ARIZONA DEPARTMENT OF ECONOMIC SECURITY (F-16-0301)
Title 6, Chapter 10, Article 1, Jobs: General Provisions; Article 3: Job Displacement Grievance Procedures

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: April 5, 2016 **AGENDA ITEM: D-1**

TO: Members of the Governor's Regulatory Review Council

FROM: Shama Thathi, Staff Attorney

DATE : March 18, 2016

SUBJECT: **ARIZONA DEPARTMENT OF ECONOMIC SECURITY (F-16-0301)**
Title 6, Chapter 10, Article 1, Jobs: General Provisions; Article 3: Job Displacement Grievance Procedures

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Department of Economic Security (Department) is "to provide social services, welfare programs, vocational rehabilitation and employment services…." Laws 2008, Ch. 104, § 3. This five-year review report covers 27 rules in A.A.C. Title 6, Chapter 10 (Chapter 10) that relate to the Jobs Program, Arizona's mandatory employment and training program for work-eligible individuals in households receiving Temporary Assistance for Needy Families (TANF) cash assistance.

TANF cash assistance is provided through a federal TANF block grant, established by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). The block grant includes cash assistance funds, work program funds, and emergency assistance funds for the purpose of assuring that needy recipients receive cash assistance and employment services that will help them avoid long-term welfare dependence. The Jobs Program engages work-eligible individuals in a variety of work-related activities to improve their employability and, depending on funding, offers supportive services to remove barriers to employment.

The Department elected to not review three rules in Article 1 and one rule in Article 3, and those rules have now expired.

Article Contents

- Article 1 contains twenty-four rules that provide definitions, address work requirement and criteria for selecting participants for the Jobs Program, and list various training and employment programs for participant's enrollment.
- Article 3 contains three rules that relate to the job displacement grievance procedures.

Year that Each Rule was Last Amended or Newly Made

All rules in Article 1 and Article 3 were last amended by final rulemaking on January 14, 2006.

Proposed Action

The Department proposes to amend all rules in Articles 1 and 3. Specific actions are outlined throughout this memorandum. The Department anticipates submitting the Notice of Final Rulemaking to the Council by February 2017. In addition, the Department intends to revise the Jobs Program policy manual, available on their website, by July 2016.

Summary of Reasons for the Proposed Action

The majority of the rules need to be amended because they contain obsolete terms and outdated requirements. Additional problems with a number of rules have led the Department to deem those rules ineffective. Also, many rules lack clarity, conciseness, and understandability.

Exemption or Request and Approval for Exception from the Moratorium

On April 2, 2015 the Department sent a request to the Governor's Office for an exception from the rulemaking moratorium on articles in Title 6, Chapter 10. Based on guidance from the Governor's Office, the Department submitted a shorter exception request list which included the Chapter 10 rulemaking. On March 7, 2016, the Department received an approval from the Governor's Office to proceed with the rulemaking process for Title 6, Chapter 10.

Substantive or Procedural Concerns

In a five-year-review report approved by the Council on July 12, 2011, the Department indicated that it would take action to amend nine rules and submit the Notice of Final Rulemaking to the Council by December 2012. However, over the last five years, little has changed with respect to the rules.

The Department's pattern of inaction has not served the best interests of the regulated community. It is true that the Department has had to work around the rulemaking moratorium since 2009. However, the Department received an exception from the moratorium to draft rulemaking for Chapter 10 in December 2009, prior to the Council's approval of the 2011 five-year-review report. The Department filed a Notice of Docket Opening with the Secretary of State in June 2010 and July 2011. No action was taken on Chapter 10 until April 2014, when the

Department transmitted the draft rulemaking to the Attorney General's Office for legal review. Progress on that rulemaking was then halted in January, upon Governor Ducey's signing of Executive Order 2015-01.

Staff's concerns have been somewhat alleviated by the steps taken by the Department over the past year and a half, which indicate a willingness and desire to move forward with the much-needed amendments to these rules.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. <u>Has the agency certified that it is in compliance with A.R.S. § 41-1091?</u>

Yes. The Department has certified that it is in compliance with A.R.S. § 41-1091.

2. <u>Has the agency analyzed the rules' effectiveness in achieving their objectives?</u>

Yes. The Department indicates that the rules are effective, with the following exceptions:

- R6-10-101 contains obsolete terms and lacks current and necessary terms, such as "core activity" should be replaced with "primary activity" and reference to "Jobs" instead of "the Jobs Program."
- R6-10-102 contains outdated requirements for the Jobs Program.
- R6-10-104 contains outdated selection and priority of service requirements.
- R6-10-105 is ineffective as the name of the Jobs Introduction meeting has changed.
- R6-10-106 contains an outdated process for a temporary deferral from the Jobs Program.
- R6-10-107 does not refer to the current process used to conduct specialized assessments of Jobs Program participants.
- R6-10-108 is ineffective as the term for the referenced plan has changed and requirements to revise the plan have changed.
- R6-10-109 is ineffective as the term for activities has changed and core activities for Jobs Program participants have changed.
- R6-10-110 is ineffective as participation that meets the Jobs Program work requirement has changed.
- R6-10-111 is ineffective because the term for "secondary activities" has changed to "non-core activities."
- R6-10-112 contains outdated limitations on activities.
- R6-10-119 contains an outdated list of support services that are no longer available to participants.
- R6-10-121 is ineffective as the constitution of "failure to participate" has changed. The Department intends to redefine "failure to participate" in the upcoming rulemaking.
- R6-10-123 contains an outdated sanction process.
- R6-10-124 contains an outdated withholding process.

3. <u>Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?</u>

No. The Department indicates that it has not received any written criticism of the rules in the last five years.

4. <u>Has the agency analyzed whether the rules are authorized by statute?</u>

Yes. As general authority, the Department cites:

- Under A.R.S. § 46-134(10), the Department is required to "[m]ake rules, and take action necessary…to carry out the provisions of this title [Title 46, Welfare], that are not inconsistent with this title."
- Under A.R.S. § 41-1954(A)(1)(b) and (c), the Department is required to administer services such as "[i]ndividual and family services" and "[i]ncome maintenance services…."
- Under A.R.S. § 41-1954(A)(3), the Department shall "[a]dopt rules it deems necessary or desirable to further the objectives and programs of the department."
- Under A.R.S. § 41-1954(E), the Department shall "provide for cash assistance to two parent families if both parents are able to work only on documented participation by both parents in work activities…."

The Department also cites to the following statutes that provide specific authority for the rules:

- A.R.S. § 46-101 defines relevant terms such as "jobs program," "needy family," and "work activities."
- Under A.R.S. § 46-299, Department has the authority to determine which applicants shall engage in work activities. In addition, "[t]he department shall adopt rules that establish good cause reasons that excuse the participant from engaging in work activities."
- Under A.R.S. § 46-300, "[t]he department shall impose sanctions…for any noncompliance with the work activities requirements."

5. <u>Has the agency analyzed the rules' consistency with other rules and statutes?</u>

Yes. The Department indicates that the rules are consistent with state and federal law, except for the following rules that need to be amended to reflect the 2007 changes to A.R.S. § 46-300 and changes to the federal law made by the Deficit Reduction Act of 2005.

- R6-10-101 references outdated terms. For example, "primary activity" should be replaced by "core activity."
- R6-10-102 does not conform to the new federal work participation requirements.

- R6-10-103 contains obsolete selection and priority requirements within the Jobs Program. The Family Assistance Administration is now responsible for approving a household for TANF and referring work eligible individuals to the Jobs Program.
- R6-10-104 is inconsistent because the name of the meeting, activities, and requirements of the meetings have changed.
- R6-10-109 contains an outdated list of core activities for the Jobs Program.
- R6-10-110 does not conform to the new requirement for participants to meet the work requirement.
- R6-10-111 contains an outdated list of non-core activities for the Jobs Program.
- R6-10-121 does not conform to the new constitution of "failure to participation."
- R6-10-122 outlines an obsolete sanction process. The Jobs Program requires the case manager to mail a written Notice of Request for Good Cause Information/Last Change to Stop the Sanction Appointment to the participant. The notice gives the participant another chance to comply with the work requirements.
- R6-10-124 is inconsistent because the withholding process has changed. The Jobs Program withholds TPEP cash assistance until the participant complies with the appropriate requirements.

6. <u>Has the agency analyzed the current enforcement status of the rules?</u>

Yes. The Department indicates that it enforces the rules to the extent that they are consistent with federal or state law.

7. <u>Has the agency analyzed whether the rules are clear, concise, and understandable?</u>

Yes. The Department indicates that several of the rules contain outdated terminology. For example, the terms "primary activity" and "secondary activity" are outdated, but are still used throughout the Chapter 10 rules. The Department identified the following additional changes that would make the rules more clear, concise, and understandable:

- In R6-10-101, the term "primary activity" should be replaced with "core activity" and the rule should reference "Jobs" instead of "the Jobs Program."
- R6-10-101.1 should clarify that it applies to both Jobs Program providers and participants.
- R6-10-102 needs to provide more comprehensive information relevant to the current requirements of the Jobs Program.
- R6-10-103 should reference the new name of the program.
- R6-10-104 needs to provide the current selection and priority of service requirements.
- R6-10-105 should be updated to reference the new name of the meeting, as well as activities and requirements of the meeting. The Jobs Introduction Meeting is now called the Initial Jobs Program Case Management Appointment.
- R6-10-106 does not provide the updated process for a temporary deferral from the Jobs Program and verification methods for domestic violence.

- R6-10-107 should reference the updated process for conducting specialized assessments of Jobs Program participant. The new process requires that the assessments be conducted by a licensed or certified professional.
- In R6-10-108, "employment plan" should be changed to "employment and career development plan." Further, the rule should reference the new requirements to revise the plan.
- R6-10-109 needs to provide an updated list of core activities for the Jobs Program.
- R6-10-110 needs to provide more comprehensive information relevant to current requirements of participation that meets the Jobs Program work requirement.
- R6-10-111 should reflect new terminology and updated list of non-core activities for Jobs Program participants.
- R6-10-112 is confusing because it contains obsolete limitations.
- R6-10-113 should provide the requirement for a formal, written training plan.
- R6-10-114 should reflect the new program and plan names. For example, "employment plan" should be replaced by "employment and career development plan."
- R6-10-115 needs to provide clear references to the types of community service programs that satisfy work participation requirements.
- R6-10-116 should reflect the updated study time for coursework that is counted towards the work participation requirement.
- R6-10-117 should reflect the new program and plan names.
- R6-10-119 needs to provide an updated list of services available to Jobs Program participants.
- R6-10-120 is unclear because it fails to address the necessary action to be taken to remedy a complaint.
- R6-10-121 should reference the new components of "failure to participate."
- R6-10-122 should reflect the new program and plan names.
- R6-10-123 needs to provide more comprehensive information relevant to the current sanction process.
- R6-10-124 needs to provide more comprehensive information relevant to the current withholding process.
- R6-10-302 should reference "Jobs" instead of "the Jobs Program."
- R6-10-303 is confusing because it contains an obsolete program, JOBSTART.

8. <u>Has the agency analyzed whether:</u>

a. <u>The rules are more stringent than corresponding federal law?</u>

Yes. The Department indicates that the rules are not more stringent than corresponding federal statute and regulations.

b. <u>There is statutory authority to exceed the requirements of federal law?</u>

Not applicable.

9. For rules adopted after July 29, 2010, has the agency analyzed whether:

a. The rules require issuance of a regulatory permit, license or agency authorization?

Not applicable. The rules do not require issuance of a permit or license.

b. It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. The Department did not complete the course of action in the previous five-year review report approved by the Council on July 12, 2011. In that report, the Department proposed amendments to R6-10-101, R6-10-109, R6-10-110, R6-10-111, R6-10-112, R6-10-115, R6-10-117, R6-10-121, and R6-10-123 and submit the Notice of Final Rulemaking to Council by December 2012. On December 29, 2009, the Department received an exemption to proceed through final rulemaking for Chapter 10. The Department published the Notice of Docket Opening for 6 A.A.C. 10 on June 10, 2010 and July 5, 2011. See 16 A.A.R. 929 and 17 A.A.R. 1310. The Department indicates that the draft rulemaking was submitted to the Attorney General's Office for legal review in April 2014, but it was put to a halt as a result of Executive Order 2015-01.

11. Has the agency included a proposed course of action?

Yes. The Department plans to make the aforementioned amendments to Article 1 and 3 in Title 6, Chapter 10 by February 2017.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: April 5, 2016 **AGENDA ITEM: D-1**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economist

DATE : March 18, 2016

SUBJECT: **ARIZONA DEPARTMENT OF ECONOMIC SECURITY (F-16-0301)**
Title 6, Chapter 10, Article 1, Jobs: General Provisions; Article 3: Job Displacement Grievance Procedures

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I have reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

The economic, small business, and consumer impact statement (EIS) from the most recent rulemaking in 2006 was available for the rules.

The rules in govern the Jobs Program, which is Arizona's mandatory employment and training program for work-eligible individuals in households receiving TANF Cash Assistance. Federal law specifies the work participation rate that each state is required to achieve. If the work participation rate is not met, the TANF grant to the State could be reduced.

As of November 2015, there were 5,117 TANF Cash Assistance recipients in Arizona. TANF recipients that are work-eligible are required to participate in the Jobs Program and are the population that the work participation rate applies. The work participation rate in FFY 2013 (October 2012 – September 2013) was 20.8% for all families and 54.4% for two-parent families. Arizona met the work participation rate requirements in FFY 2013 after caseload reduction credits were applied.

The Department believes the economic impact has primarily been as predicted for the rules in Articles 1 and 3.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department notes that a number of rules would be more effective, consistent, and clear if amended to reflect current requirements and terminology. For example, the work requirements stated in rule are outdated and do not reflect current Federal law and Department policy (R6-10-102: Work Requirement). In addition, statutory changes were made in 2007 to A.R.S. **§** 46-300 to require demonstration of compliance with work requirements to maintain TANF Cash Assistance eligibility and avoid sanctions; however, rule as amended in 2006, only requires the participant to express an intent to participate in work activities to avoid sanctions (R6-10-123: All Families Except TPEP Families; Sanction Process).

The Department intends to address the numerous inconsistencies and references to outdated terms in Chapter 10 following approval of an exception to the rules moratorium from the Governor's Office. It is recommended that the submitted rulemaking fully consider the impact of the rule package on businesses, particularly contracted entities. In FY 2007, the Jobs Program privatized case management and employment pursuant to A.R.S. **§** 46-300.01.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

DEPARTMENT OF ECONOMIC SECURITY
Your Partner For A Stronger Arizona

Douglas A. Ducey
Governor

Timothy Jeffries
Director

March 3, 2016

RECEIVED
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GRRC

Nicole A. Ong, Council Chair
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 402
Phoenix, Arizona 85007

Re: Five-year Review Report for A.A.C. Title 6, Chapter 10, Department of Economic Security, The Jobs Program

Dear Ms. Ong:

Enclosed is the Department of Economic Security's Five-year Review Report on A.A.C. Title 6, Chapter 10. Included in the report are copies of the authorizing statutes and rules, along with any available economic impact statements.

Pursuant to A.R.S. § 41-1056(A) and A.A.C. R1-6-301(C)(4), The Department certifies that it is in compliance with A.R.S. § 41-1091. The Department has not reviewed the following rules, and intends to let them expire under A.R.S. § 41-1056(J): R6-10-118, R6-10-125, R6-10-126, and R6-10-304.

Thank you for your attention to this report. If you have any questions, or require more information, please contact me at (602) 542-6555. The Department will be present at the Council meetings to respond to any questions the Council members may have about the report.

Sincerely,

Robert Hobbs
Lead Rules Analyst
(as Director's designee)

Enclosures

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Arizona Department of Economic Security

Five-year Review Report

Title 6. Economic Security

Chapter 10. DEPARTMENT OF ECONOMIC SECURITY

The Jobs Program

ARTICLE 1. JOBS: GENERAL PROVISIONS

ARTICLE 3. JOB DISPLACEMENT GRIEVANCE PROCEDURES

December 31, 2015

Revised March 16, 2016

INTRODUCTION

A. GENERAL

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) provides federal funds to states for the purpose of assuring that needy recipients receive cash assistance and employment services that will help them avoid long-term welfare dependence. PRWORA included the establishment of the Temporary Assistance for Needy Families (TANF) block grant, which includes cash assistance, work program funds, and emergency assistance funds.

Federal law mandates a percentage of TANF work eligible individuals participate in defined work activities for a minimum number of hours each month. Failure to achieve the required work rate on a statewide basis has implications that could result in a reduction in the State's TANF grant funds.

The Jobs Program is Arizona's mandatory employment and training program for work-eligible individuals in households receiving TANF Cash Assistance. The program engages work eligible individuals in a variety of work-related activities to improve their employability and offers supportive and some specialized services – dependent on funding – to remove barriers to employment. These activities and supportive services are provided to encourage and promote adequate employment at the earliest opportunity.

The Jobs Program is administered by the Employment Administration within the Division of Employment and Rehabilitation Services. Pursuant to A.R.S. 46-300.01, the Jobs Program case management and employment services were privatized beginning April 1, 2007. Contracts were awarded to Maximus and ResCare to operate the program in service delivery areas throughout the state. Maximus provides services to Jobs Program clients in Maricopa County, while ResCare provides services for the balance of the state.

B. RULES NOT REVIEWED IN THIS REPORT

The Department has not reviewed the rules listed below, and intends for the rules to expire because they are obsolete:

R6-10-118. Transportation-related Expenses

R6-10-125. Subsidized Employment – JOBSTART

R6-10-126. Employer Participation – JOBSTART

R6-10-304. Further Appeal

ANALYSIS OF RULES

A. STATUTORY AUTHORITY

General Authority: A.R.S. § 46-134(10) and A.R.S. § 41-1954(A)(1)(b) and (c), (A)(3), (E), and 42 U.S.C. Chapter 7, Subchapter IV, Part A

Specific Authority: A.R.S. §§ 46-101, 46-299, 46-300, 45 CFR Part 261

B. OBJECTIVE

ARTICLE 1. JOBS: GENERAL PROVISIONS

R6-10-101. Definitions

The objective of this rule is to set forth uniform definitions for key terms used in Chapter 10. The purpose of this rule is to ensure the public understands the terms used in Chapter 10.

R6-10-101.01. Applicability

The objective of this rule is to specify to whom Chapter 10 applies. The purpose of this rule is to identify the persons to whom Chapter 10 applies.

R6-10-102. Work Requirement

The purpose of this rule is to explain the work requirement for recipients of cash assistance, the conditions under which a recipient is not required to participate in work activities, the minimum hourly requirements for work activities, the sanction and withholding requirements, and the conditions for voluntary participation in the Jobs Program for recipients already participating in work activities. The objectives of this rule are to ensure that the requirements described within prevent errors in administering the requirements and that the requirements are clearly represented and easily understood by the public.

R6-10-103. Tribal Welfare-to-Work Program

The purpose of this rule is to explain that the Jobs Program does not serve persons who are eligible for a tribal cash assistance program or services through a tribal program similar to the Jobs Program. The objective of this rule is to ensure there is no confusion between the Jobs Program and the Tribal Jobs Program.

R6-10-104. Selection for Participation in the Jobs Program

The objective of this rule is to explain the selection priorities for cash assistance recipients to participate in the Jobs Program. The purpose of this rule is to ensure priority of service is provided to recipients so that individuals most in need receive services through the Jobs Program.

R6-10-105. Jobs Introduction Meeting

The objective of this rule is to explain the Jobs Introduction Meeting, including notification and attendance requirements, available supportive services, the structure of the meeting, and procedures for rescheduling a meeting. The purpose of this rule is to ensure the key elements of the Jobs Introduction Meeting are clear and performed accurately.

R6-10-106. Temporary Deferrals

The objective of this rule is to explain the temporary deferral process, and who qualifies for a temporary deferral from the requirement to participate in work activities. The purpose of this rule is to eliminate confusion regarding the temporary deferral process, including determining who qualifies for the deferral.

R6-10-107. Participant Assessment; Referral

The objective of this rule is to explain the Participant Assessment, and the process for making referrals for services resulting from the assessment. The purpose of this rule is to ensure assessments are completed properly and the subsequent referrals are appropriate and properly executed.

R6-10-108. Employment Plan

The objective of this rule is to explain the recipient's employment plan, including what must be included in the employment plan, and how the employment plan may be revised. The purpose of this rule is to ensure recipients receive accurate and effective employment plans.

R6-10-109. Primary Activities

The objective of this rule is to explain, for all recipients, including Two-Parent Employment Program (TPEP) recipients, the required participation hours per week, what constitutes primary activities, and the preference for unsubsidized employment as a primary activity. The purpose of this rule is to ensure understanding and accurate execution of the primary activities and required hours of participation in primary activities.

R6-10-110. Participation that Meets the Work Requirement

The objective of this rule is to explain the various ways in which a participant may meet the work requirement. The purpose of this rule is to ensure participants are offered all possible, situationally appropriate, and allowable methods of participation to meet their work requirement.

R6-10-111. Secondary Activities

The objective of this rule is to describe Secondary Activities and explain that the Jobs Program may assign a participant to secondary activities only after the participant completes the required participation in primary activities. The purpose of this rule is to ensure secondary activities are offered and assigned as appropriate and that participation in required primary activities is followed.

R6-10-112. Job Search and Job Readiness Assistance

The objective of this rule is to explain that the Jobs Program may assign a participant to job search and job readiness activities as a primary activity under certain circumstances. The purpose of this rule is to ensure job search and job readiness activities are assigned appropriately and needed skills and assistance are received.

R6-10-113. On-the-Job Training (OJT)

The objective of this rule is to explain the circumstances under which the Jobs Program may assign a participant to On-the-Job Training. The purpose of this rule is to ensure the proper assignment, operation, and execution of the On-the-Job Training component.

R6-10-114. Work Experience

The objective of this rule is to explain the circumstances under which the Jobs Program may assign a participant to work experience. The purpose of this rule is to ensure work experience activities are properly assigned.

R6-10-115. Community Service Programs

The objective of this rule is to explain the circumstances under which the Jobs Program may assign a participant to a community service program. The objective of this rule is to ensure community service is properly assigned.

R6-10-116. Vocational Educational Training

The objective of this rule is to explain the circumstances under which the Jobs Program may assign a participant to vocational educational training. The purpose of this rule is to ensure vocational education training is properly assigned for no more than the allowable time period.

R6-10-117. High School, GED Preparation, and Education Directly Related to Employment

The objective of this rule is to explain the circumstances under which the Jobs Program may assign a participant to high school, GED preparation, and education directly related to employment. The purpose of this rule is to ensure that these activities are assigned appropriately and that their respective guidelines are followed.

R6-10-119. Support Services

The objective of this rule is to explain what supportive services may be available to Jobs Program recipients, as budget permits. The purpose of this rule is to ensure the provision of allowable supportive services within the guidelines of the Jobs Program.

R6-10-120. Participant Complaint Resolution

The objective of this rule is to explain the procedures for addressing and resolving participant complaints. The purpose of this rule is to ensure participant complaints are handled accurately, fairly, and efficiently.

R6-10-121. Failure to participate; Good Cause Reasons; Verification; Establishment of Good Cause

The objective of this rule is to explain the consequences of a participant failing to participate in the Jobs Program, along with good cause reasons, verification procedures, and notice requirements. The purpose of this rule is to ensure accurate understanding of, and compliance with, the Good Cause and Verification of Good Cause processes.

R6-10-122. Services to Address Barriers to Participation

The objective of this rule is to explain procedures for addressing barriers to participation. The purpose of this rule is to ensure participants receive quality care and assistance with their barriers to participation and self-sufficiency.

R6-10-123. All Families Except TPEP Families: Sanction Process

The objective of this rule is to explain the sanction process, including case review, notice requirements, restoration of benefits, sanction levels, and monitoring of sanctioned participants. The purpose of this rule is to ensure an accurate understanding of the sanction process for clients to avoid sanctioning and for the Jobs Program to facilitate accurate sanctioning.

R6-10-124. TPEP: Failure to Participate; Withholding

The objective of this rule is to explain the consequences of a TPEP participant failing to participate with Jobs Program requirements, including notice requirements, case closure, and the entitlement to a fair hearing. The purpose of this rule is to ensure that TPEP clients understand the withholding process as a result of failing to participate with Jobs Program requirements and for the Jobs Program to know how to accurately facilitate the withholding process.

R6-10-301. Definitions

The objective of this rule is to apply the definitions from Article 1 to Article 3. The purpose is to ensure readers understand the meaning of key terms found within Article 3.

R6-10-302. Job Displacement

The objective of this rule is to explain under what circumstances an employee of an employer with whom Jobs participants are placed in unpaid or subsidized jobs may file a grievance regarding job displacement. The purpose of this rule is to ensure all parties fully understand the grievance rights of a regular employee of an employer when the regular employee is displaced by a Jobs Program client.

R6-10-303. Grievance Process

The objective of this rule is to explain the grievance process. The purpose of this rule is to ensure that the regular employees and Jobs Program employers have a clear understanding of the Jobs Program Grievance Process.

C. EFFECTIVENESS

The Department has found the following rules to still be effective:

R6-10-101.01. Applicability
R6-10-103. Tribal Welfare-to-Work Program
R6-10-113. On-the-Job Training (OJT)
R6-10-114. Work Experience
R6-10-115. Community Service Programs
R6-10-116. Vocational Educational Training
R6-10-117. High School, GED Preparation, and Education Directly Related to Employment
R6-10-120. Participant Complaint Resolution
R6-10-122. Services to Address Barriers to Participation
R6-10-301. Definitions
R6-10-302. Job Displacement
R6-10-303. Grievance Process

The Department has found the following rules to be ineffective:

R6-10-101. Definitions – this rule is ineffective as it contains obsolete terms and lacks current and necessary terms, such as “core activity” replacing “primary activity” and reference to “Jobs” instead of “the Jobs Program.”

