of a fire hazard, unless the fire is exempt from the permit requirement under subsection (C)(3);
 - f. Open outdoor fires of dangerous material under subsection (E);
 - g. Open outdoor fires of household waste under subsection (F); and
 - h. Open outdoor fires that use an air curtain destructor, as defined in R18-2-101.
 2. A person conducting an open outdoor fire in a county without independent authority to permit fires shall obtain a permit from the Director or a delegated authority unless exempted under subsection (C). Permits may be issued for a period not to exceed one year. A person shall obtain a permit by completing an ADEQ-approved application form.
 3. Open outdoor fire permits issued under this Section shall include:
 - a. A list of the materials that the permittee may burn under the permit;
 - b. A means of contacting the permittee authorized by the permit to set an open fire in the event that an order to extinguish the open outdoor fire is issued by the Director or the delegated authority;
 - c. A requirement that burns be conducted during the following periods, unless otherwise waived or directed by the Director on a specific day basis:
 - i. Year-round: ignite fire no earlier than one hour after sunrise; and
 - ii. Year-round: extinguish fire no later than two hours before sunset;
 - d. A requirement that the permittee conduct all open burning only during atmospheric conditions that:
 - i. Prevent dispersion of smoke into populated areas;
 - ii. Prevent visibility impairment on traveled roads or at airports that result in a safety hazard;
 - iii. Do not create a public nuisance or adversely affect public safety;
 - iv. Do not cause an adverse impact to visibility in a Class I area; and
 - v. Do not cause uncontrollable spreading of the fire;
 - e. A list of the types of emission reduction techniques that the permittee shall use to minimize fire emissions.;
 - f. A reporting requirement that the permittee shall meet by providing the following information in a format provided by the Director for each date open burning occurred, on either a daily basis on the day of the fire, or an annual basis in a report to the Director or delegated authority due on March 31 for the previous calendar year:
 - i. The date of each burn;
 - ii. The type and quantity of fuel burned for each date open burning occurred;
 - iii. The fire type, such as pile or pit, for each date open burning occurred; and
 - iv. For each date open burning occurred, the legal location, to the nearest section, or latitude and longitude, to the nearest degree minute, or street address for residential burns;
 - g. A requirement that the person conducting the open burn notify the local fire-fighting agency or private fire protection service provider, if the service provider is a delegated authority, before burning. If neither is in existence, the person conducting the burn shall notify the state forester.;
 - h. A requirement that the permittee start each open outdoor fire using items that do not cause the production of black smoke;
 - i. A requirement that the permittee attend the fire at all times until it is completely extinguished;
 - j. A requirement that the permittee provide fire extinguishing equipment on-site for the duration of the burn;
 - k. A requirement that the permittee ensure that a burning pit, burning pile, or approved waste burner be at least 50 feet from any structure;
 - l. A requirement that the permittee have a copy of the burn permit on-site during open burning;

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- m. A requirement that the permittee not conduct open burning when an air stagnation advisory, as issued by the National Weather Service, is in effect in the area of the burn or during periods when smoke can be expected to accumulate to the extent that it will significantly impair visibility in Class I areas;
 - n. A requirement that the permittee not conduct open burning when any stage air pollution episode is declared under R18-2-220;
 - o. A statement that the Director, or any other public officer, may order that the burn be extinguished or prohibit burning during periods of inadequate smoke dispersion, excessive visibility impairment, or extreme fire danger; and
 - p. A list of the activities prohibited and the criminal penalties provided under A.R.S. § 13-1706.
4. The Director or a delegated authority shall not issue an open burning permit under this Section:
- a. That would allow burning prohibited materials other than under a permit for the burning of dangerous materials;
 - b. If the applicant has applied for a permit under this Section to burn a dangerous material which is also hazardous waste under 40 CFR 261, but does not have a permit to burn hazardous waste under 40 CFR 264, or is not an interim status facility allowed to burn hazardous waste under 40 CFR 265; or
 - c. If the burning would occur at a solid waste facility in violation of 40 CFR 258.24 and the Director has not issued a variance under A.R.S. § 49-763.01.
- E. Open outdoor fires of dangerous material. A fire set for the disposal of a dangerous material is allowed by the provisions of this Section, when the material is too dangerous to store and transport, and the Director has issued a permit for the fire. A permit issued under this subsection shall contain all provisions in subsection (D)(3) except for subsections (D)(3)(e) and (D)(3)(f). The Director shall permit fires for the disposal of dangerous materials only when no safe alternative method of disposal exists, and burning the materials does not result in the emission of hazardous or toxic substances either directly or as a product of combustion in amounts that will endanger health or safety.
- F. Open outdoor fires of household waste. An open outdoor fire for the disposal of household waste is allowed by provisions of this Section when permitted in writing by the Director or a delegated authority. A permit issued under this subsection shall contain all provisions in subsection (D)(3) except for subsections (D)(3)(e) and (D)(3)(f). The permittee shall conduct open outdoor fires of household waste in an approved waste burner and shall either:
1. Burn household waste generated on-site on farms or ranches of 40 acres or more where no household waste collection or disposal service is available; or
 2. Burn household waste generated on-site where no household waste collection and disposal service is available and where the nearest other dwelling unit is at least 500 feet away.
- G. Permits issued by a delegated authority. The Director may delegate authority for the issuance of open burning permits to a county, city, town, air pollution control district, or fire district. A delegated authority may not issue a permit for its own open burning activity. The Director shall not delegate authority to issue permits to burn dangerous material under subsection (E). A county, city, town, air pollution control district, or fire district with delegated authority from the Director may assign that authority to one or more private fire protection service providers that perform fire protection services within the county, city, town, air pollution control district, or fire district. A private fire protection provider shall not directly or indirectly condition the issuance of open burning permits on the applicant being a customer. Permits issued under this subsection shall comply with the requirements in subsection (D)(3) and be in a format prescribed by the Director. Each delegated authority shall:
1. Maintain a copy of each permit issued for the previous five years available for inspection by the Director;
 2. For each permit currently issued, have a means of contacting the person authorized by the permit to set an open fire if an order to extinguish open burning is issued; and
 3. Annually submit to the Director by May 15 a record of daily burn activity, excluding household waste burn permits, on a form provided by the Director for the previous calendar year containing the information required in subsections (D)(3)(e) and (D)(3)(f).
- H. The Director shall hold an annual public meeting for interested parties to review operations of the open outdoor fire program and discuss emission reduction techniques.
- I. Nothing in this Section is intended to permit any practice that is a violation of any statute, ordinance, rule, or regulation.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Correction, subsection (C) repealed effective October 2, 1979, not shown (Supp. 80-1). Former Section R9-3-602 renumbered without change as Section R18-2-602 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-602 renumbered to R18-2-802, new Section R18-2-602 renumbered from R18-2-401 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-603. Repealed**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-603 renumbered without change as Section R18-2-603 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-603 renumbered to R18-2-803, new Section R18-2-603 renumbered from R18-2-403 effective November 15, 1993 (Supp. 93-4). Repealed effective October 8, 1996 (Supp. 96-4).

R18-2-604. Open Areas, Dry Washes, or Riverbeds

- A. No person shall cause, suffer, allow, or permit a building or its appurtenances, or a building or subdivision site, or a driveway, or a parking area, or a vacant lot or sales lot, or an urban or suburban open area to be constructed, used, altered, repaired, demolished,

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cleared, or leveled, or the earth to be moved or excavated, without taking reasonable precautions to limit excessive amounts of particulate matter from becoming airborne. Dust and other types of air contaminants shall be kept to a minimum by good modern practices such as using an approved dust suppressant or adhesive soil stabilizer, paving, covering, landscaping, continuous wetting, detouring, barring access, or other acceptable means.

- B. No person shall cause, suffer, allow, or permit a vacant lot, or an urban or suburban open area, to be driven over or used by motor vehicles, trucks, cars, cycles, bikes, or buggies, or by animals such as horses, without taking reasonable precautions to limit excessive amounts of particulates from becoming airborne. Dust shall be kept to a minimum by using an approved dust suppressant, or adhesive soil stabilizer, or by paving, or by barring access to the property, or by other acceptable means.
- C. No person shall operate a motor vehicle for recreational purposes in a dry wash, riverbed or open area in such a way as to cause or contribute to visible dust emissions which then cross property lines into a residential, recreational, institutional, educational, retail sales, hotel or business premises. For purposes of this subsection "motor vehicles" shall include, but not be limited to trucks, cars, cycles, bikes, buggies and 3-wheelers. Any person who violates the provisions of this subsection shall be subject to prosecution under A.R.S. § 49-463.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-604 renumbered without change as Section R18-2-604 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-604 renumbered to R18-2-804, new Section R18-2-604 renumbered from R18-2-404 and amended effective November 15, 1993 (Supp. 93-4).

R18-2-605. Roadways and Streets

- A. No person shall cause, suffer, allow or permit the use, repair, construction or reconstruction of a roadway or alley without taking reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne. Dust and other particulates shall be kept to a minimum by employing temporary paving, dust suppressants, wetting down, detouring or by other reasonable means.
- B. No person shall cause, suffer, allow or permit transportation of materials likely to give rise to airborne dust without taking reasonable precautions, such as wetting, applying dust suppressants, or covering the load, to prevent particulate matter from becoming airborne. Earth or other material that is deposited by trucking or earth moving equipment shall be removed from paved streets by the person responsible for such deposits.

Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-605 renumbered without change as Section R18-2-605 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-605 renumbered to R18-2-805, new Section R18-2-605 renumbered from R18-2-405 effective November 15, 1993 (Supp. 93-4).

R18-2-606. Material Handling

No person shall cause, suffer, allow or permit crushing, screening, handling, transporting or conveying of materials or other operations likely to result in significant amounts of airborne dust without taking reasonable precautions, such as the use of spray bars, wetting agents, dust suppressants, covering the load, and hoods to prevent excessive amounts of particulate matter from becoming airborne.

Historical Note

Section R18-2-606 renumbered from R18-2-406 effective November 15, 1993 (Supp. 93-4).

R18-2-607. Storage Piles

- A. No person shall cause, suffer, allow, or permit organic or inorganic dust producing material to be stacked, piled, or otherwise stored without taking reasonable precautions such as chemical stabilization, wetting, or covering to prevent excessive amounts of particulate matter from becoming airborne.
- B. Stacking and reclaiming machinery utilized at storage piles shall be operated at all times with a minimum fall of material and in such manner, or with the use of spray bars and wetting agents, as to prevent excessive amounts of particulate matter from becoming airborne.

Historical Note

Section R18-2-607 renumbered from R18-2-407 effective November 15, 1993 (Supp. 93-4).

R18-2-608. Mineral Tailings

No person shall cause, suffer, allow, permit construction of, or otherwise own or operate, mineral tailing piles without taking reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne. Reasonable precautions shall mean wetting, chemical stabilization, revegetation or such other measures as are approved by the Director.

Historical Note

Section R18-2-608 renumbered from R18-2-408, new Section R18-2-408 adopted effective November 15, 1993 (Supp. 93-4).

Amended by final rulemaking at 15 A.A.R. 228, effective March 7, 2009 (Supp. 09-1).

R18-2-609. Agricultural Practices

A person shall not cause, suffer, allow, or permit the performance of agricultural practices outside the Phoenix and Yuma planning areas, as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210, including tilling of land and application of fertilizers without taking reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne.

Historical Note

Section R18-2-609 renumbered from R18-2-409 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 6 A.A.R. 2009, effective May 12, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 2210, effective July 18, 2005 (Supp. 05-2).

R18-2-610. Definitions for R18-2-610.01, R18-2-610.02, and R18-2-610.03

The definitions in R18-2-101 and the following definitions apply to R18-2-610.01, R18-2-610.02, and R18-2-610.03:

1. “Access restriction” means reducing PM emissions by reducing the number of trips driven on agricultural aprons and access roads by restricting or eliminating public access to noncropland or commercial farm roads with signs or physical obstruction at locations that effectively control access to the area.
2. “Aggregate cover” means reducing PM emissions and wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to noncropland or commercial farm roads. The aggregate should be clean, hard and durable, and should be applied and maintained to a depth sufficient to reduce PM emissions.
3. “Area A” means the area delineated according to A.R.S. § 49-541(1).
4. “Best management practice” (BMP) means a technique verified by scientific research, that on a case-by-case basis is practical, economically feasible, and effective in reducing PM emissions from a regulated agricultural activity.
5. “Cessation of Night Tilling” means the discontinuation of tillage from sunset to sunrise on a day identified by the Maricopa or Pinal County Dust Control Forecast as being high risk of dust generation.
6. “Chemical irrigation” means reducing a minimum of one ground operation across a commercial farm by applying a fertilizer, pesticide, or other agricultural chemical to cropland through an irrigation system, which reduces soil disturbance and increases efficiency of application.
7. “Chips/ mulches” means reducing PM emissions and soil movement and preserving soil moisture by applying and maintaining nontoxic chemical or organic dust suppressants to a depth sufficient to reduce PM emissions. Materials shall meet all specifications required by federal, state, or local water agencies, and is not prohibited for use by any applicable regulations.
8. “Combining tractor operations” means reducing soil compaction and a minimum of one tillage or ground operation across a commercial farm by using a tractor, implement, harvester, or other farming support vehicle to perform two or more tillage, cultivation, planting, or harvesting operations at the same time. If Equipment modification is also chosen as a BMP, and uses the same practices as described in this BMP, this action is considered one BMP.
9. “Commercial farm” means 10 or more contiguous acres of land used for agricultural purposes within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area.
10. “Commercial farm road” means a road that is unpaved, owned by a commercial farmer, and is used exclusively to service a commercial farm.
11. “Commercial farmer” means an individual, entity, or joint operation in general control of a commercial farm.
12. “Committee” means the Governor’s Agricultural Best Management Practices Committee as established by A.R.S. § 49-457.
13. “Conservation Tillage” means a tillage system that reduces a minimum of three tillage operations. This system reduces soil and water loss by planting into existing plant stubble on the field after harvest as well as managing the stubble so that it remains intact during the planting season.
14. “Cover crop” means establishing cover crops that maintain a minimum of 60 percent ground cover. Native or volunteer vegetation that meets the minimum ground cover requirement is acceptable. Compliance shall be determined by the Line Transect Test Method, NRCS National Agronomy Manual, Subpart 503.51, Estimating Crop Residue Cover, amended through February 2011 (and no future editions).
15. “Critical area planting” means reducing PM₁₀ emissions and wind erosion by planting trees, shrubs, vines, grasses, or other vegetative cover on noncropland in order to maintain at least 60 percent ground cover. Compliance shall be determined by the Line Transect Test Method, NRCS National Agronomy Manual, Subpart 503.51, Estimating Crop Residue Cover, amended through February 2011 (and no future editions).
16. “Cropland” means land on a commercial farm that:
 - a. Is within the time-frame of final harvest to plant emergence, but does not include tillage activities;
 - b. Has been tilled in a prior year and is suitable for crop production, but is currently fallow; or
 - c. Is a turn-row.
17. “Cross-wind ridges” means stabilizing soil and reducing PM emissions and wind erosion by creating soil ridges in a commercial farm by tillage or planting operations. Ridges should be at least four inches in height, and be aligned as perpendicular as possible to the prevailing wind direction.
18. “Dust Control Forecast” means a forecast, which shall identify a low, moderate or high risk of dust generation for the next five consecutive days and shall be issued by noon on each day the forecast is generated. When developing these forecasts, the department shall consider all of the following:
 - a. Projected meteorological conditions, including:
 - i. Wind speed and direction,
 - ii. Stagnation,
 - iii. Recent precipitation, and

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- iv. Potential for precipitation;
 - b. Existing concentrations of air pollution at the time of the forecast; and
 - c. Historic air pollution concentrations that have been observed during meteorological conditions similar to those that are predicted to occur in the forecast.
19. “Equipment modification” means reducing PM emissions and soil erosion during tillage or ground operations by modifying and maintaining an existing piece of agricultural equipment, installing shielding equipment, modifying land planting and land leveling, matching the equipment to row spacing, or grafting to new varieties or technological improvements. If combining tractor operations is also chosen as a BMP, and uses the same practices as described in this BMP, this action is considered one BMP.
20. “Fallow Field” means an area of land that is routinely cultivated, planted and harvested and is unplanted for one or more growing seasons or planting cycles, but is intended to be placed back in agricultural production.
21. “Field Capacity” means the amount of water remaining in the soil two days after having been saturated and after free drainage has ceased.
22. “Forage Crop” means a product grown for consumption by any domestic animal.
23. “Genetically Modified” (GMO) means a living organism whose genetic material has been altered, changing one or more of its characteristics.
24. “GPS: Global Position Satellite System” means using a satellite navigation system on farm equipment to calculate position in the field.
25. “Green chop” means reducing soil compaction, soil disturbance and a minimum of one ground operation across a commercial farm by harvesting a Forage Crop without allowing it to dry in the field.
26. “Ground operation” means an agricultural operation that is not a tillage operation, which involves equipment passing across the field. A ground operation includes harvest activities. A pass through the field may be a subset of a ground operation.
27. “Harvest” means the time after planting up through harvest, including gathering mature crops from a commercial farm, as well as all actions taken immediately after crop removal, such as cooling, sorting, cleaning, and packing.
28. “Integrated Pest Management” means reducing soil compaction and a minimum of one ground operation across a commercial farm for spraying by using a combination of techniques including organic, conventional, and biological farming practices to suppress pest problems.
29. “Limited harvest activity” means performing no ground operations on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation.
30. “Limited tillage activity” means performing no tillage operations on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation.
31. “Maricopa PM nonattainment area” means the Phoenix planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.
32. “Multi-year crop” means reducing PM emissions from wind erosion and a minimum of one tillage and ground operation across a commercial farm, by protecting the soil surface by growing a crop, pasture, or orchard that is grown, or will be grown, on a continuous basis for more than one year.
33. “Noncropland” means any commercial farm land that:
- a. Is no longer used for agricultural production;
 - b. Is no longer suitable for production of crops;
 - c. Is subject to a restrictive easement or contract that prohibits use for the production of crops; or
 - d. Includes a ditch, ditch bank, equipment yard, storage yard, or well head.
34. “NRCS” means the Natural Resource Conservation Service.
35. “Organic material cover” means reducing PM emissions and wind erosion and preserving soil moisture by applying and maintaining cover material such as animal waste or plant residue, to a soil surface to reduce soil movement. Material shall be evenly applied and maintained to a depth sufficient to reduce PM emissions and coverage should be a minimum of 70 percent.
36. “Permanent cover” means reducing PM emissions and wind erosion by maintaining a long-term perennial vegetative cover on cropland that is temporarily not producing a major crop. Perennial species such as grasses and/or legumes shall be used to establish at least 60 percent cover. Compliance shall be determined by the Line Transect Test Method, NRCS National Agronomy Manual, Subpart 503.51, Estimating Crop Residue Cover, amended through February 2011 (and no future editions).
37. “Pinal County PM Nonattainment Area” means the West Pinal PM₁₀ planning area and the West Central PM_{2.5} planning area, as defined in 40 CFR 81.303, and incorporated by reference in R18-2-210.
38. “Plant stubble” means stubble on the soil surface, which insulates soil to reduce evaporation of moisture, and also protects the soil from wind and water erosion.
39. “Planting based on soil moisture” means reducing PM emissions and wind erosion by applying water or having enough moisture in the soil to germinate the seed prior to planting. Soil must have a minimum soil moisture content of 60% of field capacity at planting depth. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions).
40. “PM” includes both particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR 50 Appendix L, or by an equivalent method designated according to 40 CFR 53; and particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method contained within 40 CFR 50 Appendix J or by an equivalent method designated in accordance with 40 CFR 53, as incorporated by reference in Appendix 2.

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41. “Precision Farming” means reducing the number of passes across a commercial farm by at least 12 inches per pass by using GPS to precisely guide farm equipment in the field.
42. “Reduce vehicle speed” means reducing PM emissions and soil erosion from the operation of farm vehicles or farm equipment on noncropland or commercial farm roads at speeds not to exceed 15. This can be achieved through installation of engine speed governors, signage, or speed control devices.
43. “Reduced harvest activity” means reducing soil disturbance, soil and water loss, and the number of mechanical harvest passes by a minimum of one ground operation across a commercial farm, by means other than equipment modification or combining tractor operations.
44. “Reduced tillage system” means reducing soil disturbance, soil and water loss, by using a single piece of equipment that reduces a minimum of three tillage operations, by means other than equipment modification or combining tractor operations.
45. “Regulated agricultural activity” means a regulated agricultural activity as defined in A.R.S. § 49-457(P)(1)(a) through (P)(1)(d).
46. “Regulated area” means the regulated area as defined in A.R.S. § 49-457(P)(6).
47. “Residue management” means reducing PM emissions and wind erosion by maintaining a minimum of 60 percent ground cover of crop and other plant residues on a soil surface between the time of harvest of one crop and the commencement of tillage for a new crop. Compliance shall be determined by the Line Transect Test Method, NRCS National Agronomy Manual, Subpart 503.51, Estimating Crop Residue Cover, amended through February 2011 (and no future editions).
48. “Sequential cropping” means reducing PM emissions and wind erosion by growing crops in a sequence or close rotation that limits the amount of time bare soil is exposed on a commercial farm to 30 days or less.
49. “Shuttle System/Larger Carrier” means reducing one out of every four trips across a commercial farm by using multiple or larger bins/trailers to haul commodity from the field.
50. “Significant Agricultural Earth Moving Activities” means either leveling activities conducted on a commercial farm that disturb the soil more than 4 inches below the surface, or the creation, maintenance and relocation of: ditches, canals, ponds, irrigation lines, tailwater recovery systems (agricultural sumps) and other water conveyances, not to include activities performed on cropland for tillage, ground operations or harvest.
51. “Silt content test method” means the test method as described in Appendix 2.
52. “Stabilization of soil prior to plant emergence” means reducing PM emissions by applying water to soil prior to crop emergence in order to cause the soil to form a visible crust.
53. “Surface roughening” means reducing PM emissions or wind erosion by manipulating a soil surface by means such as rough discing or tillage in order to produce or maintain clods on the land surface. Compliance shall be determined by NRCS Practice Code 609, Surface Roughening, amended through November 2008 (and no future editions).
54. “Synthetic particulate suppressant” means reducing PM emissions and wind erosion by providing a stabilized soil surface on noncropland or commercial farm roads with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
55. “Tillage” means any mechanical practice that physically disturbs the soil, and includes preparation for planting, such as plowing, ripping, or discing.
56. “Tillage based on soil moisture” means reducing PM emissions by irrigating fields to the depth of the proposed cut prior to soil disturbances or conducting tillage to coincide with precipitation. Soil must have a minimum soil moisture content of 40-60% of field capacity at planting depth. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions).
57. “Timing of a tillage operation” means reducing wind erosion and PM emissions by performing tillage operations that minimize the amount of time within 45 days.
58. “Tillage operation” means an agricultural operation that mechanically manipulates the soil for the enhancement of crop production. Examples include discing or bedding. A pass through the field may be a subset of a tillage operation.
59. “Track-out control system” means minimizing any and all material that adheres to and agglomerates on all vehicles and equipment from noncropland or commercial farm roads or and falls onto paved public roads or shoulders to paved public roads by using a device or system to remove mud or soil from a vehicle or equipment before the vehicle enters a paved public road. Devices such as a grizzly, a gravel pad or a wheel wash system can be used.
60. “Transgenic Crops” means reducing a minimum of one tillage or ground operation, the number of chemical spray applications, or soil disturbances by using plants that are genetically modified.
61. “Transplanting” means reducing a minimum of one ground operation across a commercial farm and minimizing soil disturbance by utilizing plants already in a growth state as compared to seeding.
62. “VDT” (Vehicle trips per day) means trips per day made by one vehicle, in one direction.
63. “Watering” means reducing PM emissions and wind erosion by applying water to noncropland or commercial farm road bare soil surfaces during periods of high traffic until the surfaces are visibly moist.
64. “Watering on a high risk day” means reducing PM emissions and wind erosion by applying water to commercial farm road bare soil surfaces until the surfaces are visibly moist, on a day forecast to be high risk for dust generation by the Maricopa or Pinal County Dust Control Forecast.
65. “Wind barrier” means reducing PM emissions and wind erosion by constructing a fence or structure, or providing a woody vegetative barrier by planting a row of trees or shrubs, perpendicular or across the prevailing wind direction to reduce wind speed by changing the pattern of air flow over the land surface. For fences and structures, the wind barrier shall have a density of no less than 50% and the height of the wind barrier must be proportionate to the downwind protected area. The downwind protected area is considered ten times the height of the wind barrier. For vegetative barriers, compliance shall be determined by NRCS Conservation Practice Standard, Code 380, Windbreak/Shelterbelt Establishment, amended through August 21, 2009 (and no future editions).

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Historical Note

Former Section R18-2-610 renumbered to R18-2-612; new Section R18-2-610 adopted by final rulemaking at 6 A.A.R. 2009, effective May 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 13 A.A.R. 4326, effective November 14, 2007 (Supp. 07-4).

Amended by exempt rulemaking at 18 A.A.R. 137, effective December 29, 2011 (Supp. 11-4). Subsection (A) corrected at the request of the Department, Office File No. M12-133, filed April 5, 2012 (Supp. 11-4). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-610.01. Agricultural PM General Permit for Crop Operations; Maricopa County PM Nonattainment Area

- A. A commercial farmer within the Maricopa County PM Nonattainment Area shall implement at least two best management practices from each category to reduce PM emissions.
- B. A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions during tillage, harvest or ground operation activities:
 1. Chemical irrigation,
 2. Combining tractor operations,
 3. Equipment modification,
 4. Green Chop,
 5. Integrated Pest Management,
 6. Limited harvest activity,
 7. Limited tillage activity,
 8. Multi-year crop,
 9. Cessation of Night Tilling,
 10. Planting based on soil moisture,
 11. Precision Farming,
 12. Reduced harvest activity,
 13. Reduced tillage system,
 14. Tillage based on soil moisture,
 15. Timing of a tillage operation,
 16. Transgenic Crops,
 17. Transplanting,
 18. Shuttle System/Larger Carrier, or
 19. Conservation Tillage.
- C. A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions from noncropland and commercial farm roads:
 1. Access restriction,
 2. Aggregate cover,
 3. Wind barrier,
 4. Critical area planting,
 5. Organic material cover,
 6. Reduce vehicle speed,
 7. Synthetic particulate suppressant,
 8. Track-out control system, or
 9. Watering.
- D. A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions from cropland:
 1. Wind barrier,
 2. Cover crop,
 3. Cross-wind ridges,
 4. Chips/mulches,
 5. Multi-year crop,
 6. Permanent cover,
 7. Stabilization of soil prior to plant emergence,
 8. Residue management,
 9. Sequential cropping, or
 10. Surface roughening.
- E. A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions when conducting Significant Agricultural Earth Moving Activities as defined in R18-2-610:
 1. Apply water prior to conducting Significant Agricultural Earth Moving Activities and/or time Significant Agricultural Earth Moving Activities to coincide with precipitation. Soil must have a minimum soil moisture content of 50% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);

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2. Apply water during Significant Agricultural Earth Moving Activities. Soil must have a minimum soil moisture content of 30% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
 3. Limit activities on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation; or
 4. Conduct Significant Agricultural Earth Moving Activities in a manner to reduce a minimum of one ground operation across a commercial farm by using equipment that is the most efficient means of moving the soil.
- F.** From and after December 31, 2015, a commercial farmer who engages in a regulated agricultural activity shall complete and maintain a Best Management Practices Program General Permit Record Form demonstrating compliance with this Section. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial farmer. The Best Management Practice Program General Permit Record Form shall include the following information:
1. The name of the commercial farmer, signature, and date signed;
 2. The mailing address or physical address of the commercial farm; and
 3. The best management practices selected for tillage, harvest, and ground operation activities, cropland, noncropland and commercial farm roads, and significant earth moving activities (if applicable).
- G.** Records of any changes to the Best Management Practices identified in the most recently submitted Best Management Practices Program General Permit Record Form shall be kept by the commercial farmer onsite and made available for review by the Director within two business days of notice to the commercial farmer.
- H.** A person may develop different practices to control PM emissions not contained in subsections (B), (C), (D), or (E) and may submit such practices that are proven effective through on-farm demonstration trials to the Committee. The proposed new practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- I.** A commercial farmer shall maintain a record demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice.
- J.** The Director shall not assess a fee to a commercial farmer for coverage under the agricultural PM₁₀ general permit.
- K.** A commercial farmer shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- L.** The Director shall document noncompliance with this Section before issuing a compliance order.
- M.** A commercial farmer who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

Historical Note

New Section made by exempt rulemaking at 18 A.A.R. 137, effective December 29, 2011 (Supp. 11-4). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-610.02. Agricultural PM General Permit for Crop Operations; Moderate PM Nonattainment Areas, Designated After June 1, 2009

- A.** A commercial farmer within a PM Moderate Nonattainment Area, designated after June 1, 2009, shall implement at least one best management practice from each category to reduce PM emissions.
- B.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions during tillage, harvest and ground operation activities:
1. Chemical irrigation,
 2. Combining tractor operations,
 3. Equipment modification,
 4. Green Chop,
 5. Integrated Pest Management,
 6. Limited harvest activity,
 7. Limited tillage activity,
 8. Multi-year crop,
 9. Cessation of Night Tilling,
 10. Planting based on soil moisture,
 11. Precision Farming,
 12. Reduced harvest activity,
 13. Reduced tillage system,
 14. Tillage based on soil moisture,
 15. Timing of a tillage operation,
 16. Transgenic Crops,
 17. Transplanting, or
 18. Shuttle System/Larger Carrier, or
 19. Conservation Tillage.
- C.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions from noncropland and commercial farm roads:
1. Access restriction,
 2. Aggregate cover,
 3. Wind barrier,

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4. Critical area planting,
 5. Organic material cover,
 6. Reduce vehicle speed,
 7. Synthetic particulate suppressant,
 8. Track-out control system, or
 9. Watering.
- D.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions from cropland:
1. Wind barrier,
 2. Cover crop,
 3. Cross-wind ridges,
 4. Chips/mulches,
 5. Multi-year crop,
 6. Permanent cover,
 7. Stabilization of soil prior to plant emergence,
 8. Residue management,
 9. Sequential cropping, or
 10. Surface roughening.
- E.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), when conducting Significant Agricultural Earth Moving Activities as defined in R18-2-610:
1. Apply water prior to conducting Significant Agricultural Earth Moving Activities and/or time Significant Agricultural Earth Moving Activities to coincide with precipitation. Soil must have a minimum soil moisture content of 50% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
 2. Apply water during Significant Agricultural Earth Moving Activities. Soil must have a minimum soil moisture content of 30% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
 3. Limit activities on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation; or
 4. Conduct Significant Agricultural Earth Moving Activities in a manner to reduce a minimum of one ground operation across a commercial farm by using equipment that is the most efficient means of moving the soil.
- F.** From and after December 31, 2015, a commercial farmer who engages in a regulated agricultural activity shall complete and maintain a Best Management Practices Program General Permit Record Form demonstrating compliance with this Section. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial farmer. The Best Management Practice Program General Permit Record Form shall include the following information:
1. The name of the commercial farmer, signature, and date signed;
 2. The mailing address or physical address of the commercial farm; and
 3. The best management practice selected for tillage, harvest and ground operation activities, cropland, noncropland and commercial farm roads, and significant earth moving activities (if applicable).
- G.** Records of any changes to the Best Management Practices shall be noted on the Best Management Practices Program General Permit Record Form and shall be kept by the commercial farmer onsite and made available for review by the Director within two business days of notice to the commercial farmer.
- H.** A person may develop different practices to control PM emissions not contained in subsections (B), (C), (D), or (E) and may submit such practices that are proven effective through on-farm demonstration trials to the Committee. The proposed new practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- I.** A commercial farmer shall maintain a record demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice.
- J.** The Director shall not assess a fee to a commercial farmer for coverage under the agricultural PM general permit.
- K.** A commercial farmer shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- L.** The Director shall document noncompliance with this Section before issuing a compliance order.
- M.** A commercial farmer who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

Historical Note

New Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-610.03. Agricultural PM General Permit for Crop Operations; Pinal County PM Nonattainment Area

- A.** On the day before and during the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, a commercial farmer shall ensure implementation of best management practices as described in sections (B)(1)(b), (B)(2)(b), (B)(3)(b), (B)(4)(b), and (B)(5)(b).

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B. On all days, a commercial farmer shall implement at least one best management practice from each category to reduce PM emissions, as described below in subsections (1)(a), (2)(a), (3)(a), (4)(a), and (6), and at least two best management practices from subsection (5)(a). If a commercial farmer implements the Conservation tillage or Reduced tillage system best management practice for the tillage category, they do not have to implement a best management practice from the subsections (2)(a), (2)(b), (5)(a) and (5)(b).

1. Tillage:

- a. A commercial farmer shall implement at least one of the following:
 - i. Combining tractor operations,
 - ii. Equipment modification,
 - iii. Multi-year crop,
 - iv. Cessation of night tilling,
 - v. Planting based on soil moisture,
 - vi. Precision farming,
 - vii. Tillage based on soil moisture,
 - viii. Timing of a tillage operation,
 - ix. Transgenic crops,
 - x. Transplanting,
 - xi. Reduced tillage system, or
 - xii. Conservation tillage.
- b. Unless choosing limited tillage activity (subsection iv, below), on the day before and during the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, a commercial farmer shall ensure implementation of at least one of the following:
 - i. Multi-year crop,
 - ii. Planting based on soil moisture,
 - iii. Tillage based on soil moisture,
 - iv. Limited tillage activity,
 - v. Reduced tillage system, or
 - vi. Conservation tillage.

2. Ground Operations and Harvest:

- a. A commercial farmer shall implement at least one of the following:
 - i. Combining tractor operations,
 - ii. Equipment modification,
 - iii. Chemical irrigation,
 - iv. Green chop,
 - v. Integrated pest management,
 - vi. Multi-year crop,
 - vii. Precision farming,
 - viii. Reduced harvest activity,
 - ix. Transgenic crops, or
 - x. Shuttle System/Larger Carrier.
- b. Unless choosing limited harvest activity (subsection iv, below), on the day before and during the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, a commercial farmer shall ensure implementation of at least one of the following:
 - i. Green chop,
 - ii. Integrated pest management,
 - iii. Multi-year crop, or
 - iv. Limited harvest activity.