R6-10-102. Work Requirement – this rule is ineffective as it contains outdated requirements that no longer reflect the current practice within the Jobs Program. The current rule requires clients to work in federally countable activities for a minimum of 35 hours per week. The intention is to change the rule to reflect the federal work participation requirement, which ranges from 20 to 35 hours per week depending on certain factors, while keeping the 40 hour per week maximum. The change is needed to conform to current practice and ensure that contractors can work with clients, who have barriers to employment, through non-countable activities that serve to eliminate barriers such as substance abuse and mental health conditions.

R6-10-104. Selection for Participation in the Jobs Program – this rule is ineffective as it contains selection and priority of service requirements that no longer exist within the Jobs Program because the Family Assistance Administration (FAA) approves a household for TANF and refers work eligible individuals to the Jobs Program.

R6-10-105. Jobs Introduction Meeting – this rule is ineffective as the name of the meeting referenced within has changed. The Jobs Introduction Meeting is now called the Initial Jobs Program Case Management Appointment.

R6-10-106. Temporary Deferrals – this rule is ineffective as the process for a temporary deferral from the Jobs Program and verification methods for domestic violence has changed. The Jobs Program now requires a timeframe to be determined for a client’s temporary deferral and a requirement to substantiate a temporary deferral when the client claims a disability or domestic violence has occurred that prevents a client’s participation in work activities.

R6-10-107. Participant Assessment; Referral – this rule is ineffective as the process for conducting specialized assessments of Jobs Program participants has changed. The Jobs Program

now requires that specialized assessments shall be conducted by a licensed or certified professional.

R6-10-108. Employment Plan – this rule is ineffective as the term for the referenced plan has changed and requirements to revise the plan have changed. The “employment plan” is now called the “employment and career development plan”. Locations for each assigned work activity must now be included in the employment and career development plan.

R6-10-109. Primary Activities – this rule is ineffective as the term for activities has changed and core activities for Jobs Program participants have changed. “Primary activities” are now called “core activities.” The reference to assignment of a Jobs Program client to primary activities for 30 hours per week needs to be removed; requirements for vocational education have changed; and the age of a single teen custodial parent or married teen parents in high school or GED classes and education directly related to employment is now under 20 years of age.

R6-10-110. Participation that Meets the Work Requirement – this rule is ineffective as participation that meets the Jobs Program work requirement has changed. The requirement for participants to meet the work requirement has changed for work eligible individuals in accordance with 45 CFR 261.31 and 261.32; a single custodial parent or caretaker relative in accordance with 45 CFR 261.35; and a single, teen custodial parent under 20 years of age in accordance with 45 CFR 261.33.

R6-10-111. Secondary Activities – this rule is ineffective as the term for activities has changed and non-core activities for Jobs Program participants have changed. “Secondary activities” are now called “non-core activities.” Job search and job readiness assistance may no longer exceed the maximum number of weeks in accordance with 45 CFR 261.34.

R6-10-112. Job Search and Job Readiness Assistance – this rule is ineffective as it contains limitations for these activities that are no longer used in the Jobs Program. Job search and job readiness assistance may not be used to count as a full week of participation.

R6-10-119. Support Services – this rule is ineffective as the term for services has changed and the services available to Jobs Program participants have changed. The Jobs Program no longer provides post-employment support services to participants whose TANF case closed due to employment.

R6-10-121. Failure to participate; Good Cause Reasons; Verification; Establishment of Good Cause – this rule is ineffective as the constitution of "failure to participate" has changed. Failure to participate has been clearly defined in draft rulemaking. The Jobs Program provides a participant 10 calendar days to provide a "good cause reason" as to why he or she failed to participate with the Jobs Program before a sanction is imposed.

R6-10-123. All Families Except TPEP Families: Sanction Process – this rule is ineffective as the sanction process has changed. The Jobs Program now requires the Jobs Program case manager to mail a written Request for Good Cause Information/Last Chance to Stop the Sanction Appointment Notice to the participant to allow the participant the opportunity to comply with required work activities.

R6-10-124. TPEP: Failure to Participate; Withholding – this rule is ineffective as the withholding process has changed. The Jobs Program now withholds TPEP cash assistance until the participant again complies with the Jobs Program.

D. CONSISTENCY

The rules in Chapter 10 are consistent with state and federal law, except for the following rules, which need to be amended to reflect the 2007 changes to A.R.S. § 46-300 and changes to the federal law made by the Deficit Reduction Act of 2005, Pub. L. 109-171, Feb. 8, 2006, 120 Stat. 4, Short title, see 42 U.S.C.1305 note.

R6-10-101. Definitions - this rule is inconsistent with state and federal law due to obsolete terms and lacks current and necessary terms, such as "core activity" replacing "primary activity" and reference to "Jobs" instead of "the Jobs Program."

R6-10-102. Work Requirement – this rule is inconsistent with state and federal law as it contains outdated requirements that no longer exist within the Jobs Program. For example, the Jobs Program may not require a participant who has not been temporarily deferred from the work requirement to participate beyond the federal work participation rate in accordance with 45 CFR 261.31 and 261.32.

R6-10-104. Selection for Participation in the Jobs Program – this rule is inconsistent with state and federal law as it contains selection and priority of service requirements that no longer exist within the Jobs Program because the Family Assistance Administration (FAA) approves a household for TANF and refers work eligible individuals to the Jobs Program.

R6-10-105. Jobs Introduction Meeting – this rule is inconsistent with state and federal law as the name of the meeting referenced within has changed, as well as the activities and requirements of the meeting. The Jobs Introduction Meeting is now called the Initial Jobs Program Case Management Appointment and the procedures for rescheduling this meeting are obsolete.

R6-10-109. Primary Activities – this rule is inconsistent with state and federal law as the term for activities has changed and core activities for Jobs Program participants have changed. "Primary activities" are now called "core activities." The reference to assignment of a Jobs Program client to primary activities for 30 hours per week has been removed; requirements for vocational education have changed; and the age of a single teen custodial parent or married teen parents in high school or GED classes or in education directly related to employment is now under 20 years of age.

R6-10-110. Participation that Meets the Work Requirement – this rule is inconsistent with state and federal law as participation that meets the Jobs Program work requirement has changed. The requirement for participants to meet the work requirement has changed for work eligible individuals in accordance with 45 CFR 261.31 and 261.32; a single custodial parent or caretaker relative in accordance with 45 CFR 261.35; and a single, teen custodial parent under 20 years of age in accordance with 261.33.

R6-10-111. Secondary Activities – this rule is inconsistent with state and federal law as the term for activities has changed and non-core activities for Jobs Program participants have changed. “Secondary activities” are now called “non-core activities.” Job search and job readiness assistance may no longer exceed the maximum number of weeks in accordance with 45 CFR 261.34.

R6-10-121. Failure to participate; Good Cause Reasons; Verification; Establishment of Good Cause – this rule is inconsistent with state and federal law as the constitution of “failure to participate” has changed. Failure to participate has been clearly defined and the Jobs Program provides a participant 10 calendar days to provide a “good cause reason” as to why he or she failed to participate with the Jobs Program before a sanction is imposed.

R6-10-123. All Families Except TPEP Families: Sanction Process – this rule is inconsistent with state and federal law as the sanction process has changed. The Jobs Program now requires the Jobs Program case manager to mail a written Request for Good Cause Information/Last Change to Stop the Sanction Appointment Notice to the participant to allow the participant the opportunity to comply with required work activities.

R6-10-124. TPEP: Failure to Participate; Withholding – this rule is inconsistent with state and federal law as the withholding process has changed. The Jobs Program now withholds TPEP cash assistance until the participant again complies with the Jobs Program.

E. ENFORCEMENT POLICY

The Department currently uses and regularly enforces all of these rules to the extent that they do not conflict with state or federal law.

F. CLEAR, CONCISE, AND UNDERSTANDABLE

R6-10-101. Definitions – this rule is not clear, concise, and understandable as it contains obsolete terms and lacks current and necessary terms, such as “core activity” replacing “primary

activity" and reference to "Jobs" instead of "the Jobs Program," which may be confusing to the public.

R6-10-101.01. Applicability – this rule is not clear, concise, and understandable as it does not clearly state that these rules apply to Jobs Program providers, as well as Jobs Program participants, which may be confusing to the public.

R6-10-102. Work Requirement – this rule is not clear, concise, and understandable as it contains outdated requirements that no longer exist within the Jobs Program, which may be confusing to the public.

R6-10-103. Tribal Welfare-to-Work Program – this rule is not clear, concise, and understandable as the program name is not recognizable because it has changed, which may be confusing to the public.

R6-10-104. Selection for Participation in the Jobs Program – this rule is not clear, concise, and understandable as it contains selection and priority of service requirements that no longer exist within the Jobs Program, which may be confusing to the public.

R6-10-105. Jobs Introduction Meeting – this rule is not clear, concise, and understandable as the name of the meeting referenced within has changed, as well as the activities and requirements of the meeting, which may be confusing to the public.

R6-10-106. Temporary Deferrals – this rule is not clear, concise, and understandable as the process for a temporary deferral from the Jobs Program and verification methods for domestic violence has changed, which may be confusing to the public.

R6-10-107. Participant Assessment; Referral – this rule is not clear, concise, and understandable as the process for conducting specialized assessments of Jobs Program participants has changed, which may be confusing to the public.

R6-10-108. Employment Plan – this rule is not clear, concise, and understandable as the term for the referenced plan has changed and requirements to revise the plan have changed, which may be confusing to the public.

R6-10-109. Primary Activities – this rule is not clear, concise, and understandable as the term for activities has changed and core activities for Jobs Program participants have changed, which may be confusing to the public.

R6-10-110. Participation that Meets the Work Requirement – this rule is not clear, concise, and understandable as participation that meets the Jobs Program work requirement has changed, which may be confusing to the public.

R6-10-111. Secondary Activities – this rule is not clear, concise, and understandable as the term for activities has changed and non-core activities for Jobs Program participants have changed, which may be confusing to the public.

R6-10-112. Job Search and Job Readiness Assistance – this rule is not clear, concise, and understandable as it contains limitations for these activities that are no longer used in the Jobs Program, which may be confusing to the public.

R6-10-113. On-the-job Training (OJT) – this rule is not clear, concise, and understandable as it lacks the requirement of providing a formal, written training plan for the Jobs Program participant, which may be confusing to the public.

R6-10-114. Work Experience - this rule is not clear, concise, and understandable as the program and plan names within are not recognizable because they have changed, which may be confusing to the public.

R6-10-115. Community Service Programs – this rule is not clear, concise, and understandable as it does not clearly define the types of community service programs that satisfy work participation requirements for the Jobs Program, which may be confusing to the public.

R6-10-116. Vocational Educational Training – this rule is not clear, concise, and understandable as study time for coursework that is counted toward the work participation requirement has changed, which may be confusing to the public.

R6-10-117. High School; GED Preparation, and Education Related Directly to Employment – this rule is not clear, concise, and understandable as the program and plan names within are not recognizable because they have changed, which may be confusing to the public.

R6-10-119. Support Services – this rule is not clear, concise, and understandable as the term for services has changed and the services available to Jobs Program participants have changed, which may be confusing to the public.

R6-10-120. Participant Complaint Resolution – this rule is not clear, concise, and understandable as it does not indicate action to be taken to remedy a complaint, which may be confusing to the public.

R6-10-121. Failure to participate; Good Cause Reasons; Verification; Establishment of Good Cause – this rule is not clear, concise, and understandable as the components of "failure to participate" has changed.

R6-10-122. Services to Address Barriers to Participation – this rule is not clear, concise, and understandable as the program and plan names within are not recognizable because they have changed, which may be confusing to the public.

R6-10-123. All Families Except TPEP Families: Sanction Process – this rule is not clear, concise, and understandable as the sanction process has changed, which may be confusing to the public.

R6-10-124. TPEP: Failure to Participate; Withholding – this rule is not clear, concise, and understandable as the withholding process has changed, which may be confusing to the public.

R6-10-302. Job Displacement – this rule is not clear, concise, and understandable as it references “Jobs” instead of “the Jobs Program,” which may be confusing to the public.

R6-10-303. Grievance Process – this rule is not clear, concise, and understandable as an obsolete program, JOBSTART, is referenced within the rule, which may be confusing to the public.

G. WRITTEN CRITICISMS

The Department has not received any written criticisms on any of the rules in Chapter 10.

H. ECONOMIC IMPACT COMPARISON

Arizona’s Jobs Program is charged with assuring that needy recipients receive cash assistance and employment services to help them avoid long-term welfare dependence. The Jobs Program provides eligible cash assistance recipients the opportunity to become economically independent through employment. The Jobs Program helps remove barriers to employment by providing a variety of services that make a positive difference in participants’ lives. Jobs Program participants are employed in a wide variety of settings in the private and public sectors. The Jobs Program is also responsible for determining whether a cash assistance grant must be reduced or closed (sanctioned) if a cash assistance recipient does not comply with Jobs Program work requirements.

Funding for the Jobs Program comes through TANF Block Grant federal and state Maintenance of Effort (MOE) funding. Arizona’s SFY 2015 annual cost of operating the Jobs Program is $13,590,811, including $2,823,843 for participant services. Participant service expenditures assist those participants with barriers which restrict participation in work activities or employment. Examples of these expenditures include services such transportation allowances, GED training, and vocational skills training.

The Jobs Program reaches all of Arizona, except the areas served by the Native Employment Works (NEW) Program, and the Tribal TANF Program. Approximately 17,967 cash assistance recipients were served by the Arizona Jobs Program Contractors in SFY 2015.

The rules in Chapter 10 were last amended in 2006 to make them consistent with then current policy and practice, and in response to the *Olea v. Clayton* lawsuit and settlement agreement. At that time, the Department anticipated that the new rules would not impact state revenues, and would benefit Jobs Program participants by ensuring that they received due process before their case was closed under A.R.S. § 46-300 for non-participation. The rulemaking was not anticipated to impact business, small business, or political subdivisions. The Department has found the economic impact of the rules to be consistent with expectations identified in the economic impact statement associated with the 2006 rulemaking.

In 2007, A.R.S. § 46-300 was amended to require demonstration of compliance with work requirements in order to maintain eligibility and avoid sanctions. The current rules, as amended in 2006, do not align with A.R.S. § 46-300. Under current rules, a participant is required only to express an intent to participate in work activities in order to avoid a sanction. The Department's current practice, however, aligns with the provisions of A.R.S. § 46-300. This practice will be reflected in the rules to be promulgated.

Since the 2011 Five Year Review, sanction levels for the subsequent years were as follows:

SFY	**TOTAL**
2011	2,018
2012	2,250
2013	2,654
2014	2,213

The monthly case closures due to failure to comply with the Jobs Program participation requirements in SFY15 are:

Jul 14	Aug 14	Sep 14	Oct 14	Nov 14	Dec 14	Jan 15	Feb 15	Mar 15	Apr 15	May 15	Jun 15
184	192	160	149	151	135	131	140	215	253	208	213

Failure to comply with Jobs Program participation requirements is the primary reason for case closure, as shown below:

REASON	Jul 14	Aug 14	Sep 14	Oct 14	Nov 14	Dec 14	Jan 15	Feb 15	Mar 15	Apr 15	May 15	Jun 15
DCSS SANCTION	15	7	17	17	18	17	11	11	5	9	13	7
FAIL TO COMPLY WITH JOBS	184	192	160	149	151	135	131	140	215	253	208	213
TOTAL	199	199	177	166	169	152	142	151	220	262	221	220

I. BUSINESS COMPETITIVENESS ANALYSIS

The Department did not receive a business competitive analysis from a member of the public during the process of preparing this report.

J. COURSE OF ACTION FROM PREVIOUS FIVE-YEAR REVIEW REPORT

In the previous Five-year Review Report approved by Council on July 12, 2011, the Department indicated its plans to amend R6-10-101, R6-10-109, R6-10-110, R6-10-111, R6-10-112, R6-10-115, R6-10-117, R6-10-121, and R6-10-123, and submit the Notice of Final Rulemaking to Council by December 2012. The Department received an exception from the regulatory moratorium to draft rulemaking for Chapter 10 on December 29, 2009. The Department reported that a rule package was in development. Notices of Docket Opening for 6AAC10, the Jobs

Program, were published on June 10, 2010 (16 A.A.R. 929) and on July 15, 2011 (17 A.A.R. 1310).

The Department Rules Unit coordinated with the DES Divisions that administer the Jobs Program and the TANF Cash Assistance Program to complete a draft rulemaking to address the needed changes in Chapter 10. This rulemaking was drafted while the Department also accomplished the work necessary to complete high priority rulemakings in areas that impact vulnerable populations served by the Department including Adult Protective Services, Child Welfare Services, Tuberculosis Victims, and Persons with Disabilities. The draft rulemaking was transmitted to the Office of the Attorney General for legal review in April 2014.

On January 5, 2015, the Department's rulemaking was put on hold as a result of the moratorium imposed by the Governor's Executive Order 2015-01. On April 2, 2015, the Department sent a request to the Office of the Governor for an exception to proceed with certain rulemakings, including rulemaking to amend Chapter 10. Based on guidance from the Office of the Governor, on September 2, 2015, the Department submitted a shorter exception request list. That list continued to include the Chapter 10 rulemaking.

Executive Order 2015-01 expired on December 31, 2015. On February 10, 2016, the Department's rulemaking was again put on hold as a result of a rulemaking moratorium that was established by Executive Order 2016-03. The Department submitted a request for permission to proceed with high priority rulemakings that align with the justifications detailed in Executive Order 2016-03. On March 7, 2016 the Department received approval from the Governor's Office to proceed with six high priority rulemakings, including rulemaking for Chapter 10.

K. DETERMINATION OF BURDEN AND COSTS

With the amendments proposed in this report, the Department believes that the rules would impose the least burden and costs to persons regulated by these rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives.

L. CORRESPONDING FEDERAL LAW

The Department has determined that the rules in Chapter 10 are not more stringent than corresponding federal statute and regulations, including the Block Grant to States for Temporary Assistance to Needy Families at 42 U.S.C. Chapter 7, Subchapter IV, Part A, and the amendments made by the Deficit Reduction Act of 2005, Pub. L. 109-171, Feb. 8, 2006, 120 Stat. 4, Short title, see 42 U.S.C. 1305 note, and federal regulations at 45 CFR §§ 261.31, 261.32, 261.33, and 261.35.

M. COMPLIANCE WITH A.R.S. § 41-1037

The Department has determined that A.R.S. § 41-1037 does not apply to these rules, because the Department is not proposing a new rule or an amendment to an existing rule that requires the issuance of a regulatory permit, license or agency authorization.

N. PROPOSED ACTION

The Department received approval on March 7, 2016 to proceed with the rulemaking process for Chapter 10. The Department anticipates completing any further refinements needed to update the draft rulemaking, complete and respond to legal review, obtain stakeholder input, publish a Notice of Proposed Rulemaking and transmit the Notice of Final Rulemaking to Council by February 2017.

TITLE 6. ECONOMIC SECURITY

CHAPTER 10. DEPARTMENT OF ECONOMIC SECURITY THE JOBS PROGRAM

(Authority: A.R.S. §§ 41-1954(1)(b) and 41-1954(3))

Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 05-4).

Editor's Note: Sections of this Chapter were repealed and adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Chapter 300, § 74(A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on these rules. Under Laws 1997, Ch. 300, § 74(B), the Department is required to institute the formal rulemaking process on these Sections on or before December 31, 1997. Because these rules are exempt from the regular rulemaking process, the Chapter is being printed on blue paper.

ARTICLE 1. JOBS: GENERAL PROVISIONS

Article 1, consisting of Sections R6-10-101 thru R6-10-121, repealed; new Sections R6-10-101 thru R6-10-125 adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Section
R6-10-101. Definitions
R6-10-101.01. Applicability
R6-10-102. Work Requirement
R6-10-103. Tribal Welfare-to-Work Program
R6-10-104. Selection for Participation in the Jobs Program
R6-10-105. Jobs Introduction Meeting
R6-10-106. Temporary Deferrals
R6-10-107. Participant Assessment; Referral
R6-10-108. Employment Plan
R6-10-109. Primary Activities
R6-10-110. Participation that Meets the Work Requirement
R6-10-111. Secondary Activities
R6-10-112. Job Search and Job Readiness Assistance
R6-10-113. On-the-job Training (OJT)
R6-10-114. Work Experience
R6-10-115. Community Service Programs
R6-10-116. Vocational Educational Training
R6-10-117. High School, GED Preparation, and Education Directly Related to Employment
R6-10-118. Transportation-related Expenses
R6-10-119. Support Services
R6-10-120. Participant Complaint Resolution
R6-10-121. Failure to participate; Good Cause Reasons; Verification; Establishment of Good Cause
R6-10-122. Services to Address Barriers to Participation
R6-10-123. All Families Except TPEP Families: Sanction Process
R6-10-124. TPEP: Failure to Participate; Withholding
R6-10-125. Subsidized Employment - JOBSTART
R6-10-126. Employer Participation - JOBSTART

ARTICLE 2. REPEALED

Article 2, consisting of Sections R6-10-201 thru R6-10-220, repealed under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Article 2, consisting of Sections R6-10-201 thru R6-10-220, adopted effective December 11, 1995 (Supp. 95-4).

ARTICLE 3. JOB DISPLACEMENT GRIEVANCE PROCEDURES

Article 3, consisting of Sections R6-10-301 thru R6-10-304, adopted effective December 11, 1995 (Supp. 95-4).

Section
R6-10-301. Definitions
R6-10-302. Job Displacement
R6-10-303. Grievance Process
R6-10-304. Further Appeal

ARTICLE 1. JOBS: GENERAL PROVISIONS

Editor's Note: The following Section was repealed and a new Section adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-10-101. Definitions

The definitions in A.R.S. § 46-101 and the following definitions apply to this Chapter:

1. "AHCCCS" means the Arizona Health Care Cost Containment System.
2. "Assessment" means the evaluation of a participant by a case manager, with the assistance of the participant, to determine employment potential, as well as services necessary to remove barriers to employment. The case manager will use the assessment to develop the participant's employment plan.
3. "At risk" means an individual who is either expecting a child or has a dependent child and is vulnerable to becoming TANF dependent based on one or more of the following factors. The individual:
   a. Has reading or math skills that are at or below ninth grade level;
   b. Has dropped out of school;
   c. Has a criminal record;
   d. Is homeless or a run-away youth;
   e. Has a mental or physical disability;
   f. Is pregnant;
   g. Is a victim of domestic violence;
   h. Has received services from a domestic violence shelter;
   i. Is income eligible for TANF;
   j. Has a WIA service delivery area designated barrier;
   k. Is a displaced homemaker;
   l. Is eligible for WIA programs
   m. Is attending school; or
   n. Other similar factors that place the family at risk.
4. "Barrier" means a circumstance that, if not addressed, may prevent or delay participation in work activities. A barrier includes one or more of the following circumstances, or any similar circumstance:
   a. A temporary physical or mental condition, including behavioral health issues of the participant or the participant's family member for whom the participant is the primary caregiver;
   b. A physical or mental disability of the participant or the participant's family member for whom the participant is the primary caregiver;
   c. A lack of transportation;
   d. A lack of child care;
   e. Limited English proficiency;
   f. A threat of domestic violence toward the participant, the participant's family member, or the caregiver for a minor child, if the threat interferes with the participant's ability to participate in work activities;
   g. Illiteracy; insufficient education; lack of vocational skills; or
   h. An ongoing family crisis that interferes with the participant's ability to participate in work activities.
5. "Calendar week" means seven consecutive days beginning on Saturday.
6. "Calendar year" means a 12-month period beginning January 1 and ending December 31.
7. "Case manager" means the Jobs employee who determines the needs of an individual requesting or receiving services through Jobs.
8. "Case Management" means the process through which Jobs determines the needs of the participant requesting or receiving services through Jobs. Appropriate services or benefits for participants are identified, planned, obtained, provided, recorded, monitored, and terminated, and follow-up is provided, as necessary and subject to budgetary constraints, in accordance with A.R.S. § 46-299.
9. "Cash assistance program" means the state Temporary Assistance for Needy Families program established by 42 U.S.C. § 601 et seq.
10. "Community resource" means a community, faith-based, or non-profit organization that provides services to the general public at no cost to the participant or Jobs.
11. "Community service program" means an unpaid work activity that provides a service to the community or an organization.
12. "Complaint" means a formal accusation or charge expressing dissatisfaction or a grievance with a service provider, an agency, or a Jobs action or decision.
13. "Day" means a calendar day unless otherwise specified. If, under rule or statute, a deadline falls on a weekend day or a holiday, Jobs shall consider the deadline to fall on the next business day.
14. "Department" means the Arizona Department of Economic Security.
15. "Education directly related to employment" means remedial education, classes leading to a GED or high school diploma, and English for Speakers of Other Languages (ESOL).
16. "Employment plan" means the document described in R6-10-108, prepared by the participant and the Program, which lists the steps required of the participant, the services to be provided by Jobs, and the referrals made to address barriers to participation to transition the participant to economic independence.
17. "Employment services" means vocational educational training, education directly related to employment, job skills training, and other similar training or education provided by a service provider or community resource to assist a participant in obtaining employment.
18. "FAA" means the Family Assistance Administration, an administrative unit within the Department's Division of Benefits and Medical Eligibility responsible for providing cash assistance to eligible persons.
19. "Fails to participate," or "failure to participate," means that a participant has not done one or more of the following, absent good cause:
   a. Participated in job readiness activities,
   b. Complied with the requirements in the participant's employment plan, or
   c. Participated in work activities.
20. "Full-time employment" means employment that is 40 hours per week or, if less, is regarded as full-time for a specific industry.
21. "Functionally incapable" means a person who suffers a continuing inability to function in daily life activities due to life circumstances, including past physical or sexual abuse, insufficient education, nonexistent vocational skills, episodic depression, or emotional dysfunction.

22. "GED" means general equivalency degree, which is a certificate awarded upon completion of a series of five tests that demonstrate high school skills equivalency.
23. "Good cause" means one or more of the circumstances listed in R6-10-121(B).
24. "Health care professional" means a licensed physician, registered nurse, or a licensed physician's assistant.
25. "Immediate threat of domestic violence" means a domestic violence situation that, in the perception of the participant, is physically, mentally, or emotionally dangerous or harmful to the participant or any child living with the participant.
26. "Job readiness assistance" means all activities, involving the Department and the participant, that prepare a participant for work. These activities include: completion of an assessment, any additional assessments under R6-10-107(E), and an employment plan; attendance at the Jobs Introduction Meeting; participation in an employment preparation program, which includes life skills, employment, and job retention skills training; and any other Program requirement under this Article or a statute pertaining to assisting a participant in preparing for and obtaining employment.
27. "Jobs" means the administrative unit within the Department's Division of Employment and Rehabilitation Services that is responsible for administration of the Jobs Program, including providers under contract with the Department that provide Jobs case management and employment services.
28. "Job search" means a structured activity in which participants are required to actively seek employment by identifying employment opportunities, applying for employment, and participating in employment interviews.
29. "Job skills training" means training that enables a participant to become proficient in an occupation or skill necessary to meet the participant's employment goal.
30. "Jobs Program services" means ongoing case management services offered to participants by Jobs.
31. "JOBSTART" means the Department's subsidized employment work activity in the public and private sectors.
32. "JOBSTART employment" means the subsidized employment work activity for which participants are hired.
33. "Licensed physician" means:
    a. Medical doctors,
    b. Doctors of osteopathy,
    c. Doctors of naturopathic medicine,
    d. Chiropractors,
    e. Psychiatrists,
    f. Board-certified psychologists, or
    g. Other personnel authorized to act on the physician's behalf.
34. "Mailing date" means one day after the date printed on the notice.
35. "OJT" means on-the-job training, which is a paid training opportunity generally provided at a worksite for a specified period.
36. "Participant" has the meaning in A.R.S. § 46-101(15), and includes any recipient selected to participate in the Jobs Program.
37. Primary activity" means a work activity that counts toward the work requirement.
38. "Program" means the Jobs Program, as authorized by A.R.S. § 46-299.
39. "Program Administrator" means the Program Administrator of the Employment Administration.
40. "Recipient" has the meaning in A.R.S. § 46-101(17), and includes an individual who received assistance or services but is no longer eligible for cash assistance because of statutory time limits.
41. "Regular employee" means an unsubsidized individual currently employed by an employer.
42. "Sanction" means a reduction or termination of cash assistance, for all families, except TPEP families, who fail to participate in the Jobs Program without good cause.
43. "Satisfactory attendance in high school or GED activities" means that a participant who has not completed high school or received a GED is attending high school or participating in GED activities and meeting attendance requirements established by the school or GED program.
44. "Satisfactorily participates in education directly related to employment" or "satisfactory progress" means that a participant is meeting, on a periodic basis, a consistent level of progress, based upon standards established by the educational institution or program and approved by Jobs, in which the participant is enrolled for educational or training activities.
45. "Secondary activity" means a work activity that counts toward the work requirement only after the participant obtains the required number of hours of primary activity.
46. "Services" means Jobs Program services, community resources, employment services, support services, or any other available service, subject to budgetary constraints.
47. "Service provider" means an entity that is responsible for providing services to clients. This includes Jobs staff, an agency or organization, public or nonprofit, or a person awarded a grant or contract by the Jobs Program to provide services to clients.
48. "Subsidized employment" means employment in a public or private sector organization that receives a JOBSTART subsidy to offset the cost of wages (and possibly other employer-paid benefits) of an employee.
49. "Supplemental payment" means an amount paid to a participant whose net wages are less than the combined benefit amount of cash assistance and food stamps for which the participant is eligible.
50. "Support services" means services provided to a Jobs participant that facilitate the participant's ability to participate in work activities, accept and maintain employment, and successfully make the transition to employment. Examples of support services include child care and transportation.
51. "Temporary Assistance for Needy Families" or "TANF" has the meaning in A.R.S. § 46-101(22).
52. "Teen custodial parent" means a parent age 13 through 19 years, who is caring for that parent's own child.
53. "TPEP" means the Two-Parent Employment Program that provides cash assistance for a two-parent family if:
    a. The parents have at least one child in common;
    b. Neither parent is permanently disabled; and
    c. The primary wage-earning parent is unemployed or underemployed.
54. "Transportation-related expenses" means travel costs that a participant will incur because of participation in the Jobs Program.
55. "Unaffordable child care" means that child care is not affordable to a family because the cost of care is more than the Department will pay.
56. "Unavailable child care" means that:

a. The location of a child care provider is at a distance that requires a one-way travel time by vehicular transportation equal to or greater than one hour, measured from the participant's residence to the child care provider and then to work, or if walking, a distance that requires a one-way travel time equal to or greater than 1/2 hour, measured in the same manner;
b. Child care providers do not have available slots or vacancies;
c. Child care providers cannot provide services to a child with a disability who has special needs;
d. Child care providers related to the child are unavailable or unwilling to provide care;
e. Child care is available through a non-relative provider, but the provider is unwilling to apply for DES certification; or
f. A child age 13 or older requires adult supervision:
   i. Due to a disability, which includes mental health or other health-related issues;
   ii. Because the child would be harmful to himself, herself, or others if left alone; or
   iii. Because the child is on court-ordered probation that requires the child to remain in the home or under house arrest.

57. "Unsubsidized employment" means all paid employment in the public or private sector except JOBSTART or OJT.
58. "Unsuitable child care" means that child care is available through a provider, but the participant declares in writing that the provider is unsuitable based on factors, such as the following. The provider:
    a. Has a history of child neglect or abuse;
    b. Is experiencing domestic violence;
    c. Has a history of serious crime;
    d. Is a drug abuser;
    e. Has an emotional, mental, or physical condition that prevents the provider from providing safe care;
    f. Resides in a home that is unsafe for children; or
    g. Possesses similar attributes that render the provider unsuitable to furnish child care services.
59. "Verification" means any documentation that substantiates an individual's claim.
60. "Vocational educational training" means training that is intended to result in a degree, certificate, or license. Vocational educational training includes hours spent studying for vocational coursework, as provided in R6-10-116(E). Examples of vocational educational training include post-secondary education, as limited by A.R.S. § 46-299(B), and training in such professions as carpentry, auto mechanics, nursing, or certified public accountancy.
61. "WIA" means the federal Workforce Investment Act of 1998.
62. "WIA local workforce investment area designated barrier" means that a participant has a barrier to employment as determined by a WIA service provider.
63. "Withholding" means retention of semi-monthly TPEP cash assistance payments for TPEP parents who fail to participate or comply with Jobs Program requirements without good cause.
64. *"Work activities" means activities that are countable toward the federal work participation rate as prescribed in 42 U.S.C. 607:*
    (a) Unsubsidized employment;
    (b) Subsidized private or public sector employment;
    (c) Work experience;
    (d) On-the-job training;
    (e) Job search and job readiness assistance;
    (f) Community service programs;
    (g) Vocational educational training;
    (h) Job skills training directly related to employment;
    (i) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;
    (j) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate, as described in A.R.S. § 46-101(24)(j).
65. "Workday" means Monday through Friday, excluding Arizona state holidays.
66. "Work experience" means unpaid work in the public or private sector that helps a participant establish a good work record and develop good work habits and skills, and provides opportunities for the participant to transition into paid employment.
67. "Work requirement" means the minimum number of hours required for a Jobs participant to participate in work activities as a condition of eligibility for cash assistance.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

R6-10-101.01 Applicability

The rules in this Chapter apply to all Jobs service providers.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

Editor's Note: The following Section was repealed and a new Section adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-10-102. Work Requirement

A. To remain eligible for cash assistance, a recipient shall participate in work activities unless the recipient is governed by subsection (B).

B. Jobs shall not require a recipient of cash assistance or a participant in the Jobs Program to participate in work activities if either is:
1. Already complying with the work requirement;
2. A dependent child less than age 16 or is age 16 through 18 and attending school;
3. Temporarily deferred from the work requirement, as prescribed in R6-10-106; or
4. Temporarily excused from participating in a work activity, under R6-10-121(B).

C. Jobs shall assign all participants, other than those listed in subsection (B), to work activities for 35 hours per week or more as required to meet the federal work rate.

D. Jobs may require a participant who has not been temporarily deferred to participate in work activities for up to five hours more per week than the minimum number of hours required to meet the work requirement, if required by an employer.

E. The Department shall impose a sanction, as provided in R6-10-123, or a withholding, as provided in R6-10-124, if a participant who is required to participate in work activities fails to do so without good cause, as defined in R6-10-121.

F. Jobs shall permit a recipient who is already complying with the work requirement to voluntarily participate in the Jobs Program, under the following conditions:

1. Jobs shall provide Jobs Program services on a first-come, first-served basis, to the extent that resources permit, except that Jobs shall give priority to volunteers who are nearest to reaching the 60-month lifetime limit for cash assistance.
2. Jobs shall not sanction a volunteer who fails to participate in work activities without good cause. However, the volunteer shall lose Jobs Program priority status for participation in the Program. For the purpose of this subsection, "good cause" means one of the circumstances described in R6-10-121(B).

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

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R6-10-103. Tribal Welfare-to-Work Program

Jobs shall not serve an individual who is eligible to receive assistance through a tribal cash assistance program or services through a Tribal program similar to Jobs.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

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R6-10-104. Selection for Participation in the Jobs Program

A. In selecting recipients to participate in the Jobs Program, Jobs shall give priority to recipients who are:

1. At risk of losing cash assistance due to time limits, or
2. At risk of becoming long term welfare dependents.

B. Jobs shall consider the following factors when determining selection priorities:

1. The number of months a recipient has received cash assistance,
2. Whether the recipient is a teen-custodial parent, and
3. Sanction status.

C. Jobs shall begin Jobs Program services for a TPEP individual at the time the parent individual reports to a Jobs local office.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

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R6-10-105. Jobs Introduction Meeting

A. Jobs shall notify in writing a recipient selected to participate in Jobs of the requirement to attend a Jobs Introduction Meeting. The notice shall include:

1. The date and time of the Jobs Introduction Meeting and the address of the Jobs local office where the Jobs Introduction Meeting will be held;
2. Information regarding transportation, translation, and child care assistance that may be available for the Jobs Introduction Meeting if requested, and the contact information necessary to obtain available services;
3. A provision explaining that if the recipient needs transportation, translation, or child care services to attend the Jobs Introduction Meeting, and the services are not available, the recipient has good cause for not attending the Jobs Introduction Meeting under R6-10-121(B).
4. The procedure for rescheduling the Jobs Introduction Meeting, under R6-10-105(C); and
5. A statement that the consequence of failing, without good cause, to attend the Jobs Introduction Meeting is progressive sanctioning under A.R.S. § 46-300.

B. A recipient selected under subsection (A) becomes a participant in the Jobs Program and shall attend a Jobs Introduction Meeting provided by Jobs. Upon request, the Department shall provide the participant with transportation, translation, and child care assistance, if services are available, to enable the participant to attend the Jobs Introduction Meeting. If a participant is unable to attend the Jobs Introduction Meeting because

requested services are not available, the participant shall be granted good cause under R6-10-121(B).

C. At the Jobs Introduction Meeting, Jobs shall:
1. Register the participant in the Program;
2. Explain to the participant the rights and responsibilities of the participant, Jobs, and the Department's child care program, including;
   a. A statement that the consequence of non-compliance with the Program requirements, without good cause, is progressive sanctioning under A.R.S. § 46-300;
   b. The contents and meaning of the Program sanction or withholding notices; and
   c. The deferral and good cause procedures;
3. Complete privately, with the participant's assistance, an assessment of the participant;
4. Complete privately, with the participant, an employment plan that takes into account the participant's background and skills, any barriers to employment, and any available services that will assist in the removal of barriers to employment.

D. Jobs shall explain the procedures for rescheduling the Jobs Introduction Meeting, and the consequences of failure to complete the Jobs Introduction meeting.
1. If a participant does not attend a Jobs Introduction Meeting as required by the Jobs Program, the case manager shall send the participant a Jobs Introduction Meeting Rescheduled Notice to allow the participant to reschedule attendance at the meeting. The Jobs case manager shall also attempt to contact the participant by telephone, inquire as to whether other administrations have had contact with the participant, or use any other reasonable method of making contact with the participant.
2. If the participant fails to attend the rescheduled meeting or contact the case manager by the close of business 10 calendar days after the date of the original meeting, the case manager shall initiate the good cause process described in R6-10-121. The case manager shall count the day following the date of the original meeting as day 1.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

R6-10-106. Temporary Deferrals

A. Jobs shall determine whether to temporarily defer a participant from engaging in work activities under A.R.S. § 46-299(A) and this Section.

B. Jobs shall defer a participant with a temporary or permanent disability. A participant with a temporary or permanent disability may opt to participate and receive reasonable accommodation to facilitate participation, and Jobs shall not impose a sanction if the participant is then subsequently unable to participate due to the disability.

C. For the purposes of this Section:
1. "Disability" means a physical or mental impairment that substantially limits one or more major life activities, and includes being mentally, physically, or functionally incapable of participating in work activities.
2. "Permanent disability" means a disability under subsection (1) that is expected to last for the life of the individual.
3. "Temporary disability" means a disability under subsection (1) that is not expected to last for the life of the individual.

D. Jobs shall obtain verification of a temporary or permanent disability from a participant according to the terms of subsection (J) from any of the following:
1. A health care professional;
2. A vocational rehabilitation specialist; or
3. The district medical consultant.

E. Jobs shall temporarily defer a participant from work activities if the participant or the participant's child is a victim of domestic violence.
1. Jobs shall grant a temporary deferral for domestic violence if:
   a. Participation in Jobs threatens the safety of or, in the perception of the participant, causes an immediate threat of physical, mental, or emotional harm to the participant, the participant's child, or any child living with the participant; or
   b. Due to domestic violence, the participant has been physically or emotionally harmed to such an extent that the participant is incapable of participation in Jobs.
2. Jobs shall provide a participant who is a victim of domestic violence with:
   a. A deferral from Program requirements, under A.R.S. § 46-244 and R6-10-121, for a period of time that will enable the participant to safely participate in work activities. The maximum deferral period is 6 months. Jobs may grant additional deferrals consistent with A.R.S. § 46-299; and
   b. A referral to appropriate and available services.

F. Jobs shall temporarily defer a participant who needs to be present to care for a dependent who has a disability if no other member of the household is available or suitable to provide the care. The participant shall provide a statement, obtained from an individual listed in subsection (D), regarding the dependent's disability within 15 days of the date on the deferral request. The Department may grant an extension if the participant has requested a statement from a health care professional and is unable to obtain the statement within 15 days.

G. Jobs shall temporarily defer a participant who is an unmarried custodial parent less than age 18 and personally caring for a child less than 12 weeks of age.

H. Jobs shall temporarily defer a participant who is a parent, relative, or caretaker personally caring for a child less than one year of age, for no more than 12 months in the participant's lifetime, unless the participant is a teenaged custodial parent who does not have a high school diploma or GED.

I. Jobs shall temporarily defer only one parent at a time in a TPEP family. Jobs shall temporarily defer a TPEP parent, if the TPEP parent:
1. Is personally caring for the TPEP parent's child who is less than one year of age, unless the TPEP parent is a teenaged custodial parent who does not have a high school diploma or GED;
2. Is an unmarried teen custodial parent less than 18 years of age who is personally caring for a child less than 12 weeks of age;
3. Is personally caring for a member of the family, who is not the other TPEP parent, who has a disability, as verified by a health care professional, and no other member

of the household is available or suitable to provide the care; or
4. Has an illness that is expected to last less than 30 days, as verified by a health care professional.

J. Jobs shall request that a participant substantiate the participant's claim of inability to participate in work activities due to a circumstance established under this Section, and shall assist the participant as necessary to obtain the verification. Unless otherwise stated, the following are examples of acceptable verification:
1. Physician or other health care professional statement;
2. Vocational Rehabilitation (VR) consultation report, if a physician or health care professional statement does not contain conclusive information and the participant claims a disability;
3. Police report;
4. Court or medical records;
5. Newspaper article, or similar evidence of public knowledge;
6. Statement from crisis shelter staff or witness to domestic violence;
7. Statement from DES Child Protective Services;
8. Statement from a third party; or
9. Statement signed by the participant if no other verification is available.

K. Jobs shall determine the length of time that a participant is temporarily deferred based on the information provided under this Section.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

R6-10-107. Participant Assessment; Referral

A. At or following the Jobs Introduction Meeting, the case manager shall, with the assistance of the participant, complete an assessment, using a standard form, to identify any possible barriers to employability or participation in the Jobs Program. The participant shall provide, either verbally or in writing, all personal information necessary to accurately complete the assessment form. The assessment form shall include questions to determine whether the participant needs services to address:
1. Past or ongoing domestic violence,
2. Chemical dependency,
3. Psychological or psychiatric needs,
4. Education or training insufficient to obtain or sustain employment,
5. Mental, physical, or functional incapacity or disability,
6. Issues regarding retaining or maintaining employment,
7. Inadequate housing,
8. Inadequate child care, or
9. Inadequate transportation,
10. Other family issues that affect the individual's ability to participate in work activities.

B. Using the information from the assessment, Jobs shall refer a participant who is identified as in need of services to available Jobs Program services or community resources. Jobs shall give priority to any service provider that furnishes services at no cost to the participant. Jobs shall refer the participant to any available community resource that provides the service, or a contracted provider, if available to address the needed service. If, after researching available options, the case manager determines that a needed service is not available through Jobs Program services or community resources, Jobs shall not make a referral and shall grant the participant good cause for not engaging in work activities under R6-10-121.

C. If a participant does not cooperate with the assessment process, Jobs is not required to provide the participant with referrals to service providers.

D. Jobs shall use the information provided by the participant during the assessment to develop the employment plan described in R6-10-108.

E. Based on the initial assessment and available resources, Jobs may determine that a participant may benefit from a more in-depth employment-focused assessment. The case manager shall determine whether such an assessment can be provided by an outside provider.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

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R6-10-108. Employment Plan

A. Jobs and the participant shall complete an employment plan for the participant that takes into consideration barriers to employment and incorporates work activities and agreed upon services offered, so that the participant can meet work requirements and move into unsubsidized employment at the earliest opportunity. Jobs shall include the following in the employment plan:
1. Employment goals,
2. Work activities,
3. Dates for beginning and ending activities,
4. Available services offered by Jobs Program or community resources,
5. A list of referrals made as a result of the participant assessment,
6. Signatures of the participant and the case manager assigned to oversee provision of services to the participant. Jobs shall not sanction a participant solely for refusing to sign the employment plan.

B. The case manager, in consultation with the participant, may revise the employment plan as necessary to ensure the participant continues to advance toward the employment goal. The case manager shall revise an employment plan:
1. To address any barriers to participation identified by the case manager or the participant,
2. To reflect any change in services needed by the participant, if the participant has expressed an intent to participate with the Jobs Program, as provided at R6-10-123, and

3. At any time a participant's circumstances require a change in work activities or services.

Historical Note

Adopted effective Jan 10, 1977 (Supp.77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

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R6-10-109. Primary Activities

A. Jobs shall assign a participant, unless temporarily deferred under R6-10-106, to no less than 30 hours per week of primary activities, based on the participant's employment plan described in R6-10-108. For the 10 remaining required work activity hours, Jobs shall assign the participant to any primary activity or any secondary activity as described in R6-10-111.

B. Unsubsidized employment is the first priority for a participant. Whenever possible, Jobs shall assign a participant to unsubsidized employment as the participant's primary activity.

C. The following are primary activities:
1. Unsubsidized employment;
2. Job search and job readiness assistance, described in R6-10-112, for up to six weeks per federal fiscal year;
3. Subsidized employment such as JOBSTART, described in R6-10-125;
4. OJT, described in R6-10-113;
5. Work experience, described in R6-10-114;
6. Community service programs, described in R6-10-115;
7. Vocational educational training, described in R6-10-116:
   a. If the participant is an unmarried custodial parent, provided that the state continues to meet the federally required work participation rates referenced in A.R.S. § 46-299(B);
   b. For up to 12 months, for all other participants;
8. Satisfactory attendance in high school or GED preparation classes, described in R6-10-117, for any single teen custodial parent who is a head of household and has not obtained a high school diploma or GED;
9. Education directly related to employment, described in R6-10-117, for any teen custodial parent who is a head of household and has not obtained a high school diploma or GED.

D. TPEP parents shall participate for a minimum of three consecutive work days in work activities before the Department authorizes issuance of the initial TPEP cash assistance payment.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

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R6-10-110. Participation that Meets the Work Requirement

A. The following participants meet the work requirement:
1. A parent who is participating in work activities for at least the minimum average number of hours per week under R6-10-102(C).
2. A parent with a child less than age 6, who participates for at least 20 hours per week in primary activities, except that only one parent in a TPEP family can meet the federal work requirement in this manner.
3. A single, teen custodial parent less than age 20 who:
   a. Is a head of household;
   b. Has not obtained a high school diploma or GED; and either
      i. Maintains satisfactory attendance in high school or GED activities, or
      ii. Satisfactorily participates in education directly related to employment for at least an average of 20 hours per week during the month.

B. A participant who falls in one of the categories listed in subsection (A), who is deemed to be meeting the work requirement, may participate in additional work activities beyond those that meet the work requirement.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

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R6-10-111. Secondary Activities

A. Jobs may assign a participant to secondary activities based on information obtained through the assessment or contained in the participant's employment plan only after the participant meets required participation in primary activity hours under R6-10-109.

B. The following are secondary activities:
1. Job search and job readiness assistance that exceeds the maximum of six weeks per federal fiscal year allowable as a primary activity;

2. Job skills training directly related to employment;
3. High school or GED preparation for a participant (other than a single, teen custodial parent who is a head of household) who has not attained a high school diploma or GED certificate; and
4. Education directly related to employment for a participant (other than a single, teen custodial parent who is a head of household) who has not attained a high school diploma or GED certificate.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Amended effective December 11, 1995 (Supp. 95-4). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

Editor's Note: The following Section was repealed and a new Section adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-10-112. Job Search and Job Readiness Assistance

A. Based on information obtained through assessment or contained in a participant's employment plan, Jobs may assign a participant to job search and job readiness assistance as a primary activity in accordance with 42 U.S.C. § 607.

B. A participant assigned to job search and job readiness assistance as a primary activity shall participate in job search and job readiness assistance for at least the minimum number of hours required under R6-10-102.

C. On not more than one occasion per participant, Jobs shall permit three or four days of job search and job readiness assistance, and Jobs shall count this as a full week of participation.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

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R6-10-113. On-the-job Training (OJT)

A. Based on information obtained through the assessment or contained in a participant's employment plan, Jobs may assign a participant to OJT if other work activities have not resulted in employment and OJT is consistent with the participant's employment plan.

B. Jobs shall approve OJT worksites and assignments that:

1. Are designed to improve the participant's chances for employment, and
2. Provide compensation in accordance with applicable wage laws.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

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R6-10-114. Work Experience

A. Based on information obtained through the assessment or contained in a participant's employment plan, Jobs may assign a participant to work experience to improve the participant's employability, or meet work participation requirements.

B. When assigning work experience, Jobs shall select work experience that is consistent with the participant's employment plan and consider the participant's prior training and experience.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

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R6-10-115. Community Service Programs

Based on information obtained through the assessment or contained in a participant's employment plan, Jobs may assign a participant to community service programs to establish good work habits if the participant is unlikely to meet work participation requirements by participating in other primary activities.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

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R6-10-116. Vocational Educational Training

A. Based on information obtained through the assessment or contained in a participant's employment plan, Jobs may assign a participant to vocational educational training, for any period of time up to the maximum of 12 months, if other work activities have not resulted in employment and vocational educational training is consistent with the participant's employment plan.

B. In addition to criteria in subsection (A), Jobs shall use the following criteria to determine whether a participant should be assigned to, or remain in, vocational educational training:

1. The participant:
   a. Lacks a self-supporting skill for available jobs in the participant's geographical area;
   b. Will attend at least half-time, as defined by the institution, an educational or training facility that is legally authorized, accredited, or recognized in Arizona as providing a program to prepare students for gainful employment; and
   c. Remains in good standing with the educational or training institution and makes satisfactory progress as defined by the institution.
2. The participant seeks the education or training activities to attain skills directly related to job opportunities for self-supporting employment in a recognized occupation that does not have high turnover due to substandard wages or working conditions.

C. Jobs may approve, as vocational educational training, the educational or training activities of an individual who is already enrolled in educational, vocational, or technical training at the time the individual is selected for the Program.

D. Jobs shall use the following criteria to determine whether the educational or training activities of an individual already enrolled in education or training is approved:

1. The individual is:
   a. Attending at least half-time, as defined by the institution, an educational or training facility that is legally authorized, accredited, or recognized in Arizona as providing a program to prepare students for gainful employment; and
   b. In good standing with the educational or training institution and is making satisfactory progress, as defined by the institution;
2. The individual seeks the education or training activities to attain skills directly related to job opportunities for self-supporting employment in a recognized occupation that does not have high turnover due to substandard wages or working conditions.