3. Noncropland:

- a. A commercial farmer shall implement at least one of the following best management practices:
 - i. Access restriction,
 - ii. Aggregate cover,
 - iii. Wind barrier,
 - iv. Critical area planting,
 - v. Organic material cover,
 - vi. Reduce vehicle speed,
 - vii. Synthetic particulate suppressant, or
 - viii. Watering.
- b. Unless choosing watering on a high risk day (subsection vi, below), on the day before and during a day forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, on a noncropland area that experiences more than 20 VDT from 2 or more axle vehicles, commercial farmer shall ensure implementation of at least one of the following best management practices:
 - i. Aggregate cover,
 - ii. Wind barrier,
 - iii. Critical area planting,
 - iv. Organic material cover,

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- v. Synthetic particulate suppressant, or
 - vi. Watering on a high risk day.
4. Commercial farm roads:
- a. A commercial farmer shall implement at least one of the following best management practices:
 - i. Access restriction,
 - ii. Reduce vehicle speed,
 - iii. Track-out control system,
 - iv. Aggregate cover,
 - v. Synthetic particulate suppressant,
 - vi. Watering, or,
 - vii. Organic material cover.
 - b. Unless choosing watering on a high risk day (subsection vi, below), on the day before and during a day forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, on a road that experiences more than 20 VDT from 2 or more axle vehicles, a commercial farmer shall ensure implementation of at least one of the following best management practices:
 - i. Aggregate cover,
 - ii. Synthetic particulate suppressant,
 - iii. Wind barrier,
 - iv. Organic material cover,
 - v. Roads are stabilized as determined by the silt content test method,
 - vi. Watering on a high risk day.
5. Cropland:
- a. A commercial farmer shall implement at least two of the following best management practices, one from subsection (i) through (vii), and one from subsection (viii) through (xi), to reduce PM emissions from cropland:
 - i. Wind barrier,
 - ii. Cover crop,
 - iii. Cross-wind ridges,
 - iv. Chips/mulches,
 - v. Sequential cropping
 - vi. Residue management,
 - vii. Surface roughening,
 - viii. Multi-year crop,
 - ix. Permanent cover, or
 - x. Stabilization of soil prior to plant emergence.
 - b. On the day before and during the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, a commercial farmer shall ensure implementation of at least one of the following:
 - i. Wind barrier,
 - ii. Cover crop,
 - iii. Cross-wind ridges,
 - iv. Chips/mulches,
 - v. Surface roughening,
 - vi. Multi-year crop,
 - vii. Permanent cover,
 - viii. Stabilization of soil prior to plant emergence, or
 - ix. Residue management.
6. A commercial farmer shall implement at least one of the following best management practices, when conducting Significant Agricultural Earth Moving Activities as defined in R18-2-610:
- a. Apply water prior to conducting Significant Agricultural Earth Moving Activities and/or time Significant Agricultural Earth Moving Activities to coincide with precipitation. Soil must have a minimum soil moisture content of 50% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
 - b. Apply water during Significant Agricultural Earth Moving Activities. Soil must have a minimum soil moisture content of 30% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
 - c. Limit activities on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation; or
 - d. Conduct Significant Agricultural Earth Moving Activities in a manner to reduce a minimum of one ground operation across a commercial farm by using equipment that is the most efficient means of moving the soil.
- C. From and after December 31, 2015, a commercial farmer who engages in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form demonstrating compliance with this rule. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the

Director within two business days of notice to the commercial farmer. The Best Management Practice Program General Permit Record Form shall include the following information:

1. The name of the commercial farmer, signature, and date signed;
 2. The mailing address or physical address of the commercial farm; and
 3. The best management practices selected for tillage, ground operations and harvest, cropland, noncropland, commercial farm roads, and significant earth moving activities (if applicable); and
 4. Any additional best management practices selected for high risk days as predicted by the Pinal County Dust Control Forecast.
- D.** Beginning in calendar year 2017, and no more than once every subsequent three calendar years, the Director, in conjunction with the Arizona Department of Agriculture, shall provide the commercial farmer with a Best Management Practices Program 3-year Survey. The commercial farmer shall complete the Survey with data from the preceding calendar year and submit the Survey to the Arizona Department of Agriculture (ADA) by January 31, 2018, and every three years thereafter. The Survey information submitted to the ADA shall be compiled by the ADA without reference to a commercial farmer's name, shall aggregate the data from the Surveys received, and be submitted to the Department. The 3-year Survey shall include the following information:
1. The name, business address, and phone number of the commercial farmer responsible for the preparation and implementation of the best management practices;
 2. The signature of the commercial farmer and the date the form was signed;
 3. The acreage of each crop type planted/growing during the calendar year that the survey is conducted;
 4. The total miles of commercial farm roads at the commercial farm;
 5. The total acreage of the noncropland at the commercial farm;
 6. The best management practices selected for tillage, ground operations and harvest, cropland, noncropland, commercial farm roads, and significant earth moving activities (if applicable); and
 7. Any additional best management practices selected for high risk days as predicted by the Pinal County Dust Control Forecast.
- E.** Records of any changes to the Best Management Practices shall be noted on the Best Management Practices Program General Permit Record Form and shall be kept by the commercial farmer onsite and made available for review by the Director within two business days of notice to the commercial farmer.
- F.** A person may develop different practices to control PM emissions not contained in subsections (B)(1) through (B)(6) and may submit such practices that are proven effective through on-farm demonstration trials to the Committee. The proposed new practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- G.** A commercial farmer shall maintain a record demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice.
- H.** The Director shall not assess a fee to a commercial farmer for coverage under the agricultural PM general permit.
- I.** A commercial farmer shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- J.** The Director shall document noncompliance with this Section before issuing a compliance order.
- K.** A commercial farmer who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

Historical Note

New Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-611. Definitions for R18-2-611.01, R18-2-611.02, and R18-2-611.03

The definitions in R18-2-101 and the following definitions apply to R18-2-611.01, R18-2-611.02, and R18-2-611.03:

1. The following definitions apply to a commercial dairy operation, a commercial beef feedlot, a commercial poultry facility, and commercial swine facility:
 - a. "Animal waste handling and transporting" means the processes by which any animal excretions and mixtures containing animal excretions are collected and transported.
 - b. "Arenas, corrals and pens" means areas where animals are confined for the purposes of, but not limited to, feeding, displaying, safety, racing, exercising, or husbandry.
 - c. "Commercial animal operation" means a commercial dairy operation, a commercial beef feedlot, a commercial poultry facility, and a commercial swine facility, as defined in this Section.
 - d. "Commercial animal operator" means an individual, entity, or joint operation in general control of a commercial animal operation.
 - e. "Dust Control Forecast" means a forecast, which shall identify a low, moderate or high risk of dust generation for the next five consecutive days and shall be issued by noon on each day the forecast is generated. When developing these forecasts, the department shall consider all of the following:
 - i. Projected meteorological conditions, including:
 - (1) Wind speed and direction,
 - (2) Stagnation,
 - (3) Recent precipitation, and
 - (4) Potential for precipitation;
 - ii. Existing concentrations of air pollution at the time of the forecast; and
 - iii. Historic air pollution concentrations that have been observed during meteorological conditions similar to those that are predicted to occur in the forecast.

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- f. "High traffic areas" means areas that experience more than 20 VDT from 2 or more axle vehicles.
 - g. "Maricopa PM nonattainment area" means the Phoenix planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.
 - h. "Paved Public Road" means any paved roadways that are open to public travel and maintained by a City, County, State, or Federal entities.
 - i. "Pinal County PM Nonattainment Area" means the West Pinal PM₁₀ planning area and the West Central PM_{2.5} planning area, as defined in 40 CFR 81.303, and incorporated by reference in R18-2-210.
 - j. "PM" includes both particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR 50 Appendix L, or by an equivalent method designated according to 40 CFR 53; and particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method contained within 40 CFR 50 Appendix J or by an equivalent method designated in accordance with 40 CFR 53, as incorporated by reference in Appendix 2.
 - k. "Regulated agricultural activity" means a regulated agricultural activity as defined in A.R.S. § 49-457(P)(5).
 - l. "Regulated area" means the regulated area as defined in A.R.S. § 49-457(P)(6).
 - m. "Track-out control device" means minimizing any and all material that adheres to and agglomerates on all vehicles and equipment from unpaved access connections and falls onto paved public roads or shoulders to paved public roads by using a device or system to remove mud or soil from a vehicle or equipment before the vehicle enters a paved public road. Devices such as a grizzly, a gravel pad or a wheel wash system can be used.
 - n. "Unpaved access connections" means any unpaved road connection which connects to a paved public road.
 - o. "Unpaved roads or feed lanes" means roads and feed lanes that are unpaved, owned by a commercial animal operator, and used exclusively to service a commercial animal operation.
 - p. "VDT" (Vehicle trips per day) means trips per day made by one vehicle, in one direction.
2. The following definitions apply to a commercial dairy operation:
- a. "Aggregate cover" means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads or feed lanes. The aggregate should be clean, hard and durable, and should be applied and maintained to a minimum of three inches deep.
 - b. "Apply a fibrous layer" means reducing PM emissions and soil movement, and preserving soil moisture by spreading shredded or deconstructed plant materials to cover loose soil in high animal traffic areas. Material shall be consistently applied to a minimum depth of two inches above the soil surface and coverage should be a minimum of 70 percent.
 - c. "Bunkers" means below ground level storage systems for storing large amount of silage, which is covered with a plastic tarp.
 - d. "Calves" means young dairy stock under two months of age.
 - e. "Cement cattle walkways to milk barn" means reducing PM emissions by fencing pathways from the corrals to the milking barn, restricting dairy cattle to surfaces with concrete floors.
 - f. "Commercial dairy operation" means a dairy operation with more than 150 dairy cattle within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area.
 - g. "Cover manure hauling trucks" means reducing PM emissions by completely covering the top of the loaded area.
 - h. "Covers for silage" means reducing PM emissions and wind erosion by using large plastic tarps to completely cover silage.
 - i. "Do not run cattle" means reducing PM emissions by walking dairy cattle to the milking barn.
 - j. "Feed higher moisture feed to dairy cattle" means reducing PM emissions by feeding dairy cattle one or any combination of the following:
 - i. Add water to ration mix to achieve a 20% minimum moisture level,
 - ii. Add molasses or tallow to ration mix at a minimum of 1%,
 - iii. Add silage, or
 - iv. Add green chop.
 - k. "Feed green chop" means feeding high moisture feed that contains at least 30% moisture directly to dairy cattle.
 - l. "Groom manure surface" means reducing PM emissions and wind erosion by:
 - i. Flushing or vacuuming lanes daily,
 - ii. Scraping and harrowing pens on a weekly basis, and
 - iii. Removing manure every four months with equipment that leaves an even corral surface of compacted manure on top of the soil.
 - m. "Hutches" means raised, roofed enclosures that protect the calves from the elements.
 - n. "Pile manure between cleanings" means reducing PM emissions by collecting loose surface materials within the confines of the surface area of the occupied feed pen every two weeks.
 - o. "Provide cooling in corral" means reducing PM emissions by using cooling systems under the corral shades to reduce the ambient air temperature, thereby increasing stocking density in the cool areas of the corrals.
 - p. "Provide shade in corral" means reducing PM emissions by increasing stocking density and reducing animal movement by using a permanent structure, which provides at least 16 square feet per animal of shaded pen surface.
 - q. "Push equipment" means manure harvesting equipment pushed in front of a tractor.

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- r. "Silage" means fermented, high-moisture fodder that can be fed to ruminants, such as cattle and sheep; usually made from grass crops including corn, sorghum or other cereals, by using the entire green plant.
 - s. "Store and maintain feed stock" means reducing PM emissions and wind erosion by storing feed stock in a covered area where the commodity is surrounded on at least three sides by a structure.
 - t. "Synthetic particulate suppressant" means reducing PM emissions and wind erosion by providing a stabilized soil surface on a commercial dairy operation with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
 - u. "Use drag equipment to maintain pens" means reducing PM emissions by using manure equipment pulled behind a tractor instead of using push equipment, which avoids dust accumulation in floor depressions.
 - v. "Use free stall housing" means reducing PM emissions by enclosing one cow per stall, which are outfitted with concrete floors.
 - w. "Water misting systems" means reducing PM emissions from dry manure by using systems that project a cloud of very small water particles onto the manure surface, keeping the surface visibly moist.
 - x. "Wind barrier" means reducing PM10 emissions and wind erosion by constructing a fence or structure, or providing a woody vegetative barrier by planting a row of trees or shrubs, perpendicular or across the prevailing wind direction to reduce wind speed by changing the pattern of air flow over the land surface. For fences and structures, the wind barrier shall have a density of no less than 50% and the height of the wind barrier must be proportionate to the downwind protected area. The downwind protected area is considered ten times the height of the wind barrier. For vegetative barriers, compliance shall be determined by NRCS Conservation Practice Standard, Code 380, Windbreak/Shelterbelt Establishment, amended through August 21, 2009 (and no future editions).
3. The following definitions apply to a commercial beef cattle feedlot:
- a. "Add moisture to pen surface" means reducing PM emissions and wind erosion by applying at least three to six gallons of water per head/per day in pens occupied by beef cattle.
 - b. "Add molasses or tallow to feed" means reducing PM emissions by adding molasses or tallow so that it equals three percent of the total ration.
 - c. "Aggregate cover" means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads or feed lanes. The aggregate should be clean, hard and durable, and should be applied and maintained to a minimum of three inches deep.
 - d. "Apply a fibrous layer in working areas" means reducing PM emissions and soil movement, and preserving soil moisture by spreading shredded or deconstructed plant materials to cover loose soil in high animal traffic areas. Material shall be consistently applied to a minimum depth of two inches above the soil surface and coverage should be a minimum of 70 percent.
 - e. "Bulk materials" means reducing PM emissions by using a closed conveyor system instead of vehicular means to move grain or other.
 - f. "Commercial beef cattle feedlot" means a beef cattle feedlot with more than 500 beef cattle within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area.
 - g. "Concrete apron" means reducing PM emissions by using solidly formed concrete surface, at least 4 inches thick on top of the soil surface, inside the feed pen for 8 feet approaching the feed bunk or water trough.
 - h. "Control cattle during movements" means reducing PM emissions by suppressing the animal's ability to run by driving them forward while intruding on their "flight zones" or restraining the animal's movement.
 - i. "Cover manure hauling trucks" means reducing PM emissions by completely covering the top of the loaded area.
 - j. "Feed higher moisture feed to beef cattle" means reducing PM emissions by feeding beef cattle feed that contains at least 30% moisture.
 - k. "Frequent manure removal" means reducing PM emissions and wind erosion by harvesting loose manure on top of the pen surface at least once every six months.
 - l. "Pile manure between cleanings" means reducing PM emissions by collecting loose manure surface materials, by scraping or pushing, within the confines of the surface area of the occupied feed pen at least four times per year.
 - m. "Provide shade in corral" means reducing PM emissions by increasing stocking density and reducing animal movement by using a permanent structure, which provides at least 16 square feet per animal of shaded pen surface.
 - n. "Push equipment" means manure harvesting equipment pushed in front of a tractor.
 - o. "Store and maintain feed stock" means reducing PM emissions and wind erosion by storing feed stock in a covered area where the commodity is surrounded on at least three sides by a structure.
 - p. "Synthetic particulate suppressant" means reducing PM emissions and wind erosion by providing a stabilized soil surface on a commercial beef feedlot with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
 - q. "Use drag equipment to maintain pens" means reducing PM emissions by using manure harvesting equipment pulled behind a tractor instead of using push equipment, which avoids dust accumulation in floor depressions.
 - r. "Wind barrier" means reducing PM10 emissions and wind erosion by constructing a fence or structure, or providing a woody vegetative barrier by planting a row of trees or shrubs, perpendicular or across the prevailing wind direction to reduce wind speed by changing the pattern of air flow over the land surface. For fences and structures, the wind barrier shall have a density of no less than 50% and the height of the wind barrier must be proportionate to the downwind protected area. The downwind protected area is considered ten times the height of the wind barrier. For vegetative barriers, compliance shall be determined by NRCS Conservation Practice Standard, Code 380, Windbreak/Shelterbelt Establishment, amended through August 21, 2009 (and no future editions).

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4. The following definitions apply to a commercial poultry facility:
 - a. “Add moisture through ventilation systems” means reducing PM emissions by using a ventilation system that is designed to allow stock to maintain their normal body temperature without difficulty while maintaining a minimum of 20% moisture in the air within the housing system to bind small particles to larger particles.
 - b. “Add oil and/or moisture to the feed” means reducing PM emissions by adding a minimum of 1% edible oil and/or moisture to feed rations to bind small particles to larger particles.
 - c. “Aggregate cover” means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads or feed lanes. The aggregate should be clean, hard and durable, and should be applied and maintained to a minimum of three inches deep.
 - d. “Clean aisles between cage rows” means reducing PM emissions by cleaning the aisles between cage rows at least twice every 14 days to prevent dried manure, spilled feed, and debris accumulation.
 - e. “Clean fans, louvers, and soffit inlets in a commercial poultry facility” means reducing PM emissions by cleaning fans, louvers, and soffit inlets when the facility is empty between depopulating and populating the facility.
 - f. “Clean floors and walls in a commercial poultry facility” means reducing PM emissions by cleaning floors and walls to prevent dried manure, spilled feed, and debris accumulation when the facility is empty between depopulating and populating the facility.
 - g. “Commercial poultry facility” means a poultry operation with more than 25,000 egg laying hens within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area.
 - h. “Control vegetation on building exteriors” means reducing PM emissions by removing, cutting, or trimming vegetation that accumulates PM and restricts ventilation of the building, so as to leave approximately 3 feet between the vegetation and building.
 - i. “Enclose transfer points” means reducing PM emissions by enclosing the points of transfer between the enclosed, weatherproof storage structure and the enclosed feed distribution system, which reduce air contact with the feed rations during feed conveyance.
 - j. “House in fully enclosed ventilated buildings” means reducing PM emissions by utilizing fully enclosed buildings with sufficient ventilation.
 - k. “Maintain moisture in manure solids” means reducing PM emissions by maintaining a moisture content of a minimum of 15% in the solids sufficient to bind small particles to larger particles.
 - l. “Minimize drop distance” means reducing PM emissions by designing the feed distribution system so that the distance the feed ration drops from the feed distribution system into feeders is approximately 1 foot or less, which reduces air contact with the feed rations during feed conveyance.
 - m. “Poultry” means any domesticated bird including chickens, turkeys, ducks, geese, guineas, ratites and squabs.
 - n. “Remove spilled feed” means reducing PM emissions by removing spilled feed from the housing facility at least once every 14 days.
 - o. “Stack separated manure solids” means reducing PM emissions and wind erosion by reducing the amount of exposed surface area of manure solids.
 - p. “Store feed” means reducing PM emissions by storing feed in a structure that is enclosed and weatherproof, which reduces air contact with the feed rations during feed storage.
 - q. “Synthetic particulate suppressant” means reducing PM emissions and wind erosion by providing a stabilized soil surface on a commercial poultry operation with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
 - r. “Use enclosed feed distribution system” means reducing PM emissions by using an enclosed feed conveyance system that distributes feed rations throughout the housing facility, which reduces air contact with the feed rations during feed conveyance.
 - s. “Use a flexible discharge spout” means reducing PM emissions and wind erosion at the time of bulk feed deliveries to the housing units by using a flexible discharge spout on the end of the feed truck transfer auger.
 - t. “Use no bedding in the production facility” means reducing PM emissions by not using bedding such as wood shavings, sawdust, peanut hulls, straw, or other organic material.
 - u. “Use of a rotary dryer to dry manure waste” means reducing PM10 emissions by drying the manure waste in a rotary dryer fitted with a baghouse or wet scrubber. A commercial poultry facility using a rotary dryer must comply with all of the following:
 - i. Install, maintain, and operate the baghouse or wet scrubber in a manner consistent with the manufacturer’s specifications at all times the rotary dryer is operated. The manufacturer specifications must be available on site upon request.
 - ii. Conduct monthly observations using EPA Method 22 on the control equipment to ensure proper operation. If improper operation is observed through EPA Method 22, the dryer must stop immediately and the equipment repaired before resuming operations.
 - iii. For baghouses, conduct an annual black light inspection of the bags to detect broken or leaking bags. If broken or leaking bags are detected it must be repaired or replaced immediately.
 - iv. Maintain a record of all repair activity required under (ii) and (ii) that must be made available within two days of Director’s request for inspection.

5. The following definitions apply to a commercial swine facility:
- a. “Add oil and/or moisture to the feed” means reducing PM emissions by adding a minimum of 0.5% edible oil and/or moisture to feed rations to bind small particles to larger particles.
 - b. “Add moisture through ventilation systems” means reducing PM emissions by using a ventilation system that is designed to allow stock to maintain their normal body temperature without difficulty while maintaining minimum of 15% moisture in the air within the housing system to bind small particles to larger particles.
 - c. “Aggregate cover” means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads or feed lanes. The aggregate should be clean, hard and durable, and should be applied and maintained to a minimum of three inches deep.
 - d. “Clean aisles between pens and stalls” means reducing PM emissions by cleaning the aisles between pens and stalls at least twice every 14 days to prevent dried manure, spilled feed, and debris accumulation.
 - e. “Clean fans, louvers, and soffit inlets in a commercial swine facility” means reducing PM emissions by cleaning fans, louvers, and soffit inlets between transfer of animal groups, but in any case, at least every 6 months.
 - f. “Clean pens, floors and walls in a commercial swine facility” means reducing PM emissions by cleaning pens, floors, and walls between transfer of animal groups to prevent dried manure, spilled feed, and debris accumulation, but in any case, at least every 6 months.
 - g. “Commercial swine facility” means a swine operation with more than 50 animal units for more than 30 consecutive days within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area. One thousand pounds equals one animal unit.
 - h. “Control vegetation on building exteriors” means reducing PM emissions by removing, cutting, or trimming vegetation that accumulates PM and restricts ventilation of the building, so as to leave approximately 3 feet between the vegetation and the building.
 - i. “Enclose transfer points” means reducing PM emissions by enclosing the points of transfer between the enclosed, weather-proof storage structure and the enclosed feed distribution system, which reduces air contact with the feed rations during feed conveyance.
 - j. “House in fully enclosed ventilated buildings” means reducing PM emissions by utilizing fully enclosed buildings with sufficient ventilation.
 - k. “Lagoon” means a liquid manure storage and treatment pond.
 - l. “Maintain moisture in manure solids” means reducing PM₁₀ emissions by maintaining a minimum moisture content of 10% in the solids sufficient to bind small particles to larger particles.
 - m. “Minimize drop distance” means reducing PM emissions by designing the feed distribution system so that the distance the feed ration drops from the feed distribution system into feeders is 3 feet or less, which reduces air contact with the feed rations during feed conveyance.
 - n. “Remove spilled feed” means reducing PM emissions by removing spilled feed from the housing facility at least once every 14 days.
 - o. “Slatted flooring” means reducing PM emissions by using flooring that is a slotted concrete or wire-mesh floor set above a liquid manure collection pit, which allows the excrement to fall though the flooring into the liquid pit below, which prevents solids build-up. Slats 4 to 8 inches wide with spacing of about 1 inch in between are recommended.
 - p. “Sloped concrete flooring” means reducing PM emissions by pouring concrete with a minimum of 0.25% grade inside of the barns which provides drainage and easier cleaning of floor areas.
 - q. “Stack separated manure solids” means reducing PM emissions and wind erosion by reducing the amount of exposed surface area of manure solids.
 - r. “Store feed” means reducing PM emissions by storing feed in a structure that is enclosed and weatherproof, which reduces air contact with the feed rations during feed storage.
 - s. “Store separated manure solids” means reducing PM emissions by storing manure solids in a wind-blocked area behind a wall, structure, or area with natural wind protection to minimize blowing air movement over the manure stack.
 - t. “Synthetic particulate suppressant” means reducing PM emissions and wind erosion by providing a stabilized soil surface on a commercial swine operation with a manufactured product such as lignosulfonate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
 - u. “Use a flexible discharge spout” means reducing PM emissions and wind erosion at the time of bulk feed deliveries to the housing units by using a flexible discharge spout on the end of the feed truck transfer auger.
 - v. “Use enclosed feed distribution system” means reducing PM emissions by using an enclosed feed conveyance system that distributes feed rations throughout the housing facility, which reduces air contact with the feed rations during the feed conveyance.
 - w. “Use no bedding in the production facility” means reducing PM emissions by not using bedding such as wood shavings, sawdust, peanut hulls, straw, or other organic material.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 2009, effective May 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 13 A.A.R. 4326, effective November 14, 2007 (Supp. 07-4). Section repealed; new Section made by exempt rulemaking at 18 A.A.R. 137, effective December 29, 2011 (Supp. 11-4). Subsection (2)(a) corrected at request of the Department, Office File No. M12-133, filed April 5, 2012 (Supp. 11-4). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 22 A.A.R.

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987, effective April 5, 2016 (Supp. 16-2).

R18-2-611.01. Agricultural PM General Permit for Animal Operations; Maricopa County Serious PM Nonattainment Areas

- A. A commercial animal operator within a Serious PM Nonattainment Area shall implement at least two best management practices from each category to reduce PM emissions.
- B. A commercial dairy operation shall implement the following best management practices, as described in subsection (A), from each of the following categories:
 1. Arenas, Corrals, and Pens:
 - a. Use free stall housing,
 - b. Provide shade in corral,
 - c. Provide cooling in corral,
 - d. Cement cattle walkways to milk barn,
 - e. Groom manure surface,
 - f. Water misting systems,
 - g. Use drag equipment to maintain pens,
 - h. Pile manure between cleanings,
 - i. Feed green chop,
 - j. Keep calves in barns or hutches,
 - k. Do not run cattle,
 - l. Apply a fibrous layer, or
 - m. Wind barrier.
 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Feed higher moisture feed to dairy cattle,
 - b. Store and maintain feed stock,
 - c. Covers for silage,
 - d. Store silage in bunkers,
 - e. Cover manure hauling trucks, or
 - f. Do not load manure trucks with dry manure when wind exceeds 15 mph.
 3. Unpaved Access Connections:
 - a. Install signage to limit vehicle speed to 15 mph,
 - b. Install speed control devices,
 - c. Restrict access to through traffic,
 - d. Install and maintain a track-out control device,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant, or
 - h. Apply and maintain water as a dust suppressant.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed truck to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict access to through traffic,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant,
 - h. Apply and maintain water as a dust suppressant,
 - i. Use appropriate vehicles such as electric carts or small utility vehicles instead of trucks, or
 - j. Apply and maintain pavement or cement feed lanes.
- C. A commercial beef cattle feedlot shall implement the following best management practices, as described in subsection (A), from each of the following categories:
 1. Arenas, Corrals, and Pens:
 - a. Concrete aprons,
 - b. Provide shade in corral,
 - c. Add moisture to pen surface,
 - d. Manure removal,
 - e. Pile manure between cleanings,
 - f. Feed higher moisture feed to beef cattle,
 - g. Control cattle during movements,
 - h. Use drag equipment to maintain pens,
 - i. Apply a fibrous layer, or
 - j. Wind barrier.

2. Animal Waste (and Feed) Handling and Transporting:
 - a. Feed higher moisture feed to beef cattle,
 - b. Add molasses or tallow to feed,
 - c. Store and maintain feed stock,
 - d. Bulk materials,
 - e. Use drag equipment to maintain pens,
 - f. Cover manure hauling trucks, or
 - g. Do not load manure when wind exceeds 15 mph.
 3. Unpaved Access Connections:
 - a. Install and maintain a track-out control device,
 - b. Apply and maintain pavement in high traffic areas,
 - c. Apply and maintain aggregate cover,
 - d. Apply and maintain synthetic particulate suppressant, or
 - e. Apply and maintain water as a dust suppressant.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed truck to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict access to through traffic,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant,
 - h. Apply and maintain water as a dust suppressant, or
 - i. Apply and maintain oil on roads or feed lanes.
- D. A commercial poultry facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens (Housing):
 - a. Clean fans, louvers, and soffit inlets in a commercial poultry facility,
 - b. Use no bedding,
 - c. Control vegetation on building exteriors,
 - d. Add moisture through ventilation systems, or
 - e. House in fully enclosed ventilated buildings.
 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Remove spilled feed,
 - b. Store feed,
 - c. Add oil and/or moisture to the feed,
 - d. Use enclosed feed distribution system,
 - e. Use flexible discharge spout,
 - f. Minimize drop distance,
 - g. Enclose transfer points,
 - h. Clean floors and walls in a commercial poultry facility,
 - i. Clean aisles between cage rows,
 - j. Stack separated manure solids,
 - k. Maintain moisture in manure solids, or
 - l. Use of a rotary dryer to dry manure waste.
 3. Unpaved Access Connections:
 - a. Install speed control devices,
 - b. Restrict traffic access,
 - c. Install and maintain a track-out control system, or
 - d. Install signage to limit vehicle speed to 15 mph.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed trucks to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict traffic access,
 - e. Apply and maintain aggregate cover,
 - f. Apply and maintain synthetic particulate suppressant,
 - g. Apply and maintain water, or
 - h. Apply and maintain oil on roads or feed lanes.
- E. A commercial swine facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens (Housing):
 - a. House in fully enclosed ventilated buildings,
 - b. Use no bedding,

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- c. Use a slatted floor system,
 - d. Use sloped concrete flooring,
 - e. Clean fans, louvers, and soffit inlets in a commercial swine facility,
 - f. Control vegetation on building exteriors, or
 - g. Add moisture through ventilation systems.
2. Animal Waste (and Feed) Handling and Transporting:
- a. Remove spilled feed,
 - b. Store feed,
 - c. Add oil and/or moisture to feed,
 - d. Use enclosed feed distribution system,
 - e. Use flexible discharge spout,
 - f. Minimize drop distance,
 - g. Enclose transfer points,
 - h. Clean pens, floors, and walls in a commercial swine facility,
 - i. Clean aisles between pens and stalls,
 - j. Store separated manure solids in a wind-blocked area,
 - k. Stack separated manure solids,
 - l. Maintain moisture in manure solids, or
 - m. Maintain liquid lagoon level.
3. Unpaved Access Connections:
- a. Install speed control devices,
 - b. Restrict traffic access,
 - c. Install and maintain a track-out control system,
 - d. Install signage to limit vehicle speed to 15 mph.
4. Unpaved Roads or Feed Lanes:
- a. Install engine speed governors on feed trucks to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict traffic access,
 - e. Apply and maintain aggregate cover,
 - f. Apply and maintain synthetic particulate suppressant,
 - g. Apply and maintain water,
 - h. Apply and maintain oil on roads or feed lanes, or
 - i. Wind barrier.
- F. From and after December 31, 2015, a commercial animal operator who engages in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial animal operator. The Best Management Practice Program General Permit Record form shall include the following information:
- 1. The name of the commercial animal operator, signature, and date signed,
 - 2. The mailing address or physical address of the commercial animal operation, and
 - 3. The best management practices selected for Arenas, Corrals, and Pens, Animal Waste Handling and Transporting, Unpaved Access Connections, and Unpaved Roads or Feed Lanes.
- G. Beginning January 1, 2016, a commercial animal operator shall maintain records demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice and any changes to the best management practices. Records shall be kept by the commercial animal operator onsite and made available for review by the Director within two business days of notice to the commercial animal operator.
- H. A person may develop different practices not contained in subsection (B), (C), (D), or (E), that reduce PM and may submit such practices that are proven effective through on-operation demonstration trials to the Committee.
- I. The Director shall not assess a fee to a commercial animal operator for coverage under the Best Management Practice Program General Permit Record Form.
- J. A commercial animal operator shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- K. The Director shall document noncompliance with this Section before issuing a compliance order.
- L. A commercial animal operator who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

Historical Note

New Section made by exempt rulemaking at 18 A.A.R. 137, effective December 29, 2011 (Supp. 11-4). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 22 A.A.R. 987, effective April 5, 2016 (Supp. 16-2).

R18-2-611.02. Agricultural PM General Permit for Animal Operations; Moderate PM Nonattainment Areas Designated After June 1, 2009, Except Pinal County PM Nonattainment Area

- A. A commercial animal operator within a Moderate PM Nonattainment Area, designated after June 1, 2009, shall implement at least one best management practice from each category to reduce PM emissions.
- B. A commercial dairy operation shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens:
 - a. Use free stall housing,
 - b. Provide shade in corral,
 - c. Provide cooling in corral,
 - d. Cement cattle walkways to milk barn,
 - e. Groom manure surface,
 - f. Water misting systems,
 - g. Use drag equipment to maintain pens,
 - h. Pile manure between cleanings,
 - i. Feed green chop,
 - j. Keep calves in barns or hutches,
 - k. Do not run cattle,
 - l. Apply a fibrous layer, or
 - m. Wind barrier.
 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Feed higher moisture feed to dairy cattle,
 - b. Store and maintain feed stock,
 - c. Covers for silage,
 - d. Store silage in bunkers,
 - e. Cover manure hauling trucks, or
 - f. Do not load manure trucks with dry manure when wind exceeds 15 mph.
 3. Unpaved Access Connections:
 - a. Install signage to limit vehicle speed to 15 mph,
 - b. Install speed control devices,
 - c. Restrict access to through traffic,
 - d. Install and maintain a track-out control device,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant, or
 - h. Apply and maintain water as a dust suppressant.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed truck to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict access to through traffic,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant,
 - h. Apply and maintain water as a dust suppressant,
 - i. Use appropriate vehicles such as electric carts or small utility vehicles instead of trucks, or
 - j. Apply and maintain pavement or cement feed lanes.
- C. A commercial beef cattle feedlot shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens:
 - a. Concrete aprons,
 - b. Provide shade in corral,
 - c. Add moisture to pen surface,
 - d. Manure removal,
 - e. Pile manure between cleanings,
 - f. Feed higher moisture feed to beef cattle,
 - g. Control cattle during movements,
 - h. Use drag equipment to maintain pens,
 - i. Apply a fibrous layer, or
 - j. Wind barrier.
 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Feed higher moisture feed to beef cattle,
 - b. Add molasses or tallow to feed,
 - c. Store and maintain feed stock,

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- d. Bulk materials,
 - e. Use drag equipment to maintain pens,
 - f. Cover manure hauling trucks, or
 - g. Do not load manure when wind exceeds 15 mph.
3. Unpaved Access Connections:
 - a. Install and maintain a track-out control device,
 - b. Apply and maintain pavement in high traffic areas,
 - c. Apply and maintain aggregate cover,
 - d. Apply and maintain synthetic particulate suppressant, or
 - e. Apply and maintain water as a dust suppressant.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed truck to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict access to through traffic,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant,
 - h. Apply and maintain water as a dust suppressant, or
 - i. Apply and maintain oil on roads or feed lanes.
- D. A commercial poultry facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens (Housing):
 - a. Clean fans, louvers, and soffit inlets in a commercial poultry facility,
 - b. Use no bedding,
 - c. Control vegetation on building exteriors;
 - d. Add moisture through ventilation systems, or
 - e. House in fully enclosed ventilated buildings.
 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Remove spilled feed,
 - b. Store feed,
 - c. Add oil and/or moisture to the feed,
 - d. Use enclosed feed distribution system,
 - e. Use flexible discharge spout,
 - f. Minimize drop distance,
 - g. Enclose transfer points,
 - h. Clean floors and walls in a commercial poultry facility,
 - i. Clean aisles between cage rows,
 - j. Stack separated manure solids, or
 - k. Maintain moisture in manure solids.
 3. Unpaved Access Connections:
 - a. Install speed control devices,
 - b. Restrict traffic access,
 - c. Install and maintain a track-out control system, or
 - d. Install signage to limit vehicle speed to 15 mph.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed trucks to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict traffic access,
 - e. Apply and maintain aggregate cover,
 - f. Apply and maintain synthetic particulate suppressant,
 - g. Apply and maintain water, or
 - h. Apply and maintain oil on roads or feed lanes.
- E. A commercial swine facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens (Housing):
 - a. House in fully enclosed ventilated buildings,
 - b. Use no bedding,
 - c. Use a slatted floor system,
 - d. Use sloped concrete flooring,

- e. Clean fans, louvers, and soffit inlets in a commercial swine facility,
 - f. Control vegetation on building exteriors, or
 - g. Add moisture through ventilation systems.
2. Animal Waste (and Feed) Handling and Transporting:
- a. Remove spilled feed,
 - b. Store feed,
 - c. Add oil and/or moisture to feed,
 - d. Use enclosed feed distribution system,
 - e. Use flexible discharge spout,
 - f. Minimize drop distance,
 - g. Enclose transfer points,
 - h. Clean pens, floors, and walls in a commercial swine facility,
 - i. Clean aisles between pens and stalls,
 - j. Store separated manure solids in a wind-blocked area,
 - k. Stack separated manure solids,
 - l. Maintain moisture in manure solids, or
 - m. Maintain liquid lagoon level.
3. Unpaved Access Connections:
- a. Install speed control devices,
 - b. Restrict traffic access,
 - c. Install and maintain a track-out control system,
 - d. Install signage to limit vehicle speed to 15 mph.
4. Unpaved Roads or Feed Lanes:
- a. Install engine speed governors on feed trucks to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict traffic access,
 - e. Apply and maintain aggregate cover,
 - f. Apply and maintain synthetic particulate suppressant,
 - g. Apply and maintain water,
 - h. Apply and maintain oil on roads or feed lanes, or
 - i. Wind barrier.
- F. From and after December 31, 2015, a commercial animal operator who engages in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial animal operator. The Best Management Practices Program General Permit Record Form shall include the following information:
- 1. The name of the commercial animal operator, signature, and date signed,
 - 2. The mailing address or physical address of the commercial animal operation, and
 - 3. The best management practices selected for Arenas, Corrals, and Pens, Animal Waste Handling and Transporting, Unpaved Access Connections, and Unpaved Roads or Feed Lanes.
- G. Beginning January 1, 2016, a commercial animal operator shall maintain records demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice and any changes to the best management practices. Records shall be kept by the commercial animal operator onsite and made available for review by the Director within two business days of notice to the commercial animal operator.
- H. A person may develop different practices not contained in subsection (B), (C), (D), or (F) that reduce PM and may submit such practices that are proven effective through on-operation demonstration trials to the Committee. The new best management practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- I. The Director shall not assess a fee to a commercial animal operator for coverage under the agricultural PM general permit.
- J. A commercial animal operator shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- K. The Director shall document noncompliance with this Section before issuing a compliance order.
- L. A commercial animal operator who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

Historical Note

New Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-611.03. Agricultural PM General Permit for Animal Operations; Pinal County PM Nonattainment Area

- A. A commercial animal operator within the Pinal County PM Nonattainment Area shall implement at least one best management practice from each category to reduce PM emissions.