E. Jobs shall allow time spent studying for vocational education training coursework to count toward the work participation requirement at a rate of one hour of study time for every two hours of scheduled classroom time.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

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R6-10-117. High School, GED Preparation, and Education Directly Related to Employment

A. Based on information obtained through the assessment or contained in a participant's employment plan, Jobs may assign a teen custodial parent who has not obtained a high school diploma or GED to education directly related to employment.

B. Jobs may assign a single, teen custodial parent, who is head of household and has not obtained a high school diploma or GED, to education directly related to employment.

C. Jobs may only assign an adult participant, who does not have a high school diploma or GED, to education directly related to employment as a secondary activity.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

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R6-10-118. Transportation-related Expenses

A. As budget permits, Jobs shall reimburse a participant for a transportation expense of up to $7.00 per day incurred as a result of complying with the work requirement. If Jobs determines that a lack of transportation expense reimbursement prevents a participant from participating in work activities, Jobs shall:

1. Identify an alternate work activity or mode of transportation that does not require the participant to incur a transportation expense; or
2. Grant the participant good cause for failing to participate in work activities in accordance with R6-10-121(B).

B. Jobs may pay transitional transportation and post-employment education and training for up to six months from the date of employment if a participant's cash assistance case is closed due to employment.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

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R6-10-119. Support Services

A. As budget permits, Jobs may provide a participant with support services to enable participation in the Program. Jobs shall give a participant a list of available support services. Support services may include:
1. Transportation services to assist a participant with transportation expenses that may be incurred as a result of Jobs participation. Services may include:
   a. Transportation-related expenses (TRE),
   b. Bus tickets or passes,
   c. Vehicle repair,
   d. Vehicle general maintenance,
   e. Liability insurance, or
   f. Contracted transportation services.
2. Health-related services not covered by AHCCCS but necessary to enable a participant to become employed or to make a determination of employability. The following are examples:
   a. Medical examinations and tests,
   b. Eyeglasses and other optical services,
   c. Dental services, or
   d. Mental health counseling.
3. The following are examples of other optional support services:
   a. Clothing,
   b. Tools, equipment, or specialized garments used in specific occupations such as uniforms, hard hats, or other similar attire,
   c. Licenses,
   d. GED testing,
   e. Relocation, or
   f. Shelter or utility assistance.

B. As budget permits, the Department shall provide a participant with subsidized child care and other child care related expenses to enable participation in the Jobs Program. The following are examples of other child care related expenses:
1. Transportation to and from child care centers and to and from school,
2. Child care registration fees, and
3. Participants' co-pay obligations.

C. As budget permits, Jobs may provide post-employment support services to participants whose TANF case is closed due to employment. The following are examples of post-employment support services:
1. Transportation services;
2. Child care and related expenses;
3. Health-related expenses;
4. Clothing;
5. Tools, equipment, or specialized garments;
6. Licenses;
7. GED testing;
8. Relocation;
9. Shelter or utility assistance; or
10. Post-employment education.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

R6-10-120. Participant Complaint Resolution

A. This Section applies to participant complaints about the Jobs Program, including complaints about service providers.

B. Each service provider shall establish a written complaint resolution procedure that shall be posted and given to participants. The complaint resolution procedure shall include an opportunity for an informal dispute resolution meeting between the participant and the service provider, and inform the participant of the right to elevate the complaint to the Program Administrator if the participant is not satisfied with the service provider decision.

C. A participant shall continue to participate in the Program while the complaint resolution is pending, unless the participant has established a good cause reason for not participating. If a participant fails to participate, JOBS shall initiate the sanction process as provided in R6-10-123 or withholding as provided in R6-10-124.

D. A participant shall use all applicable steps of the following process to seek a resolution of a complaint:
1. The participant shall attempt to informally resolve a complaint at the lowest management level. However, if a participant believes that a complaint to the service provider would be futile, the participant may complain directly to the Program Administrator under subsection (D)(4).
2. The participant shall submit the complaint orally or in writing to the participant's service provider. If requested, the service provider shall assist the participant with writing the complaint.
3. Upon receipt of the participant's complaint, the service provider shall respond in writing within seven days of the date the complaint was filed. The response shall provide the reason for the decision, and mention the participant's right to complain to the Program Administrator.
4. If the service provider takes no action to resolve the complaint or the participant perceives the complaint is unsatisfactorily resolved, the participant shall submit a

complaint orally or in writing to the Program Administrator.

5. The Program Administrator shall issue a written decision within 30 days after the date the complaint is filed. The Program Administrator shall consider the participant's employment plan, applicable statutes, rules, and policy and, if applicable, the terms of the service provider's contract, in reaching a decision.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed; new Section made by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

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R6-10-121. Failure to participate; Good Cause Reasons; Verification; Establishment of Good Cause

A. Failure to participate. If a participant does not participate in work activities, including attendance at the Jobs Introduction Meeting, the case manager shall determine whether a barrier to participation has been identified through discussions with the participant, or information provided by the participant, and if so, whether services have been provided to address the barrier.

1. If services have not been provided to address an identified barrier, the case manager shall refer the participant to available Jobs Program services or community resources.
2. If services have been provided to address all identified barriers, or no barrier has been identified, the case manager shall send the participant a Request for Good Cause Information to determine whether a good cause reason exists for the participant not to participate.

B. Good cause reasons. Good cause reasons that prevent a participant from engaging in work activities under R6-10-102, include:

1. The participant has a barrier to participation for which services are not available, or the participant is participating in referred services to address a barrier;
2. The participant has an illness;
3. The participant is required to care for an ill or disabled family member;
4. Either the participant or a dependent child has an appointment that cannot be rescheduled, such as a court-ordered appearance, medical appointment, or another comparable appointment;
5. The participant has a family emergency;
6. The participant has a temporary lack of transportation with no reasonable alternate means of transportation;
7. Extreme weather makes walking to childcare or work activities unreasonable for a participant who has no other form of transportation;
8. The participant is prevented from participating due to inclement weather;
9. The participant is unable to obtain child care for a child who is less than 13 years old because the child care is unavailable, unaffordable, or unsuitable;
10. Child care is unavailable for a child age 13 or over who requires adult supervision:
    a. Due to a disability, which includes mental health or other health-related issues;
    b. Because the child would be harmful to himself, herself, or others if left alone; or
    c. Because the child is on court-ordered probation that requires the child to remain in the home or under house arrest.
11. The participant needs translation services that are not available or not provided.
12. The participant is not capable of performing the work activity due to:
    a. Unsafe worksite conditions;
    b. Physical demands of the job;
    c. Lack of skills, aptitude, or knowledge for the position;
    d. Strike, lockout, or other bona fide labor dispute; or
    e. Conditions of the participant's membership in a union representing employees in the occupation.
13. The participant is a victim or perceives himself or herself to be a victim of domestic violence whose current situation:
    a. Threatens the safety of the participant or any child living with the participant; or
    b. Causes physical, mental, or emotional harm to the participant or any child living with the participant.
14. The Department fails to provide the participant with services agreed upon in the employment plan; or
15. Other comparable circumstances beyond the participant's control, including an error by the Department.

C. Verification. A participant subject to subsection (A) shall provide documentation that verifies good cause within 10 calendar days of the mailing date on the Request for Good Cause Information. The case manager may obtain verification directly from the reporting source. The case manager shall, upon request, assist the participant in obtaining the documentation that verifies good cause. Verification includes the following:

1. Physician or other health care professional statement;
2. Appointment notice from a court, FAA, or other comparable entity;
3. Death certificate;
4. Newspaper article, or other similar evidence of public knowledge;
5. Document or statement from the DES Child Care Administration;
6. Police report;
7. Statement from crisis shelter staff or a witness to the domestic violence;
8. Statement from a third party; or
9. Signed participant statement explaining the circumstances that establish good cause if no other verification is possible.

D. Notice.

1. If the participant establishes a good cause reason for failing to participate within 10 calendar days of the mailing date on the Request for Good Cause Information, the case manager shall not sanction the participant, and shall send the participant a notice indicating that good cause has been established. If, based on the information received from the participant, the case manager determines that a barrier exists that prevents the participant from participat-

ing, the case manager shall refer the participant to available Jobs Program services or community resources.

2. If the participant does not establish good cause within 10 calendar days of the mailing date on the Request for Good Cause Information, the case manager shall send the participant a notice indicating that good cause has not been established and begin the sanction process described in R6-10-123.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Section repealed, new Section adopted effective June 6, 1995 (Supp. 95-2). Section repealed; new Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-10-121 renumbered to R6-10-123; new Section R6-10-121 renumbered from R6-10-122 and amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

R6-10-122. Services to Address Barriers to Participation

A. Identification of Barriers to Participation and Referral to Available Services.

1. A participant shall notify the participant's case manager of any barrier to participation in the Jobs Program.
2. Upon notification or personal observation that a participant has a barrier to participation, the case manager shall document the barrier, and determine whether revising the participant's employment plan would address the identified barrier. If so, the case manager shall revise the employment plan as necessary.
3. If revising the employment plan does not address the identified barrier, the case manager shall refer the participant to available community resources.
4. If no community resources are available to address the identified barrier, the case manager shall refer the participant to available Jobs Program services.
5. If no services are available, the case manager shall grant the participant good cause for not participating and re-evaluate the situation in 30 days to determine whether the barrier has been resolved or services have become available.

B. A participant shall participate in a referred service until identified barriers have been resolved, or the service is no longer available.

1. If the participant's barriers have been resolved, the participant shall participate in work activities. If the participant does not participate in work activities after the participant's barriers have been resolved, the case manager shall initiate the good cause process under R6-10-121.
2. If the participant does not participate in referred services and does not participate in work activities, the case manager shall initiate the good cause process under R6-10-121.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Repealed effective June 6, 1995 (Supp. 95-2). New Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-10-122 renumbered to R6-10-121; new R6-10-122 made by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section. Subsequently, this Section was renumbered by final rulemaking. Please refer to historical note.

R6-10-123. All Families Except TPEP Families: Sanction Process

If a participant fails to participate in work activities without good cause under R6-10-121, the case manager shall initiate the sanction process.

1. Case review. Before requesting a sanction, the case manager shall review the case to determine whether all necessary steps have been taken, including barrier identification, available service referrals, and an opportunity to establish good cause. After reviewing the case and determining that a sanction is appropriate, the case manager shall submit the case to a Jobs supervisor for review. The Jobs supervisor shall review the case to determine whether all necessary steps have been taken before imposing a sanction, and shall approve or deny the sanction based on this review.
   a. If the Jobs supervisor approves the sanction, the case manager shall sanction the participant under A.R.S. § 46-300, as provided in subsection (4).
   b. If the Jobs supervisor does not approve the sanction, the case manager shall review the case record and take all necessary corrective action on the case.
2. Notice. If a sanction is approved, at each sanction level the case manager shall send the participant written notice of the Department's intent to sanction. The adverse action notice shall be timely and shall adequately explain:
   a. The date and the location of the alleged failure to comply;
   b. How or why the case manager believes the participant failed to comply;
   c. The month in which the Department shall impose the sanction;
   d. The length of time that the sanction will be imposed;
   e. How the participant can stop the proposed sanction or recomply if it is too late to stop the proposed sanction;
   f. The name and telephone number of a specific contact person who will provide more information to the participant about the sanction level;
   g. The percentage of the sanction;
   h. The benefit amount, after the sanction is imposed;
   i. The fact that the participant is required to contact a case manager by the due date listed on the notice and either participate in work activities or express an intent to participate in work activities to avoid the imposition of a sanction; and
   j. Information regarding the right to request a hearing, and how to do so.
3. How a participant can avoid a sanction or have benefits restored after a sanction is imposed.
   a. A participant who has received a notice that the Jobs Program intends to impose a sanction may avoid the sanction by participating in work activities, expressing an intent to participate, or identifying a barrier to participation within 10 calendar days from the mailing date on the notice.

i. The participant may express an intent to participate in work activities by contacting the participant's case manager by telephone or appearing in person. If a barrier is identified, the case manager shall follow the process in R6-10-122.

ii. If the participant requests a fair hearing within 10 calendar days from the mailing date of the notice, Jobs shall not reduce the cash grant due to a sanction, pending the results of the fair hearing.

b. If the participant does not respond within 10 calendar days of the mailing date of the notice, the sanction is imposed. If the participant responds after the sanction is imposed, and resumes participation, expresses an intent to participate, or identifies a barrier to participation, the Jobs Program shall restore benefits after one month of sanction. The participant may express an intent to participate or identify a barrier by contacting the case manager by telephone or in person. If a barrier is identified, the case manager shall follow the process in R6-10-122. The Jobs Program shall not require a participant to begin work activities before the program takes action to restore benefits.

c. Upon recompliance with the Jobs Program following a sanction, the participant shall attend a Jobs Introduction Meeting if the participant has not attended a Jobs Introduction meeting in the prior six months.

d. If a participant has been sanctioned 100% and the participant's Jobs case has been closed, the participant shall reapply for cash assistance to resume the Jobs Program services and work activities.

4. Sanction levels. The Department shall impose a sanction, which is a percentage of the original cash assistance amount, in accordance with A.R.S. § 46-300 as follows:

a. For the first instance of noncompliance, the department shall reduce the household's cash assistance grant by twenty-five per cent for one month.

b. For a second instance of noncompliance that occurs in a month other than the month in which the first noncompliance occurred, the department shall reduce the household's cash assistance grant by fifty per cent for one month.

c. For a third instance of noncompliance that occurs in a month other than the month in which the second noncompliance occurred and any instance of noncompliance thereafter, the department shall terminate the household's cash assistance grant for at least one month or until the household complies. The Jobs Program shall close the participant's case at this sanction level, and upon subsequent sanctions. The former participant shall reapply for cash assistance to resume the Jobs Program services and work activities.

5. Monitoring sanctioned participants.

a. A case manager shall keep a record listing each sanctioned participant, the participant's sanction date, sanction level, benefit month, and revised benefit amount, and shall review the record each month, in addition to the participant's case record, to determine whether the next sanction level should be imposed. A Jobs supervisor shall review the case record before the initiation of any sanction action by a case manager.

b. Before imposing the 100% sanction, the case manager shall use the following methods in an attempt to contact the participant and determine whether good cause exists under R6-10-121:

i. A telephone call, if the participant has a telephone;

ii. Notice by first class mail;

iii. Consultation with other programs within the Department to determine whether they have had contact with the non-compliant participant or have a current address or telephone number for the participant;

iv. Any other reasonable method for contacting the participant.

6. A participant is entitled to a fair hearing, to contest a Department sanction.

7. A participant who wishes to appeal a sanction shall file a written request with the Department, following the procedures in A.A.C. R6-12-1002.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Repealed effective June 6, 1995 (Supp. 95-2). New Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-10-123 renumbered to R6-10-124; new Section R6-10-123 renumbered from R6-10-121 and amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

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R6-10-124. TPEP: Failure to Participate; Withholding

A. If a TPEP parent who is a participant fails to participate with Jobs Program requirements, Jobs shall determine whether good cause exists under R6-10-121.

B. If Jobs determines that the TPEP parent failed to participate without good cause, the Department shall withhold TPEP cash assistance.

C. Jobs shall send the participant a timely adverse action notice that adequately explains:

1. The date and location of the alleged failure to participate;
2. How or why the case manager believes the participant failed to participate;
3. The pay period in which the Department shall impose the withholding; and
4. The length of time that the withholding will be imposed;
5. How the participant can stop the proposed withholding or resume participation if it is too late to stop the proposed withholding;
6. The name and telephone number of a specific contact person who will provide more information to the participant about the withholding;

D. At the third withholding, Jobs shall close the participant's Jobs case.

E. A participant is entitled to a fair hearing to contest a Department withholding of cash assistance.

F. A participant who wishes to appeal a withholding of cash assistance shall file a written request with the Department, following the procedures in A.A.C. R6-12-1002.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Repealed effective June 6, 1995 (Supp. 95-2). New Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-10-124 renumbered to R6-10-125; new Section R6-10-124 renumbered from R6-10-123 and amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (05-4).

Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section. Subsequently, this Section was renumbered by final rulemaking. Please refer to historical note.

R6-10-125. Subsidized Employment - JOBSTART

A. To be eligible for JOBSTART, a participant shall:
1. Be a Jobs participant,
2. Be receiving both cash assistance and food stamps,
3. Complete Job Readiness training and a preliminary job search,
4. Assist Jobs in assessing whether the participant can achieve enhanced employability through subsidized employment.

B. If a participant is selected for JOBSTART, Jobs shall provide a JOBSTART orientation to the participant. The orientation shall describe JOBSTART, including:
1. The benefits of subsidized employment;
2. The diversion of the participant's cash assistance and food stamp benefits for wage subsidy;
3. The consequences of failure to comply with JOBSTART requirements;
4. The availability of, and the requirements to qualify for and obtain, supplemental payments;
5. The fair hearing process for challenging adverse action or failure to receive a supplemental payment;
6. The exclusion of JOBSTART wages in calculating cash assistance and food stamp benefit eligibility;
7. The potential eligibility for advance Earned Income Credits (EIC), as allowed under the Internal Revenue Code.

C. Jobs shall make job referrals by matching a participant's skills, experience, and employment plan with a JOBSTART employer's requirements. Jobs shall also consider the following criteria in making JOBSTART employment referrals:
1. Whether a referral provides a participant with additional employment opportunities because of skills learned through JOBSTART employment;
2. Whether a referral is likely to result in permanent, unsubsidized, or full-time employment for the participant;
3. The length and quality of training the JOBSTART employer will provide to the participant;
4. Wages, benefits, and opportunities for advancement;
5. The employer's turnover rate; and
6. Other comparable or similar factors.

D. Jobs shall schedule the participant for an interview with the prospective employer and notify the participant of the interview date, place, and time.

E. The employer shall decide whether to hire a participant.

F. A participant shall abide by an employer's regular requirements regarding:
1. Submitting an application for employment,
2. Appearing for interviews,
3. Providing necessary information, such as citizenship verification,
4. Hours of employment,
5. Attendance,
6. Job performance,
7. Conduct, and
8. Other similar conditions of employment.

G. A participant shall:
1. Sign the Jobs form, agreeing to abide by JOBSTART requirements;
2. Appear for pre-referral and assessment interviews with Jobs staff or a Jobs designee;
3. File a weekly report of employment days, hours, and pay received;
4. Accept and maintain subsidized employment or establish good cause for failing to participate, as prescribed in R6-10-121;
5. Report changes to Jobs that affect JOBSTART participation such as;
   a. The need for additional support services under R6-10-119,
   b. Acceptance or refusal of an employment offer,
   c. Absence from or termination of employment,
   d. Job position or function modifications, and
   e. Other similar or comparable factors;
6. Ensure that the participant's children between the ages of 6 and 16 receive school instruction as prescribed in A.R.S. § 15-802.

H. At the end of each work week, a participant shall complete and sign the Jobs form on which the participant shall indicate the participant's name, days and hours worked, and pay received. The participant shall obtain the participant's supervisor's signature, or the signature of that person's designee, on the form and send the form to the participant's case manager.

I. Jobs shall use information on the form to determine:
1. Whether the participant is entitled to a supplemental payment under subsection (N);
2. The amount of reimbursement for JOBSTART employers under R6-10-126(H); and
3. The participant's compliance with JOBSTART requirements.

J. If the participant fails to send in the completed form, the Department shall initiate the sanction process, under R6-10-123, or a withholding under R6-10-124 for TPEP. If the employer fails to sign the form, Jobs shall delay reimbursement payments to the employer until the employer signs the form or is terminated for the failure to sign, under R6-10-126.

K. A participant may participate in JOBSTART employment for up to six months with one extension of three months, at the option of Jobs. If a participant's employer wishes to request the three month extension, the employer shall make the request in writing and shall provide the following information on which Jobs shall consider in its decision whether to extend:
1. Name of the participant for whom the extension is requested;
2. Position for which an extension is requested;
3. Additional experience or training that is necessary for the participant to achieve competency;

4. Whether the employer expects to hire the individual following the extension;
5. The length of the extension, not to exceed three months; and
6. Other similar or comparable factors indicating that an extension is necessary.

L. Jobs shall not permit the total JOBSTART employment time for a participant to exceed nine months.

M. A participant shall comply with Jobs Program requirements, including all JOBSTART requirements as prescribed in this Article. If a participant fails to participate or to comply with these requirements, the Department shall impose a sanction, under R6-10-123, or withholding of cash assistance under R6-10-124.

N. Each month, the Department shall make a supplemental payment to any participant whose net wages do not equal the combined benefit amount of cash assistance and food stamps for which the participant is eligible.

O. If a participant's combined cash assistance and food stamp monthly benefit amount exceeds the amount of the participant's adjusted gross wages and supplemental payments for the same month, and the loss is due to an unpaid hour of unexcused absence as reported by the JOBSTART employer, the Department shall:
1. Presume that each unpaid hour was not for good cause;
2. Withhold a supplemental payment to make up the difference; and
3. Send the participant written notice of adverse action no later than 10 calendar days following the end of the benefit month. At minimum, the notice shall include the following information:
   a. When and how the participant failed to comply, the consequences of the noncompliance, the month in which the Department is imposing the sanction or withholding, and how the participant can recomply;
   b. The participant's right to provide verification of good cause for such absence, under R6-10-121, and the participant's right to receive a supplemental payment if the Department finds that the participant has established good cause; and
   c. The participant's responsibility to provide documentation of good cause to Jobs within 10 calendar days from the mailing date of the notice to avoid withholding of the supplemental payment pending the outcome of a fair hearing.

P. The Department shall provide a supplemental payment, reconciling any difference, no later than 10 work days after the end of the month in which the participant establishes good cause if:
1. The participant provides verification of good cause under R6-10-121, and
2. The verification is received by Jobs within 10 calendar days of the mailing date on the adverse action notice.

Q. The Department shall not provide the participant with a supplemental payment, reconciling the difference, if the participant does not request a hearing or requests a hearing but waives the continuation of benefits pending the outcome of the hearing, and either does not:
1. Provide any verification of good cause, or
2. Timely provide verification of good cause.

R. The Department shall conduct hearings on appeals of adverse action as prescribed in Article 3. Grievances are also governed by procedures provided in Article 3.

Historical Note

Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Repealed effective June 6, 1995 (Supp. 95-2). New Section adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-10-125 renumbered to R6-10-126; new Section R6-10-125 renumbered from R6-10-124 and amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (Supp. 05-4).

R6-10-126. Employer Participation - JOBSTART

A. An employer who wants to participate in JOBSTART shall notify the Jobs office in the community where the employer is located. To qualify for participation, an employer shall:
1. Agree to place a participant in a full-time position;
2. Offer the participant an opportunity for full-time, unsubsidized employment;
3. Not require a participant to work more than an average of 40 hours per week, on a regular basis;
4. Not place the participant in a position that will displace a regular employee;
5. Pay wages that are substantially similar to the wages paid for similar jobs, with adjustments for experience and skills, but never less than the federal minimum wage;
6. Maintain safety, health, and working conditions at or above levels generally acceptable in the industry and no less than conditions of comparable jobs offered by the employer;
7. Provide training at the worksite that is necessary to meet the competency standards for the position;
8. Provide health care coverage, sick leave, holidays, vacation leave, and other comparable benefits in accordance with the employer's rules for new employees;
9. Provide Workers' Compensation coverage;
10. Help the participant obtain any advance Earned Income Credit for which the participant may be eligible;
11. Sign the agreement, as prescribed in subsection (D); and
12. Sign the Department's certification form, as prescribed in subsection (F).

B. If the employer satisfies the criteria listed in subsection (A), the employer may submit a job placement order to Jobs. The order shall include the following information on the available position:
1. Days and hours of work,
2. Wages,
3. Description of responsibilities,
4. Benefits,
5. Any opportunity for advancement, and
6. Other pertinent job-related information.

C. An employer is not required to participate in JOBSTART.

D. An employer who wants to hire a participant shall sign an agreement with the Department.
1. The employer shall affirm that the employer satisfies all of the criteria listed in subsection (A) and will continue to meet all the criteria while participating in JOBSTART.
2. If the employer violates a JOBSTART requirement, the employer shall repay any reimbursements the employer receives after the date of the violation.
3. The employer shall avoid conflicts of interest and the appearance of impropriety or favoritism in hiring practices, such as preferential hiring of relatives, friends, and business associates.
4. The employer shall prepare and provide to the Department the following reports:
   a. Each week, the employer shall verify and sign a timesheet for each participant stating:
      i. Gross wages,
      ii Participant net earnings,
      iii. Number of paid hours worked (including paid hours of leave),

iv. Hours for which a participant was not paid because the participant had an unexcused absence, and
v. Hours for which the participant was not paid because the employer reduced available work hours.

b. No later than the 10th workday of each calendar month following a month of work, the employer shall complete and provide Jobs with a one-page report on each participant's performance. The report shall include the employer's assessment of the participant's:
i. Skills (competencies) gained as a result of employment;
ii Ability to correctly and timely complete assignments;
iii. General work habits such as punctuality, absenteeism, and neatness of work area; and
iv. Development of effective and efficient working relationships with people, including supervisors, peers, and subordinates.

5. An employer shall allow Jobs staff to schedule and make visits to the worksite, so that staff can observe a participant's work activities and interview the participant.

E. The employer shall sign and date the agreement. A Jobs representative and the participant shall also sign and date the agreement.

F. An employer who wants to participate in JOBSTART shall provide Jobs with a completed, signed, dated, and certified form. On the form, the employer shall certify that the following information is true, regarding the employer, and its principal officers and directors:
1. The employer is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a federal department or agency, the state of Arizona, or any other state.
2. The employer has not, within the preceding three years, been convicted of or had a civil judgment rendered against the employer for:
a. Fraud,
b. Antitrust violations,
c. Embezzlement,
d. Theft,
e. Forgery,
f. Bribery,
g. Falsification or destruction of records,
h. Making false statements, or
i. Receiving stolen property.

G. Jobs shall compute an employer's reimbursement amount, based on the information the participant and employer provide under subsection (D)(4)(a).

H. For each participant, Jobs shall provide an employer with reimbursement for wages and employer's expenses that is the lesser of:
1. The gross wages paid to the participant in the month, or
2. $400.

I. Jobs shall issue the reimbursement no later than the 25th day of the same calendar month in which the employer's report is timely received. Late receipt of the form may delay reimbursements.

J. If Jobs knows or learns of information indicating that the employer's certification, under subsection (F), is or has become untrue, Jobs shall terminate the employer's participation in JOBSTART in writing, and exclude the employer from participation in the future.

K. Jobs shall also terminate an employer's participation in JOBSTART if the employer demonstrates a pattern of either unjustifiably terminating participants before the completion of their training or of not offering unsubsidized employment to participants who have successfully completed training with the employer.
1. Jobs shall consider each occurrence of either circumstance in establishing the pattern.
2. Jobs shall not allow the employer to participate in JOBSTART if the total number of occurrences exceed the greater of the following figures, unless the employer can establish good cause:
a. 2 occurrences, or
b. 20% of the total number of participants placed with the employer.
3. If the employer claims good cause, the employer shall provide proof that a participant failed to meet the employer's requirements, absent good cause, pursuant to R6-10-125(F), and that the employer attempted to establish a reasonable alternative with the participant but was unsuccessful, due to circumstances outside the employer's control.

L. If Jobs determines that an employer has violated JOBSTART requirements, in subsection (A), Jobs shall take all of the following adverse actions against the employer:
1. Withhold any subsidized payment due the employer, following the date of the violation;
2. Seek repayment of any amount overpaid to the employer; and
3. Exclude the employer from participation in JOBSTART, as prescribed in subsection (J).

M. If Jobs plans to take adverse action against an employer, Jobs shall send the employer a written notice of adverse action. The notice shall include:
1. The name and address of the employer;
2. The action taken and the reason for the adverse action;
3. The authority for the action; and
4. The employer's appeal rights.

N. An employer who disagrees with the amount of an unsubsidized payment or is subject to adverse action as prescribed in subsection (M), may file a grievance as provided in Article 3.

O. The Department shall conduct grievance procedures under R6-10-303.

Historical Note
Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Repealed effective June 6, 1995 (Supp. 95-2). New Section R6-10-126 renumbered from R6-10-125 and amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (Supp. 05-4).

R6-10-127. Repealed

Historical Note
Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Repealed effective June 6, 1995 (Supp. 95-2).

R6-10-128. Repealed

Historical Note
Adopted effective January 10, 1977 (Supp. 77-1). Amended effective July 27, 1983 (Supp. 83-4). Repealed effective June 6, 1995 (Supp. 95-2).

ARTICLE 2. REPEALED

R6-10-201. Repealed

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Amended effective January 10, 1997 (Supp. 97-1). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-202. Repealed

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-203. Repealed

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-204. Repealed

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-205. Repealed

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-206. Repealed

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-207. Repealed

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-208. Repealed

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-209. Repealed

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-210. Repealed

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-211. Repealed

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-212. Repealed

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-213. Repealed

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-214. Repealed

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-215. Repealed

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-216. Repealed

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-217. Repealed

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-218. Repealed

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-219. Repealed

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

R6-10-220. Repealed

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Repealed effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

ARTICLE 3. JOB DISPLACEMENT GRIEVANCE PROCEDURES

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-10-301. Definitions

The definitions in R6-10-101 apply to this Article.

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (Supp. 05-4).

R6-10-302. Job Displacement

Regular employees of employers with whom Jobs participants are placed in unpaid or subsidized jobs may file a grievance regarding displacement as prescribed in this Article. As used in this Section, "displacement" means assignment of a participant to a position which:

1. Results in the termination or reassignment of a regular employee;
2. Results in the reduction of non-overtime work, wages, or benefits for a regular employee;
3. Impairs an existing contract for service or a collective bargaining agreement;
4. Fills the position of a regular employee on layoff status;
5. Creates a new position for the participant that has substantially the same job functions as the position held by a regular employee who is on layoff or subsequently terminated;
6. Infringes upon the promotional opportunities of a regular employee; or
7. Fills any established, unfilled position that can be filled by a qualified, regular employee who has applied for the position.

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (Supp. 05-4).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-10-303. Grievance Process

A. Upon request, Jobs shall provide information to regular employees and JOBSTART employers regarding their right to file a grievance and the procedure for doing so.

B. An aggrieved party may seek to informally resolve a grievance at the regional level with the Jobs Regional Program manager, or that person's designee, or may request a fair hearing.

C. To pursue informal resolution, an aggrieved party shall file a Departmental grievance form with the Jobs Regional Program Manager or designee. The form shall contain the following information:
1. Aggrieved party's name, address, and telephone number;
2. Date of grievance;
3. Contact person, if other than the aggrieved party;
4. Regional Program Manager or designee, address, telephone number;
5. A description of the action that is the subject of the grievance and the date of the action; and
6. The proposed resolution.

D. If the aggrieved party requests an informal resolution, the Department shall hold an informal resolution meeting with the aggrieved party, within 15 working days from the date the Department receives the grievance.

E. If a grievance is not resolved at the informal meeting, the aggrieved party may request a fair hearing with the Department of Economic Security, Office of Appeals, within 30 days from the date of the informal meeting, by sending a written request for a fair hearing to the Jobs local office.

F. If the aggrieved party does not choose to seek an informal resolution as prescribed in subsections (C) and (D), the aggrieved party may request a fair hearing by filing a written request with the local Jobs office. An employer who requests a fair hearing shall file a written request within 30 calendar days of the date of the adverse action notice as described in A.A.C. R6-12-1002. Upon request, Jobs shall assist the aggrieved party in preparing the hearing request. Assistance shall include an explanation of the aggrieved party's right to fair hearing, the fair hearing procedures, and the process.

G. A request for a hearing is deemed filed on the date specified in A.A.C. R6-12-1002.

H. The Jobs local office shall prepare and forward the request for a hearing to the Office of Appeals. The Jobs office shall include:
1. The information submitted under subsection (C);
2. The decision reached at the informal resolution meeting, if any; and
3. Any decision, notice, or other documents relating to the hearing request.

I. Upon receipt of a request for a fair hearing, the Office of Appeals shall conduct the hearing under A.A.C. R6-12-1005 through R6-12-1007 and R6-12-1009 through R6-12-1013(A), except that references to "FAA" are replaced by "Jobs."

Historical Note
Adopted effective December 11, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (Supp. 05-4).

Editor's Note: The following Section was amended under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1997, Ch. 300, § 74 (A). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit these rules to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Section.

R6-10-304. Further Appeal

A. Regular employees grieving displacement issues under R6-10-126(A)(4) may appeal any decision of a Department hearing officer as prescribed below:

1. The aggrieved party shall send the appeal to:
   Office of Administration Law Judges
   U.S. Department of Labor
   Vanguard Building, Room 600
   1111 20th Street, N.W.
   Washington, DC 20036
2. The aggrieved party shall send a copy of the appeal to the following:
   a. Assistant Secretary for Employment and Training
      U.S. Department of Labor
      200 Constitution Avenue, N.W.
      Washington, DC 20210; and
   b. Assistant Secretary for Family Support
      Department of Health and Human Services
      370 L'Enfant Promenade, SW, 6th Floor
      Washington, DC 20447
3. The aggrieved party shall include the following information in the appeal:
   a. The full name, address, and telephone number of the aggrieved party;
   b. Citations to provisions or regulations the aggrieved party believes have been violated;
   c. A copy of the original grievance filed with the state; and
   d. A copy of the state's finding and decision.
4. The decision of the Office of the Administrative Law Judges is the final decision of the Department of Labor.

B. Employers grieving issues under R6-10-126 may appeal the findings of a Department hearing officer to the Department's Appeals Board under R6-12-1014(A), except that the decision of the Board is final.

Historical Note

Adopted effective December 11, 1995 (Supp. 95-4). Amended effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by final rulemaking at 11 A.A.R. 5371, effective January 14, 2006 (Supp. 05-4).

Arizona Department of Economic Security
Five-year Review Report
Title 6. Economic Security
Chapter 10. Department of Economic Security
The Jobs Program

STATUTES

A.R.S. § 41-1954. Powers and duties

A. In addition to the powers and duties of the agencies listed in section 41-1953, subsection E, the department shall:
1. Administer the following services:
(a) Employment services, including manpower programs and work training, field operations, technical services, unemployment compensation, community work and training and other related functions in furtherance of programs under the social security act, as amended, the Wagner-Peyser act, as amended, the federal unemployment tax act, as amended, 33 United States Code, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.
(b) Individual and family services, which shall include a section on aging, services to children, youth and adults and other related functions in furtherance of social service programs under the social security act, as amended, title IV, except parts B and E, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services, the older Americans act, as amended, the family support act of 1988 (P.L. 100-485) and other related federal acts and titles.
(c) Income maintenance services, including categorical assistance programs, special services unit, child support collection services, establishment of paternity services, maintenance and operation of a state case registry of child support orders, a state directory of new hires, a support payment clearinghouse and other related functions in furtherance of programs under the social security act, title IV, grants to states for aid and services to needy families with children and for child-welfare services, title XX, grants to states for services, as amended, and other related federal acts and titles.
(d) Rehabilitation services, including vocational rehabilitation services and sections for the blind and visually impaired, communication disorders, correctional rehabilitation and other related functions in furtherance of programs under the vocational rehabilitation act, as amended, the Randolph-Sheppard act, as amended, and other related federal acts and titles.
(e) Administrative services, including the coordination of program evaluation and research, interagency program coordination and in-service training, planning, grants, development and management, information, legislative liaison, budget, licensing and other related functions.
(f) Manpower planning, including a state manpower planning council for the purposes of the federal-state-local cooperative manpower planning system and other related functions in furtherance of programs under the comprehensive employment and training act of 1973, as amended, and other related federal acts and titles.

(g) Economic opportunity services, including the furtherance of programs prescribed under the economic opportunity act of 1967, as amended, and other related federal acts and titles.
(h) Intellectual disability and other developmental disability programs, with emphasis on referral and purchase of services. The program shall include educational, rehabilitation, treatment and training services and other related functions in furtherance of programs under the developmental disabilities services and facilities construction act, Public Law 91-517, and other related federal acts and titles.
(i) Nonmedical home and community based services and functions, including department designated case management, housekeeping services, chore services, home health aid, personal care, visiting nurse services, adult day care or adult day health, respite sitter care, attendant care, home delivered meals and other related services and functions.
2. Provide a coordinated system of initial intake, screening, evaluation and referral of persons served by the department.
3. Adopt rules it deems necessary or desirable to further the objectives and programs of the department.
4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
5. Employ and determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons subject to chapter 4, article 4 and, as applicable, article 5 of this title as may be necessary in the performance of its duties, contract for the services of outside advisors, consultants and aides as may be reasonably necessary and reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business.
6. Make contracts and incur obligations within the general scope of its activities and operations subject to the availability of funds.
7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of its purposes, objectives and programs.
8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.
9. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.
10. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of its duties subject to the departmental rules on the confidentiality of information.
11. Establish and maintain separate financial accounts as required by federal law or regulations.
12. Advise and make recommendations to the governor and the legislature on all matters concerning its objectives.
13. Have an official seal that shall be judicially noticed.
14. Annually estimate the current year's population of each county, city and town in this state, using the periodic census conducted by the United States department of commerce, or its successor agency, as the basis for such estimates and deliver such estimates to the economic estimates commission before December 15.

15. Estimate the population of any newly annexed areas of a political subdivision as of July 1 of the fiscal year in which the annexation occurs and deliver such estimates as promptly as is feasible after the annexation occurs to the economic estimates commission.
16. Establish and maintain a statewide program of services for persons who are both hearing impaired and visually impaired and coordinate appropriate services with other agencies and organizations to avoid duplication of these services and to increase efficiency. The department of economic security shall enter into agreements for the utilization of the personnel and facilities of the department of economic security, the department of health services and other appropriate agencies and organizations in providing these services.
17. Establish and charge fees for deposit in the department of economic security prelayoff assistance services fund to employers who voluntarily participate in the services of the department that provide job service and retraining for persons who have been or are about to be laid off from employment. The department shall charge only those fees necessary to cover the costs of administering the job service and retraining services.
18. Establish a focal point for addressing the issue of hunger in Arizona and provide coordination and assistance to public and private nonprofit organizations that aid hungry persons and families throughout this state. Specifically such activities shall include:
(a) Collecting and disseminating information regarding the location and availability of surplus food for distribution to needy persons, the availability of surplus food for donation to charity food bank organizations, and the needs of charity food bank organizations for surplus food.
(b) Coordinating the activities of federal, state, local and private nonprofit organizations that provide food assistance to the hungry.
(c) Accepting and disbursing federal monies, and any state monies appropriated by the legislature, to private nonprofit organizations in support of the collection, receipt, handling, storage and distribution of donated or surplus food items.
(d) Providing technical assistance to private nonprofit organizations that provide or intend to provide services to the hungry.
(e) Developing a state plan on hunger that, at a minimum, identifies the magnitude of the hunger problem in this state, the characteristics of the population in need, the availability and location of charity food banks and the potential sources of surplus food, assesses the effectiveness of the donated food collection and distribution network and other efforts to alleviate the hunger problem, and recommends goals and strategies to improve the status of the hungry. The state plan on hunger shall be incorporated into the department's state comprehensive plan prepared pursuant to section 41-1956.
(f) Establishing a special purpose advisory council on hunger pursuant to section 41-1981.
19. Establish an office to address the issue of homelessness and to provide coordination and assistance to public and private nonprofit organizations that prevent homelessness or aid homeless individuals and families throughout this state. These activities shall include:
(a) Promoting and participating in planning for the prevention of homelessness and the development of services to homeless persons.

(b) Identifying and developing strategies for resolving barriers in state agency service delivery systems that inhibit the provision and coordination of appropriate services to homeless persons and persons in danger of being homeless.
(c) Assisting in the coordination of the activities of federal, state and local governments and the private sector that prevent homelessness or provide assistance to homeless people.
(d) Assisting in obtaining and increasing funding from all appropriate sources to prevent homelessness or assist in alleviating homelessness.
(e) Serving as a clearinghouse on information regarding funding and services available to assist homeless persons and persons in danger of being homeless.
(f) Developing an annual state comprehensive homeless assistance plan to prevent and alleviate homelessness.
(g) Submitting an annual report to the governor, the president of the senate and the speaker of the house of representatives on the status of homelessness and efforts to prevent and alleviate homelessness.
20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
21. Exchange information, including case specific information, and cooperate with the department of child safety for the administration of the department of child safety's programs.
B. If the department of economic security has responsibility for the care, custody or control of a child or is paying the cost of care for a child, it may serve as representative payee to receive and administer social security and United States department of veterans affairs benefits and other benefits payable to such child. Notwithstanding any law to the contrary, the department of economic security:
1. Shall deposit, pursuant to sections 35-146 and 35-147, such monies as it receives to be retained separate and apart from the state general fund on the books of the department of administration.
2. May use such monies to defray the cost of care and services expended by the department of economic security for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.
3. Shall maintain separate records to account for the receipt, investment and disposition of funds received for each child.
4. On termination of the department of economic security's responsibility for the child, shall release any funds remaining to the child's credit in accordance with the requirements of the funding source or in the absence of such requirements shall release the remaining funds to:
(a) The child, if the child is at least eighteen years of age or is emancipated.
(b) The person responsible for the child if the child is a minor and not emancipated.
C. Subsection B of this section does not pertain to benefits payable to or for the benefit of a child receiving services under title 36.

D. Volunteers reimbursed for expenses pursuant to subsection A, paragraph 5 of this section are not eligible for workers' compensation under title 23, chapter 6.
E. In implementing the temporary assistance for needy families program pursuant to Public Law 104-193, the department shall provide for cash assistance to two parent families if both parents are able to work only on documented participation by both parents in work activities described in title 46, chapter 2, article 5, except that payments may be made to families who do not meet the participation requirements if:
1. It is determined on an individual case basis that they have emergency needs.
2. The family is determined to be eligible for diversion from long-term cash assistance pursuant to title 46, chapter 2, article 5.
F. The department shall provide for cash assistance under temporary assistance for needy families pursuant to Public Law 104-193 to two parent families for no longer than six months if both parents are able to work, except that additional assistance may be provided on an individual case basis to families with extraordinary circumstances. The department shall establish by rule the criteria to be used to determine eligibility for additional cash assistance.
G. The department shall adopt the following discount medical payment system for persons who the department determines are eligible and who are receiving rehabilitation services pursuant to subsection A, paragraph 1, subdivision (c) of this section:
1. For inpatient hospital admissions and outpatient hospital services the department shall reimburse a hospital according to the rates established by the Arizona health care cost containment system administration pursuant to section 36-2903.01, subsection G.
2. The department's liability for a hospital claim under this subsection is subject to availability of funds.
3. A hospital bill is considered received for purposes of paragraph 5 of this subsection on initial receipt of the legible, error-free claim form by the department if the claim includes the following error-free documentation in legible form:
(a) An admission face sheet.
(b) An itemized statement.
(c) An admission history and physical.
(d) A discharge summary or an interim summary if the claim is split.
(e) An emergency record, if admission was through the emergency room.
(f) Operative reports, if applicable.
(g) A labor and delivery room report, if applicable.
4. The department shall require that the hospital pursue other third-party payors before submitting a claim to the department. Payment received by a hospital from the department pursuant to this subsection is considered payment by the department of the department's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third party payors or in situations covered by title 33, chapter 7, article 3.
5. For inpatient hospital admissions and outpatient hospital services rendered on and after October 1, 1997, if the department receives the claim directly from the hospital, the department shall pay a hospital's rate established according to this section subject to the following:
(a) If the hospital's bill is paid within thirty days of the date the bill was received, the department shall pay ninety-nine per cent of the rate.

(b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the department shall pay one hundred per cent of the rate.
(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the department shall pay one hundred per cent of the rate plus a fee of one per cent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.
6. For medical services other than those for which a rate has been established pursuant to section 36-2903.01, subsection G, the department shall pay according to the Arizona health care cost containment system capped fee-for-service schedule adopted pursuant to section 36-2904, subsection K or any other established fee schedule the department determines reasonable.
H. The department shall not pay claims for services pursuant to this section that are submitted more than nine months after the date of service for which the payment is claimed.
I. To assist in the location of persons or assets for the purpose of establishing paternity, establishing, modifying or enforcing child support obligations and other related functions, the department has access, including automated access if the records are maintained in an automated database, to records of state and local government agencies, including:
1. Vital statistics, including records of marriage, birth and divorce.
2. State and local tax and revenue records, including information on residence address, employer, income and assets.
3. Records concerning real and titled personal property.
4. Records of occupational and professional licenses.
5. Records concerning the ownership and control of corporations, partnerships and other business entities.
6. Employment security records.
7. Records of agencies administering public assistance programs.
8. Records of the motor vehicle division of the department of transportation.
9. Records of the state department of corrections.
10. Any system used by a state agency to locate a person for motor vehicle or law enforcement purposes, including access to information contained in the Arizona criminal justice information system.
J. Notwithstanding subsection I of this section, the department or its agents shall not seek or obtain information on the assets of an individual unless paternity is presumed pursuant to section 25-814 or established.
K. Access to records of the department of revenue pursuant to subsection I of this section shall be provided in accordance with section 42-2003.
L. The department also has access to certain records held by private entities with respect to child support obligors or obligees, or individuals against whom such an obligation is sought. The information shall be obtained as follows:
1. In response to a child support subpoena issued by the department pursuant to section 25-520, the names and addresses of these persons and the names and addresses of the employers of these persons, as appearing in customer records of public utilities and cable television companies.
2. Information on these persons held by financial institutions.

M. Pursuant to department rules, the department may compromise or settle any support debt owed to the department if the director or an authorized agent determines that it is in the best interest of the state and after considering each of the following factors:
1. The obligor's financial resources.
2. The cost of further enforcement action.
3. The likelihood of recovering the full amount of the debt.
N. Notwithstanding any law to the contrary, a state or local governmental agency or private entity is not subject to civil liability for the disclosure of information made in good faith to the department pursuant to this section.

A.R.S. § 46-134. Powers and duties; expenditure; limitation

The state department shall:
1. Administer all forms of public relief and assistance except those that by law are administered by other departments, agencies or boards.
2. Develop a section of rehabilitation for the visually impaired that shall include a sight conservation section, a vocational rehabilitation section in accordance with the federal vocational rehabilitation act, a vending stand section in accordance with the federal Randolph-Sheppard act and an adjustment service section that shall include rehabilitation teaching and other social services deemed necessary, and shall cooperate with similar agencies already established. The administrative officer and staff of the section for the blind and visually impaired shall be employed only in the work of that section.
3. Assist other departments, agencies and institutions of the state and federal governments, when requested, by performing services in conformity with the purposes of this title.
4. Act as agent of the federal government in furtherance of any functions of the state department.
5. Carry on research and compile statistics relating to the entire public welfare program throughout this state, including all phases of dependency and defectiveness.
6. Cooperate with the superior court in cases of delinquency and related problems.
7. Develop plans in cooperation with other public and private agencies for the prevention and treatment of conditions giving rise to public welfare and social security problems.
8. Make necessary expenditures in connection with the duties specified in paragraphs 5, 6, 7, 13 and 14 of this subsection.
9. Have the power to apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this chapter.
10. Make rules, and take action necessary or desirable to carry out the provisions of this title, that are not inconsistent with this title.
11. Administer any additional welfare functions required by law.
12. Provide the cost of care and transitional independent living services for a person under twenty-one years of age pursuant to section 8-521.01.
13. If a tribal government elects to operate a cash assistance program in compliance with the requirements of the United States department of health and human services, with the review of the joint legislative budget committee, provide matching monies at a rate that is consistent with the applicable fiscal year budget and that is not more than the state

matching rate for the aid to families with dependent children program as it existed on July 1, 1994.
14. Furnish a federal, state or local law enforcement officer, at the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that the recipient is a fugitive felon or a probation, parole or community supervision violator or has information that is necessary for the officer to conduct the official duties of the officer and the location or apprehension of the recipient is within these official duties.
15. In conjunction with Indian tribal governments, request a federal waiver from the United States department of agriculture that will allow tribal governments that perform eligibility determinations for temporary assistance for needy families programs to perform the food stamp eligibility determinations for persons who apply for services pursuant to section 36-2901, paragraph 6, subdivision (a). If the waiver is approved, the state shall provide the state matching monies for the administrative costs associated with the food stamp eligibility based on federal guidelines. As part of the waiver, the department shall recoup from a tribal government all federal fiscal sanctions that result from inaccurate eligibility determinations.

A.R.S. § 46-10. Definitions

In this title, unless the context otherwise requires:
1. "Aid to families with dependent children" means assistance granted under section 403 of title IV of the social security act as it existed before August 22, 1996.
2. "Applicant" means a person who has applied for assistance or services under this title, or a person who has applied for assistance or services under this title and who has custody of a dependent child.
3. "Assistance" means payments in cash or kind to or on behalf of a person or persons in need as provided for in this title.
4. "Assistance unit" means those members of a needy family, as prescribed by the department in rule, or a child only case, that meets the nonfinancial eligibility criteria for cash assistance and whose needs and other circumstances are considered as a whole to determine a cash assistance benefit amount.
5. "Cash assistance" means temporary assistance for needy families paid to a recipient for the purpose of meeting basic living expenses as defined by the department.
6. "Child care personnel" means any person who supervises children in a day care home or center that receives child care food program monies under this article.
7. "Child only case" means a case in which the eligible dependent child is in the legal custody of the department of child safety and placed in foster care with an unrelated adult or with a nonparent relative who is not receiving cash assistance.
8. "Dependent child" means a needy child who has been deprived of parental support or care by reason of the death, unemployment of the supporting parent as defined and prescribed by the rules of the department, continued absence from the home, or physical or mental incapacity of a parent, and whose relatives who are responsible under the law for the child's support are not able to provide adequate care and support of the child without public assistance, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt,

niece, nephew or cousin in a place of residence maintained by one or more of such relatives as his or their own home or who is in the legal custody of the department of child safety and placed in a foster home or with an unrelated adult as a recipient of temporary assistance for needy families. Such dependent child must be under eighteen years of age or, if eighteen, must be a full-time student in a high school, or in the equivalent level of vocational or technical training, and shall be reasonably expected to complete the program before reaching age nineteen.
9. "Director" means the director of the department of economic security.
10. "Domestic violence" means battered or subject to extreme cruelty as defined in section 408(a)(7)(C)(iii) of the social security act.
11. "Employment plan" means an agreement between the department and the cash assistance recipient regarding the participant's work activities and services provided by the department.
12. "Federal poverty level" means the poverty guidelines that are issued by the United States department of health and human services pursuant to section 673(2) of the omnibus budget reconciliation act of 1981 and that are reported annually in the federal register.
13. "Head of household" means a dependent child's parent or the spouse of the parent, or the dependent child's nonparent relative or spouse of the nonparent relative, who receives cash assistance for himself and on behalf of the dependent child or only on behalf of the dependent child.
14. "Homestead property" means a home owned and occupied by the applicant or recipient, or his spouse.
15. "Jobs program" means services established by the department to ensure that participants comply with work requirements as prescribed in Public Law 104-193.
16. "Needy family":
(a) Means a family that resides in the same home and includes a dependent child, one or more of the dependent child's parents and nonparent relatives of the dependent child and their spouses who meet financial cash assistance eligibility criteria established by this title and by department rule.
(b) Does not include a child only case.
17. "Nonparent relative" means a dependent child's grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, niece, nephew or cousin and includes a permanent guardian who is appointed pursuant to section 8-872.
18. "Participant" means a recipient of cash assistance engaged in work activities through the JOBS program.
19. "Personal responsibility declaration" means a document that is prescribed by the department and in which the applicant acknowledges understanding of the applicant's personal responsibility.
20. "Recipient" means a person who receives assistance or services under the provisions of this title.
21. "Services" includes social casework, rehabilitation counseling and similar services rendered to a person or persons in need as provided for in this title.
22. "Sponsor" means any political subdivision of this state, any federally recognized Indian tribe, any military base or any other person, partnership, corporation or association

contracting with this state to provide assistance in the distribution of child care food program monies pursuant to this article.
23. "State department" or "department" means the department of economic security.
24. "Temporarily deferred" means the postponement of work activities.
25. "Temporary assistance for needy families" means assistance granted under section 403 of title IV of the social security act as it exists after August 21, 1996.
26. "Vendor payment" means any payment to a person other than the recipient on his behalf.
27. "Work activities" means the following activities that are countable toward the federal work participation rate as prescribed in Public Law 104-193, section 407 (1996):
(a) Unsubsidized employment.
(b) Subsidized private or public employment.
(c) Work experience.
(d) On-the-job training.
(e) Job search and job readiness assistance.
(f) Community service programs.
(g) Vocational educational training.
(h) Job skills training directly related to employment.
(i) Education directly related to employment in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency.
(j) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalency, in the case of a recipient who has not completed secondary school or received such a certificate.