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- B.** In addition to subsection (A), on the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, commercial dairy operations within the Pinal County PM Nonattainment Area shall apply and maintain one of the four following BMPs on unpaved roads that experience more than 20 VDT from 2 or more axle vehicles:
1. Apply and maintain pavement in high traffic areas,
 2. Apply and maintain aggregate cover,
 3. Apply and maintain synthetic particulate suppressant, or
 4. Apply and maintain water as a dust suppressant.
- C.** In addition to subsection (A), commercial beef feedlots within the Pinal County PM Nonattainment Area, shall add water to pen surface, as defined in R18-2-611(3)(a), on the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast.
- D.** A commercial dairy operation shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens:
 - a. Use free stall housing,
 - b. Provide shade in corral,
 - c. Provide cooling in corral,
 - d. Cement cattle walkways to milk barn,
 - e. Groom manure surface,
 - f. Water misting systems,
 - g. Use drag equipment to maintain pens,
 - h. Pile manure between cleanings,
 - i. Feed green chop,
 - j. Keep calves in barns or hutches,
 - k. Do not run cattle,
 - l. Apply a fibrous layer, or
 - m. Wind barrier.
 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Feed higher moisture feed to dairy cattle,
 - b. Store and maintain feed stock,
 - c. Covers for silage,
 - d. Store silage in bunkers,
 - e. Cover manure hauling trucks, or
 - f. Do not load manure trucks with dry manure when wind exceeds 15 mph.
 3. Unpaved Access Connections:
 - a. Install signage to limit vehicle speed to 15 mph,
 - b. Install speed control devices,
 - c. Restrict access to through traffic,
 - d. Install and maintain a track-out control device,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant, or
 - h. Apply and maintain water as a dust suppressant.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed truck to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict access to through traffic,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant,
 - h. Apply and maintain water as a dust suppressant,
 - i. Use appropriate vehicles such as electric carts or small utility vehicles instead of trucks, or
 - j. Apply and maintain pavement or cement feed lanes.
- E.** A commercial beef cattle feedlot shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens:
 - a. Concrete aprons,
 - b. Provide shade in corral,
 - c. Add water to pen surface,
 - d. Manure removal,
 - e. Pile manure between cleanings,

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- f. Feed higher moisture feed to beef cattle,
 - g. Control cattle during movements,
 - h. Use drag equipment to maintain pens,
 - i. Apply a fibrous layer, or
 - j. Wind barrier.
 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Feed higher moisture feed to beef cattle;
 - b. Add molasses or tallow to feed,
 - c. Store and maintain feed stock,
 - d. Bulk materials,
 - e. Use drag equipment to maintain pens,
 - f. Cover manure hauling trucks, or
 - g. Do not load manure when wind exceeds 15 mph.
 3. Unpaved Access Connections:
 - a. Install and maintain a track-out control device,
 - b. Apply and maintain pavement in high traffic areas,
 - c. Apply and maintain aggregate cover,
 - d. Apply and maintain synthetic particulate suppressant, or
 - e. Apply and maintain water as a dust suppressant.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed truck to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict access to through traffic,
 - e. Apply and maintain pavement in high traffic areas,
 - f. Apply and maintain aggregate cover,
 - g. Apply and maintain synthetic particulate suppressant,
 - h. Apply and maintain water as a dust suppressant, or
 - i. Apply and maintain oil on roads or feed lanes.
- F. A commercial poultry facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens (Housing):
 - a. Clean fans, louvers, and soffit inlets in a commercial poultry facility,
 - b. Use no bedding,
 - c. Control vegetation on building exteriors,
 - d. Add moisture through ventilation systems, or
 - e. House in fully enclosed ventilated buildings.
 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Remove spilled feed,
 - b. Store feed,
 - c. Add oil and/or moisture to the feed,
 - d. Use enclosed feed distribution system,
 - e. Use flexible discharge spout,
 - f. Minimize drop distance,
 - g. Enclose transfer points,
 - h. Clean floors and walls in a commercial poultry facility,
 - i. Clean aisles between cage rows,
 - j. Stack separated manure solids, or
 - k. Maintain moisture in manure solids.
 3. Unpaved Access Connections:
 - a. Install speed control devices,
 - b. Restrict traffic access,
 - c. Install and maintain a track-out control system, or
 - d. Install signage to limit vehicle speed to 15 mph.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed trucks to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict traffic access,
 - e. Apply and maintain aggregate cover,
 - f. Apply and maintain synthetic particulate suppressant,
 - g. Apply and maintain water, or
 - h. Apply and maintain oil on roads or feed lanes.

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- G. A commercial swine facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens (Housing):
 - a. House in fully enclosed ventilated buildings,
 - b. Use no bedding,
 - c. Use a slatted floor system,
 - d. Use sloped concrete flooring,
 - e. Clean fans, louvers, and soffit inlets in a commercial swine facility,
 - f. Control vegetation on building exteriors, or
 - g. Add moisture through ventilation systems.
 2. Animal Waste (and Feed) Handling and Transporting:
 - a. Remove spilled feed,
 - b. Store feed,
 - c. Add oil and/or moisture to feed,
 - d. Use enclosed feed distribution system,
 - e. Use flexible discharge spout,
 - f. Minimize drop distance,
 - g. Enclose transfer points,
 - h. Clean pens, floors, and walls in a commercial swine facility,
 - i. Clean aisles between pens and stalls,
 - j. Store separated manure solids in a wind-blocked area,
 - k. Stack separated manure solids,
 - l. Maintain moisture in manure solids, or
 - m. Maintain liquid lagoon level.
 3. Unpaved Access Connections:
 - a. Install speed control devices,
 - b. Restrict traffic access,
 - c. Install and maintain a track-out control system,
 - d. Install signage to limit vehicle speed to 15 mph.
 4. Unpaved Roads or Feed Lanes:
 - a. Install engine speed governors on feed trucks to 15 mph,
 - b. Install signage to limit vehicle speed to 15 mph,
 - c. Install speed control devices,
 - d. Restrict traffic access,
 - e. Apply and maintain aggregate cover,
 - f. Apply and maintain synthetic particulate suppressant,
 - g. Apply and maintain water,
 - h. Apply and maintain oil on roads or feed lanes, or
 - i. Wind barrier.
- H. From and after December 31, 2015, a commercial animal operator who engages in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial animal operator. The Best Management Practices Program General Permit Record Form shall include the following information:
1. The name of the commercial animal operator, signature, and date signed,
 2. The mailing address or physical address of the commercial animal operation, and
 3. The best management practices selected for Arenas, Corrals, and Pens, Animal Waste Handling and Transporting, Unpaved Access Connections, and Unpaved Roads or Feed Lanes.
- I. Beginning in calendar year 2017, and no more than once every subsequent three calendar years, the Director shall provide the commercial animal operator with a Best Management Practices Program 3-year Survey. The commercial animal operator shall complete the Survey with data from the preceding calendar year and submit the Survey to the Arizona Department of Agriculture (ADA) by January 31, 2018, and every three years thereafter. The Survey information submitted to the ADA shall be compiled by the ADA in a format that does not refer to a commercial animal operator's name, shall aggregate the data from the Surveys received, and be submitted to the Department. The 3-year Survey shall include the following information:
1. The name, business address, and phone number of the commercial farmer responsible for the preparation and implementation of the best management practices;
 2. The signature of the commercial farmer and the date the form was signed;
 3. The number of animals in a commercial dairy operation, beef cattle feed lot, poultry facility or swine facility;
 4. The total miles of unpaved roads at the commercial dairy operation, beef cattle feed lot, poultry facility or swine facility;
 5. The total acreage of the unpaved access connections and equipment areas at the commercial dairy operation, beef cattle feed lot, poultry facility or swine facility;

6. The best management practices selected for each category; and
 7. For commercial dairy operations and beef cattle feedlots, an acknowledgement that water was applied on the day of a high risk day as predicted by the Pinal County Dust Control Forecast.
- J.** Beginning January 1, 2016, a commercial animal operator shall maintain records demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice and any changes to the best management practices. Records shall be kept by the commercial animal operator onsite and made available for review by the Director within two business days of notice to the commercial animal operator.
- K.** A person may develop different practices not contained in subsection (D), (E), (F), or (G) that reduce PM and may submit such practices that are proven effective through on-operation demonstration trials to the Committee. The new best management practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- L.** The Director shall not assess a fee to a commercial animal operator for coverage under the agricultural PM general permit.
- M.** A commercial animal operator shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- N.** The Director shall document noncompliance with this Section before issuing a compliance order.
- O.** A commercial animal operator who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

Historical Note

New Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-612. Definitions for R18-2-612.01

The definitions in R18-2-101 and the following definitions apply to R18-2-612.01:

1. “Access restriction” means reducing PM emission by reducing the number of trips driven on unpaved operation and maintenance and unpaved utility roads by restricting or eliminating public access by the use of signs or physical obstruction at locations that effectively control access to roads.
2. “Aggregate cover” means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads. The aggregate should be clean, hard and durable, and should be applied a depth sufficient to create soil stabilization in accordance with material specifications. A minimum depth of three inches is the standard in the absence of such specifications.
3. “Apply and maintain water” means reducing PM emissions and wind erosion by applying water to bare soil surfaces until the surfaces are visibly moist.
4. “Best management practice” means a technique verified by scientific research, that on a case-by-case basis is practical, economically feasible, and effective in reducing PM emissions from a regulated agricultural activity.
5. “Biological control of aquatic weeds” means reducing at least one trip, or to one trip if only one trip is needed, per treatment, made by vehicles for the purposes of removing aquatic weeds from canals by using fish, and other biologic means, within the canal through the use of to control the growth of aquatic weeds that reduce operating capacities and create debris that causes other operational issues.
6. “Canals” means facilities constructed for the sole purpose of the control, conveyance, and delivery of water. These facilities may be either open earthen channels, lined or unlined, or buried pipelines, which are used to convey water uphill and under obstructions, such as roadways and wash and river channels. These facilities include, but are not limited to, gate, inlet, outlet, safety, and measuring structures required to control water along the canals and deliver water to irrigation district customers, as well as compacted earthen banks constructed to protect these facilities from storm runoff events.
7. “Committee” means the Governor’s Agricultural Best Management Practices Committee.
8. “Debris” means trash, rubble, and other non-soil materials.
9. “Dredge canals” means reducing PM emissions by mechanically removing muck, debris, and other foreign objects from canals while material is still wet or damp.
10. “Dust Control Forecast” means a forecast, which shall identify a low, moderate or high risk of dust generation for the next five consecutive days and shall be issued by noon on each day the forecast is generated. When developing these forecasts, the department shall consider all of the following:
 - a. Projected meteorological conditions, including:
 - i. Wind speed and direction,
 - ii. Stagnation,
 - iii. Recent precipitation, and
 - iv. Potential for precipitation;
 - b. Existing concentrations of air pollution at the time of the forecast; and
 - c. Historic air pollution concentrations that have been observed during meteorological conditions similar to those that are predicted to occur in the forecast.
11. “Earth materials” means natural materials covering the ground surface, which includes, but are not limited to, dirt, rocks, or soil.
12. “Grading roadways” means mechanically smoothing and compacting the roadway surface.
13. “Irrigation District” means a political subdivision, governed by title 48, chapter 19.
14. “Limit activity” means performing only critical operational or emergency activity on a day forecast to be high risk for dust generation as forecasted by the Pinal County Dust Control Forecast.

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15. “Major earth moving activities” means the mechanical movement of earth materials to reconstruct, relocate, reshape, reconfigure canals, including operation and maintenance roads and utility access roads.
16. “Maricopa PM nonattainment area” means the Phoenix planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.
17. “Minor earth moving activities” means the mechanical movement of earth materials to repair and maintain the existing configuration, location, bank slopes, or inclines of canals.
18. “Muck” means water that is saturated with mud, dirt, and soil, which accumulates over time along the bottom of canals.
19. “Paved Public Road” means any paved roadways that are open to public travel and maintained by a City, County, or the State.
20. “Pinal County PM Nonattainment Area” means the West Pinal PM₁₀ planning area and the West Central PM_{2.5} planning area, as defined in 40 CFR 81.303, and incorporated by reference in R18-2-210.
21. “PM” includes both particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR 50 Appendix L, or by an equivalent method designated according to 40 CFR 53; and particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method contained within 40 CFR 50 Appendix J or by an equivalent method designated in accordance with 40 CFR 53, as incorporated by reference in Appendix 2.
22. “Reduce vehicle speed” means reducing PM emissions and soil erosion from the use of vehicles owned or operated by the irrigation district on unpaved operation, maintenance, and utility access roads, at speeds not to exceed 25 mph. This can be achieved through worker behavior modifications, signage, or any other necessary means.
23. “Regulated agricultural activity” means activities of an irrigation district, which affects those lands and facilities that are under the jurisdiction and control of an irrigation district, as described in § 49-457(P)(1)(f) and A.R.S. § 49-457(P)(5)(b).
24. “Regulated area” means a regulated area as defined in A.R.S. § 49-457(P)(6)(c).
25. “Sediment” means muck that has dried after removal from canals.
26. “Supervisory control system” means a system that allows the irrigation district to control operational structures from a remote computer location in order to reduce at least one trip made by vehicles to access structures for operational purposes.
27. “Synthetic or natural particulate suppressant” means reducing PM emissions and wind erosion by providing a stabilized soil surface with organic material, such as muck, animal waste or biosolids, or with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide.
28. “Track-out control system” means minimizing any and all material that adheres to and agglomerates on all vehicles and equipment and falls onto paved public roads or shoulders to paved public roads by using a device or system to remove mud or soil from a vehicle or equipment before the vehicle enters a paved public road. Devices such as a grizzly, a gravel pad or a wheel wash system can be used.
29. “Unauthorized use” means any travel or access by non-district personnel in non-district vehicles along roadways under the control of an irrigation district without the permission of the irrigation district.
30. “Unpaved operation and maintenance roads” means unpaved roadways that lay adjacent to canals, which provide access for irrigation district personnel and equipment for direct operation and maintenance of canals, and are under the control of the irrigation district.
31. “Unpaved utility access roads” means unpaved roadways used to provide access to canals, and also includes office and shop facilities, equipment yards, staging areas and other lands under the control of the irrigation district.
32. “Weed management” means reducing at least one trip made by vehicles for the purposes of removing weeds by using a combination of techniques, including organic, chemical, or biological means, to control weeds along canal banks and land surfaces not used for conveying water, excluding unpaved roadways.
33. “Wind barrier” means reducing PM₁₀ emissions and wind erosion by constructing a fence or structure, or providing a woody vegetative barrier by planting a row of trees or shrubs, perpendicular or across the prevailing wind direction to reduce wind speed by changing the pattern of air flow over the land surface. For fences and structures, the wind barrier shall have a density of no less than 50% and the height of the wind barrier must be proportionate to the downwind protected area. The downwind protected area is considered ten times the height of the wind barrier. For vegetative barriers, compliance shall be determined by NRCS Conservation Practice Standard, Code 380, Windbreak/Shelterbelt Establishment, amended through August 21, 2009 (and no future editions).

Historical Note

New Section R18-2-612 renumbered from R18-2-610 at 6 A.A.R. 2009, effective May 12, 2000 (Supp. 00-2). Former Section R18-2-612 renumbered to R18-2-614; new Section R18-2-612 made by final rulemaking at 11 A.A.R. 2210, effective July 18, 2005 (Supp. 05-2). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-612.01. Agricultural PM General Permit For Irrigation Districts; PM Nonattainment Areas Designated After June 1, 2009

- A. An irrigation district within a PM Nonattainment Area, designated after June 1, 2009, shall implement at least one best management practice from each of the following categories to reduce PM emissions:
 1. Unpaved operation and maintenance roads:
 - a. Access restriction,
 - b. Apply and maintain aggregate cover,
 - c. Install supervisory control system to limit vehicle travel,

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- d. Limit activity,
 - e. Install signage to limit vehicle speed to 25 mph,
 - f. Post warning signs for unauthorized use at point of entry to roads,
 - g. Reduce vehicle speed,
 - h. Install and maintain a track-out control system,
 - i. Apply and maintain synthetic or natural particulate suppressant,
 - j. Apply and maintain water before, during, and after major and minor earth moving activities,
 - k. Apply and maintain water when grading roadways,
 - l. Use paved non-district or paved public roads to access structures, or
 - m. Install wind barriers.
2. Canals:
 - a. Dredge canals while muck or debris is still wet,
 - b. Dispose of muck or debris while still damp,
 - c. Weed management,
 - d. Biological control of aquatic weeds, or
 - e. Apply and maintain water before, during and after major and minor earth moving activities.
 3. Unpaved utility access roads:
 - a. Access restriction,
 - b. Apply and maintain aggregate cover,
 - c. Limit activity,
 - d. Install signage to limit vehicle speed to 25 mph,
 - e. Post warning signs for unauthorized use at points of entry to roads,
 - f. Reduce vehicle speed,
 - g. Install and maintain a track-out control system,
 - h. Apply and maintain pavement,
 - i. Apply and maintain synthetic or natural particulate suppressant,
 - j. Apply and maintain water before, during and after major and minor earth moving activities,
 - k. Apply and maintain water when grading roadways,
 - l. Use paved non-district or paved public roads to access structures, or
 - m. Install wind barriers.
- B. From and after December 31, 2015, an irrigation district engaged in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the irrigation district. The Best Management Practice Program General Permit Record form shall include the following information:
1. The name, business address, and the irrigation district representative responsible for the preparation and implementation of the best management practices;
 2. The signature of the irrigation district representative and the date the form was signed; and
 3. The best management practice selected for unpaved operation and utility roads, canals, and unpaved utility access roads.
- C. Beginning in calendar year 2017, and no more than once every subsequent three calendar years, the Director, in conjunction with the Arizona Department of Agriculture, shall provide the irrigation district with a Best Management Practices Program 3-year Survey. The irrigation district shall complete the Survey with data from the preceding calendar year and submit the Survey to the Arizona Department of Agriculture (ADA) by January 31, 2018, and every three years thereafter. The Survey information submitted to the ADA shall be compiled by the ADA then be submitted to the Department. The 3-year Survey shall include the following information:
1. The name, business address, and phone number of the irrigation district representative responsible for the preparation and implementation of the best management practices;
 2. The signature of the irrigation district representative and the date the form was signed;
 3. The total miles of canals that the irrigation district controls;
 4. The total miles of unpaved operation and maintenance roads;
 5. The total miles of the unpaved utility access roads; and
 6. The best management practices selected for unpaved operation and utility roads, canals, and unpaved utility access roads.
- D. Records of any changes to those Best Management Practices shall be noted on the Best Management Practices Program General Permit Record Form and shall be kept by the irrigation district onsite and made available for review by the Director within two business days of notice to the irrigation district by the Department.
- E. An irrigation district may develop different practices not contained in either of the categories of subsection (A)(1), (A)(2), or (A)(3) that reduce PM and may submit such practices that are proven effective through in-district trials. The proposed new practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- F. An irrigation district shall maintain a record demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice.
- G. The Director shall not assess a fee to an irrigation district for coverage under the agricultural PM general permit.
- H. An irrigation district shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- I. The Director shall document noncompliance with this Section before issuing a compliance order.
- J. An irrigation district that is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

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Historical Note

New Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-613. Definitions for R18-2-613.01

1. “Access restriction” means restricting or eliminating public access to noncropland with signs or physical obstruction.
2. “Aggregate cover” means gravel, concrete, recycled road base, caliche, or other similar material applied to noncropland.
3. “Artificial wind barrier” means a physical barrier to the wind.
4. “Bed row spacing” means increasing or decreasing the size of a planting bed area to reduce the number of passes and soil disturbance by increasing plant density.
5. “Best management practice” means a technique verified by scientific research, that on a case-by-case basis is practical, economically feasible, and effective in reducing PM₁₀ emissions from a regulated agricultural activity.
6. “Chemical irrigation” means applying a fertilizer, pesticide, or other agricultural chemical to cropland through an irrigation system.
7. “Combining tractor operations” means performing two or more tillage, cultivation, planting, or harvesting operations with a single tractor or harvester pass.
8. “Commercial farm” means 10 or more contiguous acres of land used for agricultural purposes within the boundary of the Yuma PM₁₀ nonattainment area.
9. “Commercial farmer” means an individual, entity, or joint operation in general control of a commercial farm.
10. “Conservation irrigation” means the use of drips, sprinklers, or underground lines to conserve water, and to reduce the weed population, the need for tillage, and soil compaction.
11. “Conservation tillage” means types of tillage that reduce the number of passes and the amount of soil disturbance.
12. “Cover crop” means plants or a green manure crop grown for seasonal soil protection or soil improvement.
13. “Critical area planting” means using trees, shrubs, vines, grasses, or other vegetative cover on noncropland.
14. “Cropland” means land on a commercial farm that:
 - a. Is within the time-frame of final harvest to plant emergence;
 - b. Has been tilled in a prior year and is suitable for crop production, but is currently fallow; or
 - c. Is a turn-row.
15. “Cross-wind ridges” means soil ridges formed by a tillage operation.
16. “Cross-wind strip-cropping” means planting strips of alternating crops within the same field.
17. “Cross-wind vegetative strips” means herbaceous cover established in one or more strips within the same field.
18. “Equipment modification” means modifying agricultural equipment to prevent or reduce particulate matter generation from cropland.
19. “Limited activity during a high-wind event” means performing no tillage or soil preparation activity when the measured wind speed at six feet in height is more than 25 mph at the commercial farm site.
20. “Manure application” means applying animal waste or biosolids to a soil surface.
21. “Mulching” means applying plant residue or other material that is not produced onsite to a soil surface.
22. “Multi-year crop” means a crop, pasture, or orchard that is grown, or will be grown, on a continuous basis for more than one year.
23. “Night farming” means performing regulated agricultural activities at night when moisture levels are higher and winds are lighter.
24. “Noncropland” means any commercial farmland that:
 - a. Is no longer used for agricultural production;
 - b. Is no longer suitable for production of crops;
 - c. Is subject to a restrictive easement or contract that prohibits use for the production of crops; or
 - d. Includes a private farm road, ditch, ditch bank, equipment yard, storage yard, or well head.
25. “Permanent cover” means a perennial vegetative cover on cropland.
26. “Planting based on soil moisture” means applying water to soil before performing planting operations.
27. “Precision farming” means use of satellite navigation to calculate position in the field, to reduce overlap during field operations, and allow operations to occur during nighttime and inclement weather, thus generating less PM₁₀.
28. “Reduce vehicle speed” means operating farm vehicles or farm equipment on unpaved farm roads at speeds not to exceed 20 mph.
29. “Reduced harvest activity” means reducing the number of harvest passes using a mechanized method to cut and remove crops from a field.
30. “Regulated agricultural activity” means a commercial farming practice that may produce PM₁₀ within the Yuma PM₁₀ nonattainment area.
31. “Residue management” means managing the amount and distribution of crop and other plant residues on a soil surface.
32. “Sequential cropping” means growing crops in a sequence that minimizes the amount of time bare soil is exposed on a field.
33. “Surface roughening” means manipulating a soil surface to produce or maintain clods.
34. “Synthetic particulate suppressant” means a manufactured product such as lignosulfonate, calcium chloride, magnesium chloride, and polyacrylamide, an emulsion of a petroleum product, and an enzyme product that is used to control particulate matter.

35. "Tillage and harvest" means any mechanical practice that physically disturbs cropland or crops on a commercial farm.
36. "Tillage based on soil moisture" means applying water to soil before or during tillage, or delaying tillage to coincide with precipitation.
37. "Timing of a tillage operation" means performing tillage operations at a time that will minimize the soil's susceptibility to generate PM₁₀.
38. "Transgenic crops" means the use of genetically modified crops such as "herbicide ready" crops, which reduces the need for tillage or cultivation operations, and reduces soil disturbance.
39. "Track-out control system" means a device to remove mud or soil from a vehicle before the vehicle enters a paved public road.
40. "Tree, shrub, or windbreak planting" means providing a woody vegetative barrier to the wind.
41. "Watering" means applying water to noncropland.
42. "Yuma PM₁₀ nonattainment area" means the Yuma PM₁₀ planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 2210, effective July 18, 2005 (Supp. 05-2). Section R18-2-313 renumbered to R18-2-313.01; new Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-613.01. Yuma PM₁₀ Nonattainment Area; Agricultural Best Management Practices

- A. A commercial farmer shall comply with this Section by August 1, 2005.
- B. A commercial farmer who begins a regulated agricultural activity after August 1, 2005, shall comply with this Section within 60 days after beginning the regulated agricultural activity.
- C. A commercial farmer shall implement at least one of the best management practices from each of the following categories at each commercial farm:
 1. Tillage and harvest, subsection (E);
 2. Noncropland, subsection (F); and
 3. Cropland, subsection (G).
- D. A commercial farmer shall ensure that the implementation of each selected best management practice does not violate any other local, state, or federal law.
- E. A commercial farmer shall implement at least one of the following best management practices to reduce PM₁₀ emissions from tillage and harvest:
 1. Bed row spacing,
 2. Chemical irrigation,
 3. Combining tractor operations,
 4. Conservation irrigation,
 5. Conservation tillage,
 6. Equipment modification,
 7. Limited activity during a high-wind event,
 8. Multi-year crop,
 9. Night farming,
 10. Planting based on soil moisture,
 11. Precision farming,
 12. Reduced harvest activity,
 13. Tillage based on soil moisture,
 14. Timing of a tillage operation, or
 15. Transgenic crops.
- F. A commercial farmer shall implement at least one of the following best management practices to reduce PM₁₀ emissions from noncropland:
 1. Access restriction;
 2. Aggregate cover;
 3. Artificial wind barrier;
 4. Critical area planting;
 5. Manure application;
 6. Reduce vehicle speed;
 7. Synthetic particulate suppressant;
 8. Track-out control system;
 9. Tree, shrub, or windbreak planting; or
 10. Watering.
- G. A commercial farmer shall implement at least one of the following best management practices to reduce PM₁₀ emissions from cropland:
 1. Artificial wind barrier;
 2. Cover crop;
 3. Cross-wind ridges;
 4. Cross-wind strip-cropping;

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5. Cross-wind vegetative strips;
 6. Manure application;
 7. Mulching;
 8. Multi-year crop;
 9. Permanent cover;
 10. Planting based on soil moisture;
 11. Precision farming;
 12. Residue management;
 13. Sequential cropping;
 14. Surface roughening; or
 15. Tree, shrub, or windbreak planting.
- H.** A person may develop different practices not contained in subsections (E), (F), or (G) that reduce PM₁₀. A person may submit practices that are proven effective through demonstration trials to the Director. The Director shall review the submitted practices.
- I.** A commercial farmer shall maintain records demonstrating compliance with this Section. The commercial farmer shall provide the records to the Director within two business days of written notice to the commercial farmer. The records shall contain:
1. The name of the commercial farmer,
 2. The mailing address or physical location of the commercial farm, and
 3. The best management practices selected for tillage and harvest, noncropland, and cropland by the commercial farmer, and the date each best management practice was implemented.

Historical Note

New Section R18-2-313.01 renumbered from Section R18-2-313 by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

R18-2-614. Evaluation of Nonpoint Source Emissions

Opacity of an emission from any nonpoint source shall not be greater than 40% measured according to the 40 CFR 60, Appendix A, Reference Method 9. An open fire permitted under R18-2-602 or regulated under Article 15 is exempt from this requirement.

Historical Note

Section R18-2-614 renumbered from R18-2-612; amended by final rulemaking at 11 A.A.R. 2210, effective July 18, 2005 (Supp. 05-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

ARTICLE 8. EMISSIONS FROM MOBILE SOURCES (NEW AND EXISTING)**R18-2-801. Classification of Mobile Sources**

- A.** This Article is applicable to mobile sources which either move while emitting air contaminants or are frequently moved during the course of their utilization but are not classified as motor vehicles, agricultural vehicles, or agricultural equipment used in normal farm operations.
- B.** Unless otherwise specified, no mobile source shall emit smoke or dust the opacity of which exceeds 40%.

Historical Note

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Amended effective February 3, 1993 (Supp. 93-1). Former Section R18-2-801 renumbered to Section R18-2-901, new Section R18-2-801 renumbered from R18-2-601 effective November 15, 1993 (Supp. 93-4).

R18-2-802. Off-road Machinery

- A.** No person shall cause, allow or permit to be emitted into the atmosphere from any off-road machinery, smoke for any period greater than 10 consecutive seconds, the opacity of which exceeds 40%. Visible emissions when starting cold equipment shall be exempt from this requirement for the first 10 minutes.
- B.** Off-road machinery shall include trucks, graders, scrapers, rollers, locomotives and other construction and mining machinery not normally driven on a completed public roadway.

Historical Note

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-802 renumbered to Section R18-2-902, new Section R18-2-802 renumbered from R18-2-602 effective November 15, 1993 (Supp. 93-4).

R18-2-803. Heater-planer Units

No person shall cause, allow or permit to be emitted into the atmosphere from any heater-planer operated for the purpose of reconstructing asphalt pavements smoke the opacity of which exceeds 20%. However three minutes' upset time in any one hour shall not constitute a violation of this Section.

Historical Note

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-803

renumbered to Section R18-2-903, new Section R18-2-803 renumbered from R18-2-603 effective November 15, 1993 (Supp. 93-4).

R18-2-804. Roadway and Site Cleaning Machinery

- A. No person shall cause, allow or permit to be emitted into the atmosphere from any roadway and site cleaning machinery smoke or dust for any period greater than 10 consecutive seconds, the opacity of which exceeds 40%. Visible emissions when starting cold equipment shall be exempt from this requirement for the first 10 minutes.
- B. In addition to complying with subsection (A), no person shall cause, allow or permit the cleaning of any site, roadway, or alley without taking reasonable precautions to prevent particulate matter from becoming airborne. Reasonable precautions may include applying dust suppressants. Earth or other material shall be removed from paved streets onto which earth or other material has been transported by trucking or earth moving equipment, erosion by water or by other means.

Historical Note

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Amended effective February 3, 1993 (Supp. 93-1). Former Section R18-2-804 renumbered to Section R18-2-904, new Section R18-2-804 renumbered from R18-2-604 effective November 15, 1993 (Supp. 93-4).

R18-2-805. Asphalt or Tar Kettles

- A. No person shall cause, allow or permit to be emitted into the atmosphere from any asphalt or tar kettle smoke for any period greater than 10 consecutive seconds, the opacity of which exceeds 40%.
- B. In addition to complying with subsection (A), no person shall cause, allow or permit the operation of an asphalt or tar kettle without minimizing air contaminant emissions by utilizing all of the following control measures:
 1. The control of temperature recommended by the asphalt or tar manufacturer;
 2. The operation of the kettle with lid closed except when charging;
 3. The pumping of asphalt from the kettle or the drawing of asphalt through cocks with no dipping;
 4. The dipping of tar in an approved manner;
 5. The maintaining of the kettle in clean, properly adjusted, and good operating condition;
 6. The firing of the kettle with liquid petroleum gas or other fuels acceptable to the Director.

Historical Note

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-805 renumbered to Section R18-2-905, new Section R18-2-805 renumbered from R18-2-605 effective November 15, 1993 (Supp. 93-4).

ARTICLE 12. EMISSIONS BANK

R18-2-1201. Definitions

In addition to the definitions contained in Article 1 of this Chapter, and A.R.S. § 49-401.01, the following definitions apply to this Article:

1. “Certified credit” means an emission reduction credit that meets the criteria under R18-2-1205.
2. “Conditional credit” means an emission reduction credit that is in the review process before qualifying for certification under R18-2-1205.
3. “Credit generation” means the process by which a source obtains emission reduction credits for eventual listing in the registry.
4. “Credit retirement” means a person’s purchase of a banked emission reduction credit for the purpose of permanent removal from the emissions bank.
5. “Credit utilization” means the use of a certified emission reduction credit.
6. “Credit withdrawal” means the removal of an emission reduction credit from the bank by the source originally depositing the emission reduction credit.
7. “Emission reduction credit” or “credit” means a certified unit that may be banked, sold, transferred, withdrawn, or retired.
8. “Permitting authority” means the state or county that has jurisdiction over a source under A.R.S. § 49-402 and may review, issue, revise, administer, and enforce a permit; and certify a credit under this Article.
9. “Registry” means the location where emission reduction credits are posted for the purpose of public notice, allowing a person to determine the availability of credits for related market transactions.
10. “Surplus” means the amount of a permitted source’s emission reduction that is not required by federal, state, or local law.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

R18-2-1202. Applicability

The provisions of this Article apply to permitted sources emitting particulate matter, sulfur dioxide, carbon monoxide, nitrogen oxides, or volatile organic compounds. The provisions of this Article shall not apply to sources granted authority to operate under 18 A.A.C. 2, Article 5.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

R18-2-1203. Emissions Bank Administration

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- A. The Director shall place an emission reduction credit in the emissions bank credit registry upon conditional certification, certification, pending use, and final disposition. For each credit, the Director shall place in the registry:
 1. Source's contact name and information;
 2. Source name and information;
 3. Amount and type of pollutant;
 4. Date of emission reduction and credit status.
- B. The Director shall issue a certificate of deposit to the reducing source for each certified credit deposited in the bank, and issue a certificate of retirement to a person for each certified credit permanently retired.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

R18-2-1204. Credit Generation

- A. A source wanting to generate an emission reduction for deposit into the bank shall submit a Credit Generation Application (CGA) to the Director on a form prescribed by the Director. The CGA shall contain:
 1. The company name;
 2. The company mailing address;
 3. The owner, co-owner, or partner;
 4. The contact person name, title, and telephone number;
 5. The permitted source name, location, permit number, and industry code;
 6. The pollutant;
 7. The attainment status of the area where the source is located;
 8. The amount of actual emissions reduced;
 9. The date of emission reduction to be credited;
 10. The description of emission reduction credit generation activity;
 11. The signature of and verification of truthfulness and accuracy by a responsible official as defined in R18-2-301(17);
 12. The name, title, and telephone number of the responsible official.The source shall submit a copy of the CGA to the permitting authority with an application to revise the permit or request to terminate the permit.
- B. Upon receipt by the Director of the CGA with a check for the administrative fee specified in R18-2-1208(A), the Director shall list each conditional credit in the registry.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

R18-2-1205. Credit Certification

- A. A permitting authority may certify an emission credit if the permitting authority verifies the credit is based on:
 1. A reduction in actual emissions that occurred after August 17, 1999;
 2. A quantifiable reduction in actual emissions;
 3. A permanent reduction in actual emissions;
 4. An enforceable reduction in actual emissions; and
 5. A surplus reduction in actual emissions occurring in addition to any other required emission reduction.
- B. The source must notify the permitting authority when the reduction occurs.
- C. In order for an emission reduction to be quantifiable under this Section:
 1. The emission reduction must be quantifiable under R18-2-301(17); and
 2. The reducing source shall submit documentation of any testing or monitoring that demonstrates an emission reduction.
- D. The permitting authority shall certify one emission reduction credit for each ton per year of particulate matter, sulfur dioxide, carbon monoxide, nitrogen dioxide, or volatile organic compound actually reduced.
- E. A banked credit does not expire.
- F. The permitting authority shall notify the source and the Director that a credit is certified. Upon receipt of the notice, the Director shall issue a certificate for each certified credit to the applicant identified in R18-2-1204, and list the certified credit in the registry.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

R18-2-1206. Credit Utilization

- A. A source may use a certified emission reduction credit in the same nonattainment area, maintenance area, or modeling domain in which the emission reduction occurred by submitting a Credit Utilization Application (CUA) to the Director on a form prescribed by the Director. The CUA shall contain:
 1. The name and mailing address of the source that generated the credit;
 2. The owner, co-owner, or partner of the source that generated the credit;

3. The contact person name, title, telephone number of the source that generated the credit;
 4. The name and mailing address of the source utilizing the credit;
 5. The owner, co-owner, or partner of the source utilizing the credit;
 6. The contact person name, title, telephone number of the source utilizing the credit;
 7. The purpose of the utilization;
 8. The pollutant;
 9. The amount of emission reduction credit to be utilized;
 10. Each emission reduction credit certificate number;
 11. The signature of and verification of truthfulness and accuracy by a responsible official as defined in R18-2-301(17); and
 12. The name, title, and telephone number of the responsible official.
- The source shall submit a copy of the CUA to the permitting authority at the time the source submits an application for a permit or permit revision.
- B.** Upon receipt by the Director of the CUA with a check for the administrative fee specified in R18-2-1208(B), the Director shall list the pending sale in the registry.
- C.** The Director shall not list the final sale in the registry until:
1. The permitting authority evaluates and verifies the authenticity of the credit with the emissions bank;
 2. The permitting authority determines that there will be no adverse impact on air quality; and
 3. The permitting authority completes the permitting action and submits the credit certificate to the Director.
- D.** After the permitting authority notifies the Director that the requirements of this Section have been met, the Director shall delist the credits in the registry.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

R18-2-1207. Credit Withdrawal

Any party purchasing certified credits listed in the emissions bank for the purpose of credit retirement, or any source withdrawing its own credits from the emissions bank, shall submit a CUA specified in R18-2-1204(A) with the surrendered certificates to the Director. Upon receipt of the CUA and surrendered certificates, the Director shall delist the credits in the registry.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

R18-2-1208. Fees

- A. A source generating a credit shall pay a non-refundable administrative fee of \$200.00 to the Director when submitting the CGA. This fee is in addition to the fees specified in R18-2-326.
- B. A source utilizing a credit shall pay a non-refundable administrative fee of \$200.00 to the Director when submitting the CUA. This fee is in addition to the fees specified in R18-2-326.
- C. The Director shall not assess an administrative fee to a person:
 1. Purchasing a credit for retirement;
 2. Amending ownership information contained in the registry; or
 3. Withdrawing a credit from the bank.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1).

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
 2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
 3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
 4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
 5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
 6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
 7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.
 8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.
 9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.
 10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.
 11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. Beginning in 2014, the department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.
 12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.
 13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.
 14. Assist the department of health services in recruiting and training state, local and district health department personnel.
 15. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
 16. 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.
 17. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph shall not be construed to adversely affect standards adopted by an Indian tribe under federal law.
 18. Provide administrative and staff support for the oil and gas conservation commission.
- B. The department, through the director, shall:
1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.
 2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.
 3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.
 4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.
 5. Contract with other agencies, including laboratories, in furthering any department program.
 6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.
 7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes

and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at such places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying the fees. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

2. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

49-401. Declaration of policy

A. The legislature finds and declares that air pollution exists with varying degrees of severity within the state, such air pollution is potentially and in some cases actually dangerous to the health of the citizenry, often causes physical discomfort, injury to property and property values, discourages recreational and other uses of the state's resources and is esthetically unappealing. The legislature by this act intends to exercise the police power of this state in a coordinated state-wide program to control present and future sources of emission of air contaminants to the end that air polluting activities of every type shall be regulated in a manner that insures the health, safety and general welfare of all the citizens of the state; protects property values and protects plant and animal life. The legislature further intends to place primary responsibility for air pollution control and abatement in the department of environmental quality and the hearing board created thereunder. However, counties shall have the right to control local air pollution problems as specifically provided herein.

B. It is further declared to be the policy of this state that no further degradation of the air in the state of Arizona by any industrial polluters shall be tolerated. Those industries emitting pollutants in the excess of the emission standard set by the director of environmental quality shall bring their operations into conformity with the standards with all due speed. A new industry hereinafter established shall not begin normal operation until it has secured a permit attesting that its operation will not cause pollution in excess of the standards set by the director of environmental quality.