A.R.S. § 46-299 Jobs program; definition

A. As a condition of eligibility or continuing eligibility for cash assistance, all recipients shall engage in work activities that are established in this article and determined appropriate by the department. An individual with a disability shall engage in work activities as required by this subsection unless the individual with a disability provides the department verification of a condition that meets disability or temporary disability criteria established by the department. The following individuals are temporarily deferred from the requirement to engage in work activities:
1. A parent in a single parent family or a nonparent relative personally caring for a child who is under the age of twelve months for a period of not more than twelve months in the recipient's lifetime. This deferral does not apply to teenaged custodial parents who do not have a high school diploma or its equivalent.
2. An unmarried custodial parent who is under eighteen years of age and who is personally caring for a child who is under the age of twelve weeks.
3. An individual who provides verification acceptable to the department that the individual is personally caring for the individual's dependent who is a person with a disability and unable to care for himself.
4. Victims of domestic violence whose participation in work activities causes an immediate threat to their own safety or the safety of their children.
5. Dependent children as defined in this article.

B. To the extent that the state meets the federally required work participation rates, unmarried custodial parents may attend a postsecondary educational program full time in lieu of standard work participation requirements. The department may require additional work activities.
C. Teenaged heads of household who are under twenty years of age and who have not attained their high school diploma or its equivalent are required to either:
1. Maintain satisfactory attendance at a secondary school or the equivalent.
2. Satisfactorily participate in education directly related to employment at the level of participation established by the department.
D. The department may establish the minimum work participation level required to meet the work requirements established in Public Law 104-193, section 407 (1996).
E. All cash assistance recipients, excluding dependent children, shall complete a personal responsibility declaration.
F. All cash assistance recipients, excluding dependent children complying with compulsory school requirements as prescribed in section 15-803, shall also participate in the development of an employment plan and shall receive services in support of and as specified in that plan.
G. Participants who fail or refuse to engage in work activities as required by the department are subject to the progressive sanctions prescribed in section 46-300.
H. The department shall adopt rules that establish good cause reasons that excuse the participant from engaging in work activities.
I. This state shall provide workers' compensation coverage for cash assistance recipients engaged in unpaid work experience or community service programs as established in this article. The cost shall be paid from the temporary assistance for needy families monies.
J. The department may operate on a statewide basis a wage subsidy program. Employers may hire recipients of cash assistance and food stamps for subsidized job slots that are full time and that offer a reasonable possibility of unsubsidized employment after the subsidy period. This program shall provide that:
1. Employers who operate an approved wage subsidy program shall receive a subsidy for up to six months. The department may grant an extension of three months to employers operating in areas identified as having a higher unemployment rate than the state average, as defined by the department, if the extension increases the likelihood of ongoing unsubsidized employment for the subsidized employee.
2. The department shall ensure that subsidized jobs made available to subsidized employees:
(a) Do not require work in excess of forty hours per week.
(b) Pay a wage that is substantially like the wage paid for similar jobs with the employer with appropriate adjustments for experience and training but not less than the federal minimum hourly wage.
(c) Do not impair an existing contract or collective bargaining agreement.
(d) Do not displace currently employed workers or fill positions that are vacant due to a layoff.
3. Wage subsidy employers shall:
(a) Maintain health, safety and working conditions at or above levels generally acceptable in the industry and not less than those of comparable jobs offered by the employer.

(b) Provide on-the-job training necessary for subsidized employees to perform their duties.
(c) Sign an agreement for each placement outlining the specific job offered to a subsidized employee and agree to abide by all of the requirements of the program. All agreements shall contain a provision that sets forth the employer's responsibility to repay subsidies paid under this article if the employer violates program requirements.
(d) Provide workers' compensation coverage for each subsidized employee they employ.
(e) Provide the subsidized employee with benefits equal to those for new employees or as required by state and federal law, whichever is greater. For purposes of this subdivision, "benefits" includes health care coverage, paid sick leave and holiday and vacation pay.
4. Eligible subsidized employees are those who:
(a) Do not have sufficient work experience to obtain unsubsidized employment.
(b) Have completed an employment preparation program.
(c) Are deemed able to benefit from this employment strategy by the department.
5. The department shall:
(a) Disregard income earned by the subsidized employee in the subsidized job when determining the household's eligibility for cash assistance and food stamps.
(b) Suspend regular payments of cash assistance and food stamps to the household at the end of the calendar month in which an employer makes the first subsidized wage payment to a subsidized employee who is otherwise eligible to receive the cash assistance and food stamps.
(c) Reimburse employers each month, from cash assistance and food stamps, the lesser of a fixed subsidy amount determined by the department or the gross wages paid to the subsidized employee.
(d) Determine eligibility for supplemental payments as follows:
(i) If the net monthly full-time wage paid to a subsidized employee is less than the combined monthly total of the cash assistance and food stamps the participant is eligible to receive, the department shall authorize issuance of a supplemental cash payment to compensate for the deficit. To determine if a deficit exists, the department shall adopt, through rules, an equivalency scale that is adjustable to household size and other factors. For purposes of this item, "net monthly full-time wage" refers to a participant's wages after required payroll deductions.
(ii) The department shall monthly determine and pay in advance supplemental payments to eligible subsidized employees. In calculating the payment, the department shall assume that the participant will work forty hours per week during the month unless an employer provides information that the number of hours to be worked by a subsidized employee will be reduced.
K. For purposes of this section, "subsidized employee" means an individual engaged in this subsidized employment activity.

A.R.S. §46-300 Sanctions

A. The department shall impose a series of graduated sanctions as described in subsection C of this section for any noncompliance with:
1. The child support enforcement efforts required by section 46-292, subsection D unless good cause is established as provided in section 46-292, subsections F and G.

2. The work activities requirements described in section 46-299, unless good cause is established as provided in section 46-299, subsection H and department rules. A recipient who does not comply with the work activities requirements shall demonstrate compliance with the work activities requirements in order to continue benefit eligibility and to avoid sanctions.
3. The school enrollment and attendance requirements of section 46-292, subsection S.
4. The immunization requirements of section 46-292, subsection T.
B. Noncompliance with one or more of the requirements listed in subsection A of this section during any calendar month is deemed to be a month of noncompliance and shall result in the sanctions prescribed in subsection C of this section. The department shall impose these graduated sanctions even if the instances of noncompliance do not occur in consecutive months.
C. The department shall impose the following sanctions:
1. For the first instance of noncompliance, the department shall reduce the household's cash assistance grant by twenty-five per cent for one month.
2. For a second instance of noncompliance that occurs in a month other than the month in which the first noncompliance occurred, the department shall reduce the household's cash assistance grant by fifty per cent for one month.
3. For a third instance of noncompliance that occurs in a month other than the month in which the second noncompliance occurred and any instance of noncompliance thereafter, the department shall terminate the household's cash assistance grant for at least one month or until the household complies.

FEDERAL REGULATIONS

45 CFR §261.31 How many hours must a work-eligible individual participate for the family to count in the numerator of the overall rate?

(a) Subject to paragraph (d) of this section, a family with a work-eligible individual counts as engaged in work for a month for the overall rate if:
(1) He or she participates in work activities during the month for at least a minimum average of 30 hours per week; and
(2) At least 20 of the above hours per week come from participation in the activities listed in paragraph (b) of this section.
(b) The following nine activities count toward the first 20 hours of participation: unsubsidized employment; subsidized private-sector employment; subsidized public-sector employment; work experience; on-the-job training; job search and job readiness assistance; community service programs; vocational educational training; and providing child care services to an individual who is participating in a community service program.
(c) Above 20 hours per week, the following three activities may also count as participation: job skills training directly related to employment; education directly related to employment; and satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence.
(d)(1) We will deem a work-eligible individual who participates in a work experience or community service program for the maximum number of hours per month that a State may require by dividing the combined monthly TANF or SSP-MOE grant and food stamp allotment by the higher of the Federal or State minimum wage to have participated for an average of 20 hours per week for the month in that activity.
(2) This policy is limited to States that have adopted a Simplified Food Stamp Program option that permits a State to count the value of food stamps in determining the maximum core hours of participation permitted by the FLSA.
(3) In order for Puerto Rico, which does not have a traditional Food Stamp Program, to deem core hours, it must include the value of food assistance benefits provided through the Nutrition Assistance Program in the same manner as a State must include food stamp benefits under subsection (d)(1).
[73 FR 6823, Feb. 5, 2008]
(from e-CFR: current as of December 14, 2015)

45 CFR §261.32 How many hours must work-eligible individuals participate for the family to count in the numerator of the two-parent rate?

(a) Subject to paragraph (d) of this section, a family with two work-eligible parents counts as engaged in work for the month for the two-parent rate if:
(1) Work-eligible parents in the family are participating in work activities for a combined average of at least 35 hours per week during the month, and
(2) At least 30 of the 35 hours per week come from participation in the activities listed in paragraph (b) of this section.
(b) The following nine activities count for the first 30 hours of participation: unsubsidized employment; subsidized private-sector employment; subsidized public-sector employment; work experience; on-the-job training; job search and job readiness

assistance; community service programs; vocational educational training; and providing child care services to an individual who is participating in a community service program.
(c) Above 30 hours per week, the following three activities may also count for participation: job skills training directly related to employment; education directly related to employment; and satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence.
(d)(1) We will deem a family with two work-eligible parents in which one or both participates in a work experience or community service program for the maximum number of hours per month that a State may require by dividing the combined monthly TANF or SSP-MOE grant and food stamp allotment by the higher of the Federal or State minimum wage to have participated for an average of 30 hours per week for the month in that activity.
(2) This policy is limited to States that have adopted a Simplified Food Stamp Program option that permits a State to count the value of food stamps in determining the maximum core hours of participation permitted by the FLSA.
(3) In order for Puerto Rico, which does not have a traditional Food Stamp Program, to deem core hours, it must include the value of food assistance benefits provided through the Nutrition Assistance Program in the same manner as a State must include food stamp benefits under paragraph (d)(1) of this section.
(e)(1) Subject to paragraph (f) of this section, if the family receives federally funded child care assistance and an adult in the family does not have a disability or is not caring for a child with a disability, then the work-eligible individuals must be participating in work activities for an average of at least 55 hours per week to count as a two-parent family engaged in work for the month.
(2) At least 50 of the 55 hours per week must come from participation in the activities listed in paragraph (b) of this section.
(3) Above 50 hours per week, the three activities listed in paragraph (c) of this section may also count as participation.
(f)(1) We will deem a family with two work-eligible parents in which one or both participates in a work experience or community service program for the maximum number of hours per month that a State may require by dividing the combined monthly TANF or SSP-MOE grant and food stamp allotment by the higher of the Federal or State minimum wage to have participated for an average of 50 hours per week for the month in that activity.
(2) This policy is limited to States that have adopted a Simplified Food Stamp Program option that permits a State to count the value of food stamps in determining the maximum core hours of participation permitted by the FLSA.
(3) In order for Puerto Rico, which does not have a traditional Food Stamp Program, to deem core hours, it must include the value of food assistance benefits provided through the Nutrition Assistance Program in the same manner as a State must include food stamp benefits under paragraph (d)(1) of this section.
[73 FR 6823, Feb. 5, 2008]
(from e-CFR: current as of December 14, 2015)

45 CFR §261.33 What are the special requirements concerning educational activities in determining monthly participation rates?

(a) Vocational educational training may only count for a total of 12 months for any individual.
(b)(1) A recipient who is married or a single head-of-household under 20 years old counts as engaged in work in a month if he or she:
(i) Maintains satisfactory attendance at a secondary school or the equivalent during the month; or
(ii) Participates in education directly related to employment for an average of at least 20 hours per week during the month.
(2)(i) For a married recipient, such participation counts as the greater of 20 hours or the actual hours of participation.
(ii) If both parents in the family are under 20 years old, the requirements at §261.32(d) are met if both meet the conditions of paragraphs (b)(1)(i) or (b)(1)(ii) of this section.
(c) In counting individuals for each participation rate, not more than 30 percent of individuals engaged in work in a month may be included in the numerator because they are:
(1) Participating in vocational educational training; and
(2) In fiscal year 2000 or thereafter, individuals deemed to be engaged in work by participating in educational activities described in paragraph (b) of this section.
(from e-CFR: current as of December 14, 2015)

45 CFR §261.34 Are there any limitations in counting job search and job readiness assistance toward the participation rates?
Yes. There are four limitations concerning job search and job readiness assistance.
(a) Except as provided in paragraph (b) of this section, an individual's participation in job search and job readiness assistance counts for a maximum of six weeks in the preceding 12-month period.
(b) If the State's total unemployment rate is at least 50 percent greater than the United States' total unemployment rate or if the State meets the definition of a “needy State”, specified at §260.30 of this chapter, then an individual's participation in job search and job readiness assistance counts for a maximum of 12 weeks in that 12-month period.
(c) For purposes of paragraphs (a) and (b) of this section, a week equals 20 hours for a work-eligible individual who is a single custodial parent with a child under six years of age and equals 30 hours for all other work-eligible individuals.
(d) An individual's participation in job search and job readiness assistance does not count for a week that immediately follows four consecutive weeks in which the State reports any hours of such participation in the preceding 12-month period. For purposes of this paragraph a week means seven consecutive days.
(e) Not more than once for any individual in the preceding 12-month period, a State may count three or four days of job search and job readiness assistance during a week as a full week of participation. We calculate a full week of participation based on the average daily hours of participation for three or four days and will prorate participation at that level for the remaining one or two days to determine the total hours for a five-day week. Any prorated hours of participation must be included in the calculation of total hours permitted under the limitation in this section.
[73 FR 6824, Feb. 5, 2008]
(from e-CFR: current as of December 14, 2015)

45 CFR §261.35 Are there any special work provisions for single custodial parents?

Yes. A single custodial parent or caretaker relative with a child under age six will count as engaged in work if he or she participates for at least an average of 20 hours per week. *(from e-CFR: current as of December 14, 2015)*

ARIZONA DEPARTMENT OF ADMINISTRATION (F-16-0302)
Title 2, Chapter 10, Article 3, Risk Management

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR-REVIEW REPORT

MEETING DATE: April 5, 2016 **AGENDA ITEM: D-2**

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

FROM: Matthew Rippentrop, Legal Intern

DATE: March 18, 2016

SUBJECT: **ARIZONA DEPARTMENT OF ADMINISTRATION (F-16-0302)**
Title 2, Chapter 10, Article 3, Risk Management

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The Arizona Department of Administration (Department), provides for policies and procedures in administering liability insurance for state agencies. The Risk Management Division provides insurance coverage to state agencies and employees for property, liability, and workers' compensation losses.

A.A.C. Title 2, Chapter 10, Article 3 titled "Risk Management" contains one rule.

Section Content and Subject Matter

R2-10-301 titled "Insurance: Purchase and Contracts" establishes the Department's policies and procedures for risk management in administering liability insurance for state agencies.

Year Each Rule was Last Amended or Newly Made

The rule was last amended on February 4, 2006.

Proposed Action

The Department is not considering any course of action at this time.

Summary of Reasons for the Proposed Action

The Department believes the rule is effective, and is consistent with state statutes and rules.

Substantive or Procedural Concerns

None.

Analysis of the Agency's Report Pursuant to Criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

   Yes. The Department has certified its compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

   Yes. The Department indicates that the rule is effective in achieving its objective.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

   No. The Department indicates that it has not received any written criticisms of the rule during the past five years.

4. **Has the agency analyzed whether the rules are authorized by statute?**

   Yes. Under A.R.S. § 41-621, "[t]he department of administration shall obtain insurance against loss, to the extent it is determined necessary and in the best interests of the state.

   A.R.S. § 41-621(Q) provides that the Department "shall adopt such rules as are deemed necessary to carry out, implement and limit the provisions of this chapter [Chapter 3.1]". Under A.R.S. §41-623(A), the Department "shall promulgate rules and regulations to initiate and implement a risk management and loss control program for all state departments, agencies, boards and commissions for the purpose of reducing risks, accidents and property liability and workers' compensation losses."

5. **Has the agency analyzed the rules' consistency with other rules and statutes?**

   Yes. The Department indicates that the rule is consistent with state statutes and rules.

6. **Has the agency analyzed the current enforcement status of the rules?**

   Yes. The Department indicates it is enforcing the rule as written.

7. **Has the agency analyzed whether the rules are clear, concise, and understandable?**

   Yes. The rule is clear, concise, and understandable.

8. **Stringency of the Rules:**

   a. **Are the rules more stringent than corresponding federal law?**

No. The rule does not correspond to any federal law.

   b. **If so, is there statutory authority to exceed the requirements of federal law?**

Not applicable.

9. **For rules adopted after July 29, 2010:**

   a. **Do the rules require issuance of a regulatory permit, license or agency authorization?**

No. The Department indicates that the rule does not require the issuance of a regulatory permit, license or agency authorization.

   b. **If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?**

Not applicable.

10. **Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?**

Yes. No course of action was proposed in the previous five-year-review report.

11. **Has the agency included a proposed course of action?**

Yes. The Department is not considering any course of action at this time.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends that the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: April 5, 2016 **AGENDA ITEM: D-2**

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

FROM: GRRC Economist

DATE: March 18, 2016

SUBJECT: **ARIZONA DEPARTMENT OF ADMINISTRATION (F-16-0302)**
Title 2, Chapter 10, Article 3, Risk Management

I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-621, A.R.S. § 41-621(Q), and A.R.S. § 41-623(A) and have the following comments.

1. Economic Impact Comparison

The economic, small business, and consumer impact statement (EIS) from the most recent rulemaking was available for the rules.

The rules "provide authority to the Department to indemnify, hold harness and limit the liability of contractors", provides for policies and procedures in administering liability insurance for state agencies, and provides insurance coverage to state agencies and employees for property, liability, and workers' compensation losses. According to the Department, no adverse economic impacts would affect small businesses nor consumers because the rule change does not "amend any existing requirements" affecting these groups. The Department predicted a possible increase in insurance risk to the state due to the potential need to modify contracts, leases, or written agreements based off of the rule change. The resulting cost was not updated in the five-year-review report.

The Department has concluded that the economic impact has been as predicted for the rules.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department has determined that the rules impose the least burden and costs to the regulated community.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Douglas A. Ducey
Governor

Craig C. Brown
Director

ARIZONA DEPARTMENT OF ADMINISTRATION

OFFICE OF THE DIRECTOR

100 NORTH FIFTEENTH AVENUE • SUITE 401
PHOENIX, ARIZONA 85007

(602) 542-1500

RECEIVED
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GRRC

December 22, 2015

Nicole A. Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007

Dear Ms. Ong:

In compliance with A.R.S. § 41-1056, the Arizona Department of Administration (ADOA) submits a report of its five-year-review of Title 2, Chapter 10 of the Arizona Administrative Code. I certify that the Department is in compliance with A.R.S. § 41-1091. This Chapter contains rules authorized by statute that govern the administering liability insurance for state agencies.

If you have any questions regarding this five-year-review report or you need additional information prior to the Council meeting when the report is considered, please contact Ray Di Ciccio, ADOA State Risk Manager at (602) 542-1791. Individuals from the Department will be present at the Council meeting to answer any questions the members may have about this five-year-review report.

Sincerely,

Craig C. Brown
Director

cc: Ray Di Ciccio, State Risk Manager

Five Year Review Report
Title 2, Chapter 10, Article 3
Risk Management

Introduction

The Department adopted rules as authorized by statute to provide policies and procedures in administering liability insurance for state agencies. The rules were adopted July 27, 1983 and include R2-10-301 through R2-10-304, inclusive. R2-10-302 through R2-10-304 was repealed by rulemaking dated December 18, 1992.

The Department amended R2-10-301 in December 2005 and requested a rescheduling of the five-year report due based on this rulemaking. The amended rule was approved by GRRC on December 6, 2005. The approved rule was published in the *Register* on December 30, 2005 and became effective February 4, 2006.

Except as otherwise noted, the following information is identical for the rule in this Article: R2-10-301.

1. General and specific statutes authorizing the rules:

A.R.S. §41-621 – Provides general authority for the rule
A.R.S. §§ 41-621(Q) and 41-623(A) – Provides specific authority for the rule

2. Objective of the rules including the purpose for the existence of the rules:

The Department believes the rules are effective in achieving their objective.

The objective of the rule is to establish the Department's policies and procedures for Risk Management in administering liability insurance for state agencies.

Article 3 Risk Management
R2-10-301 Insurance: Purchase and Contracts
R2-10-301 prescribes the approval procedures for state agencies to follow when seeking insurance or entering into contractual agreements that expand the state's liabilities of the state.

3. Effectiveness of the rules in achieving the objective, including a summary of any available data supporting the conclusion reached:

The rules effectively achieve their objective.

4. Consistency of the rules with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency:

The Department believes the following rule is consistent with state rule(s): R2-10-301.

5. Agency enforcement policy, including whether the rules are currently being enforced and, if so, whether there are any problems with enforcement:

The Department is currently enforcing the following rule: R2-10-301.

6. Clarity, conciseness, and understandability of the rules:

The Department considers the language for the rule to be clear, concise, and understandable.

7. Summary of the written criticisms of the rules received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, written analysis submitted to agency questioning whether the rules are 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 rules are discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings:

The Department has not received written criticisms regarding the rules during the last five years.

8. A comparison of the current economic, small business, and consumer impact of the rules with economic, small business, and consumer impact statement prepared on the last rulemaking of the rule or, if no economic, small business, and consumer impact statement was prepared on the last rulemaking of the rule, an assessment of the actual economic, small business, and consumer impact of the rules:

The information provided with the last adoption of rule in December 2005 estimated that there would be no adverse impact on small business as it does not impose any new requirements nor does it amend any existing requirements impacting small business. Consumers are not impacted by these rules.

Since the last review, the Department currently estimates that the rule does not have any adverse impact on small business or consumers in the state, nor has the effect on state agencies changed.

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:

None

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report:

The Department indicated in the previous five-year review report that no course of action was necessary for the rules.

11. A determination that the probable benefits of the rules outweigh within this state the probable costs of the rules, and 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:

The Department believes that the rule imposes the least burden and costs to the agencies regulated by the rule. Risk Management has made every effort to ensure the policies, procedures, paperwork and compliance costs effectively work for agencies, but that they are also efficient, cost effective and necessary to achieving the regulatory objectives for the Department to properly manage insurance for the state.

12. A determination that the rules are not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law, indicating whether:

a. There is a similar regulatory framework governing the same subject matter under federal law,

There is no similar regulatory framework or federal law applicable to the subject matter of the rules.

b. The rules are more restrictive than a similar requirement in federal law, and

There is no similar requirement in federal law.

c. There is statutory authority for more restrictive requirements than those in federal law.

Federal law does not apply to this rule.

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, indicating whether:

a. The rule requires issuance of a regulatory permit, license, or agency authorization;

Not applicable.

b. The permit, license, or agency authorization falls within the definition of "general permit" in A.R.S. § 41-1001, if a permit, license or agency authorization is issued; or

Not applicable as answer was provided in 13(a).

c. An exception applies under A.R.S. § 41-1037, if a general permit is not issued.

Not applicable as answer was provided in 13(a).

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.

The Department is not considering a course of action in amending the rules at this time.

Title 2, Chapter 10, Article 3

Risk Management Section

Insurance: Purchase and Contracts

RULE TEXT

TITLE 2. ADMINISTRATION

CHAPTER 10. DEPARTMENT OF ADMINISTRATION
RISK MANAGEMENT SECTION

(Authority: A.R.S. § 41-621 et seq.)

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

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

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

ARTICLE 3. INSURANCE: PURCHASE AND CONTRACTS

R2-10-301. Insurance: Purchase and Contracts

A. An agency seeking to purchase property, liability, or workers' compensation insurance shall request RM's approval in writing at least 90 days before the desired effective date of coverage.

RM shall not reimburse an agency for the purchase of property, liability, or workers' compensation insurance that has not been approved by RM.

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

1. Names a non-state entity as an additional insured in a contract;
2. Provides a Certificate of Insurance;
3. Indemnifies, holds harmless, or limits the liability of any party to a contract, lease, or other written agreement; or
4. Waives the state's right to subrogate with regard to any party to a contract, lease, or other written agreement.

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

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

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

Historical Note

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

R2-10-302. Repealed

Historical Note

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

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

R2-10-303. Repealed

Historical Note

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

R2-10-304. Repealed

Historical Note

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

ffective January 12, 199

A COPY OF THE GENERAL AND SPECIFIC STATUTES AUTHORIZING THE RULES

A.A.C. Title 2, Chapter 10
Arizona Department of Administration
Risk Management Section
Article 3, Insurance: Purchase and Contracts

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

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

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

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

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

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

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

6. Workers' compensation and employers' liability insurance.

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

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

B. To the extent it is determined necessary and in the best interests of the state, the department of administration shall obtain insurance or provide for state self-insurance against property damage caused by clients and liability coverage resulting from, the direct or incidental care of clients participating in programs of the state and its departments, agencies, boards or commissions relating to custodial care. The insurable programs shall include foster care, programs for the developmentally disabled, an independent living program pursuant to section 8-521 and respite-sitter service programs. The department shall obtain insurance or provide for state self-insurance pursuant to this subsection to protect the clients participating in these programs and individual providers of these program services on behalf of the state and its departments, agencies, boards or commissions. The insurance provided under this subsection does not include medical or workers' compensation coverage for providers. The department may include in its annual budget request pursuant to section 41-622, subsection D a charge for the insurance or self-insurance provided in this subsection. To assist in carrying out the provisions of this subsection, the department shall establish a seven member advisory board in accordance with the following provisions:

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

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

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

4. Board members shall serve for three year terms.

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

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

C. The department of administration may obtain insurance against loss, to the extent it is determined necessary and in the best interests of the state as provided in subsection F of this section for the professional liability of individual physicians and psychiatrists who provide services under a contract with the state department of corrections. Coverage is limited to acts and omissions committed inside a state department of corrections facility while in the performance of the contract and to individual physicians and psychiatrists who demonstrate to the satisfaction of the state department of corrections that they cannot otherwise obtain professional liability coverage for the services required by the contract. The director of the department of administration may impose on the state department of corrections a deductible of not more

than ten thousand dollars per loss that arises out of a professional liability claim pursuant to this subsection. Deductible amounts established by the director shall be subject to annual review by the joint legislative budget committee.
D. The department of administration may obtain property, liability, disability or workers' compensation insurance, self-insure or develop risk retention pools to provide for payment of property loss or casualty claims or disability insurance claims against contractors of this state with the approval of the joint legislative budget committee. With respect to insurance, self-insurance or risk retention pools for contractors licensed and contracted to do work for this state, the coverage afforded applies with respect to the conduct of the business entity of that contractor. The pool is available to all contractors regardless of the amount that the state contracted work bears in relation to the amount of nonstate contracted work. The contractor shall be terminated from the pool if the contractor ceases to be a state contractor.
E. The department of administration may determine, in the best interests of the state, that state self-insurance is necessary or desirable and, if that decision is made, shall provide for state self-insurance for losses arising out of state property, liability or workers' compensation claims prescribed by subsection A of this section. If the department of administration provides state self-insurance, such coverage shall be excess over any other valid and collectible insurance. The director of the department of administration may impose on state departments, agencies, boards and commissions a deductible of not more than ten thousand dollars per loss that arises out of a property, liability or workers' compensation loss pursuant to this subsection. Deductible amounts established by the director shall be subject to annual review by the joint legislative budget committee.
F. In carrying out the provisions of this chapter, the department of administration shall establish and provide the state with some or all of the necessary risk management services, or shall contract for risk management services pursuant to chapter 23 of this title, as the director of the department of administration deems necessary in the best interest of the state, and may, in addition to other specifications of such coverage as deemed necessary, determine self-insurance to be established. The provisions of chapter 23 of this title shall not apply to the department of administration's procurement of insurance to cover losses arising out of state property or liability claims prescribed in subsections A and D of this section or excess loss insurance for the state's workers' compensation liability for individual or aggregate claims, or both, in such amounts and at such primary retention levels as the department of administration deems in the best interest of the state. In purchasing insurance to cover losses arising out of state property or liability claims prescribed by subsection A of this section, the department of administration is not subject to the provisions of title 20, chapter 2, article 5.
G. No successful bidder for risk management services pursuant to this section shall be entitled to receive directly or indirectly any sales commission, contingent commission, excess profit commission, or other commissions, or anything of value, as payment for the risk management services except those amounts received directly from this state as payment for the risk management services.
H. The department of administration shall pay for purchased risk management services, premiums for insurance on state property and state liability and workers' compensation pursuant to the provisions of this chapter.
I. A state officer, agent or employee acting in good faith, without wanton disregard of his statutory duties and under the authority of an enactment that is subsequently declared to be unconstitutional, invalid or inapplicable is not personally liable for an injury or damage caused thereby except to the extent that he would have been personally liable had the enactment been constitutional, valid and applicable.
J. A state officer, agent or employee, except as otherwise provided by statute, is not personally liable for an injury or damage resulting from his act or omission in a public official capacity where the act or omission was the result of the exercise of the discretion vested in him if the exercise of the discretion was done in good faith without wanton disregard of his statutory duties.
K. The state and its departments, agencies, boards and commissions are immune from liability for losses arising out of a judgment for willful and wanton conduct resulting in punitive or exemplary damages.
L. The following exclusions shall apply to subsections A, B and E of this section:
1. Losses against this state and its departments, agencies, boards and commissions that arise out of and are directly attributable to an act or omission determined by a court to be a felony by a person who is provided coverage pursuant to this article unless the state knew of the person's propensity for that action, except those acts arising out of the operation or use of a motor vehicle.
2. Losses arising out of contractual breaches.

M. If self-insurance coverage is determined to exist, the attorney general, with funds provided by the department of administration, shall provide for the defense, either through his office or by appointment of outside legal counsel, of the state and its departments, agencies, boards and commissions and all officers, agents and employees thereof and such others as are insured by the department of administration for or on account of their acts or omissions covered pursuant to this chapter. All state departments, agencies, boards and commissions, all officers, agents and employees thereof and such others as are insured by the department of administration shall cooperate fully with the attorney general and department of administration in the defense of claims arising pursuant to this chapter.
N. A claim for liability damages made pursuant to this chapter may be settled and payment made up to the amount of twenty-five thousand dollars or such higher limit as may be established by the joint legislative budget committee with the approval of the director of the department of administration. A claim over the amount of twenty-five thousand dollars up to fifty thousand dollars or such higher limit as may be established by the joint legislative budget committee may be settled and payment made with the approval of the director of the department of administration and the attorney general. Any claim over the amount of fifty thousand dollars or such higher limit as may be established by the joint legislative budget committee may be settled and payment made with the approval of the director of the department of administration, the attorney general and the joint legislative budget committee. If it is in the best interest of this state, the joint legislative budget committee may establish higher settlement limits. Any settlements involving amounts in excess of fifty thousand dollars or such higher limit as may be established by the joint legislative budget committee shall be approved by the department of administration, the attorney general and the joint legislative budget committee pursuant to the authority granted. The settlement of liability claims shall be solely the authority of the department of administration, the attorney general and the joint legislative budget committee. No state department, agency, board or commission or any officer, agent or employee of this state may voluntarily make any payment, assume any obligation, incur any expense or maintain the individual right of consent for liability claims made pursuant to this chapter except as provided by this section.
O. Neither the authority provided by this section to insure, nor the exercise of such authority, shall:
1. Impose any liability on this state or the departments, agencies, boards and commissions or any officers, agents and employees of this state unless such liability otherwise exists.
2. Impair any defense this state or the departments, agencies, boards and commissions or any officers, agents and employees of this state otherwise may have.
P. The department of administration shall pay, on behalf of any state officer, agent or employee, any damages, excluding punitive damages, for which the officer, agent or employee becomes legally responsible if the acts or omissions resulting in liability were within the officer's, agent's or employee's course and scope of employment. The department of administration may pay for all damages however designated which the officer, agent or employee becomes legally responsible for if the acts or omissions resulting in liability are determined by the director of the department of administration to be within the person's course and scope of employment.
Q. The department of administration shall adopt such rules as are deemed necessary to carry out, implement and limit the provisions of this chapter.
R. For the purposes of determining whether a state officer, agent or employee is entitled to coverage under this chapter, "within the course and scope of employment or authorization" means:
1. The acts or omissions that the state officer, agent or employee is employed or authorized to perform.
2. The acts or omissions of the state officer, agent or employee occur substantially within the authorized time and space limit.
3. The acts or omissions are activated at least in part by a purpose to serve this state or its departments, agencies, boards or commissions.
S. To the extent it is determined necessary and in the best interest of this state, the department of administration may obtain design and construction insurance or provide for self-insurance against property damage caused by this state, its departments, agencies, boards and commissions and all officers and employees of this state in connection with the construction of public works projects. Workers' compensation liability insurance may be purchased to cover both general contractors and subcontractors doing work on a specific contracted work site. The department may include in its annual budget request, pursuant to section 41-622, subsection D, the cost of the insurance purchased or provided. In connection with the construction of public works projects, the department of administration may also use an owner-controlled or wrap-up insurance program if all of the following conditions are met:

1. The total cost of the project is over fifty million dollars.
2. The program maintains completed operations coverage for a term during which coverage is reasonably commercially available as determined by the director of the department of insurance, but in no event for less than three years.
3. Bid specifications clearly specify for all bidders the insurance coverage provided under the program and the minimum safety requirements that shall be met.
4. The program does not prohibit a contractor or subcontractor from purchasing any additional insurance coverage that a contractor believes is necessary for protection from any liability arising out of the contract. The cost of the additional insurance shall not be passed through to this state on a contract bid.
5. The program does not include surety insurance.
T. The state may purchase an owner-controlled or wrap-up policy that has a deductible or self-insured retention as long as the deductible or self-insured retention does not exceed one million dollars.
U. For the purposes of subsections S and T of this section:
1. "Owner-controlled or wrap-up insurance" means a series of insurance policies issued to cover this state and all of the contractors, subcontractors, architects and engineers on a specified contracted work site for purposes of general liability, property damage and workers' compensation.
2. "Specific contracted work site" means construction being performed at one site or a series of contiguous sites separated only by a street, roadway, waterway or railroad right-of-way, or along a continuous system for the provision of water and power.
V. Notwithstanding any other statute the department of administration may:
1. Limit the liability of a person who contracts to provide goods, software or other services to this state.
2. Allow the person to disclaim incidental or consequential damages.
3. Indemnify or hold harmless any party to the contract.

D-3

ARIZONA ICEBERG LETTUCE RESEARCH COUNCIL (F-16-0303)
Title 3, Chapter 9, Article 1, Arizona Iceberg Lettuce Research Council

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR-REVIEW REPORT

MEETING DATE: April 5, 2016 **AGENDA ITEM: D-3**

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

FROM: Matthew Rippentrop, Legal Intern

DATE: March 18, 2016

SUBJECT: **ARIZONA ICEBERG LETTUCE RESEARCH COUNCIL (F-16-0303)**
Title 3, Chapter 9, Article 1, Arizona Iceberg Lettuce Research Council

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The Arizona Iceberg Lettuce Research Council (AILRC) conducts research concerning the Arizona iceberg lettuce industry. The AILRC operates as a program under the Agricultural Consultation and Training (ACT) Program, a compliance assistance program for the Arizona Department of Agriculture. (ADA). The AILRC reviews and awards research proposals on topics such as variety development and lettuce pest eradication. Awards are also made for programs relating to production, harvesting, handling, and hauling lettuce from fields to markets. AILRC members are appointed by the Governor and consist of seven producers.

A.A.C. Title 3, Chapter 9, Article 1 contains five rules that provide for the authority and scope of the AILRC. The AILRC has omitted a review of R3-9-105 to allow it to expire under A.R.S. § 41-1056(J).

Article Contents, Including the Subject Matter of Each Rule in the Report

R3-9-101 titled "Definitions" prescribes definitions of terms used in the AILRC's other rules.

R3-9-102 titled "Elections" sets out when annual officer elections will take place and the length of service.

R3-9-103 titled "Hearings and Rehearing" requires the AILRC to hold administrative hearings in accordance with the Uniform Administrative Procedures Act and sets out how requests for rehearing will be handled.

R3-9-104 titled "Annual Report" sets a date by which AILRC's annual report must be prepared.

R3-9-105 titled "Records" requires the AILRC to keep records and provide copies to the public during regular State business hours.

R3-9-106 titled "Grants" sets out the procedures for the public to apply for grants and for the AILRC in awarding grants.

Year Each Rule was Last Amended or Newly Made

- November 8, 2008: Sections 101, 106
- March 11, 2006: Sections 102, 103, 104, 105

Proposed Action

The AILRC does not propose any action on the rules.

Summary of Reasons for the Proposed Action

The AILRC indicates that amendments could be made to Sections 102 and 103. The AILRC does not believe such amendments fall into a category for approval by the Governor's office. In the previous report, the AILRC proposed amendments to Sections 102 and 103 to update the language, and concerning Section 103, incorporate Arizona Rules of Civil Procedure relating to local rules in responding to motions. Staff believes that the AILRC should request an exception from the moratorium.

Substantive or Procedural Concerns

None.

Analysis of the Agency's Report Pursuant to Criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

   Yes. The AILRC has certified its compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

   Yes. The AILRC indicates the rules are effective in meeting their objectives.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

No. The AILRC indicates that it has not received any written criticisms of these rules during the past five years.

4. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. Concerning general authority, A.R.S. § 3-526.02(C)(9) provides the council shall "[a]dopt rules necessary to promptly and effectively administer this article." Specific authorizing statutes include A.R.S. §§ 3-526.02(A)(2) concerning elections, 3-526.05 concerning hearing and rehearing authority and procedure, 3-526.02(A)(5) prescribing responsibilities concerning an annual report, 3-526.02(A)(4) and 39-121 et seq. concerning record keeping, and 3-526.02(B) and 3-526.02(C)(5) concerning grant award and application procedures.

5. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes. The AILRC indicates the rules are consistent with controlling statute A.R.S. Title 3, Chapter 3, Article 4.2 "Arizona Iceberg Lettuce Research Council". AILRC notes exemption from grant statutes pursuant to A.R.S. § 41-2706(B)(4), which provides "[g]rants made by the Arizona iceberg lettuce research council for research programs [operate] under [controlling] section 3-526.02, subsection C, paragraph 3 or 5."

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The AILRC indicates that all of the rules are currently enforced as written.

7. **Has the agency analyzed whether the rules are clear, concise, and understandable?**

Yes. The AILRC indicates that the rules are clear, concise, and understandable.

8. **Stringency of the Rules:**

   a. **Are the rules more stringent than corresponding federal law?**

No. The AILRC indicates there are no corresponding federal laws.

   b. **If so, is there statutory authority to exceed the requirements of federal law?**

Not applicable.

9. **For rules adopted after July 29, 2010:**

   a. **Do the rules require issuance of a regulatory permit, license or agency authorization?**

No. The AILRC indicates the rules in the Article do not require the issuance of any permits.

   b. **If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?**

Not applicable.

10. **Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?**

The AILRC indicates that the proposed course of action identified in the previous five-year-review report was not completed. In the previous report, the AILRC proposed amendments to Sections 102 and 103 to update the language, and concerning Section 103, incorporate Arizona Rules of Civil Procedure relating to local rules in responding to motions. No action was taken.

The AILRC believed at the time of the previous report and continues to believe that the changes proposed in Sections 102 and 103 would have no impact on the enforcement, clarity, or effectiveness of the Article.

11. **Has the agency included a proposed course of action?**

Yes. The AILRC plans no course of action to be taken on the rules. The AILRC has omitted a review of R3-9-105 to allow it to expire under A.R.S. § 41-1056(J).

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends that the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: April 5, 2016 **AGENDA ITEM: D-3**

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

FROM: GRRC Economist

DATE: March 18, 2016

SUBJECT: **ARIZONA ICEBERG LETTUCE RESEARCH COUNCIL (F-16-0303)**
Title 3, Chapter 9, Article 1, Arizona Iceberg Lettuce Research Council

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I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

The economic, small business, and consumer impact statement (EIS) from the most recent rulemaking was available for the rules contained in the five-year-review report. The economic impact information provided by the Arizona Iceberg Lettuce Research Council (hereafter referred to as the Council) fulfills the criteria of A.R.S. § 41-1056.

The Council supports the development of iceberg lettuce research programs and projects within the Arizona iceberg lettuce industry. The Council is responsible for projects concerning production, insect and disease control, and efficient fertilization and irrigation, in addition to varietal development. The Council is comprised of seven producers: four from District I (including Yuma and La Paz), one from District II (including the remainder of the iceberg lettuce producing areas of the state) and two producers at large.

From fiscal years 2011 through 2015, the Council received $464,331 in revenue. The Council's revenue came from a $0.004 assessment rate in fiscal years 2011 through 2015. Arizona iceberg lettuce producers pay the assessment, with the shippers first marketing the lettuce responsible for collecting that assessment and remitting it to the Council.

2. <u>Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?</u>

The Council states that the rules are consistent with the Council's statutes and are also consistent with the rules of the Arizona Citrus Research Council and the Arizona Grain Research and Promotion Council. The Council states that the rules are clear, concise, and understandable and have been enforced as written.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the Council by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, the staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Arizona Iceberg Lettuce Research Council

1688 W. Adams Street, Phoenix, Arizona 85007
(602) 542-3262 FAX (602) 542-5420

March 15, 2016

Nicole Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007

RE: Five-Year Review Report for A.A.C. Title 3, Chapter 9, Article 1

Dear Ms. Ong:

Enclosed please find the Arizona Iceberg Lettuce Research Council's revised five-year review report for A.A.C. Title 3, Chapter 9, Article 1.

The Council did not include a review of R3-9-105. The Council intends for R3-9-105 to expire under A.R.S. § 41-1056(J). The Council reviewed all the other rules in the article.

The Council certifies that it is in compliance with A.R.S. § 41-1091.

Please contact Aaron Thompson at (602) 542-8334 or Aaron.Thompson@azag.gov with any questions about this report.

Sincerely,

Lisa James
Council Administrator

Enclosure

ARIZONA ICEBERG LETTUCE RESEARCH COUNCIL

2015 FIVE-YEAR REVIEW REPORT

TITLE 3. AGRICULTURE

CHAPTER 9. DEPARTMENT OF AGRICULTURE – AGRICULTURAL COUNCILS AND COMMISSIONS

ARTICLE 1. ARIZONA ICEBERG LETTUCE RESEARCH COUNCIL

Table of Contents

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III.	Information That Is Different For Each Rule	4

Arizona Iceberg Lettuce Research Council
2015 Five-Year Review Report
I. Introduction

Under A.R.S. § 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. Each agency shall prepare a report summarizing its findings, its supporting reasons, and any proposed course of action; and obtain approval of the report from the Governor's Regulatory Review Council (GRRC). The schedule for reviews is determined by GRRC. The report for the Arizona Iceberg Lettuce Research Council's rules listed under A.A.C. Title 3, Chapter 9, Article 1 is due January 29, 2016.

The Council did not include a review of R3-9-105. The Council intends for R3-9-105 to expire under A.R.S. § 41-1056(J). The Council reviewed all the other rules in the article.

The Arizona Iceberg Lettuce Research Council's purpose is to authorize or contract for research, development and survey programs concerning varietal development; programs for lettuce pest eradication; programs concerning production, harvesting, handling and hauling from field to market; and any other program, excluding sales or marketing, that it deems to be appropriate. The Council awards grants to fulfill its mission.

II. Information That Is Identical For All Rules

1. Statutory Authority.

General: A.R.S. § 3-526.02(C)(9)

3. Effectiveness.

The rules are effective in meeting their respective objectives.

4. Consistency.

The rules are consistent with the Arizona Iceberg Lettuce Research Council's statutes: A.R.S. Title 3, Chapter 3, Article 4.2. The Council's rules are also consistent with the rules of the Arizona Citrus Research Council and the Arizona Grain Research and Promotion Council, A.A.C. Title 3, Chapter 9, Articles 2 & 5, though they need not be. The Council is exempt from the grant statutes in A.R.S. Title 41, Chapter 24 pursuant to A.R.S. § 41-2706(B)(4), which is why the Council has adopted its own grant rules. There are no other state and federal statutes and rules to consider.

5. Enforcement.

The rules are enforced as written.

6. Clarity, Conciseness and Understandability.

The rules are clear, concise, and understandable.

7. Written Criticisms.

The Council has not received any written criticisms of the rules.

8. Economic, Small Business, and Consumer Impact Comparison.

The economic impact of the rules has not differed significantly from that projected in the last economic impact statements prepared.

From fiscal years 2011 through 2015, the Council received $464,331 in revenue.

The Council's revenue came from a $0.004 assessment rate in fiscal years 2011 through 2015. Arizona iceberg lettuce producers pay the assessment, with the shippers first marketing the lettuce responsible for collecting that assessment and remitting it to the Council. *See* A.R.S. § 3-526.04(C).

9. Analysis Submitted Comparing Rule's Impact.

No analysis was submitted.

12. Determination that Rules are not more Stringent than Corresponding Federal Law

There is no federal law that corresponds with these rules.

13. Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit

The rules in this Article do not require a permit.

III. Information That Is Different For Each Rule

R3-9-101. Definitions

1. Statutory Authority.

Specific: A.R.S. § 3-526.02(C)(9)

2. Objective.

This rule prescribes definitions of terms used in the Council's other rules.

10. Completion of Previous Five-Year Review.

The Council did not propose any action on this rule.

11. Least Burden and Costs to Persons Regulated Necessary to Achieve the Underlying Regulatory Objective.

The definitions do not impose a burden or cost on the public and do make the remaining rules more understandable.

14. Proposed Action.

The Council plans to leave the rule as written.

R3-9-102. Elections

1. Statutory Authority.

Specific: A.R.S. § 3-526.02(A)(2)

2. Objective.

This rule sets out when annual officer elections will take place and the length of service.

10. Completion of Previous Five-Year Review.

The Council proposed to eliminate paragraphs B and C from the rule if it conducted another other rulemakings. No rulemakings were made.

11. Least Burden and Costs to Persons Regulated Necessary to Achieve the Underlying Regulatory Objective.

This rule only affects the Council and does not impose a burden or cost on the public.

14. Proposed Action.

The Council does not plan to take any action on this rule.

R3-9-103. Hearings and Rehearings

1. Statutory Authority.

Specific: A.R.S. § 3-526.05

2. Objective.

This rule requires the Council to hold administrative hearings in accordance with the Uniform Administrative Procedures Act and sets out how requests for rehearing will be handled.

10. Completion of Previous Five-Year Review.

The Council proposed to eliminate paragraphs B-D of the rule and replace them with language that allows the Council to use the Arizona Rules of Civil Procedure and related local rules in responding to motions. The Council proposed to revise the rule by December 2014. Because the Council has never had a request for hearing, does not anticipate getting a request for hearing in the near future, does not view this revision as critical, and is subject to strict rulemaking limits ordered by the Governor, the Council did not amend this rule.

11. Least Burden and Costs to Persons Regulated Necessary to Achieve the Underlying Regulatory Objective.

This rule follows state law by adopting the Administrative Procedures Act for governing hearings and by taking provisions for the Arizona Rules of Civil Procedure to handle motions for rehearings. Accordingly, this rule imposes the least burden and costs to persons regulated necessary to achieve the underlying regulatory objective.

14. Proposed Action.

The Council does not plan to take any action on this rule.

R3-9-104. Annual Report

1. Statutory Authority.

Specific: A.R.S. § 3-526.02(A)(5)

2. Objective.

This rule sets a date by which the Council's annual report must be prepared.

10. Completion of Previous Five-Year Review.

The Council did not propose any action on this rule.

11. Least Burden and Costs to Persons Regulated Necessary to Achieve the Underlying Regulatory Objective.

This rule only affects the Council and does not impose a burden or cost on the public.

14. Proposed Action.

The Council believes this rule has worked well and that no change is necessary.

R3-9-106. Grants

1. Statutory Authority.

Specific: A.R.S. §§ 3-526.02(B) & 3-526.02(C)(5)

2. Objective.

This rule sets out the procedures for the public to apply for grants and for the Council in awarding grants.

10. Completion of Previous Five-Year Review.

The Council did not propose any action on this rule.

11. Least Burden and Costs to Persons Regulated Necessary to Achieve the Underlying Regulatory Objective.

This rule imposes the least burden and costs on persons regulated necessary to achieve the underlying regulatory objective.

14. Proposed Action.

The Council plans to leave the rule as written.

IV. Rules

ARTICLE 1. ARIZONA ICEBERG LETTUCE RESEARCH COUNCIL

Section
R3-9-101. Definitions
R3-9-102. Elections
R3-9-103. Hearings and Rehearings
R3-9-104. Annual Report
R3-9-105. Records
R3-9-106. Grants

ARTICLE 1. ARIZONA ICEBERG LETTUCE RESEARCH COUNCIL

R3-9-101. Definitions

In addition to the definitions in A.R.S. § 3-526, the following terms apply to this Article:

1. "AILRC" means the Arizona Iceberg Lettuce Research Council.
2. "Authorized signature" means the signature of an individual authorized to receive funds on behalf of the applicant and responsible for the execution of the applicant's project.
3. "Awardee" means a successful applicant to whom the AILRC awards grant funds for research on a specific project.
4. "Department" means the Arizona Department of Agriculture.
5. "Governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive branch or corporation commission of this state, another state, or the federal government.
6. "Grant" means an award of financial support to an applicant according to A.R.S. § 3-526.02(B) and (C)(5).
7. "Grant award agreement" means a document that advises an applicant of the amount of money awarded following receipt by the AILRC of the applicant's signed acceptance.