49-404. State implementation plan

A. The director shall maintain a state implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act.

B. The director may adopt rules that describe procedures for adoption of revisions to the state implementation plan.

C. The state implementation plan and all revisions adopted before September 30, 1992 remain in effect according to their terms, except to the extent otherwise provided by the clean air act, inconsistent with any provision of the clean air act, or revised by the administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement or plan in effect, before the enactment of the clean air act in any area which is a nonattainment or maintenance area for

any air pollutant may be modified after enactment in any manner unless the modification insures equivalent or greater emission reductions of the air pollutant. The director shall evaluate and adopt revisions to the plan in conformity with federal regulations and guidelines promulgated by the administrator for those purposes until the rules required by subsection B are effective.

49-422. Powers and duties

- A. In addition to any other powers vested in it by law, the department may:
 1. Accept, receive and administer grants or other funds or gifts from public and private agencies, including the federal government, to carry out any of the purposes of this chapter. All monies resulting therefrom shall be deposited, pursuant to sections 35-146 and 35-147, in the account of the department.
 2. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise to carry out the purposes of this chapter.
 3. Require, as specified in subsections B and C of this section, any source of air contaminants to monitor, sample or perform other studies to quantify emissions of air contaminants or levels of air pollution that may reasonably be attributable to that source, if the director either:
 - (a) Determines that monitoring, sampling or other studies are necessary to determine the effects of the source on levels of air pollution.
 - (b) Has reasonable cause to believe a violation of this chapter, rules adopted pursuant to this chapter or a permit issued pursuant to this chapter has been committed.
 - (c) Determines that those studies or data are necessary to accomplish the purposes of this chapter, and that the monitoring, sampling or other studies by the source are necessary in order to assess the impact of the source on the emission of air contaminants.
- B. The director shall adopt rules requiring sources of air contaminants to monitor, sample or otherwise quantify their emissions of air pollution that may reasonably be attributable to such sources for air contaminants for which ambient air quality standards or emission standards or design, equipment, work practice or operational standards have been adopted pursuant to section 49-424 or section 49-425, subsection A. In the development of the rules, the director shall consider the cost and effectiveness of the monitoring, sampling or other studies.
- C. For those sources of air contaminants for which rules are not required to be adopted pursuant to subsection B of this section, the director may require a source of air contaminants, by permit or order, to perform monitoring, sampling or other quantification of its emissions or air pollution that may reasonably be attributed to such a source. Before requiring such monitoring, sampling or other quantification by permit or order, the director shall consider the relative cost and accuracy of any alternatives that may be reasonable under the circumstances such as emission factors, modeling, mass balance analyses or emissions projections. The director may require such monitoring, sampling or other quantification by permit or order if the director determines in writing that all of the following conditions are met:
 1. The actual or potential emissions or air pollution may adversely affect public health or the environment.
 2. A monitoring, sampling or quantification method is technically feasible for the subject contaminant and the source.
 3. An adequate scientific basis for the monitoring, sampling or quantification method exists.
 4. The monitoring, sampling or quantification method is reasonably accurate.
 5. The cost of the method is reasonable in light of the use to be made of the data.
- D. In determining the frequency and duration of monitoring, sampling or quantification of emissions under subsections B and C of this section, the director shall consider the five factors prescribed in subsection C of this section and the level of emissions from the source.
- E. Orders issued and permit conditions imposed pursuant to this section may be appealed as appealable agency actions pursuant to title 41, chapter 6, article 10.
- F. On request of the on-scene commander or the department of health services, the department of environmental quality shall assist at a significant chemical or other toxic fire event, excluding chemical or nuclear warfare or biological agents, and shall provide the following services if funding is available and if the director, in the director's professional capacity, determines the department's provision of services is necessary to protect human health and the environment:
 1. Collect air samples for likely contaminants resulting from the fire. The department of environmental quality shall coordinate sampling locations, times and pollutants to be sampled with the department of health services and other appropriate health and emergency response officials.
 2. Maintain an hourly plume report that includes meteorological conditions that affect dispersal of smoke.
 3. In consultation with the department of health services and the on-scene coordinator, prepare a report that includes test results of any sampling, including the sampling rationale and protocol and chain of custody report using applicable environmental protection agency standards. The report shall also include, to the extent practicable, a smoke dispersion map with detail adequate to determine possible areas of impact at the level of detail practicable and a listing of likely

releases of any chemical that is categorized by the United States environmental protection agency as a hazardous air pollutant and the corresponding environmental protection agency description of possible health effects of the chemical based on a reliable inventory of hazardous materials at the site or facility.

49-424. Duties of department

The department shall:

1. Determine whether the meteorology of the state is such that airsheds can be reasonably identified and air pollution, therefore, can be controlled by establishing air pollution control districts within well defined geographical areas.
2. Make continuing determinations of the quantity and nature of emissions of air contaminants, topography, wind and temperature conditions, possible chemical reactions in the atmosphere, the character of development of the various areas of the state, the economic effect of remedial measures on the various areas of the state, the availability, use and economic feasibility of air-cleaning devices, the effect on human health and danger to property from air contaminants, the effect on industrial operations of remedial measures and other matters necessary to arrive at a better understanding of air pollution and its control. In a county with a population in excess of one million two hundred thousand persons, the department shall locate a monitoring system in at least two remote geographic sites.
3. Establish substantive policy statements for identifying air quality exceptional events that take into consideration this state's unique geological, geographical and climatological conditions and any other unusual circumstances. These substantive policy statements shall be developed with the planning agency certified pursuant to section 49-406, subsection A and the county air pollution control department or district.
4. Determine the standards for the quality of the ambient air and the limits of air contaminants necessary to protect the public health, and to secure the comfortable enjoyment of life and property by the citizens of the state or in any defined geographical area of the state where the concentration of air pollution sources, the health of the population, or the nature of the economy or nature of land and its uses so require, and develop and transmit to the county boards of supervisors minimum state standards for air pollution control.
5. Conduct investigations, inspections and tests to carry out the duties of this section under the procedures established by this article.
6. Hold hearings relating to any aspect of or matter within the duties of this section, and in connection therewith, compel the attendance of witnesses and the production of records under the procedures established by section 49-432.
7. Prepare and develop a comprehensive plan or plans for the abatement and control of air pollution in this state.
8. Encourage voluntary cooperation by advising and consulting with persons or affected groups or other states to achieve the purposes of this chapter, including voluntary testing of actual or suspected sources of air pollution.
9. Encourage political subdivisions of the state to handle air pollution problems within their respective jurisdictions, and provide as it deems necessary technical and consultative assistance therefor.
10. Compile and publish from time to time reports, data and statistics with respect to those matters studied and investigated by the department.
11. Develop and disseminate air quality dust forecasts for the Maricopa county PM-10 nonattainment or maintenance area and any other PM-10 nonattainment or maintenance areas that are designated in this state from and after December 31, 2011. Each forecast shall identify a low, moderate or high risk of dust generation for the next five consecutive days and shall be issued by noon on each day the forecast is generated. At a minimum, the forecasts shall be posted on the department's website and distributed electronically. When developing these forecasts, the department shall consider all of the following:
 - (a) Projected meteorological conditions for the PM-10 nonattainment or maintenance area, including all of the following:
 - (i) Wind speed and direction.
 - (ii) Stagnation.
 - (iii) Recent precipitation.
 - (iv) Potential for precipitation.
 - (b) Existing concentrations of air pollution at the time of the forecast.
 - (c) Historic air pollution concentrations that have been observed during meteorological conditions similar to those that are predicted to occur in the forecast.

49-425. Rules; hearing

- A. The director shall adopt such rules as he determines are necessary and feasible to reduce the release into the atmosphere of air contaminants originating within the territorial limits of the state or any portion thereof and shall adopt, modify, and amend reasonable standards for the quality of, and emissions into, the ambient air of the state for the prevention, control and abatement of air pollution. Additional standards shall be established for particulate matter emissions, sulfur dioxide emissions, and other air contaminant emissions determined to be necessary and feasible for the

prevention, control and abatement of air pollution. In fixing such ambient air quality standards, emission standards or standards of performance, the director shall give consideration but shall not be limited to the relevant factors prescribed by the clean air act.

B. No rule may be enacted or amended except after the director first holds a public hearing after twenty days' notice of such hearing. The proposed rule, or any proposed amendment of a rule, shall be made available to the public at the time of notice of such hearing.

C. The department shall enforce the rules adopted by the director.

D. All rules enacted pursuant to this section shall be made available to the public at a reasonable charge upon request.

49-457. Agricultural best management practices committee; members; powers; permits; enforcement; preemption; definitions

A. A best management practices committee for regulated agricultural activities is established.

B. The committee shall consist of:

1. The director of environmental quality or the director's designee.
2. The director of the Arizona department of agriculture or the director's designee.
3. The dean of the college of agriculture of the university of Arizona or the dean's designee.
4. The state director of the United States natural resources conservation service or the director's designee.
5. One person actively engaged in the production of citrus.
6. One person actively engaged in the production of vegetables.
7. One person actively engaged in the production of cotton.
8. One person actively engaged in the production of alfalfa.
9. One person actively engaged in the production of grain.
10. One soil taxonomist from the university of Arizona college of agriculture.
11. One person actively engaged in the operation of a beef cattle feed lot.
12. One person actively engaged in the operation of a dairy.
13. One person actively engaged in the operation of a poultry facility.
14. One person actively engaged in the operation of a swine facility.
15. One person who is employed by a county air quality department or agency.

C. The governor shall appoint the members designated pursuant to subsection B, paragraphs 5 through 15 of this section for a term of six years. Members may be reappointed. Members are not entitled to compensation for their services but are entitled to receive reimbursement of expenses pursuant to title 38, chapter 4, article 2.

D. The committee shall elect a chairman from the appointed members to serve a two year term.

E. The committee shall meet at the call of the chairman or at the request of a majority of the appointed members.

F. The department of environmental quality, the Arizona department of agriculture and the college of agriculture of the university of Arizona shall cooperate with and provide technical assistance and any necessary information to the committee. The department of environmental quality shall provide the necessary staff support and meeting facilities for the committee.

G. A person who commences a regulated agricultural activity shall immediately comply with the agricultural general permit prescribed by this section.

H. The committee shall adopt, by rule, an agricultural general permit specifying best management practices, including record keeping and reporting requirements, for regulated agricultural activities to reduce PM-10 particulate emissions. A person who is subject to an agricultural general permit pursuant to this section is not subject to a permit issued pursuant to section 49-426 except as provided in subsection K of this section. The committee shall adopt by rule a list of best management practices, at least one of which shall be used in areas designated as moderate nonattainment for PM-10 particulate matter and at least two of which shall be used in areas designated as serious nonattainment for PM-10 particulate matter, to demonstrate compliance with applicable provisions of the general permit. Best management practices may vary within the regulated area, according to regional or geographical conditions or cropping patterns.

I. If the director determines that a person who is engaged in a regulated activity is not in compliance with the general permit, and that person has not previously been subject to a compliance order issued pursuant to this section, the director may serve on the person by certified mail an order requiring compliance with the general permit and notifying the person of the opportunity for a hearing pursuant to title 41, chapter 6, article 10. The order shall state with reasonable particularity the nature of the noncompliance and shall specify that the person has a period that the director determines is reasonable, but is not less than sixty days, to submit a plan to the supervisors of the natural resource conservation district in which the person engages in the regulated activity that specifies the best management practices from among those adopted in rule pursuant to subsection H of this section that the person will use to comply with the general permit.

J. If the director determines that a person who is engaged in a regulated activity is not in compliance with the general permit, and that person has previously submitted a plan pursuant to subsection I of this section, the director may serve on the person by certified mail an order requiring compliance with the general permit and notifying the person of the opportunity for a hearing pursuant to title 41, chapter 6, article 10. The order shall state with reasonable particularity the nature of the noncompliance and shall specify that the person has a period that the director determines is reasonable, but is not less than sixty days, to submit a plan to the department that specifies the best management practices from among those adopted in rule pursuant to subsection H of this section that the person will use to comply with the general permit.

K. If a person fails to comply with the plan submitted pursuant to subsection J of this section, the director may revoke the agricultural general permit for that person and require that the person obtain an individual permit pursuant to section 49-426. A revocation becomes effective after the director has provided the person with notice and an opportunity for a hearing pursuant to title 41, chapter 6, article 10.

L. The committee may periodically reexamine, evaluate and modify best management practices. Any approved modifications shall be submitted to the United States environmental protection agency as a revision to the applicable implementation plan.

M. The committee shall develop and commence an education program. The education program shall be conducted by the director or the director's designee or designees.

N. A best management practice adopted pursuant to this section does not affect any applicable requirements in an applicable implementation plan or any other applicable requirements of the clean air act, including section 110(l) of the act (42 United States Code section 7410(l)).

O. The regulation of PM-10 particulate emissions produced by regulated agricultural activities is a matter of statewide concern. Accordingly, this section preempts further regulation of regulated agricultural activities by a county, city, town or other political subdivision of this state.

P. For the purposes of this section, unless the context otherwise requires:

1. "Agricultural general permit" means best management practices that:

(a) Reduce PM-10 particulate emissions from tillage practices and from harvesting on a commercial farm.

(b) Reduce PM-10 particulate emissions from those areas of a commercial farm that are not normally in crop production.

(c) Reduce PM-10 particulate emissions from those areas of a commercial farm that are normally in crop production including prior to plant emergence and when the land is not in crop production.

(d) Reduce PM-10 particulate emissions from those areas of a commercial farm undergoing significant agricultural earthmoving activities.

(e) Reduce PM-10 particulate emissions from the activities of a dairy, a beef cattle feed lot, a poultry facility or a swine facility, including practices relating to the following:

(i) Unpaved access connections.

(ii) Unpaved roads or feed lanes.

(iii) Animal waste handling and transporting.

(iv) Arenas, corrals and pens.

(f) Only in those regulated areas that are established after June 1, 2009, as prescribed in paragraph 6, subdivision (c) of this subsection, reduce PM-10 particulate emissions from the activities of an irrigation district governed by title 48, chapter 19 and affecting those lands and facilities that are under the jurisdiction and control of the district, including practices relating to the following:

(i) Unpaved operation and maintenance roads.

(ii) Canals.

(iii) Unpaved utility access roads.

2. "Applicable implementation plan" means that term as defined in 42 United States Code section 7601(q).

3. "Best management practices" means techniques that are verified by scientific research and that on a case by case basis are practical, economically feasible and effective in reducing PM-10 particulate emissions from a regulated agricultural activity.

4. "Maricopa PM-10 particulate nonattainment area" means the Phoenix planning area as set forth in 40 Code of Federal Regulations section 81.303.

5. "Regulated agricultural activities" means:

(a) Commercial farming practices that may produce PM-10 particulate emissions within the regulated area, including activities of a dairy, a beef cattle feed lot, a poultry facility and a swine facility.

(b) Only in those regulated areas that are established after June 1, 2009, as prescribed in paragraph 6, subdivision (c) of this subsection, activities of an irrigation district that is governed by title 48, chapter 19.

6. "Regulated area" means any of the following:

(a) The Maricopa PM-10 particulate nonattainment area.

- (b) Any portion of area A that is located in a county with a population of two million or more persons.
- (c) Any other PM-10 particulate nonattainment area established in this state on or after June 1, 2009.

49-501. Unlawful open burning; exceptions; civil penalty; definition

- A. Notwithstanding the provisions of any other section of this article: 1. It is unlawful for any person to ignite, cause to be ignited, permit to be ignited, or suffer, allow, or maintain any open outdoor fire except as provided in this section.
 - 2. From May 1 through September 30 each year, it is unlawful for any person to ignite, cause to be ignited, permit to be ignited or suffer, allow or maintain any open outdoor fire in area A as defined in section 49-541.
- B. The following fires are excepted from this section:
 - 1. Fires used only for cooking of food or for providing warmth for human beings or the branding of animals or the use of orchard heaters for the purpose of frost protection in farming or nursery operations.
 - 2. Any fire set or permitted by any public officer in the performance of official duty, if such fire is set or permission given for the purpose of weed abatement, the prevention of a fire hazard, or instruction in the methods of fighting fires.
 - 3. Fires set by or permitted by the director of the department of agriculture or county agricultural agents of the county for the purpose of disease and pest prevention.
 - 4. Fires set by or permitted by the federal government or any of its departments, agencies or agents or the state or any of its agencies, departments or political subdivisions for the purpose of watershed rehabilitation or control through vegetative manipulation.
 - 5. Fires permitted by any rule or regulation issued pursuant to this article, by any conditional permit issued by a hearing board established under this article or by any rule or conditional permit issued pursuant to article 2 of this chapter when the department of environmental quality pursuant to section 49-402 has assumed jurisdiction of the county in which the fire is located.
 - 6. Fires set for the disposal of dangerous materials where there is no safe alternate method of disposal.
- C. Permission for the setting of any fire given by a public officer in the performance of official duty under subsection B, paragraph 2, 3 or 4 of this section shall be given in writing and a copy of the written permission shall be transmitted immediately to the director of environmental quality and the control officer of the county, district or region in which such fire is allowed. The setting of any such fire shall be conducted in a manner and at such time as approved by the control officer or the director of environmental quality, unless doing so would defeat the purpose of the exemption.
- D. Notwithstanding section 49-107, the director may delegate authority for the issuance of open burning permits to a county, city, town or fire district. A county, city, town or fire district that has been delegated authority for the issuance of open burning permits may assign the issuance of these permits to a private fire protection service provider that performs fire protection services within that county, city, town or fire district. Any private fire protection service provider that is authorized to issue open burning permits pursuant to this subsection shall maintain a copy of all currently effective permits issued including a means of contacting the person authorized by the permit to set the fire in the event that an order to extinguish the open burning is issued. Permits issued pursuant to this subsection shall contain both of the following:
 - 1. Conditions that limit the manner and time of setting the fire and that are consistent with this section and rules adopted pursuant to this section.
 - 2. A provision that all burning be extinguished at the discretion of the director or the director's authorized representative during periods of inadequate atmospheric smoke dispersion, periods of excessive visibility impairment that could adversely affect public safety or periods when smoke is blown into populated areas so as to create a public nuisance.
- E. The director may issue a general permit to allow persons engaged in farming or ranching on forty acres or more in an unincorporated area to burn household waste, as defined in section 49-701, that is generated on site, if no household waste collection and disposal service is available. The general permit shall include the following:
 - 1. Conditions governing the method, manner and times for burning.
 - 2. Limitation on materials which may be burned, including a prohibition on burning of materials which generate noxious fumes.
 - 3. A requirement that any person seeking coverage under the general permit shall register with the director on a form prescribed by the director. Upon receipt of a registration form, the director shall notify the county in which the farm or ranch is located of such registration.
 - 4. A statement that the director, a local air pollution control officer, or any other public officer may order the extinguishment of burning or may prohibit burning during periods of inadequate smoke dispersion or excessive visibility impairment or at other times when public health or safety could be adversely affected.
- F. Nothing in this section is intended to permit any practice which is a violation of any statute, ordinance, rule or regulation in a county with a population in excess of one million two hundred thousand persons. Notwithstanding any other law, such a county shall prohibit by ordinance the use of wood burning chimineas, outdoor fire pits and similar outdoor fires on those days for which the county has issued a no burn day restriction.

G. A person who violates any provision of this section may be served a notice of violation and be subject to the enforcement provisions of this article to the same extent as a person violating any rule or regulation adopted pursuant to this article, except that a violation that lasts no more than twenty-four hours and that is the first violation committed by that person is subject to a civil penalty of no more than five hundred dollars.

H. For the purposes of this section, "open outdoor fire" means any combustion of combustible material of any type outdoors, in the open where the products of combustion are not directed through a flue. For the purposes of this subsection, "flue" means any duct or passage for air, gases or the like, such as a stack or chimney.

Arizona Health Care Cost Containment System (F-18-0201)
Title 9, Chapter 22, Article 2, Scope of Services



GOVERNOR'S REGULATORY REVIEW COUNCIL ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: February 6, 2018

AGENDA ITEM: G-2

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

FROM: Council Staff

DATE : January 23, 2018

SUBJECT: ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F-18-0201)
Title 9, Chapter 22, Article 2, Scope of Services

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Health Care Cost Containment System (AHCCCS) is “to promote a comprehensive health care system to eligible citizens of this state.” Laws 2013, 1st S.S., Ch. 10, § 53. This system is managed by the Director of the AHCCCS Administration (Administration), which is established under A.R.S. § 36-2902(A). The Director has the powers and duties prescribed in A.R.S. §§ 36-2903 and 2903.01.

This five-year-review report covers 17 rules in A.A.C. Title 9, Chapter 22, Article 2. As of July 2017, AHCCCS provides, directly or through contracts, health care coverage for approximately 2 million Arizonans. The rules in Article 2 cover the types of services provided to members of the AHCCCS Acute Care programs. The AHCCCS Acute Care programs are federal and state funded programs that provide health care services to the general population meeting the designated income levels.

The Administration did not complete all the proposed actions in its previous five-year review report by November 2015, but intends to make the amendments that are still necessary in its upcoming rulemaking.

Proposed Action

The Administration intends to initiate a rulemaking within 180 days following Council approval of the report.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Administration cites to A.R.S. § 36-2903.01(F) as general authority for the rules. Under A.R.S. § 36-2903.01(F), in relevant part, “[i]n addition to the rules otherwise specified in this article [Arizona Health Care Cost Containment System], the [Administration] may adopt necessary rules pursuant to [T]itle 41, [C]hapter 6 to carry out this article.”

The Administration cites to A.R.S. § 36-2906 as specific authority for the Administration to adopt rules necessary to limit the scope, duration and amount of services.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

Most the recommended changes are for clarification purposes or to align the rules with AHCCCS policy, and do not actually expand the current scope of services. Some of the changes, including emergency dental provisions, that could have had an economic impact on the Administration’s budget had already been reflected in prior year budget submissions and AHCCCS policy. The proposed changes will have no additional economic impact. Therefore, there are minimal economic and consumer impacts as a result of the proposed changes.

The stakeholders are the Administration, individuals, and businesses who use or interact with AHCCCS.

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?

Yes. The Administration indicates that the underlying regulatory objectives are the most cost-effective means and impose the least burden to regulated persons.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Administration has not received any written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. The Administration indicates that the rules are clear, concise, and understandable, with the following exceptions:

- Section 201: The rule should be amended to update terminology and definition for FES (Federal Emergency Services) and non-FES members.
- Section 204: Remove subsection (C) as coverage of in-state and out-of-state inpatient hospital services is no longer limited to 25 days.
- Section 210: The rule should be amended to update terminology and definitions.

- Section 210.01: The rule should be amended to clarify that the 72-hour limitation regarding contractor responsibility for emergency inpatient behavioral health services applies to prospective eligibility.

The Administration indicates that following rules are inconsistent with other rules and statutes:

- Section 209: The rule should be updated to comply with 42 CFR 440.120, related to prescription drugs.
- Sections 207 and 213: Emergency dental provisions should be updated to align with A.R.S. § 36-2939.

The Administration indicates that the following rules are ineffective in achieving their objectives:

- Section 201: The rule contains outdated terminology and definitions, such as home health services, occupational therapy, physical therapy, and speech therapy. Definitions should be amended to align with current AHCCCS policy.
- Section 212: The list of durable medical equipment should be updated to align with AHCCCS policy.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Administration indicates that the rules are enforced as written to the extent they are consistent with other rules and statutes.

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

No. The Administration indicates that the rules are not more stringent than corresponding federal law.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

No. The rules do not require a regulatory permit, license, or agency authorization.

9. Conclusion

As mentioned above, the Administration plans to initiate the rulemaking process to make the changes identified in this memo within 180 days following Council approval of the report. This report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

November 21, 2017

Ms. Nicole Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Ave, Suite 402
Phoenix, AZ 85007

Dear Ms. Ong:

Pursuant to requirements in R1-6-301, attached is a copy of the 5-Year Review Report for Title 9, Chapter 22, Article 2. The report includes all of the documentation required by R1-6-301 (C) and (D).

No rules were left out of this 5-Year Review Report to be expired under A.R.S. § 41-1056 (J). Similarly, there were no rules subject to rescheduling.

As required by A.R.S. § 41-1056, the Administration certifies that the agency is in compliance with A.R.S. § 41-1091.

If you have any questions or comments regarding this report, please contact Nicole Fries, Associate General Counsel, Office of Administrative Legal Services at (602)-417-4232.

Sincerely,



Matthew Devlin
Assistant Director

Attachment

Arizona Health Care Cost Containment System (AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 22, Article 2

November 2017

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2903.01

Specific Statutory Authority: A.R.S. §§ 36-2903.03, 36-2907

2. The objective of each rule:

Rule	Objective
R9-22-201	This rule sets forth definitions applicable to the Article and establishes certain requirements, limitations and exclusions that are applicable to most, if not all, health care services provided by the program.
R9-22-202	This rule sets forth general requirements that apply to all medically necessary covered services.
R9-22-203	This rule describes the experimental services that are not covered.
R9-22-204	This rule prescribes coverage requirements for and limitations of inpatient hospital services.
R9-22-205	This rule establishes requirements, limitations and exclusions that are applicable to attending physician, practitioner, and primary care services.
R9-22-206	This rule prescribes coverage requirements of organ and tissue transplant services.
R9-22-207	This rule establishes the requirements, limitations and exclusions that are applicable to dental services provided by the program.
R9-22-208	This rule prescribes coverage requirements for laboratory, radiology and medical imaging services.
R9-22-209	This rule establishes the requirements, limitations and exclusions that are applicable to pharmaceutical services provided by the program.
R9-22-210	This rule prescribes coverage requirements for and limitations of emergency medical services for the Non-FES members.
R9-22-210.01	This rule prescribes coverage requirements for and limitations of emergency behavioral health services for the Non-FES members
R9-22-211	This rule establishes the requirements, limitations and exclusions that are applicable to emergency and non-emergency transportation services provided by the program.
R9-22-212	This rule prescribes coverage requirements for and limitations of medical supplies, durable medical equipment, and orthotic and prosthetic devices.
R9-22-213	This rule establishes the requirements applicable to "early and periodic screening, diagnosis, and treatment services" (as defined in federal law) provided by the program.
R9-22-215	This rule establishes the requirements, limitations and exclusions that are applicable to services provided by the program from medical professions other than those set forth in other rules.
R9-22-216	This rule prescribes coverage of services provided in a nursing facility, alternative HCBS setting or HCBS as well as billing standards.
R9-22-217	This rule establishes the requirements, limitations and exclusions that are applicable to services included in the federal emergency services program.

3. Are the rules effective in achieving their objectives?

Yes No X

Rule	Explanation
R9-22-201	Update definitions of home health services, occupational therapy, physical therapy, speech therapy, to align with AHCCCS policy
R9-22-212	Update list of durable medical equipment to align with AHCCCS policy.

4. **Are the rules consistent with other rules and statutes?** Yes No X

Rule	Explanation
R9-22-207	Update to add emergency dental provisions to align with A.R.S. § 36-2907.
R9-22-209	Update to comply with fed regulation for prescription drugs in 42 CFR 440.120.
R9-22-213	Update to add emergency dental provisions to align with A.R.S. § 36-2907.

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

Rule	Explanation
R9-22-207	Update to add emergency dental provisions to align with A.R.S. § 36-2907.
R9-22-209	Update to comply with fed regulation for prescription drugs in 42 CFR 440.120.
R9-22-213	Update to add emergency dental provisions to align with A.R.S. § 36-2907.

6. **Are the rules clear, concise, and understandable?** Yes No X

Rule	Explanation
R9-22-201	Update to terminology and definitions for FES vs. non FES members for clarity.
R9-22-204	Update lettering because of typo, and remove C because no longer a requirement.
R9-22-210	Update to terminology and definitions.
R9-22-210.01	Clarify the 72 hr limitation regarding contractor responsibility for emergency inpatient behavioral health services applies to prospective eligibility and update terminology.

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:**

There is no measurable economic or consumer impact because the majority of the recommended changes are for clarification purposes, or to align with AHCCCS policy, and do not actually expand the current scope of service. A couple of the recommended changes included in this report, including the emergency dental provisions, could have an economic impact on the Administration's budget. However this was already reflected in the prior year submission because AHCCCS policy has already been updated to reflect this change, therefore there is no economic impact going forward. Small businesses are unlikely to see a noticeable economic impact from these articles because they pertain to the scope of services that AHCCCS covers.

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 prior 5 Year Review Report stated a large number of clarifying changes to the rules and that they were intended to be submitted to Council by November 2015 in a rulemaking package. The changes identified in the earlier report were not implemented by November 2015. The prior 5YRR suggested changes to all of Article 2, R9-22-201, R9-22-210, R9-22-210.01, R9-22-212, and R9-22-213 will be enacted within 180 days following the approval of this report by GRRC. All other suggested changes are no longer necessary due to changes in AHCCCS policy in the interim period between the two 5 year Reviews and are rejected.

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

The underlying regulatory objectives are the most cost-effective means and impose the least burden to regulated persons.

12. Are the rules more stringent than corresponding federal laws? Yes No X

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Not applicable.

14. Proposed course of action

Following approval of this 5YRR by GRRC, approval from the Governor's Office will be sought and a regular rulemaking will be initiated within 180 days to make the above changes. Additional technical and clarifying changes may also occur in the rulemaking.

(Supp. 00-2). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-117. Repealed

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2).

R9-22-118. Reserved

R9-22-119. Reserved

R9-22-120. Repealed

Historical Note

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

ARTICLE 2. SCOPE OF SERVICES

R9-22-201. Scope of Services-related 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:

“Anticipatory guidance” means a person responsible for a child receives information and guidance of what the person should expect of the child’s development and how to help the child stay healthy.

“Behavioral health recipient” means a Title XIX or Title XXI acute care member who is eligible for, and is receiving, behavioral health services through ADHS/DBHS.

“Benefit year” means a one-year time period of October 1st through September 30th.

“Emergency behavioral health condition for a non-FES member” means a condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in:

Placing the health of the person, including mental health, in serious jeopardy;

Serious impairment to bodily functions;

Serious dysfunction of any bodily organ or part; or

Serious physical harm to another person.

“Emergency behavioral health services for a non-FES member” means those behavioral health services provided for the treatment of an emergency behavioral health condition.

“Emergency medical condition for a non-FES member” means treatment for a medical condition, including labor and delivery, which manifests itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:

Placing the member’s health in serious jeopardy,

Serious impairment to bodily functions, or

Serious dysfunction of any bodily organ or part.

“Emergency medical services for a non-FES member” means services provided for the treatment of an emergency medical condition.

“Hearing aid” means an instrument or device designed for, or represented by the supplier as aiding or compensating for impaired or defective human hearing, and includes any parts, attachments, or accessories of the instrument or device.

“Home health services” means services and supplies that are provided by a home health agency that coordinates in-home intermittent services for curative, rehabilitative care, including home-health aide services, licensed nurse services, and medical supplies, equipment, and appliances.

“Occupational therapy” means medically prescribed treatment provided by or under the supervision of a licensed occupational therapist, to restore or improve an individual’s ability to perform tasks required for independent functioning.

“Pharmaceutical service” means medically necessary medications that are prescribed by a physician, practitioner, or dentist under R9-22-209.

“Physical therapy” means treatment services to restore or improve muscle tone, joint mobility, or physical function provided by or under the supervision of a registered physical therapist.

“Post-stabilization services” means covered services related to an emergency medical or behavioral health condition provided after the condition is stabilized.

“Primary care provider services” means healthcare services provided by and within the scope of practice, as defined by law, of a licensed physician, certified nurse practitioner, or licensed physician assistant.

“Psychosocial rehabilitation services” means services that provide education, coaching, and training to address or prevent residual functional deficits and may include services that may assist a member to secure and maintain employment. Psychosocial rehabilitation services may include:

Living skills training,

Cognitive rehabilitation,

Health promotion,

Supported employment, and

Other services that increase social and communication skills to maximize a member’s ability to participate in the community and function independently.

“RBHA” or “Regional Behavioral Health Authority” means the same as in A.R.S. § 36-3401.

“Residual functional deficit” means a member’s inability to return to a previous level of functioning, usually after experiencing a severe psychotic break or state of decompensation.

“Respiratory therapy” means treatment services to restore, maintain, or improve respiratory functions that are provided by, or under the supervision of, a respiratory therapist licensed according to A.R.S. Title 32, Chapter 35.

“Scope of services” means the covered, limited, and excluded services under Articles 2 and 12 of this Chapter.

“Speech therapy” means medically prescribed diagnostic and treatment services provided by or under the supervision of a certified speech therapist.

Arizona Health Care Cost Containment System - Administration

“Sterilization” means a medically necessary procedure, not for the purpose of family planning, to render an eligible person or member barren in order to:

Prevent the progression of disease, disability, or adverse health conditions; or

Prolong life and promote physical health.

“Substance abuse” means the chronic, habitual, or compulsive use of any chemical matter that, when introduced into the body, is capable of altering human behavior or mental functioning and, with extended use, may cause psychological dependence and impaired mental, social or educational functioning. Nicotine addiction is not considered substance abuse for adults who are 21 years of age or older.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-201 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B) effective May 30, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). 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. 3217, effective October 1, 2005 (Supp. 05-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 3351, effective November 10, 2007 (Supp. 07-3). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

R9-22-202. General Requirements

- A. For the purposes of this Article, the following definitions apply:
 - 1. “Authorization” means written, verbal, or electronic authorization by:
 - a. The Administration for services rendered to a fee-for-service member, or
 - b. The contractor for services rendered to a prepaid capitated member.
 - 2. Use of the phrase “attending physician” applies only to the fee-for-service population.
- B. In addition to other requirements and limitations specified in this Chapter, the following general requirements apply:
 - 1. Only medically necessary, cost effective, and federally-reimbursable and state-reimbursable services are covered services.
 - 2. Covered services for the federal emergency services program (FESP) are under R9-22-217.
 - 3. The Administration or a contractor may waive the covered services referral requirements of this Article.
 - 4. Except as authorized by the Administration or a contractor, a primary care provider, attending physician, practi-

tioner, or a dentist shall provide or direct the member’s covered services. Delegation of the provision of care to a practitioner does not diminish the role or responsibility of the primary care provider.

- 5. A contractor shall offer a female member direct access to preventive and routine services from gynecology providers within the contractor’s network without a referral from a primary care provider.
- 6. A member may receive physical and behavioral health services as specified in Articles 2 and 12.
- 7. The Administration or a contractor shall provide services under the Section 1115 Waiver as defined in A.R.S. § 36-2901.
- 8. An AHCCCS registered provider shall provide covered services within the provider’s scope of practice.
- 9. In addition to the specific exclusions and limitations otherwise specified under this Article, the following are not covered:
 - a. A service that is determined by the AHCCCS Chief Medical Officer to be experimental or provided primarily for the purpose of research;
 - b. Services or items furnished gratuitously, and
 - c. Personal care items except as specified under R9-22-212.
- 10. Medical or behavioral health services are not covered services if provided to:
 - a. An inmate of a public institution; or
 - b. A person who is in residence at an institution for the treatment of tuberculosis.
- C. The Administration or a contractor may deny payment of non-emergency services if prior authorization is not obtained as specified in this Article and Article 7 of this Chapter. The Administration or a contractor shall not provide prior authorization for services unless the provider submits documentation of the medical necessity of the treatment along with the prior authorization request.
- D. Services under A.R.S. § 36-2908 provided during the prior period coverage do not require prior authorization.
- E. Prior authorization is not required for services necessary to evaluate and stabilize an emergency medical condition. The Administration or a contractor shall not reimburse services that require prior authorization unless the provider documents the diagnosis and treatment.
- F. A service is not a covered service if provided outside the GSA unless one of the following applies:
 - 1. A member is referred by a primary care provider for medical specialty care outside the GSA. If a member is referred outside the GSA to receive an authorized medically necessary service, the contractor shall also provide all other medically necessary covered services for the member;
 - 2. There is a net savings in service delivery costs as a result of going outside the GSA that does not require undue travel time or hardship for a member or the member’s family;
 - 3. The contractor authorizes placement in a nursing facility located out of the GSA; or
 - 4. Services are provided during prior period coverage or during the prior quarter coverage.
- G. If a member is traveling or temporarily residing outside of the GSA, covered services are restricted to emergency care services, unless otherwise authorized by the contractor.
- H. A contractor shall provide at a minimum, directly or through subcontracts, the covered services specified in this Chapter and in contract.

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- I.** The Administration shall determine the circumstances under which a FFS member may receive services, other than emergency services, from service providers outside the member's county of residence or outside the state. Criteria considered by the Administration in making this determination shall include availability and accessibility of appropriate care and cost effectiveness.
- J.** The restrictions, limitations, and exclusions in this Article do not apply to a contractor electing to provide noncovered services.
 - 1. The Administration shall not consider the costs of providing a noncovered service to a member in the development or negotiation of a capitation rate.
 - 2. A contractor shall pay for noncovered services from administrative revenue or other contractor funds that are unrelated to the provision of services under this Chapter.
 - 3. If a member requests a service that is not covered or is not authorized by a contractor, or the Administration, an AHCCCS-registered service provider may provide the service according to R9-22-702.
- K.** Subject to CMS approval, the restrictions, limitations, and exclusions specified in the following subsections do not apply to American Indians receiving services through IHS or a tribal health program operating under P.L. 93-638 when those services are eligible for 100 percent federal financial participation:
 - 1. R9-22-205(A)(8),
 - 2. R9-22-206,
 - 3. R9-22-207,
 - 4. R9-22-212(C),
 - 5. R9-22-212(D),
 - 6. R9-22-212(E)(8),
 - 7. R9-22-215(C)(5), (C)(6), and
 - 8. R9-22-215(C)(4).

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-202 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1987; amended effective December 22, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2).

Amended effective April 13, 1990 (Supp. 90-2).

Amended effective December 13, 1993 (Supp. 93-4).

Amended effective July 1, 1995, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1994, Ch. 322, § 21; filed with the Office of the Secretary of State June 22, 1995 (Supp. 95-3). Amended effective January 1, 1996, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Third Special Session, Ch. 1, § 5; filed with the Office of the Secretary of State December 28, 1995 (Supp. 95-4). Section repealed effective September 22, 1997 (Supp. 97-3). New Section made by final rulemaking at 13 A.A.R. 3351, effective November 10, 2007 (Supp. 07-3). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4). Amended by final rulemaking at 21 A.A.R. 1225, effective July 7, 2015 (Supp. 15-3).

- A.** Experimental services are not covered. A service is not experimental if:
 - 1. It is generally and widely accepted as a standard of care in the practice of medicine in the United States and is a safe and effective treatment for the condition for which it is intended or used.
 - 2. The service does not meet the standard in subsection (A)(1), but the service has been demonstrated to be safe and effective for the condition for which it is intended or used based on the weight of the evidence in peer-reviewed articles in medical journals published in the United States.
 - 3. The service does not meet the standard in subsection (A)(2) because the condition for which the service is intended or used is rare, but the service has been demonstrated to be safe and effective for the condition for which it is intended or used based on the weight of opinions from specialists who provide the service or related services.
- B.** The following factors shall be considered when evaluating the weight of peer-reviewed articles or the opinions of specialists:
 - 1. The mortality rate and survival rate of the service as compared to the rates for alternative non-experimental services.
 - 2. The types, severity, and frequency of complications associated with the services as compared with the complications associated with alternative non-experimental services.
 - 3. The frequency with which the service has been performed in the past.
 - 4. Whether there is sufficient historical information regarding the service to provide reliable data regarding risks and benefits.
 - 5. The reputation and experience of the authors and/or specialists and their record in related areas.
 - 6. The extent to which medical science in the area develops rapidly and the probability that more definite data will be available in the foreseeable future.
 - 7. Whether the peer reviewed article describes a random controlled trial or an anecdotal clinical case study.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-203 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1987; amended effective December 22, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2).

Amended effective April 13, 1990 (Supp. 90-2).

Amended effective September 29, 1992 (Supp. 92-3).

Amended under an exemption from the provisions of the Administrative Procedure Act effective March 22, 1993; received in the Office of the Secretary of State March 24, 1993 (Supp. 93-1). Amended effective December 13, 1993 (Supp. 93-4). Section repealed effective September 22, 1997 (Supp. 97-3). New Section made by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Section amended by final rulemaking at 20 A.A.R. 1956, effective September 6, 2014 (Supp. 14-3).

R9-22-204. Inpatient General Hospital Services

- A.** The following limitations apply to inpatient general hospital services that are provided by FFS providers.

R9-22-203. Experimental Services

Arizona Health Care Cost Containment System - Administration

1. Providers shall obtain prior authorization from the Administration for the following inpatient hospital services:
 - a. Nonemergency and elective admission, including psychiatric hospitalization;
 - b. Elective surgery; and
 - c. Services or items provided to cosmetically reconstruct or improve personal appearance after an illness or injury.
 2. The Administration or a contractor may deny a claim if a provider fails to obtain prior authorization.
 3. Providers are not required to obtain prior authorization from the Administration for the following inpatient hospital services:
 - a. Voluntary sterilization,
 - b. Dialysis shunt placement,
 - c. Arteriovenous graft placement for dialysis,
 - d. Angioplasties or thrombectomies of dialysis shunts,
 - e. Angioplasties or thrombectomies of arteriovenous graft for dialysis,
 - f. Hospitalization for vaginal delivery that does not exceed 48 hours,
 - g. Hospitalization for cesarean section delivery that does not exceed 96 hours, and
 - h. Other services identified by the Administration through the Provider Participation Agreement.
 4. The Administration may perform concurrent review for hospitalizations of non-FES members to determine whether there is medical necessity for the hospitalization. A provider shall notify the Administration no later than 72 hours after an emergency admission.
- C.** Coverage of in-state and out-of-state inpatient hospital services is limited to 25 days per benefit year for members age 21 and older for claims with discharge dates on or before September 30, 2014. The limit applies for all inpatient hospital services with dates of service during the benefit year regardless of whether the member is enrolled in Fee for Service, is enrolled with one or more contractors, or both, during the benefit year.
1. For purposes of calculating the limit:
 - a. Inpatient days are counted towards the limit if paid by the Administration or a contractor;
 - b. Inpatient days will be counted toward the limit in the order of the adjudication date of a paid claim;
 - c. Paid inpatient days are allocated to the benefit year in which the date of service occurs;
 - d. Each 24 hours of paid observation services is counted as one inpatient day if the patient is not admitted to the same hospital directly following the observation services;
 - e. Observation services, which are directly followed by an inpatient admission to the same hospital are not counted towards the inpatient limit; and
 - f. After 25 days of inpatient hospital services have been paid as provided for in this rule Section:
 - i. Outpatient services that are directly followed by an inpatient admission to the same hospital, including observation services, are not covered;
 - ii. Continuous periods of observation services of less than 24 hours that are not directly followed by an inpatient admission to the same hospital are covered;
 - iii. For continuous periods of observation services of 24 hours or more that are not directly followed by an inpatient admission to the same hospital, 23 hours of observations services are covered.
 2. The following inpatient days are not included in the inpatient hospital limitation described in this Section:
 - a. Days reimbursed under specialty contracts between AHCCCS and a transplant facility that are included within the component pricing referred to in the contract;
 - b. Days related to Behavioral Health:
 - i. Inpatient days that qualify for the psychiatric tier under R9-22-712.09 and reimbursed by the Administration or its contractors, or
 - ii. Inpatient days with a primary psychiatric diagnosis code reimbursed by the Administration or its contractors, or
 - iii. Inpatient days paid by the Arizona Department of Health Services Division of Behavioral Health Services or a RBHA or TRBHA.
 - c. Days related to treatment for burns and burn late effects at an American College of Surgeons verified burn center;
 - d. Same Day Admit Discharge services are excluded from the 25 day limit; and
 - e. Subject to approval by CMS, days for which the state claims 100% FFP, such as payments for days provided by IHS or 638 facilities.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-204 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A) effective December 22, 1987 (Supp. 87-4). Amended effective December 13, 1993 (Supp. 93-4). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1745, effective October 1, 2012 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 1956, effective September 6, 2014 (Supp. 14-3).

R9-22-205. Attending Physician, Practitioner, and Primary Care Provider Services

- A.** A primary care provider, attending physician, or practitioner shall provide primary care provider services within the provider's scope of practice under A.R.S. Title 32. A member may receive primary care provider services in an inpatient or outpatient setting including at a minimum:
1. Periodic health examination and assessment;
 2. Evaluation and diagnostic workup;
 3. Medically necessary treatment;
 4. Prescriptions for medication and medically necessary supplies and equipment;
 5. Referral to a specialist or other health care professional if medically necessary;
 6. Patient education;
 7. Home visits if medically necessary; and

8. Preventive health services, such as, well visits, immunizations, colonoscopies, mammograms and PAP smears.
- B.** The following limitations and exclusions apply to attending physician and practitioner services and primary care provider services:
1. Specialty care and other services provided to a member upon referral from a primary care provider, or to a member upon referral from the attending physician or practitioner are limited to the service or condition for which the referral is made, or for which authorization is given by the Administration or a contractor.
 2. A member's physical examination is not covered if the sole purpose is to obtain documentation for one or more of the following:
 - a. Qualification for insurance,
 - b. Pre-employment physical evaluation,
 - c. Qualification for sports or physical exercise activities,
 - d. Pilot's examination for the Federal Aviation Administration,
 - e. Disability certification to establish any kind of periodic payments,
 - f. Evaluation to establish third-party liabilities, or
 - g. Physical ability to perform functions that have no relationship to primary objectives of the services listed in subsection (A).
 3. Orthognathic surgery is covered only for a member who is less than 21 years of age;
 4. The following services are excluded from AHCCCS coverage:
 - a. Infertility services, reversal of surgically induced infertility (sterilization), and gender reassignment surgeries;
 - b. Pregnancy termination counseling services;
 - c. Pregnancy terminations, unless required by state or federal law;
 - d. Services or items furnished solely for cosmetic purposes; and
 - e. Hysterectomies unless determined medically necessary.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-205 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A), paragraph (15) and added paragraph (20) effective December 22, 1987 (Supp. 87-4). Amended subsection (C)(2) effective May 30, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 22, 1993; received in the Office of the Secretary of State March 24, 1993 (Supp. 93-1). Amended effective December 13, 1993 (Supp. 93-4). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3).

Editor's Note: The following Section was renumbered and a new Section adopted under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not published as a proposed rule in the Arizona Administrative Register; the rule was not reviewed or approved by the Governor's Regulatory Review Council; and the agency was not required to hold public hearings on the rule. This Section was subsequently amended through the regular rulemaking process.

R9-22-206. Organ and Tissue Transplant Services

- A.** Organ and tissue transplant services are covered for a member if prior authorized and coordinated with the member's contractor, or the Administration. Only the following transplants are covered for individuals 21 years of age or older:
1. Heart, including transplants for the treatment of non-ischemic cardiomyopathy;
 2. Liver, including transplants for patients with hepatitis C;
 3. Kidney (cadaveric and live donor),
 4. Simultaneous Pancreas/Kidney (SPK),
 5. Autologous and Allogeneic related and unrelated Hematopoietic Cell transplants;
 6. Cornea;
 7. Bone;
 8. Lung; and
 9. Pancreas after a kidney transplant (PAK).
- B.** The following transplants are not covered for members 21 years of age or older:
1. Pancreas only transplants if it is not performed simultaneously with or following a kidney transplant. Partial pancreas transplants and autologous and allogeneic pancreas islet cell transplants are not covered even if performed simultaneously with or following a kidney transplant,
 2. Intestine transplants, and
 3. Any other type of transplant not specifically listed in subsection (A).
- C.** When there is a transplant of multiple organs, reimbursement will only be made for those covered.
- D.** Organ and tissue transplant services are not covered for non-qualified aliens or noncitizens members of FESP under A.R.S. § 36-2903.03(D).

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-206 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended effective December 13, 1993 (Supp. 93-4). Former Section R9-22-206 renumbered to R9-22-218, new Section R9-22-206 adopted effective January 1, 1996, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Third Special Session, Ch. 1, § 5; filed with the Office of the Secretary of State December 28, 1995 (Supp. 95-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by exempt rulemaking at 7 A.A.R. 5701, effective December 1, 2001 (Supp. 01-4). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by exempt rulemaking at 16 A.A.R. 1386, effective July 15, 2010 (Supp. 10-3). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 1122, April 1, 2011 (Supp. 11-2).

R9-22-207. Dental Services

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- A. The Administration or a contractor shall cover dental services for a member less than 21 years of age under R9-22-213.
- B. For individuals age 21 years of age or older, the Administration or a contractor shall cover medical and surgical services furnished by a dentist only to the extent such services may be performed under state law either by a physician or by a dentist and such services would be considered a physician service if furnished by a physician.
 - 1. Except as specified in subsection (C), such services must be related to the treatment of a medical condition such as acute pain, infection, or fracture of the jaw. Covered dental services include examination of the oral cavity, radiographs, complex oral surgical procedures such as treatment of maxillofacial fractures, administration of an appropriate level of anesthesia and the prescription of pain medication and antibiotics.
 - 2. Such services do not include services that physicians are not generally competent to perform such as dental cleanings, routine dental examinations, dental restorations including crowns and fillings, extractions, pulpotomies, root canals, and the construction or delivery of complete or partial dentures. Diagnosis and treatment of temporomandibular joint dysfunction are not covered except for the reduction of trauma.
- C. For the purposes of this subsection, simple restorations means silver amalgam or composite resin fillings, stainless steel crowns or preformed crowns. In addition, dental services for an individual 21 years of age or older include:
 - 1. The elimination of oral infections and the treatment of oral disease, which includes dental cleanings, treatment of periodontal disease, medically necessary extractions and the provision of simple restorations as a medically necessary pre-requisite to covered transplantation; and
 - 2. Prophylactic extraction of teeth in preparation for covered radiation treatment of cancer of the jaw, neck or head.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-207 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-207 repealed, new Section R9-22-207 adopted effective October 1, 1985 (Supp. 85-5). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3).

R9-22-208. Laboratory, Radiology, and Medical Imaging Services

Laboratory, radiology, and medical imaging services are covered services if:

- 1. Prescribed by the member's attending physician, practitioner, primary care provider or a dentist, or prescribed by a physician or practitioner upon referral from the primary care provider or dentist.
- 2. Provided by licensed health care providers in a:
 - a. Hospital,
 - b. Clinic,
 - c. Physician's office, or
 - d. Other health care facility.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-

- 3). Former Section R9-22-208 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-208 repealed, new Section R9-22-208 adopted effective October 1, 1985 (Supp. 85-5). Amended subsection (C) effective December 22, 1987 (Supp. 87-4). Amended effective December 13, 1993 (Supp. 93-4). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2).

R9-22-209. Pharmaceutical Services

- A. An inpatient or outpatient provider, including a hospital, clinic, other appropriately licensed health care facility, and pharmacy may provide covered pharmaceutical services.
- B. The Administration or a contractor shall require a provider to make pharmaceutical services:
 - 1. Available during customary business hours, and
 - 2. Located within reasonable travel distance of a member's residence.
- C. Pharmaceutical services are covered if:
 - 1. Prescribed for a member by the member's primary care provider, attending physician, practitioner, or dentist;
 - 2. Prescribed by a specialist upon referral from the primary care provider or attending physician; or
 - 3. The contractor or its designee authorizes the service.
- D. The following limitations apply to pharmaceutical services:
 - 1. A medication personally dispensed by a physician, dentist, or a practitioner within the individual's scope of practice is not covered, except in geographically remote areas where there is no participating pharmacy or if accessible pharmacies are closed.
 - 2. A new prescription or refill in excess of a 30 day supply is not covered unless:
 - a. The member will be out of the provider's service area for an extended period of time and the prescription is limited to the extended time period, not to exceed a 90 day supply; or
 - b. The Contractor authorizes the prescription for an extended time period not to exceed a 90-day supply.
 - 3. An over-the-counter medication, in place of a covered prescription medication, is covered only if the over-the-counter medication is appropriate, equally effective, safe, and less costly than the covered prescription medication.
- E. A contractor shall monitor and ensure sufficient services to prevent any gap in the pharmaceutical regimen of a member who requires a continuing or complex regimen of pharmaceutical treatment to restore, improve, or maintain physical well being.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-209 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended effective September 24, 1986 (Supp. 86-5). Amended subsections (A) and (C) effective December 22, 1987 (Supp. 87-4). Amended subsection (C)(3), effective May 30, 1989 (Supp. 89-2). Amended under an exemption from the Administrative Procedure Act effective March 22, 1993; received in the Office of the Secretary of State March 24, 1993 (Supp. 93-1). Amended effective December 13, 1993 (Supp. 93-4). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000

(Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3).

R9-22-210. Emergency Medical Services for Non-FES Members

A. General provisions.

1. Applicability. This Section applies to emergency medical services for non-FES members. Provisions regarding emergency behavioral health services for non-FES members are in R9-22-210.01. Provisions regarding emergency medical and behavioral health services for FES members are in R9-22-217.
2. Definitions.
 - a. For the purposes of this Section, "contractor" has the same meaning as in A.R.S. § 36-2901. Contractor does not include ADHS/DBHS or a subcontractor of ADHS/DBHS.
 - b. For the purposes of this Section and R9-22-210.01, "fiscal agent" means a person who bills and accepts payment for a hospital or emergency room provider.
3. Verification. A provider of emergency medical services shall verify a person's eligibility status with AHCCCS, and if eligible, determine whether the person is enrolled with AHCCCS as non-FES FFS or is enrolled with a contractor.
4. Prior authorization.
 - a. Emergency medical services. A provider is not required to obtain prior authorization for emergency medical services.
 - b. Non-emergency medical services. If a non-FES member's medical condition does not require emergency medical services, the provider shall obtain prior authorization as required by the terms of the provider agreement under R9-22-714(A) or the provider's subcontract with the contractor, whichever is applicable.
5. Prohibition against denial of payment. Neither the Administration nor a contractor shall:
 - a. Limit what constitutes an emergency medical condition on the basis of lists of diagnoses or symptoms,
 - b. Deny or limit payment because the provider failed to obtain prior authorization for emergency services,
 - c. Deny or limit payment because the provider does not have a subcontract.
6. Grounds for denial. The Administration and a contractor may deny payment for emergency medical services for reasons including but not limited to:
 - a. The claim was not a clean claim;
 - b. The claim was not submitted timely; and
 - c. The provider failed to provide timely notification under subsection (B)(4) to the contractor or the Administration, as appropriate, and the contractor does not have actual notice from any other source that the member has presented for services.

B. Additional requirements for emergency medical services for non-FES members enrolled with a contractor.

1. Responsible entity. A contractor is responsible for the provision of all emergency medical services to non-FES members enrolled with the contractor.
2. Prohibition against denial of payment. A contractor shall not limit or deny payment for emergency medical services when an employee of the contractor instructs the member to obtain emergency medical services.

3. Contractor notification. A contractor shall not deny payment to a hospital, emergency room provider, or fiscal agent for an emergency medical service rendered to a non-FES member based on the failure of the hospital, emergency room provider, or fiscal agent to notify the member's contractor within 10 days from the day that the member presented for the emergency medical service.

4. Contractor notification. A hospital, emergency room provider, or fiscal agent shall notify the contractor no later than the 11th day after presentation of the non-FES member for emergency inpatient medical services. A contractor may deny payment for a hospital's, emergency room provider's, or fiscal agent's failure to provide timely notice, under this subsection.

C. Post-stabilization services for non-FES members enrolled with a contractor.

1. After the emergency medical condition of a member enrolled with a contractor is stabilized, a provider shall request prior authorization from the contractor for post-stabilization services.
2. The contractor is financially responsible for medical post-stabilization services obtained within or outside the network that have been prior authorized by the contractor.
3. The contractor is financially responsible for medical post-stabilization services obtained within or outside the network that are not prior authorized by the contractor, but are administered to maintain the member's stabilized condition within one hour of a request to the contractor for prior authorization of further post-stabilization services;
4. The contractor is financially responsible for medical post-stabilization services obtained within or outside the network that are not prior authorized by the contractor, but are administered to maintain, improve, or resolve the member's stabilized condition if:
 - a. The contractor does not respond to a request for prior authorization within one hour;
 - b. The contractor authorized to give the prior authorization cannot be contacted; or
 - c. The contractor representative and the treating physician cannot reach an agreement concerning the member's care and the contractor physician is not available for consultation. In this situation, the contractor shall give the treating physician the opportunity to consult with a contractor physician. The treating physician may continue with care of the member until the contractor physician is reached or:
 - i. A contractor physician with privileges at the treating hospital assumes responsibility for the member's care,
 - ii. A contractor physician assumes responsibility for the member's care through transfer,
 - iii. The contractor's representative and the treating physician reach agreement concerning the member's care, or
 - iv. The member is discharged.
5. Transfer or discharge. The attending physician or practitioner actually treating the member for the emergency medical condition shall determine when the member is sufficiently stabilized for transfer or discharge and that decision shall be binding on the contractor.

D. Additional requirements for FFS members.

1. Responsible entity. The Administration is responsible for the provision of all emergency medical services to non-FES FFS members.

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2. Grounds for denial. The Administration may deny payment for emergency medical services if a provider fails to provide timely notice to the Administration.
3. Notification. A provider shall notify the Administration no later than 72 hours after a FFS member receiving emergency medical services presents to a hospital for inpatient services. The Administration may deny payment for failure to provide timely notice.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-210 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-210 repealed, new Section R9-22-210 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B), paragraph (1) effective October 1, 1987 (Supp. 87-4). Amended effective December 13, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 5 A.A.R. 867, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 5480, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3).

R9-22-210.01. Emergency Behavioral Health Services for Non-FES Members**A. General provisions.**

1. Applicability. This Section applies to emergency behavioral health services for non-FES members. Provisions regarding emergency medical services for non-FES members are in R9-22-210. Provisions regarding emergency medical and behavioral health services for FES members are in R9-22-217.
2. Definition. For the purposes of this Section, "contractor" has the same meaning as in A.R.S. § 36-2901. Contractor does not include ADHS/DBHS, a subcontractor of ADHS/DBHS, or Children's Rehabilitative Services.
3. Responsible entity for inpatient emergency behavioral health services.
 - a. Members enrolled with a contractor. ADHS/DBHS, ADHS/DBHS or a subcontractor of ADHS/DBHS is responsible for providing all inpatient emergency behavioral health services to non-FES members with psychiatric or substance abuse diagnoses who are enrolled with the contractor.
 - b. FFS members. ADHS/DBHS or a subcontractor of ADHS/DBHS is responsible for providing all inpatient emergency behavioral health services for non-FES FFS members with psychiatric or substance abuse diagnoses unless services are provided in an IHS or tribally operated 638 facility.
4. Responsible entity for non-inpatient emergency behavioral health services for non-FES members. ADHS/DBHS or a subcontractor of ADHS/DBHS is responsible for providing all non-inpatient emergency behavioral health services for non-FES members.

5. Verification. A provider of emergency behavioral health services shall verify a person's eligibility status with AHCCCS, and if eligible, determine whether the person is a member enrolled with AHCCCS as non-FES FFS or is enrolled with a contractor, and determine whether the member is a behavioral health recipient as defined in R9-22-201.

6. Prior authorization.

- a. Emergency behavioral health services. A provider is not required to obtain prior authorization for emergency behavioral health services.

- b. Non-emergency behavioral health services. When a non-FES member's behavioral health condition is determined by the provider not to require emergency behavioral health services, the provider shall follow the prior authorization requirements of a contractor and ADHS/DBHS or a subcontractor of ADHS/DBHS.

7. Prohibition against limitation or denial of payment. A contractor, TRBHA, the Administration, ADHS/DBHS, or a subcontractor of ADHS/DBHS shall not limit or deny payment to an emergency behavioral health provider for emergency behavioral health services to a non-FES member for the following reasons:

- a. On the basis of lists of diagnoses or symptoms;
- b. Prior authorization was not obtained;
- c. The provider does not have a contract;
- d. An employee of the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS instructs the member to obtain emergency behavioral health services; or
- e. The failure of a hospital, emergency room provider, or fiscal agent to notify the member's contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS within 10 days from the day the member presented for the emergency service.

8. Grounds for denial. A contractor, the Administration, ADHS/DBHS, or a subcontractor of ADHS/DBHS may deny payment for emergency behavioral health services for reasons including but not limited to the following:

- a. The claim was not a clean claim;
- b. The claim was not submitted timely; or
- c. The provider failed to provide timely notification under subsection (A)(9) to the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS or the Administration.

9. Notification.

- a. A hospital, emergency room provider, or fiscal agent shall notify a contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, whichever is appropriate, no later than the 11th day from presentation of the non-FES member for emergency inpatient behavioral health services.

- b. A hospital, emergency room provider, or fiscal agent shall notify the Administration no later than 72 hours after a FFS member receiving emergency behavioral health services presents to a hospital for inpatient services.

10. Transfer or discharge. The attending physician or the provider actually treating the non-FES member for the emergency behavioral health condition shall determine when the member is sufficiently stabilized for transfer or discharge and that decision shall be binding on the contractor and ADHS/DBHS or a subcontractor of ADHS/DBHS.

B. Post-stabilization requirements for non-FES members.

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1. A contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, as appropriate, is financially responsible for behavioral health post-stabilization services obtained within or outside the network that have been prior authorized by the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS.
2. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, as appropriate, is financially responsible for behavioral health post-stabilization services obtained within or outside the network that are not prior authorized by the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, but are administered to maintain the member's stabilized condition within one hour of a request to the contractor, ADHS/DBHS, or a subcontractor for prior authorization of further post-stabilization services;
3. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, as appropriate, is financially responsible for behavioral health post-stabilization services obtained within or outside the network that are not prior authorized by the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, but are administered to maintain, improve, or resolve the member's stabilized condition if:
 - a. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, does not respond to a request for prior authorization within one hour;
 - b. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS authorized to give the prior authorization cannot be contacted;
 - c. The representative of the contractor, ADHS/DBHS, or the subcontractor and the treating physician cannot reach an agreement concerning the member's care and the contractor's, ADHS/DBHS' or the subcontractor's physician, is not available for consultation. The treating physician may continue with care of the member until ADHS/DBHS', the contractor's, or the subcontractor's physician is reached, or:
 - i. A contracted physician with privileges at the treating hospital assumes responsibility for the member's care;
 - ii. ADHS/DBHS', a contractor's, or a subcontractor's physician assumes responsibility for the member's care through transfer;
 - iii. A representative of the contractor, ADHS/DBHS, or the subcontractor and the treating physician reach agreement concerning the member's care; or
 - iv. The member is discharged.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5480, effective December 6, 2005 (Supp. 05-4).

Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

R9-22-211. Transportation Services**A. Emergency ambulance services.**

1. A member shall receive medically necessary emergency transportation in a ground or air ambulance:
 - a. To the nearest appropriate provider or medical facility capable of meeting the member's medical needs, and
 - b. If no other appropriate means of transportation is available.
2. The Administration or a member's contractor shall reimburse a ground or air ambulance transport that originates

in response to a 911 call or other emergency response system:

- a. If the member's medical condition justifies the medical necessity of the type of ambulance transportation received,
 - b. The transport is to the nearest appropriate provider or medical facility capable of meeting the member's medical needs, and
 - c. No prior authorization is required for reimbursement of these transports.
 3. The member's medical condition at the time of transport determines whether the transport is medically necessary.
 4. A ground or air ambulance provider furnishing transport in response to a 911 call or other emergency response system shall notify the member's contractor within 10 working days from the date of transport. Failure of the provider to provide notification is cause for denial.
 5. Notification to the Administration of emergency transportation provided to a FFS member is not required, but the provider shall submit documentation with the claim that justifies the service.
- B.** The Administration or a contractor covers air ambulance services only if at least one criterion in subsection (B)(1) is met and at least one criterion in subsection (B)(2), or the criterion in subsection (B)(3) is met. The criteria are:
1. The air ambulance transport is initiated at the request of:
 - a. An emergency response unit,
 - b. A law enforcement official,
 - c. A clinic or hospital medical staff member, or
 - d. A physician or practitioner, and
 2. The point of pickup:
 - a. Is inaccessible by ground ambulance, or
 - b. Is a great distance from the nearest hospital or other provider with appropriate facilities to treat the member's condition and ground ambulance service will not suffice, or
 3. The medical condition of the member requires immediate intervention from emergency ambulance personnel or providers with the appropriate facilities to treat the member's condition.
- C.** Coverage of medically necessary nonemergency transportation is limited to the cost of transporting the member to an appropriate provider capable of meeting the member's medical needs.
1. As specified in contract, a contractor shall arrange or provide medically necessary nonemergency transportation services for a member who is unable to arrange transportation to a service site or location.
 2. For a fee-for-service member, the Administration shall authorize medically necessary nonemergency transportation for a member who is unable to arrange transportation to a service site or location.
- D.** For the purposes of this subsection, an individual means a person who is not in the business of providing transportation services such as a family or household member, friend, or neighbor. The Administration or a contractor shall cover expenses for transportation in traveling to and returning from an approved and prior authorized health care service site provided by an individual if:
1. The transportation services are authorized by the Administration or the member's contractor or designee,
 2. The individual is an AHCCCS registered provider, and
 3. No other means of appropriate transportation is available.
- E.** The Administration or a contractor shall cover expenses for meals, lodging, and transportation for a member traveling to

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- and returning from an approved health care service site outside of the member's service area or county of residence.
- F.** The Administration or a contractor shall cover the expense of meals, lodging, and transportation for:
1. A family member accompanying a member if:
 - a. The member is traveling to or returning from an approved health care service site outside of the member's service area or county of residence; and
 - b. The meals, lodging, and transportation services are authorized by the Administration or the member's contractor or designee.
 2. An escort who is not a family member as follows:
 - a. If the member is travelling to or returning from an approved and prior authorized health care service site, including an inpatient facility, outside of the member's service area or county of residence;
 - b. If the escort services are authorized by the Administration or the member's contractor or designee; and
 - c. Wage paid to an escort as reimbursement shall not exceed the federal minimum wage.
- G.** A provider shall obtain prior authorization from the Administration for transportation services provided for a member for the following:
1. Medically necessary nonemergency transportation services not originated through a 911 call or other emergency response system when the distance traveled exceeds 100 miles (whether one way or round trip); and
 2. All meals, lodging, and services of an escort accompanying the member under this Section.
- H.** A charitable organization routinely providing transportation service at no cost to an ambulatory or chairbound person shall not charge or seek reimbursement from the Administration or a contractor for the provision of the service to a member but may enter into a subcontract with a contractor for medically necessary transportation services provided to a member.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-211 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A) effective October 1, 1986 (Supp. 86-5). Amended effective December 13, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3).

R9-22-212. Durable Medical Equipment, Orthotic and Prosthetic Devices, and Medical Supplies

- A.** Durable medical equipment, orthotic and prosthetic devices, and medical supplies, including incontinence briefs as specified in subsection (E), are covered services to the extent permitted in this Section if provided in compliance with requirements of this Chapter; and
1. Prescribed by the primary care provider, attending physician, or practitioner; or
 2. Prescribed by a specialist upon referral from the primary care provider, attending physician, or practitioner; and
 3. Authorized as required by the Administration, contractor, or contractor's designee.
- B.** Covered medical supplies are consumable items that are designed specifically to meet a medical purpose, are disposable, and are essential for the member's health.
- C.** Covered DME is any item, appliance, or piece of equipment that is not a prosthetic or orthotic; and
1. Is designed for a medical purpose, and is generally not useful to a person in the absence of an illness or injury, and
 2. Can withstand repeated use, and
 3. Is generally reusable by others.
- D.** Prosthetics are devices prescribed by a physician or other licensed practitioner to artificially replace missing, deformed or malfunctioning portion of the body. Only those prosthetics that are medically necessary for rehabilitation are covered, except as otherwise provided in R9-22-215.
- E.** The following limitations on coverage apply:
1. The DME is furnished on a rental or purchase basis, whichever is less expensive. The total expense of renting the DME does not exceed the cost of the DME if purchased.
 2. Reasonable repair or adjustment of purchased DME is covered if necessary to make the DME serviceable and if the cost of repair or adjustment is less than the cost of renting or purchasing another unit.
 3. A change in, or addition to, an original order for DME is covered if approved by the prescriber in subsection (A), or prior authorized by the Administration or contractor, and the change or addition is indicated clearly on the order and initialed by the vendor. No change or addition to the original order for DME may be made after a claim for services is submitted to the member's contractor, or the Administration, without prior written notification of the change or addition to the Administration or the contractor.
 4. Reimbursement for rental fees shall terminate:
 - a. No later than the end of the month in which the prescriber in subsection (A) certifies that the member no longer needs the DME;
 - b. If the member is no longer eligible for AHCCCS services; or
 - c. If the member is no longer enrolled with a contractor, with the exception of transitions of care as specified in R9-22-509.
 5. Except for incontinence briefs for persons over 3 years old and under 21 years old as provided in subsection (E)(6), personal care items including items for personal cleanliness, body hygiene, and grooming are not covered unless needed to treat a medical condition. Personal care items are not covered services if used solely for preventive purposes.
 6. Incontinence briefs, including pull-ups are covered to prevent skin breakdown and enable participation in social, community, therapeutic and educational activities under the following circumstances:
 - a. The member is over 3 years old and under 21 years old;
 - b. The member is incontinent due to a documented disability that causes incontinence of bowel or bladder, or both;
 - c. The PCP or attending physician has issued a prescription ordering the incontinence briefs;
 - d. Incontinence briefs do not exceed 240 briefs per month unless the prescribing physician presents evidence of medical necessity for more than 240 briefs per month for a member diagnosed with chronic diarrhea or spastic bladder;
 - e. The member obtains incontinence briefs from providers in the contractor's network;

- f. Prior authorization has been obtained as required by the Administration, contractor, or contractor's designee. Contractors may require a new prior authorization to be issued no more frequently than every 12 months. Prior authorization for a renewal of an existing prescription may be provided by the physician through telephone contact with the member rather than an in-person physician visit. Prior authorization will be permitted to ascertain that:
 - i. The member is over age 3 and under age 21;
 - ii. The member has a disability that causes incontinence of bladder or bowel, or both;
 - iii. A physician has prescribed incontinence briefs as medically necessary. A physician prescription supporting medical necessity may be required for specialty briefs or for briefs different from the standard briefs supplied by the contractor; and
 - iv. The prescription is for 240 briefs or fewer per month, unless evidence of medical necessity for over 240 briefs is provided.
- 7. First aid supplies are not covered unless they are provided in accordance with a prescription.
- 8. The following services are not covered for individuals 21 years of age or older:
 - a. Hearing aids;
 - b. Prescriptive lenses unless they are the sole visual prosthetic device used by the member after a cataract extraction;
 - c. Bone Anchor Hearing Aid (BAHA);
 - d. Cochlear implant;
 - e. Percussive vest;
 - f. Insulin pump;
 - g. Microprocessor-controlled lower limbs or microprocessor-controlled joints for lower limbs; and
 - h. Orthotics, which are defined as devices that are prescribed by a physician or other licensed practitioner of the healing arts to support a weak or deformed portion of the body.
- F. Liability and ownership.
 - 1. Purchased DME that is provided to a member and no longer needed by the member may be disposed of in accordance with each contractor's policy.
 - 2. The Administration shall retain title to purchased DME provided to a member who becomes ineligible or no longer requires use of the DME.
 - 3. If customized DME is purchased by the Administration or contractor for a member, the equipment shall remain with the person during times of transition to a different contractor, or upon loss of eligibility. For purposes of this subsection, customized DME refers to equipment that is altered or built to specifications unique to a member's medical needs and that, most likely, cannot be used or reused to meet the needs of another individual.
 - 4. A member shall return DME obtained fraudulently to the Administration or the contractor.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-212 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-212 repealed, new Section R9-22-212 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B), para-

graph (2), and deleted subsection (C) effective October 1, 1986 (Supp. 86-5). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 3272, effective September 11, 2007 (Supp. 07-3). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3).

R9-22-213. Early and Periodic Screening, Diagnosis, and Treatment Services (E.P.S.D.T.)

- A. The following E.P.S.D.T. services are covered for a member less than 21 years of age:
 - 1. Screening services including:
 - a. Comprehensive health and developmental history;
 - b. Comprehensive unclothed physical examination;
 - c. Appropriate immunizations according to age and health history;
 - d. Laboratory tests; and
 - e. Health education, including anticipatory guidance;
 - 2. Vision services including:
 - a. Diagnosis and treatment for defects in vision;
 - b. Eye examinations for the provision of prescriptive lenses;
 - c. Prescriptive lenses; and
 - d. Frames.
 - 3. Hearing services including:
 - a. Diagnosis and treatment for defects in hearing;
 - b. Testing to determine hearing impairment; and
 - c. Hearing aids;
 - 4. Dental services including:
 - a. Emergency dental services as specified in R9-22-207;
 - b. Preventive services including screening, diagnosis, and treatment of dental disease; and
 - c. Therapeutic dental services including fillings, crowns, dentures, and other prosthetic devices;
 - 5. Orthognathic surgery;
 - 6. Medically necessary, nutritional assessment and nutritional therapy as specified in contract to provide complete daily dietary requirements or supplement a member's daily nutritional and caloric intake;
 - 7. Behavioral health services under 9 A.A.C. 22, Article 12;
 - 8. Hospice services do not include home-delivered meals or services provided and covered through Medicare. The following hospice services are covered:
 - a. Hospice services are covered only for a member who is in the final stages of a terminal illness and has a prognosis of death within six months;
 - b. Services available to a member receiving hospice care are limited to those allowable under 42 CFR 418.202, October 1, 2006, incorporated by reference and on file with the Administration. This incorporation by reference contains no future editions or amendments;
 - 9. Incontinence briefs as specified under R9-22-212; and
 - 10. Other necessary health care, diagnostic services, treatment, and measures required by 42 U.S.C. 1396d(r)(5).
 - B. Providers of E.P.S.D.T. services shall meet the following standards:
 - 1. Ensure that services are provided by or under the direction of the member's primary care provider, attending physician, practitioner, or dentist.
 - 2. Perform tests and examinations under 42 CFR 441 Subpart B, October 1, 2006, which is incorporated by reference and on file with the Administration. This

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- incorporation by reference contains no future editions or amendments.
3. Refer a member as necessary for dental diagnosis and treatment and necessary specialty care.
 4. Refer a member as necessary for behavioral health evaluation and treatment services.
- C. Contractors shall meet other E.P.S.D.T. requirements as specified in contract.
- D. A primary care provider, attending physician, or practitioner shall refer a member with special health care needs under R9-7-301 to CRS.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-213 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-213 repealed, new Section R9-22-213 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended effective December 13, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 3272, effective September 11, 2007 (Supp. 07-3). Amended by final rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3).

R9-22-214. Repealed**Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-214 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-214 repealed, new Section R9-22-214 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B), paragraph (4) and added subsection (C), paragraph (2) effective October 1, 1986 (Supp. 86-5). Correction to subsection (C), paragraph (2) (Supp. 87-4). Section repealed effective September 22, 1997 (Supp. 97-3).

R9-22-215. Other Medical Professional Services

- A. The following medical professional services are covered services if a member receives these services in an inpatient, outpatient, or office:
1. Dialysis;
 2. The following family planning services if provided to delay or prevent pregnancy:
 - a. Medications,
 - b. Supplies,
 - c. Devices, and
 - d. Surgical procedures;
 3. Family planning services are limited to:
 - a. Contraceptive counseling, medications, supplies, and associated medical and laboratory examinations, including HIV blood screening as part of a package of sexually transmitted disease tests provided with a family planning service;
 - b. Sterilization; and
 - c. Natural family planning education or referral;
 4. Midwifery services provided by a certified nurse practitioner in midwifery;

5. Midwifery services for low-risk pregnancies and home deliveries provided by a licensed midwife;
 6. Respiratory therapy;
 7. Ambulatory and outpatient surgery facilities services;
 8. Home health services under A.R.S. § 36-2907(D);
 9. Private or special duty nursing services;
 10. Rehabilitation services including physical therapy, occupational therapy, speech therapy, and audiology within limitations in subsection (C);
 11. Total parenteral nutrition services, which are the provision of total caloric needs by intravenous route for individuals with severe pathology of the alimentary tract; and
 12. Chemotherapy.
- B. Prior authorization from the Administration for a member is required for services listed in subsections (A)(3)(b), and (A)(4) through (11); except for:
1. Voluntary sterilization;
 2. Dialysis shunt placement;
 3. Arteriovenous graft placement for dialysis;
 4. Angioplasties or thrombectomies of dialysis shunts;
 5. Angioplasties or thrombectomies of arteriovenous grafts for dialysis;
 6. Eye surgery for the treatment of diabetic retinopathy;
 7. Eye surgery for the treatment of glaucoma;
 8. Eye surgery for the treatment of macular degeneration;
 9. Home health visits following an acute hospitalization (limited up to five visits);
 10. Hysteroscopies (up to two, one before and one after) when associated with a family planning diagnosis code and done within 90 days of hysteroscopic sterilization;
 11. Physical therapy subject to the limitation in subsection (C);
 12. Facility services related to wound debridement,
 13. Apnea management and training for premature babies up to the age of 1; and
 14. Other services identified by the Administration through the Provider Participation Agreement.
- C. The following are not covered services:
1. Occupational and speech therapies provided on an outpatient basis for a member age 21 or older;
 2. Abortion counseling;
 3. Services or items furnished solely for cosmetic purposes;
 4. Services provided by a podiatrist; or
 5. More than 15 outpatient physical therapy visits per benefit year for persons age 21 years or older for the purpose of restoring a skill or level of function and maintaining that skill or level of function once restored.
 6. More than 15 outpatient physical therapy visits per benefit year for persons age 21 years or older for the purpose of acquiring a new skill or a new level of function and maintaining that skill or level of function once acquired.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-215 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by final

rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3).

R9-22-216. NF, Alternative HCBS Setting, or HCBS

- A. Services provided in a NF, including room and board, an alternative HCBS setting as defined in R9-28-101, or a HCBS as defined in A.R.S. § 36-2939 are covered for a maximum of 90 days per contract year if the member's medical condition would otherwise require hospitalization.
- B. Except as otherwise provided in 9 A.A.C. 28, the following services are not itemized for separate billing if provided in a NF, alternative HCBS setting, or HCBS:
 - 1. Nursing services, including:
 - a. Administering medication;
 - b. Tube feedings;
 - c. Personal care services, including but not limited to assistance with bathing and grooming;
 - d. Routine testing of vital signs; and
 - e. Maintenance of a catheter;
 - 2. Basic patient care equipment and sickroom supplies, including:
 - a. First aid supplies such as bandages, tape, ointments, peroxide, alcohol, and over-the-counter remedies;
 - b. Bathing and grooming supplies;
 - c. Identification device;
 - d. Skin lotion;
 - e. Medication cup;
 - f. Alcohol wipes, cotton balls, and cotton rolls;
 - g. Rubber gloves (non-sterile);
 - h. Laxatives;
 - i. Bed and accessories;
 - j. Thermometer;
 - k. Ice bags;
 - l. Rubber sheeting;
 - m. Passive restraints;
 - n. Glycerin swabs;
 - o. Facial tissue;
 - p. Enemas;
 - q. Heating pad; and
 - r. Incontinence briefs.
 - 3. Dietary services including preparation and administration of special diets, and adaptive tools for eating;
 - 4. Any service that is included in a NF's room and board charge or a service that is required of the NF to meet a federal or state licensure standard or county certification requirement;
 - 5. Physician visits made solely for the purpose of meeting state licensure standards or county certification requirements;
 - 6. Physical therapy prescribed only as a maintenance regimen; and
 - 7. Assistive devices and non-customized durable medical equipment.
- C. A provider shall obtain prior authorization from the Administration for a NF admission for a FFS member.

Historical Note

Adopted effective October 1, 1985 (Supp. 85-5). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Sub-section (C) amended to correct a typographical error (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 3272, effective September 11, 2007 (Supp. 07-3). Amended by final rulemaking at

13 A.A.R. 4122, effective November 6, 2007 (Supp. 07-4).

R9-22-217. Services Included in the Federal Emergency Services Program

- A. Definition. Notwithstanding the definition in R9-22-201, for the purposes of this Section, an emergency medical or behavioral health condition for a FES member means a medical condition or a behavioral health condition, including labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:
 - 1. Placing the member's health in serious jeopardy,
 - 2. Serious impairment to bodily functions,
 - 3. Serious dysfunction of any bodily organ or part, or
 - 4. Serious physical harm to another person.
- B. Services. "Emergency services for a FES member" mean those medical or behavioral health services provided for the treatment of an emergency condition. Emergency services include outpatient dialysis services for a FES member with End Stage Renal Disease (ESRD) where a treating physician has certified for the month in which services are received that in the physician's opinion the absence of receiving dialysis at least three times per week would reasonably be expected to result in:
 - 1. Placing the member's health in serious jeopardy, or
 - 2. Serious impairment of bodily function, or
 - 3. Serious dysfunction of a bodily organ or part.
- C. Covered services. Services are considered emergency services if all of the criteria specified in subsection (A) are satisfied at the time the services are rendered. The Administration shall determine whether an emergency condition exists on a case-by-case basis.
- D. Prior authorization. A provider is not required to obtain prior authorization for emergency services for FES members. Prior authorization for outpatient dialysis services is met when the treating physician has completed and signed a monthly certification as described in subsection (B).
- E. Services rendered through the Federal Emergency Services Program are subject to all exclusions and limitation on services in this Article including but not limited to the limitations on inpatient hospital services in R9-22-204.

Historical Note

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by exempt rulemaking at 7 A.A.R. 5701, effective December 1, 2001 (Supp. 01-4). 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. 5480, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 3351, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 1868, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

R9-22-218. Repealed

Historical Note

Section R9-22-218 renumbered from R9-22-206 effective January 1, 1996, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Third Special Session, Ch. 1, § 5; filed with the Office of the Secretary of State December 28, 1995 (Supp. 95-4). Section repealed effective September 22, 1997 (Supp. 97-3).

ARTICLE 3. GENERAL ELIGIBILITY REQUIREMENTS**R9-22-301. Reserved****Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-301 renumbered together with former Section R9-22-102 as Section R9-22-101 and amended effective October 1, 1983 (Supp. 83-5). New Section R9-22-301 adopted effective November 20, 1984 (Supp. 84-6).

Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B), paragraph (8), subsection (E), paragraph (3), and subsection (J), paragraph (5) effective October 1, 1986 (Supp. 86-5). Amended subsections (C) and (E) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsections (B) and (C) effective October 1, 1987; amended subsection (D) effective December 22, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section reserved by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

R9-22-302. Reserved**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-302 repealed, new Section R9-22-302 adopted effective November 20, 1984 (Supp. 84-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section reserved by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

R9-22-303. Prior Quarter Eligibility

- A. Prior Quarter eligibility shall be effective no earlier than January 1, 2014. An applicant may be eligible during any of the three months prior to application if the applicant:
1. Received one or more covered services described in 9 A.A.C. 22, Article 2 and Article 12, and 9 A.A.C. 28, Article 2 during the month; and
 2. Would have qualified for Medicaid at the time services were received if the person had applied regardless of whether the person is alive when the application is made.
- B. The Prior Quarter requirements do not apply to:
1. Qualified Medicare Beneficiaries
 2. KidsCare

Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-303 repealed, new Section R9-22-303 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective

February 26, 1988 (Supp. 88-1). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section made by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

R9-22-304. Verification of Eligibility Information

- A. Except as provided in subsection (E), if information provided by or on behalf of an applicant or member on an application, renewal form or otherwise does not conflict with information obtained by the agency through an electronic data match, the Administration or its designee shall determine or renew eligibility based on such information.
- B. The Administration or its designee shall not require an applicant, member, or representative to provide additional verification unless the verification cannot be obtained electronically or the verification obtained electronically conflicts with information provided by or on behalf of the applicant or member.
- C. If information provided by or on behalf of an applicant or member does conflict with information obtained through an electronic data match, the applicant or member shall provide the Administration or its designee with information or documentation necessary to verify eligibility, including evidence originating from an agency, organization, or an individual with actual knowledge of the information.
- D. Income information obtained through an electronic data match shall be considered reasonably compatible with income information provided by or on behalf of an individual if both meet or both exceed the applicable income limit.
- E. The Administration or its designee shall not accept the applicant's or member's statement by itself as verification of:
 1. SSN;
 2. Qualified alien status, except as described under 42 USC 1320b-7(d)(4)(A); or
 3. Citizenship, except as described under 42 USC 1396a(ee)(1).
- F. The Administration or its designee shall give an applicant or member at least 10 days from the date of a written or electronic request for information to provide required verification. The Administration or its designee may deny the application or discontinue eligibility if an applicant or a member does not provide the required information timely.

Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-304 repealed, new Section R9-22-304 adopted effective November 20, 1984 (Supp. 84-6).

Amended effective October 1, 1985 (Supp. 85-5). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-304 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

R9-22-305. Eligibility Requirements

As a condition of eligibility, the Administration or its designee must require applicants, and members to do the following:

1. Take all necessary steps to obtain any annuities, pensions, retirement, disability benefits to which they are entitled, unless they can show good cause for not doing so.
2. Furnish a SSN under 42 CFR 435.910 and 435.920, or in the absence of an SSN, provide proof of a submitted application of SSN. The Administration or its designee will assist in obtaining or verifying the applicant's SSN under 42 CFR 435.910 if an applicant cannot recall the applicant's SSN or has not been issued a SSN. An applicant is not required to furnish an SSN if the applicant is not able to legally obtain a SSN. The Administration or its designee shall determine eligibility notwithstanding the applicant's lack of a SSN, if the applicant is cooperat-

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.

36-2903.03. United States citizenship and qualified alien requirements for eligibility; report; definition

A. A person who is applying for eligibility under this chapter shall provide verification of United States citizenship or documented verification of qualified alien status. Beginning July 1, 2006, an applicant who is applying for services pursuant to this chapter shall provide satisfactory documentary evidence of citizenship or qualified alien status as required by the federal deficit reduction act of 2005 (P.L. 109-171; 120 Stat. 4; 42 United States Code section 1396b) or any other applicable federal law or regulation.

B. A qualified alien may apply for eligibility pursuant to section 36-2901, paragraph 6, subdivision (a) and, if otherwise eligible for title XIX, may receive all services pursuant to section 36-2907 if the qualified alien meets at least one of the following requirements:

1. Is designated as one of the exception groups under 8 United States Code section 1613(b).
2. Has been a qualified alien for at least five years.
3. Has been continuously present in the United States since August 21, 1996.

C. Notwithstanding any other law, persons who were residing in the United States under color of law on or before August 21, 1996, and who were receiving services under this article based on eligibility criteria established under the supplemental security income program, may apply for state funded services and, if otherwise eligible for supplemental security income-medical assistance only coverage except for United States citizenship or qualified alien requirements, may be enrolled with the system and receive all services pursuant to section 36-2907.

D. A person who is a qualified alien who does not meet the requirements of subsection B of this section or who is a noncitizen who does not claim and provide verification of qualified alien status may apply for title XIX eligibility under section 36-2901, paragraph 6, subdivision (a) and, if otherwise eligible for title XIX, may receive only emergency services pursuant to section 1903(v) of the social security act.

E. In determining the eligibility for all qualified aliens pursuant to this chapter, the income and resources of any person who executed an affidavit of support pursuant to section 213A of the immigration and nationality act on behalf of the qualified alien and the income and resources of the spouse, if any, of the sponsoring individual shall be counted at the time of application and for the redetermination of eligibility for the duration of the attribution period as specified in federal law.

F. A person who is a qualified alien or a noncitizen and who is not eligible for title XIX may receive only emergency services.

G. On or before September 30 of each year, the administration shall submit a report to the governor, the president of the senate, the speaker of the house of representatives and the staff director of the joint legislative budget committee that includes the following information:

1. The number of individuals for whom the administration verified immigration status using the systematic alien verification for entitlements program administered by the United States citizenship and immigration services.
2. The number of documents that were discovered to be fraudulent by using the systematic alien verification for entitlements program.
3. A list of the types of fraudulent documents discovered.
4. The number of citizens of the United States who were referred by the administration for prosecution pursuant to violations of state or federal law and the number of individuals referred by the administration for prosecution who were not citizens.

H. The administration shall provide copies of the report to the secretary of state and the director of the Arizona state library, archives and public records.

I. For purposes of this section, "qualified alien" means an individual who is one of the following:

1. Defined as a qualified alien under 8 United States Code section 1641.
2. Defined as a qualified alien by the attorney general of the United States under the authority of Public Law 104-208, section 501.
3. An Indian described in 8 United States Code section 1612(b)(2)(E).

36-2907. Covered health and medical services; modifications; related delivery of service requirements; definition

A. Subject to the limitations and exclusions specified in this section, contractors shall provide the following medically necessary health and medical services:

1. Inpatient hospital services that are ordinarily furnished by a hospital for the care and treatment of inpatients and that are provided under the direction of a physician or a primary care practitioner. For the purposes of this section, inpatient hospital services exclude services in an institution for tuberculosis or mental diseases unless authorized under an approved section 1115 waiver.
2. Outpatient health services that are ordinarily provided in hospitals, clinics, offices and other health care facilities by licensed health care providers. Outpatient health services include services provided by or under the direction of a physician or a primary care practitioner, including occupational therapy.
3. Other laboratory and X-ray services ordered by a physician or a primary care practitioner.
4. Medications that are ordered on prescription by a physician or a dentist licensed pursuant to title 32, chapter 11. Persons who are dually eligible for title XVIII and title XIX services must obtain available medications through a medicare licensed or certified medicare advantage prescription drug plan, a medicare prescription drug plan or any other entity authorized by medicare to provide a medicare part D prescription drug benefit.
5. Medical supplies, durable medical equipment, insulin pumps and prosthetic devices ordered by a physician or a primary care practitioner. Suppliers of durable medical equipment shall provide the administration with complete information about the identity of each person who has an ownership or controlling interest in their business and shall comply with federal bonding requirements in a manner prescribed by the administration.
6. For persons who are at least twenty-one years of age, treatment of medical conditions of the eye, excluding eye examinations for prescriptive lenses and the provision of prescriptive lenses.
7. Early and periodic health screening and diagnostic services as required by section 1905(r) of title XIX of the social security act for members who are under twenty-one years of age.
8. Family planning services that do not include abortion or abortion counseling. If a contractor elects not to provide family planning services, this election does not disqualify the contractor from delivering all other covered health and medical services under this chapter. In that event, the administration may contract directly with another contractor, including an outpatient surgical center or a noncontracting provider, to deliver family planning services to a member who is enrolled with the contractor that elects not to provide family planning services.
9. Podiatry services that are performed by a podiatrist who is licensed pursuant to title 32, chapter 7 and ordered by a primary care physician or primary care practitioner.
10. Nonexperimental transplants approved for title XIX reimbursement.
11. For persons who are at least twenty-one years of age, emergency dental care and extractions in an annual amount of not more than one thousand dollars per member.
12. Ambulance and nonambulance transportation, except as provided in subsection G of this section.
13. Hospice care.
14. Orthotics, if all of the following apply:

- (a) The use of the orthotic is medically necessary as the preferred treatment option consistent with medicare guidelines.
- (b) The orthotic is less expensive than all other treatment options or surgical procedures to treat the same diagnosed condition.
- (c) The orthotic is ordered by a physician or primary care practitioner.

B. The limitations and exclusions for health and medical services provided under this section are as follows:

- 1. Circumcision of newborn males is not a covered health and medical service.
- 2. For eligible persons who are at least twenty-one years of age:
 - (a) Outpatient health services do not include speech therapy.
 - (b) Prosthetic devices do not include hearing aids, dentures, bone-anchored hearing aids or cochlear implants. Prosthetic devices, except prosthetic implants, may be limited to twelve thousand five hundred dollars per contract year.
 - (c) Percussive vests are not covered health and medical services.
 - (d) Durable medical equipment is limited to items covered by medicare.
 - (e) Nonexperimental transplants do not include pancreas-only transplants.
- (f) Bariatric surgery procedures, including laparoscopic and open gastric bypass and restrictive procedures, are not covered health and medical services.

C. The system shall pay noncontracting providers only for health and medical services as prescribed in subsection A of this section and as prescribed by rule.

D. The director shall adopt rules necessary to limit, to the extent possible, the scope, duration and amount of services, including maximum limitations for inpatient services that are consistent with federal regulations under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)). To the extent possible and practicable, these rules shall provide for the prior approval of medically necessary services provided pursuant to this chapter.

E. The director shall make available home health services in lieu of hospitalization pursuant to contracts awarded under this article. For the purposes of this subsection, "home health services" means the provision of nursing services, home health aide services or medical supplies, equipment and appliances that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on the orders of a physician or a primary care practitioner. Home health agencies shall comply with the federal bonding requirements in a manner prescribed by the administration.

F. The director shall adopt rules for the coverage of behavioral health services for persons who are eligible under section 36-2901, paragraph 6, subdivision (a). The administration acting through the regional behavioral health authorities shall establish a diagnostic and evaluation program to which other state agencies shall refer children who are not already enrolled pursuant to this chapter and who may be in need of behavioral health services. In addition to an evaluation, the administration acting through regional behavioral health authorities shall also identify children who may be eligible under section 36-2901, paragraph 6, subdivision (a) or section 36-2931, paragraph 5 and shall refer the children to the appropriate agency responsible for making the final eligibility determination.

G. The director shall adopt rules for the provision of transportation services and rules providing for copayment by members for transportation for other than emergency purposes. Subject to approval by the centers for

medicare and medicaid services, nonemergency medical transportation shall not be provided except for stretcher vans and ambulance transportation. Prior authorization is required for transportation by stretcher van and for medically necessary ambulance transportation initiated pursuant to a physician's direction. Prior authorization is not required for medically necessary ambulance transportation services rendered to members or eligible persons initiated by dialing telephone number 911 or other designated emergency response systems.

H. The director may adopt rules to allow the administration, at the director's discretion, to use a second opinion procedure under which surgery may not be eligible for coverage pursuant to this chapter without documentation as to need by at least two physicians or primary care practitioners.

I. If the director does not receive bids within the amounts budgeted or if at any time the amount remaining in the Arizona health care cost containment system fund is insufficient to pay for full contract services for the remainder of the contract term, the administration, on notification to system contractors at least thirty days in advance, may modify the list of services required under subsection A of this section for persons defined as eligible other than those persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). The director may also suspend services or may limit categories of expense for services defined as optional pursuant to title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) for persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). Such reductions or suspensions do not apply to the continuity of care for persons already receiving these services.

J. Additional, reduced or modified hospitalization and medical care benefits may be provided under the system to enrolled members who are eligible pursuant to section 36-2901, paragraph 6, subdivision (b), (c), (d) or (e).

K. All health and medical services provided under this article shall be provided in the geographic service area of the member, except:

1. Emergency services and specialty services provided pursuant to section 36-2908.
2. That the director may permit the delivery of health and medical services in other than the geographic service area in this state or in an adjoining state if the director determines that medical practice patterns justify the delivery of services or a net reduction in transportation costs can reasonably be expected. Notwithstanding the definition of physician as prescribed in section 36-2901, if services are procured from a physician or primary care practitioner in an adjoining state, the physician or primary care practitioner shall be licensed to practice in that state pursuant to licensing statutes in that state similar to title 32, chapter 13, 15, 17 or 25 and shall complete a provider agreement for this state.

L. Covered outpatient services shall be subcontracted by a primary care physician or primary care practitioner to other licensed health care providers to the extent practicable for purposes including, but not limited to, making health care services available to underserved areas, reducing costs of providing medical care and reducing transportation costs.

M. The director shall adopt rules that prescribe the coordination of medical care for persons who are eligible for system services. The rules shall include provisions for the transfer of patients, the transfer of medical records and the initiation of medical care.

N. For the purposes of this section, "ambulance" has the same meaning prescribed in section 36-2201.

Arizona Health Care Cost Containment System (F-18-0202)

Title 9, Chapter 28, Article 1, Definitions



GOVERNOR'S REGULATORY REVIEW COUNCIL ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: February 6, 2018

AGENDA ITEM: G-3

TO: Members of the Governor's Regulatory Review Council

FROM: Council Staff

DATE : January 23, 2018

SUBJECT: ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F-18-0202)
Title 9, Chapter 28, Article 1, Definitions

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Health Care Cost Containment System (AHCCCS) is “to promote a comprehensive health care system to eligible citizens of this state.” Laws 2013, 1st S.S., Ch. 10, § 53. This system is managed by the Director of the AHCCCS Administration (Administration), which is established under A.R.S. § 36-2902(A). The Director has the powers and duties prescribed in A.R.S. §§ 36-2903 and 2903.01.

This five-year-review report covers five rules in A.A.C. Title 9, Chapter 28, Article 1. The rules in Article 1 establish definitions related to the administration of the Arizona Long Term Care System (ALTCS). ALTCS is Arizona’s Medicaid program for individuals who are at least 65 years old, blind, or disabled, and require an institutional level of care. Individuals must meet specific financial requirements to qualify for ALTCS.

Proposed Action

The Administration indicates that it plans to initiate a rulemaking within 180 days of Council approval of the report.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Administration cites to both general and specific authority for the rules. Of particular significance is A.R.S. § 36-2932, which pertains to ALTCS, powers and duties of the director, and expenditure limitations. The Administration cites to A.R.S. § 36-2939 as specific statutory authority, which relates to long term care system services.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

Most of the proposed changes are for clarifying purposes. The changes will have no additional economic impact. Therefore, there are minimal economic and consumer impacts as a result of the proposed changes.

The stakeholders are the Administration, individuals, and businesses who use or interact with AHCCCS.

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?

Yes. The Administration indicates that the underlying regulatory objectives are the most cost-effective means and impose the least burden on regulated persons.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Administration indicates that it has not received any written criticisms of the rules over the last five years.

5. Has the agency analyzed the rules' effectiveness, consistency with other rules and statutes, and the rules' clarity, conciseness, and understandability?

Yes. The Administration indicates that section 101 is inconsistent with other rules and statutes because the Administration no longer has separate licenses for Level 2 and Level 3 behavioral health residential agencies. These licenses are combined and are now referred to as Behavioral Health Residential Facilities. In addition, numerous definitions in section 101 contain outdated cross references.

The Administration indicates that sections 102 and 103 are not clear, concise, and understandable. Both sections should be amended to update terminology of intermediate care facility for the mentally retarded (ICFMR) to intermediate care facility for individuals with intellectual disabilities (ICFIID) to conform to AHCCCS policy.

Despite the issues mentioned above, the Administration believes that the rules are effective in achieving their objectives.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Administration indicates that it enforces the rules as written to the extent they are consistent with other rules and statutes.

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

No. The Administration indicates that the rules are not more stringent than federal law.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

No. The rules do not require a permit or license.

9. Conclusion

As noted above, the Administration plans to start the rulemaking process 180 days after Council approval of the report. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends that the report be approved.

November 21, 2017

Ms. Nicole Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Ave, Suite 402
Phoenix, AZ 85007

Dear Ms. Ong:

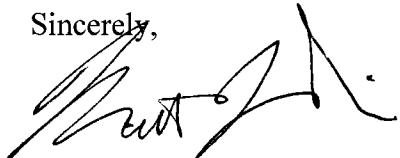
Pursuant to requirements in R1-6-301, attached is a copy of the 5-Year Review Report for Title 9, Chapter 28, Article 1. The report includes all of the documentation required by R1-6-301 (C) and (D).

No rules were left out of this 5-Year Review Report to be expired under A.R.S. § 41-1056 (J). Similarly, there were no rules subject to rescheduling.

As required by A.R.S. § 41-1056, the Administration certifies that the agency is in compliance with A.R.S. § 41-1091.

If you have any questions or comments regarding this report, please contact Nicole Fries, Associate General Counsel, Office of Administrative Legal Services at (602)-417-4232.

Sincerely,



Matthew Devlin
Assistant Director

Attachment

Arizona Health Care Cost Containment System

(AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 28, Article 1

November 2017

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-2932; 36-2903.01

Specific Statutory Authority: A.R.S. § 36-2939

2. The objective of each rule:

Rule	Objective
R9-28-101	This rule sets forth definitions applicable to the ALTCS program.
R9-28-102	This rule sets forth definitions applicable to covered services in the ALTCS program.
R9-28-103	This rule sets forth definitions applicable to the Preadmission Screening in the ALTCS program.
R9-28-106	This rule sets forth definitions applicable to Request for Proposal and the Contract Process in the ALTCS program.
R9-28-111	This rule sets forth definitions applicable to behavioral health services in the ALTCS program.

3. Are the rules effective in achieving their objectives?

Yes No

4. Are the rules consistent with other rules and statutes?

Yes No

Rule	Explanation
R9-28-101	No longer have separate licensure for Level 2 and Level 3. These were combined and are referred to as Behavioral Health Residential Facilities (BHRF), therefore the definition should be updated accordingly. Out-dated cross references in other definitions will be updated.

5. Are the rules enforced as written?

Yes No

6. Are the rules clear, concise, and understandable?

Yes No

Rule	Explanation
R9-28-102	Update terminology of ICFMR to ICFIID to conform with AHCCCS policy.
R9-28-103	Update terminology of ICFMR to ICFIID to conform with AHCCCS policy.

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:

There is no measurable economic or consumer impact because the majority of the recommended changes are for clarification purposes, or to align with AHCCCS policy, and do not actually expand the current scope of service. A couple of the recommended changes, including the emergency dental provisions, do have an economic impact on the Administration's budget, however, this was already reflected in the prior year submission because AHCCCS policy has already been updated

to reflect this change, therefore there is no economic impact going forward. Small businesses are unlikely to see a noticeable economic impact these articles because they pertain to the definitions of the scope of services that AHCCCS covers.

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?
There was no proposed course of action in the prior 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 underlying regulatory objectives are the most cost-effective means and impose the least burden to regulated persons.
12. Are the rules more stringent than corresponding federal laws? Yes No
13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:
Not applicable.
14. Proposed course of action
Following approval of this 5YRR by GRRC, approval will be requested from the Governor's Office and a rulemaking will be initiated within 180 days to make the above changes. Additional technical and clarifying changes may also occur in the rulemaking.

ARTICLE 1. DEFINITIONS

R9-28-101. General Definitions

- A. Location of definitions. Definitions applicable to Chapter 28 are found in the following:
- | Definition/Section or Citation | |
|--|--|
| “210” 42 CFR 435.211 | |
| “217” 42 CFR 435.217 | |
| “236” 42 CFR 435.236 | |
| “Acute”R9-28-301 | |
| “ADHS”R9-22-101 | |
| “ADL” R9-28-101 | |
| “Administration”A.R.S. § 36-2931 | |
| “Advance notice” R9-28-411 | |
| “Aged” R9-28-402 | |
| “Aggregate”R9-22-701 | |
| “Aggression”R9-28-301 | |
| “AHCCCS”R9-22-101 | |
| “AHCCCS registered provider”R9-22-101 | |
| “ALTCS”R9-28-101 | |
| “ALTCS acute care services”R9-28-401 | |
| “Alternative HCBS setting”R9-28-101 | |
| “Ambulance”A.R.S. § 36-2201 | |
| “Ambulation”R9-28-301 | |
| “Applicant”R9-22-101 | |
| “Assessor”R9-28-301 | |
| “Auto-assignment algorithm” or “Algorithm”R9-22-1701 | |
| “Bathing”R9-28-301 | |
| “Bathing or showering”R9-28-301 | |
| “Bed hold”R9-28-102 | |
| “Behavior intervention”R9-28-102 | |
| “Behavior management services”R9-22-1201 | |
| “Behavioral health evaluation”R9-22-1201 | |
| “Behavioral health medical practitioner”R9-22-1201 | |
| “Behavioral health professional”R9-20-101 | |
| “Behavioral health service”R9-20-101 | |
| “Behavioral health technician”R9-20-101 | |
| “Billed charges”R9-22-701 | |
| “Blind”42 U.S.C. 1382c(a)(2) | |
| “Capped fee-for-service”R9-22-101 | |
| “Case management plan”R9-28-101 | |
| “Case management”R9-28-1101 | |
| “Case manager”R9-28-101 | |
| “Case record”R9-22-101 | |
| “Categorically-eligible”R9-22-101 | |
| “Certification”R9-28-501 | |
| “Certified psychiatric nurse practitioner”R9-22-1201 | |
| “CFR”R9-28-101 | |
| “Child”R9-22-1503 | |
| “Clarity of communication”R9-28-301 | |
| “Clean claim”A.R.S. § 36-2904 | |
| “Clinical supervision”R9-22-201 | |
| “CMS”R9-22-101 | |
| “Community mobility”R9-28-301 | |
| “Community spouse”R9-28-401 | |
| “Consecutive days” R9-28-801 | |
| “Continence”R9-28-301 | |
| “Contract”R9-22-101 | |
| “Contract year”R9-22-101 | |
| “Contractor”A.R.S. § 36-2901 | |
| “Cost avoid” R9-22-1201 or R9-22-1001 | |
| “County of fiscal responsibility”R9-28-701 | |
| “Covered services”R9-28-101 | |
| “CPT”R9-22-701 | |
| “Crawling and standing”R9-28-301 | |
| “CSRD”R9-28-401 | |
| “Current”R9-28-301 | |

“Day” R9-22-101 or R9-22-1101
 “De novo hearing”42 CFR 431.201
 “Department”A.R.S. § 36-2901
 “Developmental disability” or “DD”A.R.S. § 36-551
 “Diagnostic services”R9-22-101
 “Director”R9-22-101
 “Disabled”R9-28-402
 “Disenrollment”R9-22-1701
 “Disruptive behavior”R9-28-301
 “DME”R9-22-101
 “Dressing”R9-28-301
 “Eating”R9-28-301
 “Eating or drinking”R9-28-301
 “Emergency medical services for the non-FES member”R9-22-201
 “Emotional and cognitive functioning”R9-28-301
 “Employed”R9-28-1320
 “Encounter”R9-22-701
 “Enrollment”R9-22-1701
 “EPD” R9-28-301
 “E.P.S.D.T. services” 42 CFR 440.40(b)
 “Estate”A.R.S. § 14-1201
 “Experimental services” R9-22-203
 “Expressive verbal communication”R9-28-301
 “Facility”R9-22-101
 “Factor”42 CFR 447.10
 “Fair consideration”R9-28-401
 “FBR”R9-22-101
 “Federal financial participation” or “FFP”42 CFR 400.203
 “Fee-For-Service” or “FFS”R9-22-101
 “File”R9-28-801“First continuous period of institutionalization”R9-28-401
 “Food preparation”R9-28-301
 “Frequency”R9-28-301
 “Functional assessment”R9-28-301
 “Grievance”R9-34-202
 “Grooming”R9-28-301
 “GSA”R9-22-101
 “Guardian”A.R.S. § 14-5311
 “Hand use”R9-28-301
 “HCBS” or “Home and community based services”A.R.S. § 36-2931
 “Health care practitioner”R9-22-1201
 “History”R9-28-301
 “Home” R9-28-101 and R9-28-801
 “Home health services”R9-22-201
 “Hospice”A.R.S. § 36-401
 “Hospital”R9-22-101
 “ICF-MR” or “Intermediate care facility for the mentally retarded”42 U.S.C. 1396d(d)
 “IADL”R9-28-101
 “IHS”R9-22-101
 “IMD” or “Institution for mental diseases”42 CFR 435.1010
 “Immediate risk of institutionalization”R9-28-301
 “Individual Representative”R9-28-509
 “Institutionalized”R9-28-401
 “Institutionalized spouse”R9-28-101
 “Interested Party”R9-28-106
 “Intergovernmental agreement” or “IGA”R9-28-1101
 “Intervention”R9-28-301
 “JCAHO”R9-28-101
 “License” or “licensure”R9-22-101
 “Medical assessment”R9-28-301

Arizona Health Care Cost Containment System – Arizona Long-term Care System

“Medical or nursing services and treatments” or “services and treatments”	R9-28-301	“Toileting”	R9-28-301
“Medical record”	R9-22-101	“Transferring”	R9-28-301
“Medical services”	A.R.S. § 36-401	“TRBHA”	R9-22-1201
“Medically eligible”	R9-28-401	“Tribal contractor”	R9-28-1101
“Medically necessary”	R9-22-101	“Tribal facility”	A.R.S. § 36-2981
“Member”	A.R.S. § 36-2931 and R9-28-901	“Utilization management/review”	R9-22-501
“Mental disorder”	A.R.S. § 36-501	“Ventilator dependent”	R9-28-102
“MMMNA”	R9-28-401	“Verbal or physical threatening”	R9-28-301
“Mobility”	R9-28-301	“Vision”	R9-28-301
“Natural Support Services”	R9-28-101	“Wandering”	R9-28-301
“Noncontracting provider”	A.R.S. § 36-2931	“Wheelchair mobility”	R9-28-301
“Nursing facility” or “NF”	42 U.S.C. 1396r(a)		
“Occupational therapy”	R9-22-201		
“Orientation”	R9-28-301		
“Partial care”	R9-22-1201		
“PAS”	R9-28-103		
“Personal hygiene”	R9-28-301		
“Pharmaceutical service”	R9-22-201		
“Physical therapy”	R9-22-201		
“Physically disabled”	R9-28-301		
“Physician”	R9-22-101		
“Physician consultant”	R9-28-301		
“Post-stabilization care services”	42 CFR 438.114		
“Practitioner”	R9-22-101		
“Primary care provider” or “(PCP)”	R9-22-101		
“Primary care provider services”	R9-22-201		
“Prior authorization”	R9-22-101		
“Prior period coverage” or “PPC”	R9-22-101		
“Program contractor”	A.R.S. § 36-2931		
“Provider”	A.R.S. § 36-2931		
“Psychiatrist”	R9-22-1201	Community residential setting defined in A.R.S. § 36-551;	
“Psychologist”	R9-22-1201	Group home defined in A.R.S. § 36-551;	
“Psychosocial rehabilitation services”	R9-22-201	State-operated group home under A.R.S. § 36-591;	
“Qualified behavioral health service provider”	R9-28-1101	Group foster home under R6-5-5903;	
“Quality management”	R9-22-501	Licensed residential facility for a person with traumatic brain injury under A.R.S. § 36-2939;	
“Radiology”	R9-22-101	Behavioral health adult therapeutic home under 9 A.A.C 20, Articles 1 and 15;	
“Reassessment”	R9-28-103	Level 2 and Level 3 behavioral health residential agencies under 9 A.A.C. 20, Articles 1, 4, 5, and 6; and	
“Recover”	R9-28-901	Rural substance abuse transitional centers under 9 A.A.C. 20, Articles 1 and 14; and	
“Redetermination”	R9-28-401		
“Referral”	R9-22-101	For a person who is Elderly and Physically Disabled (EPD) under R9-28-301, and the facility, setting, or institution is registered with AHCCCS:	
“Regional behavioral health authority” or “RBHA”	A.R.S. § 36-3401	Adult foster care defined in A.R.S. § 36-401 and as authorized in A.R.S. § 36-2939;	
“Reinsurance”	R9-22-701	Assisted living home or assisted living center, units only, under A.R.S. § 36-401, and as authorized in A.R.S. § 36-2939;	
“Representative”	R9-28-401	Licensed residential facility for a person with a traumatic brain injury specified in A.R.S. § 36-2939;	
“Resistiveness”	R9-28-301	Behavioral health adult therapeutic home under 9 A.A.C. 20, Articles 1 and 15;	
“Respiratory therapy”	R9-22-201	Level 2 and Level 3 behavioral health residential agencies under 9 A.A.C. 20, Articles 1, 4, 5, and 6; and	
“Respite care”	R9-28-102	Rural substance abuse transitional centers under 9 A.A.C. 20, Articles 1 and 14.	
“RFP”	R9-22-101		
“Room and board”	R9-28-102	“Case management plan” means a service plan developed by a case manager that involves the overall management of a member’s care, and the continued monitoring and reassessment of the member’s need for services.	
“Rolling and sitting”	R9-28-301		
“Running or wandering away”	R9-28-301		
“Scope of services”	R9-28-102		
“Section 1115 Waiver”	A.R.S. § 36-2901		
“Self-injurious behavior”	R9-28-301		
“Sensory”	R9-28-301		
“Seriously mentally ill” or “SMI”	A.R.S. § 36-550		
“Social worker”	R9-28-301		
“Special diet”	R9-28-301		
“Speech therapy”	R9-22-201		
“Spouse”	R9-28-401		
“SSA”	42 CFR 1000.10		
“SSI”	42 CFR 435.4		
“Subcontract”	R9-22-101		
“TEFRA lien”	R9-28-801		
“Therapeutic leave”	R9-28-501		

“Case manager” means a person who is either a degreed social worker, a licensed registered nurse, or has a minimum of two years of experience in providing case management services to a person who is EPD.

“CFR” means Code of Federal Regulations, unless otherwise specified in this Chapter.

“Covered services” means the health and medical services described in Articles 2 and 11 of this Chapter as being eligible for reimbursement by AHCCCS.

“Home” means a residential dwelling that is owned, rented, leased, or occupied by a member, at no cost to the member, including a house, a mobile home, an apartment, or other similar shelter. A home is not a facility, a setting, or an institution, or a portion of any of these that is licensed or certified by a regulatory agency of the state as a:

- Health care institution under A.R.S. § 36-401;
- Residential care institution under A.R.S. § 36-401;
- Community residential setting under A.R.S. § 36-551; or
- Behavioral health facility under 9 A.A.C. 20, Articles 1, 4, 5, and 6.

“IADL” or “Instrumental Activities of Daily Living” mean activities related to independent living that a member must perform, including but not limited to:

- Preparing meals,
- Managing money,
- Shopping for groceries or personal items,
- Performing light or heavy housework, and
- Use of the telephone.

“IHS” means the Indian Health Service.

“Institutionalized spouse” means the same as defined in 42 U.S.C. 1396r-5.

“JCAHO” means the Joint Commission on Accreditation of Healthcare Organizations.

“Natural Support Services” are services provided voluntarily by a person not legally obligated to provide those services. The services are specified in the service plan as described under R9-28-510 and cannot supplant other covered services.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 874, effective March 4, 1999 (Supp. 99-1). Subsection (A)(69) amended to correct a printing error, filed in the Office of the Secretary of State August 13, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 3810, effective

October 4, 2003 (Supp. 03-3). Amended by final rulemaking at 10 A.A.R. 1312, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 18 A.A.R. 3380, effective January 1, 2013 (Supp. 12-4).

R9-28-102. Covered Services Related Definitions

Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning:

“Bed hold” means a 24 hour per day unit of service that is authorized by an ALTCS case manager or designee during a period of short-term hospitalization or therapeutic leave that meets the requirement specified in 42 CFR 483.12.

“Behavior intervention” means the planned interruption of a member’s inappropriate behavior using techniques such as reinforcement, training, behavior modification, and other systematic procedures intended to result in more acceptable behavior.

“Respite care” means a short-term service provided in a NF or a home and community based service setting to an individual if necessary to relieve a family member or other person caring for the individual.

“Room and board” means lodging and meals.

“Scope of services” means the covered, limited, and excluded services under Articles 2 and 12 of this Chapter.

“Ventilator dependent,” for purposes of ALTCS eligibility, means an individual is medically dependent on a ventilator for life support at least six hours per day and has been dependent on ventilator support as an inpatient in a hospital, NF, or ICF-MR for at least 30 consecutive days.

Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 3810, effective October 4, 2003 (Supp. 03-3).

R9-28-103. Preadmission Screening Related Definitions

Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning:

“Developmental disability” is defined in A.R.S. § 36-551.

“PAS” means preadmission screening, which is the process of determining an individual’s risk of institutionalization at a NF or ICF-MR level of care, as specified in Article 3 of this Chapter.

“Reassessment” means the process of redetermining PAS eligibility for ALTCS services as appropriate, for all members.

Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 3810, effective October 4, 2003 (Supp. 03-3).

Amended by final rulemaking at 10 A.A.R. 1312, effective May 1, 2004 (Supp. 04-1).

R9-28-104. Repealed

Adopted effective December 8, 1997 (Supp. 97-4). Amended effective November 4, 1998 (Supp. 98-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Repealed by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2).

R9-28-105. Repealed

Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

R9-28-106. Request for Proposals and Contract Process Related Definitions

Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22 Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning: “Interested Party” means an actual or prospective offeror whose economic interest may be affected substantially and directly by the issuance of a request for proposals, the award of a contract, or the failure to award a contract.

Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

R9-28-107. Repealed

Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Amended effective November 4, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 3810, effective October 4, 2003 (Supp. 03-3). Section repealed by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3).

R9-28-108. Repealed

Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1).

R9-28-109. Repealed

Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-110. Reserved

R9-28-111. Behavioral Health Services Related Definitions

Definitions. The words and phrases in this Chapter, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, have the same meaning as specified in 9 A.A.C. 22, Article 1.

Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4).

ARTICLE 2. COVERED SERVICES

R9-28-201. General Requirements

In addition to the exclusions and limitations specified in this Article, services provided to a member are covered services if:

1. Medically necessary, cost effective, and federally reimbursable;
2. Coordinated by a case manager in accordance with requirements specified in R9-28-510;
3. The provider obtains prior authorization as required by a member’s program contractor or by the Administration:
 - a. Failure of the provider to obtain prior authorization is cause for denial.
 - b. Services provided during prior period coverage are exempt from prior authorization requirements;
4. Provided in facilities or areas of facilities that are licensed or certified under Article 5 of this Chapter, or meet other requirements described in Article 5 of this Chapter;
5. Rendered by AHCCCS registered providers as permitted under this Chapter and within their scope of practice; and
6. Provided at an appropriate level of care, as determined by the case manager or the primary care provider.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed; new Section adopted effective September 22, 1997 (Supp. 97-3).

Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2).

R9-28-202. Scope of Services

- A. The Administration or a contractor shall cover medical services specified in 9 A.A.C. 22, Article 2 for a member, subject to the limitations and exclusions specified in Article 2, unless otherwise specified in this Chapter.
- B. In addition, for members living in an HCBS setting, incontinence briefs for a member 21 years of age and older, including pull-ups, are covered in order to:
 1. Treat a medical condition; and
 2. Prevent skin breakdown when all the following are met:
 - a. The member is incontinent due to a documented medical condition that causes incontinence of bowel and/or bladder,
 - b. The PCP or attending physician has issued a prescription ordering the incontinence briefs,
 - c. Incontinence briefs do not exceed 180 briefs per month unless the prescribing physician presents evidence of medical necessity for more than 180 briefs per month,
 - d. The member obtains incontinence briefs from vendors within the Contractor’s network, and
 - e. Prior authorization has been obtained if required by the Administration, Contractor, or Contractor’s designee, as appropriate. Contractors shall not require prior authorization more frequently than every twelve months.
- C. Incontinence brief coverage for a member under age 21 is described under R9-22-212.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act effective

36-2932. Arizona long-term care system; powers and duties of the director; expenditure limitation

A. The Arizona long-term care system is established. The system includes the management and delivery of hospitalization, medical care, institutional services and home and community based services to members through the administration, the program contractors and providers pursuant to this article together with federal participation under title XIX of the social security act. The director in the performance of all duties shall consider the use of existing programs, rules and procedures in the counties and department where appropriate in meeting federal requirements.

B. The administration has full operational responsibility for the system, which shall include the following:

1. Contracting with and certification of program contractors in compliance with all applicable federal laws.
2. Approving the program contractors' comprehensive service delivery plans pursuant to section 36-2940.
3. Providing by rule for the ability of the director to review and approve or disapprove program contractors' requests for proposals for providers and provider subcontracts.
4. Providing technical assistance to the program contractors.
5. Developing a uniform accounting system to be implemented by program contractors and providers of institutional services and home and community based services.
6. Conducting quality control on eligibility determinations and preadmission screenings.
7. Establishing and managing a comprehensive system for assuring the quality of care delivered by the system as required by federal law.
8. Establishing an enrollment system.
9. Establishing a member case management tracking system.
10. Establishing and managing a method to prevent fraud by applicants, members, eligible persons, program contractors, providers and noncontracting providers as required by federal law.
11. Coordinating benefits as provided in section 36-2946.
12. Establishing standards for the coordination of services.
13. Establishing financial and performance audit requirements for program contractors, providers and noncontracting providers.
14. Prescribing remedies as required pursuant to 42 United States Code section 1396r. These remedies may include the appointment of temporary management by the director, acting in collaboration with the director of the department of health services, in order to continue operation of a nursing care institution providing services pursuant to this article.
15. Establishing a system to implement medical child support requirements, as required by federal law. The administration may enter into an intergovernmental agreement with the department of economic security to implement this paragraph.
16. Establishing requirements and guidelines for the review of trusts for the purposes of establishing eligibility for the system pursuant to section 36-2934.01 and posteligibility treatment of income pursuant to subsection L of this section.

17. Accepting the delegation of authority from the department of health services to enforce rules that prescribe minimum certification standards for adult foster care providers pursuant to section 36-410, subsection B. The administration may contract with another entity to perform the certification functions.

18. Assessing civil penalties for improper billing as prescribed in section 36-2903.01, subsection K.

C. For nursing care institutions and hospices that provide services pursuant to this article, the director shall contract periodically as deemed necessary and as required by federal law for a financial audit of the institutions and hospices that is certified by a certified public accountant in accordance with generally accepted auditing standards or conduct or contract for a financial audit or review of the institutions and hospices. The director shall notify the nursing care institution and hospice at least sixty days before beginning a periodic audit. The administration shall reimburse a nursing care institution or hospice for any additional expenses incurred for professional accounting services obtained in response to a specific request by the administration. On request, the director of the administration shall provide a copy of an audit performed pursuant to this subsection to the director of the department of health services or that person's designee.

D. Notwithstanding any other provision of this article, the administration may contract by an intergovernmental agreement with an Indian tribe, a tribal council or a tribal organization for the provision of long-term care services pursuant to section 36-2939, subsection A, paragraphs 1, 2, 3 and 4 and the home and community based services pursuant to section 36-2939, subsection B, paragraph 2 and subsection C, subject to the restrictions in section 36-2939, subsections D and E for eligible members.

E. The director shall require as a condition of a contract that all records relating to contract compliance are available for inspection by the administration subject to subsection F of this section and that these records are maintained for five years. The director shall also require that these records are available on request of the secretary of the United States department of health and human services or its successor agency.

F. Subject to applicable law relating to privilege and protection, the director shall adopt rules prescribing the types of information that are confidential and circumstances under which that information may be used or released, including requirements for physician-patient confidentiality. Notwithstanding any other law, these rules shall provide for the exchange of necessary information among the program contractors, the administration and the department for the purposes of eligibility determination under this article.

G. The director shall adopt rules to specify methods for the transition of members into, within and out of the system. The rules shall include provisions for the transfer of members, the transfer of medical records and the initiation and termination of services.

H. The director shall adopt rules that provide for withholding or forfeiting payments made to a program contractor if it fails to comply with a provision of its contract or with the director's rules.

I. The director shall:

1. Establish by rule the time frames and procedures for all grievances and requests for hearings consistent with section 36-2903.01, subsection B, paragraph 4.

2. Apply for and accept federal monies available under title XIX of the social security act in support of the system. In addition, the director may apply for and accept grants, contracts and private donations in support of the system.

3. Not less than thirty days before the administration implements a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

J. The director may apply for federal monies available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state monies appropriated for

the administration of the system may be used as matching monies to secure federal monies pursuant to this subsection.

K. The director shall adopt rules that establish requirements of state residency and qualified alien status as prescribed in section 36-2903.03. The administration shall enforce these requirements as part of the eligibility determination process. The rules shall also provide for the determination of the applicant's county of residence for the purpose of assignment of the appropriate program contractor.

L. The director shall adopt rules in accordance with the state plan regarding posteligibility treatment of income and resources that determine the portion of a member's income that shall be available for payment for services under this article. The rules shall provide that a portion of income may be retained for:

1. A personal needs allowance for members receiving institutional services of at least fifteen per cent of the maximum monthly supplemental security income payment for an individual or a personal needs allowance for members receiving home and community based services based on a reasonable assessment of need.
2. The maintenance needs of a spouse or family at home in accordance with federal law. The minimum resource allowance for the spouse or family at home is twelve thousand dollars adjusted annually by the same percentage as the percentage change in the consumer price index for all urban consumers (all items; United States city average) between September 1988 and the September before the calendar year involved.
3. Expenses incurred for noncovered medical or remedial care that are not subject to payment by a third party payor.

M. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection may consider the differences between rural and urban conditions on the delivery of services.

N. The director shall not adopt any rule or enter into or approve any contract or subcontract that does not conform to federal requirements or that may cause the system to lose any federal monies to which it is otherwise entitled.

O. The administration, program contractors and providers may establish and maintain review committees dealing with the delivery of care. Review committees and their staff are subject to the same requirements, protections, privileges and immunities prescribed pursuant to section 36-2917.

P. If the director determines that the financial viability of a nursing care institution or hospice is in question, the director may require a nursing care institution and a hospice providing services pursuant to this article to submit quarterly financial statements within thirty days after the end of its financial quarter unless the director grants an extension in writing before that date. Quarterly financial statements submitted to the department shall include the following:

1. A balance sheet detailing the institution's assets, liabilities and net worth.
2. A statement of income and expenses, including current personnel costs and full-time equivalent statistics.

Q. The director may require monthly financial statements if the director determines that the financial viability of a nursing care institution or hospice is in question. The director shall prescribe the requirements of these statements.

R. The total amount of state monies that may be spent in any fiscal year by the administration for long-term care shall not exceed the amount appropriated or authorized by section 35-173 for that purpose. This article shall not be construed to impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

36-2939. Long-term care system services

A. The following services shall be provided by the program contractors to members who are determined to need institutional services pursuant to this article:

1. Nursing facility services other than services in an institution for tuberculosis or mental disease.
2. Notwithstanding any other law, behavioral health services if these services are not duplicative of long-term care services provided as of January 30, 1993 under this subsection and are authorized by the program contractor through the long-term care case management system. If the administration is the program contractor, the administration may authorize these services.
3. Hospice services. For the purposes of this paragraph, "hospice" means a program of palliative and supportive care for terminally ill members and their families or caregivers.
4. Case management services as provided in section 36-2938.
5. Health and medical services as provided in section 36-2907.
6. Dental services in an annual amount of not more than one thousand dollars per member.

B. In addition to the services prescribed in subsection A of this section, the department, as a program contractor, shall provide the following services if appropriate to members who have a developmental disability as defined in section 36-551 and are determined to need institutional services pursuant to this article:

1. Intermediate care facility services for a member who has a developmental disability as defined in section 36-551. For purposes of this article, a facility shall meet all federally approved standards and may only include the Arizona training program facilities, a state owned and operated service center, state owned or operated community residential settings and private facilities that contract with the department.
2. Home and community based services that may be provided in a member's home, at an alternative residential setting as prescribed in section 36-591 or at other behavioral health alternative residential facilities licensed by the department of health services and approved by the director of the Arizona health care cost containment system administration and that may include:
 - (a) Home health, which means the provision of nursing services, home health aide services or medical supplies, equipment and appliances, that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on a physician's orders and in accordance with federal law. Physical therapy, occupational therapy, or speech and audiology services provided by a home health agency may be provided in accordance with federal law. Home health agencies shall comply with federal bonding requirements in a manner prescribed by the administration.
 - (b) Home health aide, which means a service that provides intermittent health maintenance, continued treatment or monitoring of a health condition and supportive care for activities of daily living provided within a member's residence.
 - (c) Homemaker, which means a service that provides assistance in the performance of activities related to household maintenance within a member's residence.
 - (d) Personal care, which means a service that provides assistance to meet essential physical needs within a member's residence.
 - (e) Day care for persons with developmental disabilities, which means a service that provides planned care supervision and activities, personal care, activities of daily living skills training and habilitation services in a group setting during a portion of a continuous twenty-four-hour period.

(f) Habilitation, which means the provision of physical therapy, occupational therapy, speech or audiology services or training in independent living, special developmental skills, sensory-motor development, behavior intervention, and orientation and mobility in accordance with federal law.

(g) Respite care, which means a service that provides short-term care and supervision available on a twenty-four-hour basis.

(h) Transportation, which means a service that provides or assists in obtaining transportation for the member.

(i) Other services or licensed or certified settings approved by the director.

C. In addition to services prescribed in subsection A of this section, home and community based services may be provided in a member's home, in an adult foster care home as prescribed in section 36-401, in an assisted living home or assisted living center as defined in section 36-401 or in a level one or level two behavioral health alternative residential facility approved by the director by program contractors to all members who do not have a developmental disability as defined in section 36-551 and are determined to need institutional services pursuant to this article. Members residing in an assisted living center must be provided the choice of single occupancy. The director may also approve other licensed residential facilities as appropriate on a case-by-case basis for traumatic brain injured members. Home and community based services may include the following:

1. Home health, which means the provision of nursing services, home health aide services or medical supplies, equipment and appliances, that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on a physician's orders and in accordance with federal law. Physical therapy, occupational therapy, or speech and audiology services provided by a home health agency may be provided in accordance with federal law. Home health agencies shall comply with federal bonding requirements in a manner prescribed by the administration.

2. Home health aide, which means a service that provides intermittent health maintenance, continued treatment or monitoring of a health condition and supportive care for activities of daily living provided within a member's residence.

3. Homemaker, which means a service that provides assistance in the performance of activities related to household maintenance within a member's residence.

4. Personal care, which means a service that provides assistance to meet essential physical needs within a member's residence.

5. Adult day health, which means a service that provides planned care supervision and activities, personal care, personal living skills training, meals and health monitoring in a group setting during a portion of a continuous twenty-four-hour period. Adult day health may also include preventive, therapeutic and restorative health related services that do not include behavioral health services.

6. Habilitation, which means the provision of physical therapy, occupational therapy, speech or audiology services or training in independent living, special developmental skills, sensory-motor development, behavior intervention, and orientation and mobility in accordance with federal law.

7. Respite care, which means a service that provides short-term care and supervision available on a twenty-four-hour basis.

8. Transportation, which means a service that provides or assists in obtaining transportation for the member.

9. Home delivered meals, which means a service that provides for a nutritious meal that contains at least one-third of the recommended dietary allowance for an individual and that is delivered to the member's residence.

10. Other services or licensed or certified settings approved by the director.

D. The amount of money expended by program contractors on home and community based services pursuant to subsection C of this section shall be limited by the director in accordance with the federal monies made available to this state for home and community based services pursuant to subsection C of this section. The director shall establish methods for the allocation of monies for home and community based services to program contractors and shall monitor expenditures on home and community based services by program contractors.

E. Notwithstanding subsections A, B, C and F of this section, no service may be provided that does not qualify for federal monies available under title XIX of the social security act or the section 1115 waiver.

F. In addition to services provided pursuant to subsections A, B and C of this section, the director may implement a demonstration project to provide home and community based services to special populations, including persons with disabilities who are eighteen years of age or younger, are medically fragile, reside at home and would be eligible for supplemental security income for the aged, blind or disabled or the state supplemental payment program, except for the amount of their parent's income or resources. In implementing this project, the director may provide for parental contributions for the care of their child.

G. Subject to section 36-562, the administration by rule shall prescribe a deductible schedule for programs provided to members who are eligible pursuant to subsection B of this section, except that the administration shall implement a deductible based on family income. In determining deductible amounts and whether a family is required to have deductibles, the department shall use adjusted gross income. Families whose adjusted gross income is at least four hundred percent and less than or equal to five hundred percent of the federal poverty guidelines shall have a deductible of two percent of adjusted gross income. Families whose adjusted gross income is more than five hundred percent of adjusted gross income shall have a deductible of four percent of adjusted gross income. Only families whose children are under eighteen years of age and who are members who are eligible pursuant to subsection B of this section may be required to have a deductible for services. For the purposes of this subsection, "deductible" means an amount a family, whose children are under eighteen years of age and who are members who are eligible pursuant to subsection B of this section, pays for services, other than departmental case management and acute care services, before the department will pay for services other than departmental case management and acute care services.

Arizona Health Care Cost Containment System (F-18-0203)
Title 9, Chapter 28, Article 2, Covered Services



GOVERNOR'S REGULATORY REVIEW COUNCIL ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: February 6, 2018

AGENDA ITEM: G-4

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

FROM: Council Staff

DATE : January 23, 2018

SUBJECT: ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (F-18-0203)
Title 9, Chapter 28, Article 2, Covered Services

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Health Care Cost Containment System (AHCCCS) is “to promote a comprehensive health care system to eligible citizens of this state.” Laws 2013, 1st S.S., Ch. 10, § 53. This system is managed by the Director of the AHCCCS Administration (Administration), which is established under A.R.S. § 36-2902(A). The Director has the powers and duties prescribed in A.R.S. §§ 36-2903 and 2903.01.

This five-year-review report covers six rules in A.A.C. Title 9, Chapter 28, Article 2, related to covered services under the Arizona Long Term Care System (ALTCS). The rules address general requirements, scope of services provided to ALTCS members, coverage for CRS services, institutional services, home and community based services (HCBS), and ALTCS services that may be provided to a member residing in either an institutional or HCBS setting.

The Administration did not complete all the proposed actions in its previous five-year review report by November 2015, but intends to make the amendments that are still necessary in its upcoming rulemaking.

Proposed Action

The Administration intends to initiate a rulemaking within 180 days following Council approval of the report.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Administration cites to A.R.S § 36-2932 as general statutory authority, which pertains to ALTCS, powers and duties of the director, and expenditure limitations. The Administration also cites to A.R.S. § 36-2939 as specific statutory authority, which relates to services provided under ALTCS.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

Most of the proposed changes are for clarifying purposes. The changes will have no additional economic impact. Therefore, there are minimal economic and consumer impacts as a result of the proposed changes.

The stakeholders are the Administration, individuals, and businesses who use or interact with AHCCCS.

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?

Yes. The Administration indicates that the underlying regulatory objectives are the most cost-effective means and impose the least burden on regulated persons.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Administration has not received any written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. The Administration indicates that the rules are generally clear, concise, and understandable, but finds the following rules should be amended:

- Section 204: The rule should be amended to update terminology to align with current AHCCCS policy and references to other regulations.
- Sections 205 and 206: The list of durable medical equipment should be updated to align with AHCCCS policy.

The Administration indicates that following rules are inconsistent with other rules and statutes:

- Section 204: The institution for mental diseases day limit should be updated to conform to Medicaid Managed Care regulations.
- Section 206: Emergency dental provisions should be updated to align with A.R.S. § 36-2939.

Despite the issues mentioned above, the Administration believes the rules are effective in achieving their objectives.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Administration indicates that the rules are enforced as written to the extent they are consistent with other rules and statutes.

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

No. The Administration indicates that the rules are not more stringent than corresponding federal law.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

No. The rules do not require a regulatory permit, license, or agency authorization.

9. Conclusion

As mentioned above, the Administration plans to initiate the rulemaking process to make the changes identified in this memo within 180 days following Council approval of the report. This report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends approval.

November 21, 2017

Ms. Nicole Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Ave, Suite 402
Phoenix, AZ 85007

Dear Ms. Ong:

Pursuant to requirements in R1-6-301, attached is a copy of the 5-Year Review Report for Title 9, Chapter 28, Article 2. The report includes all of the documentation required by R1-6-301 (C) and (D).

No rules were left out of this 5-Year Review Report to be expired under A.R.S. § 41-1056 (J). Similarly, there were no rules subject to rescheduling.

As required by A.R.S. § 41-1056, the Administration certifies that the agency is in compliance with A.R.S. § 41-1091.

If you have any questions or comments regarding this report, please contact Nicole Fries, Associate General Counsel, Office of Administrative Legal Services at (602)-417-4232.

Sincerely,



Matthew Devlin
Assistant Director

Attachment

Arizona Health Care Cost Containment System

(AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 28, Article 2

November 2017

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-2932 (M); 36-2903.01

Specific Statutory Authority: A.R.S. § 36-2939

2. The objective of each rule:

Rule	Objective
R9-28-201	This rule sets forth definitions applicable to the Article and establishes certain requirements, limitations and exclusions that are applicable to most, if not all, health care services provided by the program.
R9-28-202	This rule prescribes medical services covered in the ALTCS program.
R9-28-203	This rule describes who can receive Children's Rehabilitative Services.
R9-28-204	This rule describes institutional services available in the ALTCS Program.
R9-28-205	This rule establishes requirements, limitations and exclusions that are applicable to home and community based services.
R9-28-206	This rule describes the institutional and HCBS services covered in the ALTCS Program and the limitations applicable to those services.

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 _____

Rule	Explanation
R9-28-204	Update IMD day limit to conform with Medicaid Managed Care regulations.
R9-28-206	Update to include emergency dental provisions to align with A.R.S. § 36-2939.

5. Are the rules enforced as written? Yes _____ No X

Rule	Explanation
R9-28-204	Update IMD day limit to conform with Medicaid Managed Care regulations.
R9-28-206	Update to include emergency dental provisions to align with A.R.S. § 36-2939.

6. Are the rules clear, concise, and understandable? Yes X No _____

Rule	Explanation
R9-28-204	Update terminology to align with current AHCCCS policy and references to other regulations.
R9-28-205	Update list of durable medical equipment to align with AHCCCS policy.
R9-28-206	Update list of durable medical equipment to align with AHCCCS policy.

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:**

There is no measurable economic or consumer impact because the majority of the recommended changes are for clarification purposes, or to align with AHCCCS policy, and do not actually expand the current scope of service. A couple of the recommended changes, including the emergency dental provisions, do have an economic impact on the Administration's budget, however, this was already reflected in the prior year submission because AHCCCS policy has already been updated to reflect this change, therefore there is no economic impact going forward. Small businesses are unlikely to see a noticeable economic impact because these articles pertain to the scope of services that AHCCCS covers.

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?**

The prior 5 Year Review Report stated a large number of clarifying changes to the rules and that they were intended to be submitted to Council by November 2015 in a rulemaking package. The changes identified in the earlier report were not all implemented by November 2015. The prior 5YRR suggested changes to R9-28-204 and R9-28-205 will be enacted within 180 days following the approval of this report by GRRC. All other suggested changes are no longer necessary due to changes in AHCCCS policy in the interim period between the two 5 year Reviews and are rejected.

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

The underlying regulatory objectives are the most cost-effective means and impose the least burden to regulated persons.

12. Are the rules more stringent than corresponding federal laws? Yes No

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not applicable.

14. **Proposed course of action**

Following approval of this 5YRR by GRRC, approval will be requested from the Governor's Office and a rulemaking will be initiated within 180 days to make the above changes. Additional technical and clarifying changes may also occur in the rulemaking.

Amended by final rulemaking at 10 A.A.R. 1312, effective May 1, 2004 (Supp. 04-1).

R9-28-104. Repealed

Adopted effective December 8, 1997 (Supp. 97-4). Amended effective November 4, 1998 (Supp. 98-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Repealed by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2).

R9-28-105. Repealed

Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

R9-28-106. Request for Proposals and Contract Process Related Definitions

Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22 Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning: “Interested Party” means an actual or prospective offeror whose economic interest may be affected substantially and directly by the issuance of a request for proposals, the award of a contract, or the failure to award a contract.

Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

R9-28-107. Repealed

Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Amended effective November 4, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 3810, effective October 4, 2003 (Supp. 03-3). Section repealed by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3).

R9-28-108. Repealed

Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1).

R9-28-109. Repealed

Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-110. Reserved

R9-28-111. Behavioral Health Services Related Definitions

Definitions. The words and phrases in this Chapter, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, have the same meaning as specified in 9 A.A.C. 22, Article 1.

Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4).

ARTICLE 2. COVERED SERVICES

R9-28-201. General Requirements

In addition to the exclusions and limitations specified in this Article, services provided to a member are covered services if:

1. Medically necessary, cost effective, and federally reimbursable;
2. Coordinated by a case manager in accordance with requirements specified in R9-28-510;
3. The provider obtains prior authorization as required by a member’s program contractor or by the Administration:
 - a. Failure of the provider to obtain prior authorization is cause for denial.
 - b. Services provided during prior period coverage are exempt from prior authorization requirements;
4. Provided in facilities or areas of facilities that are licensed or certified under Article 5 of this Chapter, or meet other requirements described in Article 5 of this Chapter;
5. Rendered by AHCCCS registered providers as permitted under this Chapter and within their scope of practice; and
6. Provided at an appropriate level of care, as determined by the case manager or the primary care provider.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed; new Section adopted effective September 22, 1997 (Supp. 97-3).

Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2).

R9-28-202. Scope of Services

- A. The Administration or a contractor shall cover medical services specified in 9 A.A.C. 22, Article 2 for a member, subject to the limitations and exclusions specified in Article 2, unless otherwise specified in this Chapter.
- B. In addition, for members living in an HCBS setting, incontinence briefs for a member 21 years of age and older, including pull-ups, are covered in order to:
 1. Treat a medical condition; and
 2. Prevent skin breakdown when all the following are met:
 - a. The member is incontinent due to a documented medical condition that causes incontinence of bowel and/or bladder,
 - b. The PCP or attending physician has issued a prescription ordering the incontinence briefs,
 - c. Incontinence briefs do not exceed 180 briefs per month unless the prescribing physician presents evidence of medical necessity for more than 180 briefs per month,
 - d. The member obtains incontinence briefs from vendors within the Contractor’s network, and
 - e. Prior authorization has been obtained if required by the Administration, Contractor, or Contractor’s designee, as appropriate. Contractors shall not require prior authorization more frequently than every twelve months.
- C. Incontinence brief coverage for a member under age 21 is described under R9-22-212.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act effective

March 22, 1993; received in the Office of the Secretary of State March 24, 1993 (Supp. 93-1). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 21 A.A.R. 1243, effective July 7, 2015 (Supp. 15-3).

R9-28-203. Coverage for CRS Services

- A. Beginning October 1, 2013, ALTCS DD members who need active treatment for one or more of the qualifying medical condition(s) in A.A.C. R9-22-1303 shall receive CRS services through the CRS contractor as described under Chapter 22, Article 13.
- B. Beginning October 1, 2013, AHCCCS ALTCS EPD members who need active treatment for one or more of the qualifying medical conditions in A.A.C. R9-22-1303 shall not receive CRS services through the CRS contractor as described under Chapter 22, Article 13. These members shall receive treatment for those conditions through their assigned ALTCS EPD contractor. However, an American Indian member with a CRS condition(s) who is enrolled with a tribal contractor or Native American Community Health (NACH) shall obtain CRS services through the CRS contractor.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 22, 1993; received in the Office of the Secretary of State March 24, 1993 (Supp. 93-1). Repealed effective September 22, 1997 (Supp. 97-3). New Section R9-28-203 made by final rulemaking at 19 A.A.R. 2963, effective November 10, 2013 (Supp. 13-3).

R9-28-204. Institutional Services

- A. Institutional services are provided in:
 - 1. A NF;
 - 2. An ICF-MR; or
 - 3. A facility identified in R9-28-1105(A)(1)(b), (B), or (C).
- B. The Administration and a contractor shall include the following services in the per diem rate for a facility listed in subsection (A):
 - 1. Nursing care services;
 - 2. Rehabilitative services prescribed as a maintenance regimen;
 - 3. Restorative services, such as range of motion;
 - 4. Social services;
 - 5. Nutritional and dietary services;
 - 6. Recreational therapies and activities;
 - 7. Medical supplies and non-customized durable medical equipment under 9 A.A.C. 22, Article 2;
 - 8. Overall management and evaluation of a member's care plan;
 - 9. Observation and assessment of a member's changing condition;
 - 10. Room and board services, including supporting services such as food and food preparation, personal laundry, and housekeeping;
 - 11. Non-prescription and stock pharmaceuticals; and
 - 12. Respite care services not to exceed 600 hours per benefit year.
- C. Each facility listed in subsection (A) is responsible for coordinating the delivery of at least the following auxiliary services:
 - 1. Under 9 A.A.C. 22, Article 2;

- a. Attending physician, practitioner, and primary care provider services;
 - b. Pharmaceutical services;
 - c. Diagnostic services under A.A.C. R9-22-208;
 - d. Emergency medical services; and
 - e. Emergency and medically necessary transportation services.
2. Therapy services under R9-28-206.
- D. Limitations. The following limitations apply:
 1. A private room in a NF, ICF-MR, or facility identified in R9-28-1105(A)(1)(b), (B), or (C) is covered only if:
 - a. The member or has a medical condition that requires isolation, and
 - b. The member's primary care provider or attending physician provides written authorization;
 2. Each ICF-MR shall meet the standards in A.R.S. § 36-2939(B)(1), and in 42 CFR 483, Subpart I, February 28, 1992, incorporated by reference and on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation contains no future editions or amendments;
 3. Bed hold days as authorized by the Administration or its designee for a fee-for-service provider shall meet the following criteria:
 - a. Short-term hospitalization leave for a member age 21 and over is limited to 12 days per AHCCCS benefit year, and is available if a member is admitted to a hospital for a short stay. After the short-term hospitalization, the member is returned to the institutional facility from which leave is taken, and to the same bed if the level of care required can be provided in that bed; and
 - b. Therapeutic leave for a member age 21 and older is limited to nine days per AHCCCS benefit year. A physician order is required for therapeutic leave from the facility for one or more overnight stays to enhance psycho-social interaction, or as a trial basis for discharge planning. After the therapeutic leave, the member is returned to the same bed within the institutional facility;
 - c. Therapeutic leave and short-term hospitalization leave are limited to any combination of 21 days per benefit year for a member under age 21;
 4. The Administration or a contractor shall cover services that are not part of a per diem rate but are ALTCS covered services included in this Article, and deemed necessary by a member's case manager or the case manager's designee if:
 - a. The services are ordered by the member's primary care provider; and
 - b. The services are specified in a case management plan under R9-28-510;
 5. A member age 21 through 64 is eligible for behavioral health services provided in a facility under subsection (A)(3) that has more than 16 beds, for up to 30 days per admission and no more than 60 days per benefit year as allowed under the Administration's Section 1115 Waiver with CMS and except as specified by 42 CFR 441.151, May 22, 2001, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation contains no future editions or amendments; and
 6. The limitations in subsection (D)(5) do not apply to a member;

- a. Under age 21 or age 65 or over, or
- b. In a facility with 16 beds or less.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsections (A) and (D) effective June 6, 1989 (Supp. 89-2). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 17 A.A.R. 1876, effective October 1, 2011 (Supp. 11-3). Exemption to amend rules to expire December 31, 2013 under Laws 2012, Chapter 299, Section 8 therefore this Section was amended by final rulemaking at 19 A.A.R. 2758, effective October 8, 2013 (Supp. 13-3).

R9-28-205. Home and Community Based Services (HCBS)

- A. Subject to the availability of federal funds, HCBS are covered services if provided to a member residing in the member's own home or an alternative residential setting. Room and board services are not covered in a HCBS setting.
- B. The case manager shall authorize and specify in a case management plan any additions, deletions, or changes in home and community based services provided to a member or in accordance with R9-28-510.
- C. Home and community based services include the following:
 - 1. Home health services provided on a part-time or intermittent basis. These services include:
 - a. Nursing care;
 - b. Home health aide;
 - c. Medical supplies, equipment, and appliances;
 - d. Physical therapy;
 - e. Occupational therapy;
 - f. Respiratory therapy; and
 - g. Speech and audiology services;
 - 2. Private duty nursing services;
 - 3. Medical supplies and durable medical equipment, including customized DME, as described in 9 A.A.C. 22, Article 2;
 - 4. Transportation services to obtain covered medically necessary services;
 - 5. Adult day health services provided to a member in an adult day health care facility licensed under 9 A.A.C. 10, Article 5, including:
 - a. Supervision of activities specified in the member's care plan;
 - b. Personal care;
 - c. Personal living skills training;
 - d. Meals and health monitoring;
 - e. Preventive, therapeutic, and restorative health related services; and
 - f. Behavioral health services, provided either directly or through referral, if medically necessary;
 - 6. Personal care services;
 - 7. Homemaker services;
 - 8. Home delivered meals, that provide at least one-third of the recommended dietary allowance, for a member who does not have a developmental disability under A.R.S. § 36-551;
 - 9. Respite care services for no more than 600 hours per benefit year;
 - 10. Habilitation services including:
 - a. Physical therapy;
 - b. Occupational therapy;

- c. Speech and audiology services;
- d. Training in independent living;
- e. Special development skills that are unique to the member;
- f. Sensory-motor development;
- g. Behavior intervention; and
- h. Orientation and mobility training;
- 11. Developmentally disabled day care provided in a group setting during a portion of a 24-hour period, including:
 - a. Supervision of activities specified in the member's care plan;
 - b. Personal care;
 - c. Activities of daily living skills training; and
 - d. Habilitation services;
- 12. Supported employment services provided to a member in the ALTCS transitional program under R9-28-306 who is developmentally disabled under A.R.S. § 36-551.

Historical Note

Adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 17 A.A.R. 1876, effective October 1, 2011 (Supp. 11-3). Exemption to amend rules to expire December 31, 2013 under Laws 2012, Chapter 299, Section 8 therefore this Section was amended by final rulemaking at 19 A.A.R. 2758, effective October 8, 2013 (Supp. 13-3).

R9-28-206. ALTCS Services that may be Provided to a Member Residing in either an Institutional or HCBS Setting

The Administration shall cover the following services if the services are provided to a member within the limitations listed:

- 1. Occupational and physical therapies, speech and audiology services, and respiratory therapy:
 - a. The duration, scope, and frequency of each therapeutic modality or service is prescribed by the member's primary care provider or attending physician;
 - b. The therapy or service is authorized by the member's contractor or the Administration; and
 - c. The therapy or service is included in the members case management plan;
 - d. AHCCCS will not cover more than 15 outpatient physical therapy visits for the contract year with the exception of the required Medicare coinsurance and deductible payment as described in 9 A.A.C. 29, Article 3.
- 2. Medical supplies, durable medical equipment, and customized durable medical equipment, which conform with the requirements and limitations of 9 A.A.C. 22, Article 2 and as described under R9-28-202 for persons in HCBS settings;
- 3. Ventilator dependent services:
 - a. Inpatient or institutional services are limited to services provided in a general hospital, special hospital, NF, or ICF-MR. Services provided in a general or special hospital are included in the hospital's unit tier rate under 9 A.A.C. 22, Article 7;
 - b. A ventilator dependent member may receive the array of home and community based services under R9-28-205 as appropriate.
- 4. Hospice services:
 - a. Hospice services are covered only for a member who is in the final stages of a terminal illness and has a prognosis of death within six months;
 - b. Covered hospice services for a member are those allowable under 42 CFR 418.202, December 20, 1994, incorporated by reference and on file with the

- Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments; and
- c. Covered hospice services do not include:
 - i. Medical services provided that are not related to the terminal illness, or
 - ii. Home delivered meals.
 - d. Medicare is the primary payor of hospice services for a member if applicable.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 16 A.A.R. 1664, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 21 A.A.R. 1243, effective July 7, 2015 (Supp. 15-3).

ARTICLE 3. PREADMISSION SCREENING (PAS)

R9-28-301. Definitions

- A. Common definitions. In addition to definitions contained in A.R.S. Title 36, Chapter 29, and 9 A.A.C. 28, Article 1, the words and phrases in this Article have the following meanings for an individual who is elderly or physically disabled (EPD) or developmentally disabled (DD) unless the context explicitly requires another meaning:

“Applicant” is defined in A.A.C. R9-22-101.
 “Assessor” means a social worker as defined in this subsection or a licensed registered nurse (RN) who:
 Is employed by the Administration to conduct PAS assessments,
 Completes a minimum of 30 hours of classroom training in both EPD and DD PAS for a total of 60 hours, and
 Receives intensive oversight and monitoring by the Administration during the first 30 days of employment and ongoing oversight by the Administration during all periods of employment.

“Current” means belonging to the present time.
 “Disruptive behavior” means inappropriate behavior by the applicant or member including urinating or defecating in inappropriate places, sexual behavior inappropriate to time, place, or person or excessive whining, crying, or screaming that interferes with an applicant’s or member’s normal activities or the activities of others and requires intervention to stop or interrupt the behavior.
 “Frequency” means the number of times a specific behavior occurs within a specified interval.
 “Functional assessment” means an evaluation of information about an applicant’s or member’s ability to perform activities related to:

 Developmental milestones,
 Activities of daily living,
 Communication, and
 Behavior.

“Immediate risk of institutionalization” means the status of an applicant or member under A.R.S. § 36-2934(A)(5) and as specified in A.R.S. § 36-2936 and in the Administration’s Section 1115 Waiver with Centers for Medicare and Medicaid Services (CMS).

“Intervention” means therapeutic treatment, including the use of medication, behavior modification, and physical

restraints to control behavior. Intervention may be formal or informal and includes actions taken by friends or family to control the behavior.

“Medical assessment” means an evaluation of an applicant’s or member’s medical condition and the applicant’s or member’s need for medical services.

“Medical or nursing services and treatments” or “services and treatments” means specific, ongoing medical, psychiatric, or nursing intervention used actively to resolve or prevent deterioration of a medical condition. Durable medical equipment and activities of daily living assistive devices are not treatment unless the equipment or device is used specifically and actively to resolve the existing medical condition.

“Physician consultant” means a physician who contracts with the Administration.

“Social worker” means an individual with two years of case management-related experience or a baccalaureate or master’s degree in:

 Social work,
 Rehabilitation,
 Counseling,
 Education,
 Sociology,
 Psychology, or
 Other closely related field.

“Special diet” means a diet planned by a dietitian, nutritionist, or nurse that includes high fiber, low sodium, or pureed food.

“Toileting” means the process involved in an applicant’s or member’s managing of the elimination of urine and feces in an appropriate place.

“Vision” means the ability to perceive objects with the eyes.

- B. EPD. In addition to definitions contained in subsection (A), the following also apply to an applicant or member who is EPD:

“Aggression” means physically attacking another, including:
 Throwing an object,
 Punching,
 Biting,
 Pushing,
 Pinching,
 Pulling hair,
 Scratching, and
 Physically threatening behavior.

“Bathing” means the process of washing, rinsing, and drying all parts of the body, including an applicant’s or member’s ability to transfer to a tub or shower and to obtain bath water and equipment.

“Continence” means the applicant’s or member’s ability to control the discharge of body waste from bladder and bowel.

“Dressing” means the physical process of choosing, putting on, securing fasteners, and removing clothing and footwear. Dressing includes choosing a weather-appropriate article of clothing but excludes aesthetic concerns. Dressing includes the applicant’s or member’s ability to put on artificial limbs, braces, and other appliances that are needed daily.

“Eating” means the process of putting food and fluids by any means into the digestive system.

“Emotional and cognitive functioning” means an applicant’s or member’s orientation and mental state, as evi-

36-2932. Arizona long-term care system; powers and duties of the director; expenditure limitation

A. The Arizona long-term care system is established. The system includes the management and delivery of hospitalization, medical care, institutional services and home and community based services to members through the administration, the program contractors and providers pursuant to this article together with federal participation under title XIX of the social security act. The director in the performance of all duties shall consider the use of existing programs, rules and procedures in the counties and department where appropriate in meeting federal requirements.

B. The administration has full operational responsibility for the system, which shall include the following:

1. Contracting with and certification of program contractors in compliance with all applicable federal laws.
2. Approving the program contractors' comprehensive service delivery plans pursuant to section 36-2940.
3. Providing by rule for the ability of the director to review and approve or disapprove program contractors' requests for proposals for providers and provider subcontracts.
4. Providing technical assistance to the program contractors.
5. Developing a uniform accounting system to be implemented by program contractors and providers of institutional services and home and community based services.
6. Conducting quality control on eligibility determinations and preadmission screenings.
7. Establishing and managing a comprehensive system for assuring the quality of care delivered by the system as required by federal law.
8. Establishing an enrollment system.
9. Establishing a member case management tracking system.
10. Establishing and managing a method to prevent fraud by applicants, members, eligible persons, program contractors, providers and noncontracting providers as required by federal law.
11. Coordinating benefits as provided in section 36-2946.
12. Establishing standards for the coordination of services.
13. Establishing financial and performance audit requirements for program contractors, providers and noncontracting providers.
14. Prescribing remedies as required pursuant to 42 United States Code section 1396r. These remedies may include the appointment of temporary management by the director, acting in collaboration with the director of the department of health services, in order to continue operation of a nursing care institution providing services pursuant to this article.
15. Establishing a system to implement medical child support requirements, as required by federal law. The administration may enter into an intergovernmental agreement with the department of economic security to implement this paragraph.
16. Establishing requirements and guidelines for the review of trusts for the purposes of establishing eligibility for the system pursuant to section 36-2934.01 and posteligibility treatment of income pursuant to subsection L of this section.

17. Accepting the delegation of authority from the department of health services to enforce rules that prescribe minimum certification standards for adult foster care providers pursuant to section 36-410, subsection B. The administration may contract with another entity to perform the certification functions.

18. Assessing civil penalties for improper billing as prescribed in section 36-2903.01, subsection K.

C. For nursing care institutions and hospices that provide services pursuant to this article, the director shall contract periodically as deemed necessary and as required by federal law for a financial audit of the institutions and hospices that is certified by a certified public accountant in accordance with generally accepted auditing standards or conduct or contract for a financial audit or review of the institutions and hospices. The director shall notify the nursing care institution and hospice at least sixty days before beginning a periodic audit. The administration shall reimburse a nursing care institution or hospice for any additional expenses incurred for professional accounting services obtained in response to a specific request by the administration. On request, the director of the administration shall provide a copy of an audit performed pursuant to this subsection to the director of the department of health services or that person's designee.

D. Notwithstanding any other provision of this article, the administration may contract by an intergovernmental agreement with an Indian tribe, a tribal council or a tribal organization for the provision of long-term care services pursuant to section 36-2939, subsection A, paragraphs 1, 2, 3 and 4 and the home and community based services pursuant to section 36-2939, subsection B, paragraph 2 and subsection C, subject to the restrictions in section 36-2939, subsections D and E for eligible members.

E. The director shall require as a condition of a contract that all records relating to contract compliance are available for inspection by the administration subject to subsection F of this section and that these records are maintained for five years. The director shall also require that these records are available on request of the secretary of the United States department of health and human services or its successor agency.

F. Subject to applicable law relating to privilege and protection, the director shall adopt rules prescribing the types of information that are confidential and circumstances under which that information may be used or released, including requirements for physician-patient confidentiality. Notwithstanding any other law, these rules shall provide for the exchange of necessary information among the program contractors, the administration and the department for the purposes of eligibility determination under this article.

G. The director shall adopt rules to specify methods for the transition of members into, within and out of the system. The rules shall include provisions for the transfer of members, the transfer of medical records and the initiation and termination of services.

H. The director shall adopt rules that provide for withholding or forfeiting payments made to a program contractor if it fails to comply with a provision of its contract or with the director's rules.

I. The director shall:

1. Establish by rule the time frames and procedures for all grievances and requests for hearings consistent with section 36-2903.01, subsection B, paragraph 4.

2. Apply for and accept federal monies available under title XIX of the social security act in support of the system. In addition, the director may apply for and accept grants, contracts and private donations in support of the system.

3. Not less than thirty days before the administration implements a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

J. The director may apply for federal monies available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state monies appropriated for

the administration of the system may be used as matching monies to secure federal monies pursuant to this subsection.

K. The director shall adopt rules that establish requirements of state residency and qualified alien status as prescribed in section 36-2903.03. The administration shall enforce these requirements as part of the eligibility determination process. The rules shall also provide for the determination of the applicant's county of residence for the purpose of assignment of the appropriate program contractor.

L. The director shall adopt rules in accordance with the state plan regarding posteligibility treatment of income and resources that determine the portion of a member's income that shall be available for payment for services under this article. The rules shall provide that a portion of income may be retained for:

1. A personal needs allowance for members receiving institutional services of at least fifteen per cent of the maximum monthly supplemental security income payment for an individual or a personal needs allowance for members receiving home and community based services based on a reasonable assessment of need.
2. The maintenance needs of a spouse or family at home in accordance with federal law. The minimum resource allowance for the spouse or family at home is twelve thousand dollars adjusted annually by the same percentage as the percentage change in the consumer price index for all urban consumers (all items; United States city average) between September 1988 and the September before the calendar year involved.
3. Expenses incurred for noncovered medical or remedial care that are not subject to payment by a third party payor.

M. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection may consider the differences between rural and urban conditions on the delivery of services.

N. The director shall not adopt any rule or enter into or approve any contract or subcontract that does not conform to federal requirements or that may cause the system to lose any federal monies to which it is otherwise entitled.

O. The administration, program contractors and providers may establish and maintain review committees dealing with the delivery of care. Review committees and their staff are subject to the same requirements, protections, privileges and immunities prescribed pursuant to section 36-2917.

P. If the director determines that the financial viability of a nursing care institution or hospice is in question, the director may require a nursing care institution and a hospice providing services pursuant to this article to submit quarterly financial statements within thirty days after the end of its financial quarter unless the director grants an extension in writing before that date. Quarterly financial statements submitted to the department shall include the following:

1. A balance sheet detailing the institution's assets, liabilities and net worth.
2. A statement of income and expenses, including current personnel costs and full-time equivalent statistics.

Q. The director may require monthly financial statements if the director determines that the financial viability of a nursing care institution or hospice is in question. The director shall prescribe the requirements of these statements.

R. The total amount of state monies that may be spent in any fiscal year by the administration for long-term care shall not exceed the amount appropriated or authorized by section 35-173 for that purpose. This article shall not be construed to impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

36-2939. Long-term care system services

A. The following services shall be provided by the program contractors to members who are determined to need institutional services pursuant to this article:

1. Nursing facility services other than services in an institution for tuberculosis or mental disease.
2. Notwithstanding any other law, behavioral health services if these services are not duplicative of long-term care services provided as of January 30, 1993 under this subsection and are authorized by the program contractor through the long-term care case management system. If the administration is the program contractor, the administration may authorize these services.
3. Hospice services. For the purposes of this paragraph, "hospice" means a program of palliative and supportive care for terminally ill members and their families or caregivers.
4. Case management services as provided in section 36-2938.
5. Health and medical services as provided in section 36-2907.
6. Dental services in an annual amount of not more than one thousand dollars per member.

B. In addition to the services prescribed in subsection A of this section, the department, as a program contractor, shall provide the following services if appropriate to members who have a developmental disability as defined in section 36-551 and are determined to need institutional services pursuant to this article:

1. Intermediate care facility services for a member who has a developmental disability as defined in section 36-551. For purposes of this article, a facility shall meet all federally approved standards and may only include the Arizona training program facilities, a state owned and operated service center, state owned or operated community residential settings and private facilities that contract with the department.
2. Home and community based services that may be provided in a member's home, at an alternative residential setting as prescribed in section 36-591 or at other behavioral health alternative residential facilities licensed by the department of health services and approved by the director of the Arizona health care cost containment system administration and that may include:
 - (a) Home health, which means the provision of nursing services, home health aide services or medical supplies, equipment and appliances, that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on a physician's orders and in accordance with federal law. Physical therapy, occupational therapy, or speech and audiology services provided by a home health agency may be provided in accordance with federal law. Home health agencies shall comply with federal bonding requirements in a manner prescribed by the administration.
 - (b) Home health aide, which means a service that provides intermittent health maintenance, continued treatment or monitoring of a health condition and supportive care for activities of daily living provided within a member's residence.
 - (c) Homemaker, which means a service that provides assistance in the performance of activities related to household maintenance within a member's residence.
 - (d) Personal care, which means a service that provides assistance to meet essential physical needs within a member's residence.
 - (e) Day care for persons with developmental disabilities, which means a service that provides planned care supervision and activities, personal care, activities of daily living skills training and habilitation services in a group setting during a portion of a continuous twenty-four-hour period.

(f) Habilitation, which means the provision of physical therapy, occupational therapy, speech or audiology services or training in independent living, special developmental skills, sensory-motor development, behavior intervention, and orientation and mobility in accordance with federal law.

(g) Respite care, which means a service that provides short-term care and supervision available on a twenty-four-hour basis.

(h) Transportation, which means a service that provides or assists in obtaining transportation for the member.

(i) Other services or licensed or certified settings approved by the director.

C. In addition to services prescribed in subsection A of this section, home and community based services may be provided in a member's home, in an adult foster care home as prescribed in section 36-401, in an assisted living home or assisted living center as defined in section 36-401 or in a level one or level two behavioral health alternative residential facility approved by the director by program contractors to all members who do not have a developmental disability as defined in section 36-551 and are determined to need institutional services pursuant to this article. Members residing in an assisted living center must be provided the choice of single occupancy. The director may also approve other licensed residential facilities as appropriate on a case-by-case basis for traumatic brain injured members. Home and community based services may include the following:

1. Home health, which means the provision of nursing services, home health aide services or medical supplies, equipment and appliances, that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on a physician's orders and in accordance with federal law. Physical therapy, occupational therapy, or speech and audiology services provided by a home health agency may be provided in accordance with federal law. Home health agencies shall comply with federal bonding requirements in a manner prescribed by the administration.

2. Home health aide, which means a service that provides intermittent health maintenance, continued treatment or monitoring of a health condition and supportive care for activities of daily living provided within a member's residence.

3. Homemaker, which means a service that provides assistance in the performance of activities related to household maintenance within a member's residence.

4. Personal care, which means a service that provides assistance to meet essential physical needs within a member's residence.

5. Adult day health, which means a service that provides planned care supervision and activities, personal care, personal living skills training, meals and health monitoring in a group setting during a portion of a continuous twenty-four-hour period. Adult day health may also include preventive, therapeutic and restorative health related services that do not include behavioral health services.

6. Habilitation, which means the provision of physical therapy, occupational therapy, speech or audiology services or training in independent living, special developmental skills, sensory-motor development, behavior intervention, and orientation and mobility in accordance with federal law.

7. Respite care, which means a service that provides short-term care and supervision available on a twenty-four-hour basis.

8. Transportation, which means a service that provides or assists in obtaining transportation for the member.

9. Home delivered meals, which means a service that provides for a nutritious meal that contains at least one-third of the recommended dietary allowance for an individual and that is delivered to the member's residence.

10. Other services or licensed or certified settings approved by the director.

D. The amount of money expended by program contractors on home and community based services pursuant to subsection C of this section shall be limited by the director in accordance with the federal monies made available to this state for home and community based services pursuant to subsection C of this section. The director shall establish methods for the allocation of monies for home and community based services to program contractors and shall monitor expenditures on home and community based services by program contractors.

E. Notwithstanding subsections A, B, C and F of this section, no service may be provided that does not qualify for federal monies available under title XIX of the social security act or the section 1115 waiver.

F. In addition to services provided pursuant to subsections A, B and C of this section, the director may implement a demonstration project to provide home and community based services to special populations, including persons with disabilities who are eighteen years of age or younger, are medically fragile, reside at home and would be eligible for supplemental security income for the aged, blind or disabled or the state supplemental payment program, except for the amount of their parent's income or resources. In implementing this project, the director may provide for parental contributions for the care of their child.

G. Subject to section 36-562, the administration by rule shall prescribe a deductible schedule for programs provided to members who are eligible pursuant to subsection B of this section, except that the administration shall implement a deductible based on family income. In determining deductible amounts and whether a family is required to have deductibles, the department shall use adjusted gross income. Families whose adjusted gross income is at least four hundred percent and less than or equal to five hundred percent of the federal poverty guidelines shall have a deductible of two percent of adjusted gross income. Families whose adjusted gross income is more than five hundred percent of adjusted gross income shall have a deductible of four percent of adjusted gross income. Only families whose children are under eighteen years of age and who are members who are eligible pursuant to subsection B of this section may be required to have a deductible for services. For the purposes of this subsection, "deductible" means an amount a family, whose children are under eighteen years of age and who are members who are eligible pursuant to subsection B of this section, pays for services, other than departmental case management and acute care services, before the department will pay for services other than departmental case management and acute care services.

G-5

DEPARTMENT OF HEALTH SERVICES (F-18-0204)

Title 9, Chapter 23, All Articles



GOVERNOR'S REGULATORY REVIEW COUNCIL

STAFF MEMORANDUM – FIVE-YEAR REVIEW REPORT

MEETING DATE: February 6, 2018

AGENDA ITEM: G-5

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

FROM: Council Staff

DATE : January 23, 2018

SUBJECT: DEPARTMENT OF HEALTH SERVICES (F-18-0204)

Title 9, Chapter 23, Article 1, Definitions; Article 2, Arizona Dental Sealant Program; Article 3, Arizona Fluoride Mouthrinse Program

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year review report from the Arizona Department of Health Services (Department) covers eight rules in A.A.C. Title 9, Chapter 23 related to oral health. The rules were last amended in 2008. The rules relate to the Arizona Dental Sealant Program and the Arizona Fluoride Mouthrinse Program. In its 2012 five-year review report, the Department did not propose any action on the rules. Accordingly, no action has been taken on the rules in the past five years.

The Department indicates that the Dental Sealant Program works with county health departments and other entities to arrange for licensed dentists and dental hygienists to provide dental sealants and dental screenings at participating schools. The Department states that the Fluoride Mouthrinse Program supplies participating schools with fluoride mouthrinse for its students, as the Department purchases fluoride mouthrinse under the direction of a licensed dentist or medical director and sends it to participating schools.

Proposed Action

No action is proposed on the rules.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to both general and specific authority for the rules. Of particular significance is A.R.S. § 36-136(G), under which the Department “may make and

amend rules necessary for the proper administration and enforcement of the laws relating to the public health.”

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The rules detail the administration of oral health programs that provide dental sealants, dental screenings, and fluoride mouthrinse to students at participating schools.

Data from the 2016-2017 school year shows that the Arizona Dental Sealant program provided approximately 8,750 children with dental sealants at 406 participating schools, and the Arizona Fluoride Mouthrinse Program provided approximately 17,200 children with fluoride mouthrinse at 85 participating schools.

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

Key stakeholders include county health departments, participating schools, their students, and the Department. The Department has determined that the rules impose the least burden and costs to those who are regulated.

4. Has the agency received any written criticisms of the rules over the last five years?

No. The Department indicates that it has received no written criticism of the rules over the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?

Yes. The Department indicates that the rules are effective, are consistent with other rules and statutes, and are clear, concise, and understandable.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Department indicates that the rules are enforced as written.

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

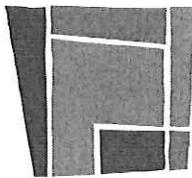
No. The Department indicates that no federal laws relate to the rules.

8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable, as the rules were adopted prior to July 29, 2010.

9. Conclusion

No action is proposed on the rules. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Council staff recommends that the report be approved.



ARIZONA DEPARTMENT OF HEALTH SERVICES

POLICY & INTERGOVERNMENTAL AFFAIRS

November 30, 2017

Nicole O. Colyer, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 10, Article 13, Behavioral Health Specialized Transitional Facility

Dear Ms. Colyer:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 23 is due to the Council no later than November 30, 2017. The Arizona Department of Health Services (Department) has reviewed A.A.C. Title 9, Chapter 23 and is enclosing a report to the Council for this rule.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. A five-year-review summary, information that is identical for all the rules, information for individual rules, the rules reviewed, the general and specific authority, and the most recent economic impact statement associated with the rules are included in the package (there were no written criticisms to submit). As described in the report, the Department plans to keep in place the rules in A.A.C. Title 9, Chapter 23.

The Department certifies that it is in compliance with A.R.S. § 41-1091.

If you need any further information, please contact me at (602) 542-1020.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert Lane'.

Robert Lane
Director's Designee

RL:rms
Enclosures

Douglas A. Ducey | Governor Cara M. Christ, MD, MS | Director



ARIZONA DEPARTMENT OF HEALTH SERVICES

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 23. DEPARTMENT OF HEALTH SERVICES

ORAL HEALTH

ARTICLE 1. DEFINITIONS

ARTICLE 2. ARIZONA DENTAL SEALANT PROGRAM

ARTICLE 3. ARIZONA FLUORIDE MOUTHRINSE PROGRAM

NOVEMBER 2017

FIVE-YEAR-REVIEW REPORT
TITLE 9. HEALTH SERVICES
CHAPTER 23. DEPARTMENT OF HEALTH SERVICES
ORAL HEALTH
ARTICLE 1. DEFINITIONS
ARTICLE 2. ARIZONA DENTAL SEALANT PROGRAM
ARTICLE 3. ARIZONA FLUORIDE MOUTHRINSE PROGRAM
NOVEMBER 2017

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4.	CURRENT RULES	Attachment A
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6.	ECONOMIC IMPACT STATEMENT	Attachment C

FIVE-YEAR-REVIEW SUMMARY

Arizona Revised Statutes (A.R.S.) § 36-104(1)(c)(i) requires the Arizona Department of Health Services (the “Department”) to administer community health services, including preventive dental care. A.R.S. § 36-132(A)(10) requires the Department to encourage, administer, and provide dental health care services, and to help coordinate local dental public health programs, in cooperation with the Arizona Dental Association. A.R.S. § 36-138 establishes the oral health fund consisting of money received by the Department as reimbursement from the Arizona Health Care Cost Containment System (“AHCCCS”) for dental services provided by the Department.

The Department has adopted in Arizona Administrative Code (A.A.C.) Title 9, Chapter 23, effective January 8, 2008, rules to implement these statutes. 9 A.A.C. 23, Article 1 contains definitions for the Department's oral health programs. The rules for the Arizona Dental Sealant Program are contained in 9 A.A.C. 23, Article 2. Under the Arizona Dental Sealant Program, the Department contracts with county health departments and other entities to arrange for licensed dentists and dental hygienists to provide dental sealants and dental screenings at participating schools. The rules in 9 A.A.C. 23, Article 3 are for the Arizona Fluoride Mouthrinse Program. The Arizona Fluoride Mouthrinse Program is a school-based program that supplies participating schools with fluoride mouthrinse for its students. For the Arizona Fluoride Mouthrinse Program, the Department purchases fluoride mouthrinse under the direction of a licensed dentist or medical director and sends it to participating schools.

After an analysis of the rules in 9 A.A.C. 23, the Department has determined that the rules are effective, clear, concise, and understandable. The Department has further determined that the rules impose the least burden and costs on regulated persons. The Department has received no written criticism of the rules. The Department believes the rules are sufficient to protect public health and does not plan to amend the rules in 9 A.A.C. 23 unless a threat to public health or safety arises that would require amending the rules.

INFORMATION THAT IS IDENTICAL FOR ALL RULES

1. Authorization of the rule by existing statute

General authority for the rules in 9 A.A.C. 23 is located in 36-136(G). Specific authority can be found in A.R.S. §§ 36-104(1)(c)(i), 36-132(A)(10), and 36-138.

2. The purpose of the rule

The purpose of the rules in 9 A.A.C. 23 is to establish administrative requirements for the Arizona Dental Sealant Program and Arizona Fluoride Mouthrinse Program.

3. Analysis of effectiveness in achieving the objective

The rules in 9 A.A.C. 23 are effective in achieving their respective objectives.

4. Analysis of consistency with state and federal statutes and rules

The rules in 9 A.A.C. 23 are consistent with statutes and rules.

5. Status of enforcement of the rule

The rules in 9 A.A.C. 23 are enforced as written by the Department.

6. Analysis of clarity, conciseness, and understandability

The rules are clear, concise and understandable.

7. Summary of the written criticisms of the rule received within the last five years

The Department has received no criticisms of the rules in the past five years.

8. Economic, small business, and consumer impact comparison

The rules in 9 A.A.C. 23 were adopted by final rulemaking published in the Arizona Administrative Register (A.A.R.) at 13 A.A.R. 4190, effective January 8, 2008. As part of the final rulemaking, the Department submitted an economic, small business, and consumer impact statement (“EIS”). The EIS stated that the 9 A.A.C. 23 was adopted using practices already in place to implement the Arizona Dental Sealant Program and the Arizona Fluoride Mouthrinse Program. During the 2005-2006 school year, the Arizona Dental Sealant Program provided approximately 8,461 children with dental sealants at 160 participating schools, and the Arizona Fluoride Mouthrinse Program provided approximately 20,875 children with fluoride mouthrinse at 85 participating schools. Recent data from the 2016-2017 school year shows that the Arizona Dental Sealant program provides approximately 8,750 children with dental sealants at 406 participating schools, and the Arizona Fluoride Mouthrinse Program provided approximately 17,200 children with fluoride mouthrinse at 85 participating schools.

Annual costs and revenues are designated as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater. The EIS stated that the rulemaking would impose a minimal burden on county health departments and other entities contracted with the Department for the Arizona Dental Sealant Program, schools participating in the Arizona Dental Sealant Program, schools participating in the Arizona Fluoride Mouthrinse

Program, and the Department. Children receiving dental sealants or fluoride mouthrinse through the program were estimated to receive an ongoing benefit from better oral health as a result of tooth decay prevention. Parents of children participating in the Department's oral health programs, participating schools, the general public, and the state's health care system were also projected to receive a benefit from bolstering the oral health of Arizona children.

In terms of costs, the EIS stated that the Department used approximately \$290,000 from the Maternal and Child Health Block Grant and state funds during the 2005-2006 school year. The Department received approximately \$240,000 in AHCCCS reimbursement for services provided to AHCCCS-enrolled children participating in the Arizona Dental Sealant Program. During the 2016-2017 school year, the Department used approximately \$505,000 from the Maternal and Child Health block Grant and state funds and received approximately \$282,600 in AHCCCS reimbursement for services provided to AHCCSS enrolled-children participating in the Arizona Dental Sealant Program.

The Department believes that the costs and benefits identified in the EIS are generally consistent with the actual costs and benefits of the rules.

9. Summary of business competitiveness analyses of the rules

The Department did not receive a business competitiveness analysis of the rules in the last five years.

10. Status of the completion of action indicated in the previous five-year-review report

The Department's November 2012 five-year-review report concluded that the rules encompassed within 9 A.A.C. 23 were sufficient to protect public health and did not require amending. Due to the fact that no substantial issues have arisen since November of 2012, the Department has successfully complied with its plan of action to keep the rules in place as written.

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

The Department has determined that the rules 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. Analysis of stringency compared to federal laws

The rules in 9 A.A.C. 23 are not governed by federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

Not applicable.

14. Plan of Action

The Department believes the rules are sufficient to protect public health and does not plan to amend the rules in 9 A.A.C. 23 unless a threat to public health or safety arises that would require amending the rules.

INFORMATION FOR INDIVIDUAL RULES

ARTICLE 1. DEFINITIONS

R9-23-101. Definitions

2. Objective

The objective of the rule is to define terms and phrases used in the 9 A.A.C. 23 to enable a reader to have a better understanding of the requirements contained in 9 A.A.C. 23.

ARTICLE 2. ARIZONA DENTAL SEALANT PROGRAM

R9-23-201. Application Process

2. Objective

The objectives of the rule are to:

- a. Set out the contents of the application form a school's contact person must submit to the Department in order to participate in the Arizona Dental Sealant Program.
- b. Establish the start date on which the Department accepts applications for the next school year.

R9-23-202. Approval Criteria for Participation

2. Objective

The objective of the rule is to establish the criteria the Department uses to approve a school applying to participate in the Arizona Dental Sealant Program.

R9-23-203. Participation Requirements

2. Objective

The objective of the rule is to ensure that the contact person for a participating school has on file at the school parental consent forms for all children participating in the Arizona Dental Sealant Program.

ARTICLE 3. ARIZONA FLUORIDE MOUTHRINSE PROGRAM

R9-23-301. Application Process

2. Objective

The objectives of the rule are to:

- a. Specify the contents of the application form a school's contact person must submit to the Department in order to participate in the Arizona Fluoride Mouthrinse Program.
- b. Establish the start date on which the Department accepts applications for the next school year.

R9-23-302. Approval Criteria for Participation

2. Objective

The objective of the rule is to establish the criteria the Department uses to approve a school applying to participate in the Arizona Fluoride Mouthrinse Program.

R9-20-303. Participation Requirements

2. Objective

The objectives of the rule are to:

- a. Require that the contact person for a participating school has on file at the school parental consent forms for all children participating in the Arizona Fluoride Mouthrinse Program.
- b. Ensure that a school's contact person properly stocks, stores, and secures a school's supply of fluoride mouthrinse packets and mixed fluoride mouthrinse.

R9-20-304. Continuing Participation

2. Objective

The objectives of the rule are to:

- a. Require the submission of an annual written program evaluation
- b. Specify the contents of the Department's annual written program evaluation
- c. Grant the Department discretion to discontinue a school's participation in the Arizona Fluoride Mouthrinse Program under certain circumstances.
- d. Require participating schools to submit a renewed application at the end of the third year of participation in the Arizona Fluoride Mouthrinse Program.
- e. Ensure that a school's contact person properly stocks, stores, and secures a school's supply of fluoride mouthrinse packets and mixed fluoride mouthrinse.

ATTACHMENT A

CHAPTER 23. ORAL HEALTH

R9-23-101. Definitions

In this Chapter, unless the context otherwise requires:

1. "Child" means an individual who is:
 - a. 18 years of age or less, or
 - b. More than 18 years of age and attending school.
2. "Contact person" means an individual in charge of an oral health program at a school.
3. "Dental care" means oral health prevention, maintenance, and treatment of diseases, injury, or other dental conditions.
4. "Dental sealant services" means activities related to the application of a dental sealant by a dentist or dental hygienist, including dental care provided to a child.
5. "Department" means the Arizona Department of Health Services.
6. "National School Lunch Program" means the federally funded assisted meal program as established under 42 U.S.C. 1751 to 42 U.S.C. 1769h.
7. "Optimally fluoridated" means the level of fluoride in water recommended by the Centers for Disease Control and Prevention to prevent tooth decay.
8. "Parent" has the same meaning as in A.R.S. § 15-101.
9. "School" has the same meaning as in A.R.S. § 36-671.
10. "School year" means the period between July 1 and the following June 30.

R9-23-201. Application Process

A. For a school to participate in the Arizona Dental Sealant Program for a school year and receive dental sealant services, a contact person shall submit to the Department a completed application form provided by the Department that contains:

1. The contact person's name, title, telephone number, fax number, and if applicable, e-mail address;
2. The school's name, street address, and telephone number;
3. The school's mailing address if different than the school's street address;
4. The name of the school district and county where the school is located;
5. The percentage of children attending the school that participated in the National School Lunch Program during the current school year; and

6. The number of children attending second and sixth grades.
- B. The Department accepts applications beginning on April 1 for the next school year.

R9-23-202. Approval Criteria for Participation

The Department uses the following criteria when determining whether to approve a school for participation in the Arizona Dental Sealant Program:

1. The amount of funding available for the Arizona Dental Sealant Program,
2. The time and date the Department received the application,
3. The school's percentage of children attending the school that participated in the National School Lunch Program, and
4. Whether the school has at least 25 children in second and sixth grades when the number of children in each grade is added together.

R9-23-203. Participation Requirements

The contact person for a participating school shall ensure that each child participating in the Arizona Dental Sealant Program has on file at the school a parental consent form provided by the Department that includes:

1. The child's name, and
2. A parent's signature indicating permission to participate in the Arizona Dental Sealant Program.

R9-23-301. Application Process

A. For a school to participate in the Arizona Fluoride Mouthrinse Program for three years, a contact person shall submit a completed application form provided by the Department to the Department that contains:

1. The contact person's name, title, telephone number, fax number, and if applicable, e-mail address;
2. The school's name, street address, mailing address, and telephone number;
3. The name of the school district and county where the school is located;
4. The grades in the school that will participate in the Arizona Fluoride Mouthrinse Program during the next school year;
5. The anticipated number of children that will participate in the Arizona Fluoride Mouthrinse Program during the next school year;

6. The percentage of children attending the school that participated in the National School Lunch Program during the current school year; and
 7. The flavor and amount of fluoride mouthrinse needed.
- B. The Department accepts applications beginning on March 1 for the next school year.

R9-23-302. Approval Criteria for Participation

The Department uses the following criteria when determining whether to approve a school for participation in the Arizona Fluoride Mouthrinse Program:

1. The amount of funding available for the Arizona Fluoride Mouthrinse Program,
2. The time and date the Department received the application,
3. The school's percentage of children attending the school that participated in the National School Lunch Program,
4. Whether the school is located in a community where the water is not optimally fluoridated,
5. Whether the school participated in the Arizona Fluoride Mouthrinse Program during the previous school year, and
6. If the school did participate in the Arizona Fluoride Mouthrinse Program, whether the school complied with R9-23-304.

R9-23-303. Participation Requirements

The contact person for a participating school shall:

1. Ensure that each child participating in the Arizona Fluoride Mouthrinse Program has a parental consent form provided by the Department that includes:
 - a. The child's name, and age;
 - b. The school's name;
 - c. The child's grade;
 - d. A parent's signature indicating permission to participate in the Arizona Fluoride Mouthrinse Program; and
 - e. The date the parent signed the parental consent form;
2. Maintain a record of the dates the child participated in the Arizona Fluoride Mouthrinse Program for as long as the child is attending the school;
3. Request fluoride mouthrinse;

4. Ensure that the fluoride mouthrinse packets are stored at room temperature in a locked storage area inaccessible to children; and
5. Ensure that the mixed fluoride mouthrinse is stored at room temperature and inaccessible to children.

R9-23-304. Continuing Participation

A. By March 15 in each year of participation, the contact person for a participating school shall submit to the Department a written program evaluation on a form provided by the Department that includes:

1. The contact person's name, title, address, telephone number, fax number, and if applicable, e-mail address;
2. The school's name, street address, mailing address, and telephone number;
3. The name of the school district and county where the school is located;
4. The number of years the school has participated in the Arizona Fluoride Mouthrinse Program;
5. The percentage of children attending the school that participated in the National School Lunch Program during the current school year;
6. The grades in the school that participated in the Arizona Fluoride Mouthrinse Program;
7. The grades in the school that will participate in the Arizona Fluoride Mouthrinse Program during the next school year;
8. The number of children that participated in the Arizona Fluoride Mouthrinse Program during the current school year;
9. The number of children the contact person anticipates will participate in the Arizona Fluoride Mouthrinse Program during the next school year;
10. The number of packets or boxes of fluoride mouthrinse unused at the end of the current school year, if applicable;
11. The number of packets or boxes of fluoride mouthrinse needed for the next school year; and
12. The flavor of fluoride mouthrinse.

B. In addition to the requirements in R9-23-304, the Department may discontinue participation in the Arizona Fluoride Mouthrinse Program if:

1. A participating school does not submit a program evaluation,
2. Less than 70% of the children attending the school participated in the Arizona Fluoride Mouthrinse Program, or
3. The school administered the Arizona Fluoride Mouthrinse Program for eight months or less.

C. At the end of the third year of participation, if a school wishes to continue participation in the Arizona Fluoride Mouthrinse Program, the school shall apply to participate according to the requirements in R9-23-301.

ATTACHMENT B

STATUTORY AUTHORITY

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 § 36-103. The director shall:

1. Administer the following services:

(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.

36-132. Department of health services; functions; contracts

A. The department, in addition to other powers and duties vested in it by law, shall:

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by § 36-138.

36-136. Powers and duties of director; compensation of personnel; rules; definition

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

36-138. Oral health fund; nonlapsing

A. The oral health fund is established consisting of monies received by the department as reimbursement from Arizona health care cost containment system contractors for dental services provided by the department pursuant to § 36-132, subsection A, paragraph 10. The department shall administer the fund and shall expend monies from the fund for dental health services. On notice from the department, 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.

B. Fund monies:

1. Do not revert to the state general fund.
2. Are exempt from the provisions of § 35-190 relating to lapsing of appropriations.
3. Are continuously appropriated.