R3-9-102. Elections

A. The AILRC shall elect officers as specified in A.R.S. § 3-526.02(A)(2) during the first quarter of each calendar year.

B. Officers continue in office until the next annual election.

C. An officer may be reelected successively.

R3-9-103. Hearings and Rehearings

A. The AILRC shall follow the Uniform Administrative Procedure Act, A.R.S. Title 41, Chapter 6, Article 10, for a hearing before the AILRC.

B. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.

C. The AILRC shall grant a rehearing or review of a decision for any of the following causes materially affecting the moving party's rights:

1. The decision is not justified by the evidence or is contrary to law;
2. There is newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original proceeding;
3. One or more of the following deprived the party of a fair hearing:
   a. Irregularity or abuse of discretion in the conduct of the proceeding;
   b. Misconduct of the AILRC, the administrative law judge, or the prevailing party; or
   c. Accident or surprise that could not have been prevented by ordinary prudence; or
4. Excessive or insufficient sanction.

D. The AILRC may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (C). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

R3-9-104. Annual Report

The AILRC shall prepare a report according to A.R.S. § 3-526.02(A)(5), by October 31 of each year.

R3-9-105. Records

The AILRC shall retain records required by A.R.S. § 3-526.02(A)(4). A person may review records at the AILRC's office, Monday through Friday, except an Arizona legal holiday, during the hours of 8 a.m. to 5 p.m. Upon request, the AILRC shall provide a copy of the records according to A.R.S. § 39-121 et seq.

R3-9-106. Grants

A. Grant application process.
1. The AILRC shall award grants according to the competitive grant solicitation requirements of this Article.
2. The AILRC shall post the grant application and manual on the AILRC's web site at least four weeks before the due date of a grant application.
3. The AILRC shall ensure that the grant application manual contains the following items:
   a. Grant topics related to AILRC programs specified by A.R.S. § 3-526.02(B) and (C)(5);
   b. A statement that the information contained in an application is not confidential;
   c. A statement that the AILRC funding source is primarily from per carton assessments on iceberg lettuce grown in Arizona;
   d. An application form including sections about the description of the grant project, scope of work to be performed, an authorized signature line, and a sample budget form;
   e. A statement that the applicant shall not include overhead expenses in the budget for the proposed project;
   f. The criteria that the AILRC shall use to evaluate an application;
   g. The date and time by which the applicant shall submit an application;
   h. The anticipated date of the AILRC award;
   i. A copy of the AILRC grant solicitation rules; and
   j. Any other information necessary for the grant application.
4. The AILRC shall not consider an application received by the AILRC after the due date and time.

B. Criteria. The AILRC shall consider the following when reviewing a grant application and deciding whether to award AILRC funds:
1. The applicant's successful completion of prior research projects,
2. The extent to which the proposed project identifies solutions to current issues facing the iceberg lettuce industry,
3. The extent to which the proposed project addresses future issues facing the iceberg lettuce industry,
4. The extent to which the proposed project addresses the findings of any industry surveys conducted within the previous year,
5. The appropriateness of the budget request in achieving the project objectives,
6. The appropriateness of the proposal time-frame to the stated project objectives, and
7. Relevant experience and qualifications of the applicant.

C. Public participation.
1. The AILRC shall make all applications available for public inspection by the business day following the application due date.
2. Before awarding a grant, the AILRC shall discuss and evaluate grant applications and proposed projects at a meeting conducted under A.R.S. § 38-431 et seq.

D. Evaluation of grant applications.
1. The AILRC may allow applicants to make oral or written presentations at the public meeting if time, applicant availability, and meeting space permit.
2. The AILRC may modify an applicant's proposed project in awarding funding.
3. The AILRC shall notify an applicant in writing of the AILRC's decision to fund, modify, or deny funding for a proposed project within 10 business days of the AILRC decision. The AILRC shall notify applicants by the U.S. Postal Service, commercial delivery, electronic mail, or facsimile.

E. Awards and project monitoring.

1. Before releasing grant funds, the AILRC shall execute a grant award agreement with the awardee. The awardee shall agree to accept the grant's legal requirements and conditions and authorize the AILRC to monitor the progress of the project by signing a grant award agreement.
2. The AILRC shall pay no more than 50% of the grant in the initial payment to the awardee.
3. During the term of the project, the awardee shall inform the AILRC of changes to the awardee's address, telephone number, or other contact information.
4. The AILRC may require an interim written report or oral presentation from the awardee during the pendency of the project.
5. The AILRC shall not award grant funds remaining after the initial payment until the awardee submits to the AILRC:
   a. A final research report, and
   b. An invoice for actual final project expenses not exceeding the remaining portion of the award.
6. The AILRC shall make research findings and reports resulting from any grant awarded by the AILRC available to Arizona iceberg lettuce producers.

F. Repayment. If the awardee does not complete the project as specified in the grant award agreement, the awardee shall return all unexpended grant funds within 30 days after receipt of a written request by the AILRC.

G. Governmental units.

1. The AILRC may request one or more governmental units to submit grant applications as prescribed in subsection (G)(3), without regard to subsections (A), (E)(2), and (E)(5).
2. The AILRC may issue grants to governmental units without regard to subsections (A), (E)(2), and (E)(5).
3. A governmental unit may apply to the AILRC for a grant when there is no pending request for grant applications under subsection (A) under the following conditions:
   a. The application shall include a description of the project, the scope of work to be performed, a budget that does not include overhead expenses, and an authorized signature.
   b. The application shall be available for public inspection upon receipt by the AILRC.

V. Authorizing Statutes

ARTICLE 1. ARIZONA ICEBERG LETTUCE RESEARCH COUNCIL
A.R.S. Title 3, Chapter 3, Article 4.2

3-526.02. Powers and duties of the council

A. The council shall:

1. Receive and disburse monies to be used in administering this article.
2. Annually elect a chairman, secretary and treasurer from among its members.
3. Meet at least once each calendar quarter or at such times as called by the chairman or when requested by four or more members of the council. A quorum consists of four or more members of the council.
4. Keep a permanent record of its proceedings and make these records available for public inspection for any lawful purpose.
5. Prepare for the governor and the iceberg lettuce industry an annual report of its activities, receipts and expenditures. A copy of the annual report shall be available to any interested iceberg lettuce producer and the general public on request.
6. Organize and administer any referendum called under subsection C, paragraph 11 of this section.
7. Prescribe fees to be assessed within the limits prescribed in section 3-526.04.

B. The council may authorize or contract for:

1. Research, development and survey programs concerning varietal development.
2. Programs for lettuce pest eradication.
3. Programs concerning production, harvesting, handling and hauling from field to market.
4. Any other programs, excluding sales or marketing, that the council deems to be appropriate for the purposes of this article.

C. The council may:

1. Disseminate reliable information, including the results of research studies, surveys and information obtained as a result of research.
2. Sue and be sued as a council, without individual liability, for acts of the council within the scope of the powers and duties conferred on it by this article.
3. Enter into contracts to carry out the purposes of this article, including contracts for research and development of iceberg lettuce.
4. Appoint advisory groups composed of representatives from organizations, institutions or businesses related to or interested in the welfare of the iceberg lettuce industry.
5. Make grants to research agencies for financing appropriate studies, or for purchase or acquisition of equipment and facilities consistent with this article.
6. Employ or retain and fix the compensation of a qualified person or a qualified entity to manage the affairs of the council on behalf of the council and other personnel that are necessary to carry out the provisions of this article.
7. Cooperate with any local, state or nationwide organization or agency engaged in work or activities similar or related to those of the council and enter into contracts with such organizations or agencies for carrying on joint programs.
8. Act jointly and in cooperation with this state or any other state or the federal government, and spend monies to administer any program deemed by the council to be beneficial to the iceberg lettuce industry of this state.
9. Adopt rules necessary to promptly and effectively administer this article.
10. Accept grants, donations, contributions, gifts, property or services or other assistance from public or private sources to further the objectives of this article.
11. Refer to the iceberg lettuce producers in this state for an advisory vote the question of setting fees or establishing or continuing any program authorized by this article.
12. Investigate and prosecute in the name of this state any action or suit to enforce the collection or ensure payment of the authorized fees.
13. Provide for an annual audit of its accounts by a qualified public accounting firm and, if an audit or financial statement is prepared, shall make the audit or financial statement available to the general public and the auditor general on request.

3-526.05. Failure to pay fee; penalty; hearing; violation; classification

A. A person who is required to pay fees pursuant to section 3-526.04 and who fails to pay the fee within the time required by the council shall be assessed a penalty of ten per cent of the amount of the total fee and two per cent interest per month on the unpaid balance. The penalty and interest shall be paid to the council. The person may request a hearing before the council to dispute or determine the amount of fee, penalty or interest imposed.

B. The council shall hold a hearing if requested. The council shall, following the hearing, enter its order determining the amount of any fee, penalty or interest. The person shall pay the fee, penalty and interest assessed within ten days of notice of the council's decision.

C. A person who knowingly fails to pay or remit any monies due or collected as required in this article is guilty of a class 2 misdemeanor.

D-4

ARIZONA DEPARTMENT OF TRANSPORTATION (F-16-0304)
Title 17, Chapter 5, Article 2, Motor Carriers; Article 4, Dealers

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR-REVIEW REPORT

MEETING DATE: April 5, 2016 **AGENDA ITEM: D-4**

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

FROM: Matthew Rippentrop, Legal Intern

DATE: March 18, 2016

SUBJECT: **ARIZONA DEPARTMENT OF TRANSPORTATION (F-16-0304)**
Title 17, Chapter 5, Article 2, Motor Carriers; Article 4, Dealers

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purposes of the Arizona Department of Transportation (Department) include:

1. Designing, constructing and maintaining the state highway system and state routes for the entire state.
2. Providing for orderly registration and titling of vehicles and licensure of motor vehicle drivers.
3. Assisting and promoting the aviation industry in this state.
4. Providing for orderly registration and licensure of general aviation aircraft.

Laws 2008, Ch. 90, § 3.

Article 2 titled "Motor Carriers" contains twelve rules related to the operations of motor carriers located throughout the State. The Federal Motor Carrier Safety Administration (FMCSA) requires the Department to update the rules in this article at least once every three years for the Department to remain in substantial compliance with relevant federal regulations and ensure eligibility for the Federal Motor Carrier Safety Assistance Program (MCSAP) grant funding that the Arizona Department of Public Safety expects to receive each year.

Article 4 titled "Dealers" contains seven rules relating to motor vehicle dealers. Due to recent Legislative action, Section 403 is now obsolete. Accordingly, staff and the Department agree that the Council should vote to require the repeal of Section 403.

Article Contents, Including the Subject Matter of Each Rule in the Report

R17-5-201 titled "Definitions" provides industry representative and members of the general public with a clearer understanding of the Department's intended meaning for the various terms specific to the rules contained in the Article.

R17-5-202 titled "Motor Carrier Safety: Incorporation of Federal Regulations; Applicability" incorporates by reference, and makes applicable to all manufacturers, shippers, and motor carriers, and drivers operating in Arizona, certain Federal Motor Carrier Safety regulations the Department deems reasonable and proper in governing safety operations.

R17-5-203 titled "Motor Carrier Safety: 49 CFR 390 – Federal Motor Carrier Regulations; General" provides the amendments and exceptions needed to ensure that the corresponding federal Motor Carrier Safety Regulations incorporated by reference are applicable to all motor carriers, shippers, and manufacturers operating in Arizona and that the incorporated material does not conflict with Arizona statute.

R17-5-204 titled "Motor Carrier Safety: 49 CFR 391 – Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructions" provides the general, physical, and alternative physical qualifications necessary for an individual to qualify for licensing by the Department to operate a commercial motor vehicle, as well as provide an intrastate waiver process for an individual that may not meet certain federal physical qualifications for interstate operation, but otherwise is qualified to drive a commercial motor vehicle.

R17-5-205 titled "Motor Carrier Safety: 49 CFR 383 – Commercial Driver's License Standards; Requirements and Penalties" enumerates incorporated material that provides for uniform standards, requirements, and penalties for commercial driver licenses.

R17-5-206 titled "Motor Carrier Safety: 49 CFR 392 – Driving of Commercial Motor Vehicles" enumerates incorporated material that provides for uniform standards, limitations, and prohibitions regarding the driving of commercial motor vehicles.

R17-5-207 titled "Civil Penalties" provides clarification on the amount of civil penalty due from a motor carrier for repeat findings of responsibility for the same class of motor vehicle safety violations.

R17-5-208 titled "Commercial Driver License Intrastate medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision" enumerates incorporated material that provides for individuals disqualified from obtaining a commercial driver license for certain physical or medical conditions provided under 49 CFR 391.41(b), but are otherwise qualified to drive a commercial motor vehicle, with information regarding the Department's intrastate medical waiver process.

R17-5-209 titled "Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability" incorporates by reference Federal Hazardous Material regulations

(HMRs) the Department deems reasonable and proper in governing motor carrier safety operations and making them applicable to all motor carriers, shippers, and manufacturers operating in Arizona that transport hazardous materials, hazardous substances, or hazardous wastes using a commercial motor vehicle defined under A.R.S. § 28-5201.

R17-5-210 titled "Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency" provides the process than an employee of a public service corporation, a political subdivision of this state that is engaged in rendering public utility service, or a railroad must use to notify state officials that an emergency situation exists under A.R.S. § 28-5234(B).

R17-5-211 titled "Motor Carrier Safety: Inspection, Enforcement, Sanction" provides inspection, enforcement, and sanction provisions applicable to a Transporter as defined under R17-5-201.

R17-5-212 titled "Motor Carrier Safety: Hearing Procedure" provides specific exceptions needed to make the Department's general administrative hearing procedures under this Article applicable to motor carrier enforcement actions under R17-5-202 through R17-5-209 and A.R.S. Title 28, Chapter 14.

Article 4

R17-5-402 titled "Bond Amounts; Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses" specifies the required bond form and amount for each dealer license type to protect the public on motor vehicle transactions.

R17-5-403 titled "Bond Amount; Motor Vehicle Title Service Business License" defines the bond amount required for motor vehicle title service business for the purpose of protecting the public when title service businesses were used in motor vehicle transactions.

R17-5-404 titled "Dealer Title Requirement for Vehicle Sale" requires the dealer's name to be recorded on a title certificate as the transferee or purchaser.

R17-5-405 titled "Motor Vehicle Dealer Acquisition Contract" provides motor vehicle dealers and the public with a better understanding of terms specific to this rule and general requirements regarding the content and disposition of dealer acquisition contracts.

R17-5-406 titled "Motor Vehicle Dealer Consignment Contracts" provides motor vehicle dealers and the public with a better understanding of terms specific to this rule and general requirements regarding the content and disposition of dealer consignment contracts.

R17-5-407 titled "Motor Vehicle Repossession" provides vehicle owners, lienholders, and dealers with the procedures and requirements necessary for transferring title of a motor vehicle repossessed by a lienholder.

R17-5-408 titled “Resale of a New Motor Vehicle” provides the process a new motor vehicle dealer shall follow and the information that must be provided in a notice to a new purchaser when reselling as “new” a motor vehicle previously delivered to a purchaser.

Year Each Rule was Last Amended or Newly Made

- August 5, 2014: Sections 202, 203, 204, 205, 208, 209, and 211
- August 2, 2011: Sections 201, 206, 210, and 212
- November 8, 2008: Section 207
- March 11, 2006: Section 408
- October 2, 2004: Section 407
- August 2, 2003: Sections 402, and 403
- November 15, 2002: Sections 405, and 406
- December 7, 2000: Section 404

Proposed Action

Concerning Article 2, on September 3, 2015, the Department received permission from the Governor’s Office to proceed with rulemaking to incorporate by reference the October 1, 2015 edition of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials regulations (HMRs). The Department anticipates amending all the rules of Article 2 by filing final rulemaking with the Council on or before December 30, 2016.

Concerning Article 4, the Department indicates that it has submitted a request to the Governor’s Office for an exemption from the rulemaking moratorium to make appropriate changes, and plans to submit this rulemaking to Council by January, 2018. The Department plans to adopt rules on motor vehicle dealer license plates and manufacturer test plates. The Department also plans the following amendments to the rules:

R17-5-402. The Department plans to remove references to the “Division” and insert the “Department”.

R17-5-403. The Department plans to repeal this rule in response to the Legislature repealing the motor vehicle title service statutes, effective April 1, 2012.

R17-5-405. The Department plans to move the definitions in this rule to Section 401 to make the rule consistent with the rulemaking requirements of the Secretary of State and further to correct statutory references throughout the rule.

R17-5-406. As in Section 405, the Department plans to move the definitions in this rule to Section 401 to make the rules consistent with the rulemaking requirements of the Secretary of State and to improve clarity and consistency.

Summary of Reasons for the Proposed Action

Concerning Article 2, these rule amendments are necessary for the Department to remain in substantial compliance with federal regulations and ensure eligibility for the MCSAP as discussed above.

Concerning Article 4, the proposed changes seek to ensure consistency and clarity in the language of the rules.

Substantive or Procedural Concerns

None.

Analysis of the Agency's Report Pursuant to Criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The Department has certified its compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. The Department indicates, with the exception of Section 403 which is obsolete, all the rules are effective in achieving their objectives.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

No. The Department indicates that it has not received any written criticisms of these rules during the past five years.

4. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. Concerning general rulemaking authority, A.R.S. § 28-366 provides for the adoption of rules pursuant to Title 41, Chapter 6 deemed necessary for: tax and fee collection, public safety, enforcement of law provisions the director administers, and the use of highways and routes to prevent their abuse.

Concerning Article 2, A.R.S. § 28-5204 requires the Department to adopt "[r]easonable rules it deems proper governing the safety operations of motor carriers, including rules governing safety operations of motor carriers, shippers and vehicles transporting hazardous materials, hazardous substances or hazardous wastes and shall prescribe necessary forms."

Concerning Article 4, A.R.S. § 28-4303 requires the Department to "supervise and regulate all persons required by this chapter [Chapter 10] to be licensed." Specific authorizing

statutes concerning the licensing prescribed by A.R.S. § 28-4303 includes A.R.S. §§ 28-4361, 28-4362, 28-4410, and 28-4543.

5. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes. Concerning Article 2, the Department indicates the rules are consistent with the 2012 edition of the FMCSRs, but amendments are necessary to ensure consistency with the 2015 edition of the FMCSRs.

Concerning Article 4, the Department indicates, with the exception of Section 403, all the rules are consistent with corresponding rules and statutes.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. With the exception of Section 403, the Department indicates that the rules are enforced as written.

7. **Has the agency analyzed whether the rules are clear, concise, and understandable?**

Yes. Concerning Article 2, the Department indicates that Sections 202-209 could be made more clear, concise, and understandable by updating the rules to ensure consistency with the most recent federal regulations.

Concerning Article 4, the Department indicates that Sections 405 and 406 are not clear, concise, and understandable.

8. **Stringency of the Rules:**

   a. **Are the rules more stringent than corresponding federal law?**

No. The Department indicates the rules are not more stringent than corresponding federal law.

   b. **If so, is there statutory authority to exceed the requirements of federal law?**

Not applicable.

9. **For rules adopted after July 29, 2010:**

   a. **Do the rules require issuance of a regulatory permit, license or agency authorization?**

The rules in Article 2 require drivers to have a commercial learner's permit or commercial driver license and endorsements.

b. <u>If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?</u>

The Department indicates that the permits are general permits under A.R.S. § 41-1001(11), as each licensee in a particular class is subject to the same activities, practices, requirements, and restrictions applicable to all others issued the same license type.

10. <u>Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?</u>

The Department completed its proposed course of action, with the exception of Sections 405 and 406. The Department was unable to complete these proposed changes due to other agency rulemaking priorities including relocation assistance, logo signs, and rental vehicle surcharge.

11. <u>Has the agency included a proposed course of action?</u>

Yes. With the exception of Sections 404, 407, and 408, the Department proposes specific actions for each rule as discussed above.

<u>Conclusion</u>

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends that the report be approved, though staff and the Department agree that the Council should vote to require the repeal of Section 403.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: April 5, 2016 **AGENDA ITEM: D-4**

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

FROM: GRRC Economist

DATE: March 18, 2016

SUBJECT: **ARIZONA DEPARTMENT OF TRANSPORTATION (F-16-0304)**
Title 17, Chapter 5, Article 2, Motor Carriers; Article 4, Dealers

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I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

The economic, small business, and consumer impact statements (EIS's) from the most recent rulemaking were available for all of the rules.

Recent amendments to Article 2 clarified Motor Carrier Identification Report filing requirements and eliminated inconsistencies between federal regulations and Arizona's statutes and the Department's Commercial Driver License (CDL) Program. Amendments were also made to ensure conformity to the Arizona Administrative Procedure Act and the Secretary of State's rulemaking requirements. Recent amendments to Article 4 provided direction to motor vehicle dealers acting as a sales agent to purchase or sell motor vehicles on behalf of the vehicle owner.

The Arizona Department of Public Safety (DPS) inspected 50,303 commercial trucks and buses in calendar year (CY) 2015. Of these inspections, 5,221 (10.3%) of the drivers and 6,859 (13.6%) of the vehicles were placed out-of-service after the inspection. There are currently (CY 2015) 106,445 valid Arizona Commercial Driver Licenses (CDLs) and 3,772 Arizona Commercial Learner's Permits. There are currently (CY 2015) 90 Arizona drivers with an Intrastate Medical Waiver.

The Department states that the objectives of the majority of rules were effectively met and that the Department currently enforces the majority of rules as written. Some rules have become inconsistent with the most recent edition of the Federal Motor Carrier Safety Regulations (FMCSRs). Rules may also have become inefficient given other statutory changes, such as motor vehicle title service companies being repealed from A.R.S. Title 28, chapter 12, in Laws 2011, Chapter 190. The Department has stated that future amendments to the rules may be necessary to incorporate these changes.

The Department states that the economic impact of the rules reviewed is the same as estimated in the economic impact statement prepared on the last amendment of the rules.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department states that the rules are designed to minimally impact regulated persons and small businesses. The Department believes that the probable benefits of the rules outweigh the probable costs of the rules.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the Department by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, the staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Director's Office

Douglas A. Ducey, Governor
John S. Halikowski, Director
Scott Omer, Deputy Director for Operations
Kevin Biesty, Deputy Director for Policy
Dallas Hammit, Deputy Director for Transportation

January 28, 2016

Ms. Nicole A. Ong, Chair
Governor's Regulatory Review Council
100 N 15th Avenue, Suite 402
Phoenix, Arizona 85007

Re: Five-year Review Report for 17 A.A.C. Chapter 5, Article 2

Dear Madam Chair:

The Arizona Department of Transportation submits for Council approval the accompanying Five-year Review Report for 17 A.A.C. Chapter 5, Article 2. This document complies with all requirements under A.R.S. § 41-1056 and A.A.C. R1-6-301. The Department certifies that it is in full compliance with the requirements of A.R.S. § 41-1091.

For information regarding the report, please communicate directly with John Lindley, Rules Analyst, at (602) 712-8804.

Sincerely,

John S. Halikowski
ADOT Director

Enclosure: ADOT 5-year Review Report

ADOT
Director's Office

Douglas A. Ducey, Governor
John S. Halikowski, Director
Scott Omer, Deputy Director for Operations
Kevin Biesty, Deputy Director for Policy
Dallas Hammit, Deputy Director for Transportation

January 7, 2016

Ms. Nicole A. Ong, Chairperson
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007

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GRRC

RE: Five-Year Review Report on 17 A.A.C. 5, Article 4

Dear Chairperson Ong:

The Arizona Department of Transportation (ADOT) submits for approval by the Governor's Regulatory Review Council the accompanying Five-Year Review Report on 17 A.A.C. 5, Article 4, relating to Dealers. This report complies with all the requirements in A.R.S. § 41-1056 and A.A.C. R1-6-301. The Department certifies that it is in full compliance with the requirements of A.R.S. § 41-1091.

This report includes a five-year review summary, information that is identical for all the rules, information for individual rules, the general and specific statutes authorizing the rules, a copy of each rule reviewed, and the previous economic, small business, and consumer impact statements prepared for these rules.

If you have any questions regarding the Five-Year Review Report, please contact Jane McVay at (602) 712-4279.

Sincerely,

John S. Halikowski
ADOT Director

Attachment

Government Relations and Policy Development

Administrative Rules Five-Year Review Report

A.A.C. Title 17 – Transportation

Chapter 5. Department of Transportation

Commercial Programs

Article 2. Motor Carriers

Douglas A. Ducey ***Governor***

John S. Halikowski ***ADOT Director***

Submitted to the Governor's Regulatory Review Council
January 2016

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 5, Article 2

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Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 5, Article 2

Section A

Report Summary

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 5, Article 2

Report Summary

Article 2. Motor Carriers

The Department reviewed twelve rules in Article 2. All of which have a significant impact on the operations of motor carriers located throughout the state.

The Department completed each course of action indicated in its previous five-year review report by final rulemaking at 17 A.A.R 1691, August 26, 2011. However, the Department now intends to amend all twelve rules in Article 2, as outlined in this report. Some of the changes made to the federal regulations since the 2012 edition last incorporated by the Department are outlined under item 6 of the report. Other anticipated amendments are intended to improve rule clarity, conciseness, and understandability or to ensure conformity with the Administrative Procedure Act and the rulemaking format and style requirements of the Secretary of State's Office.

The Federal Motor Carrier Safety Administration requires the Department to update these rules at least once every three years for the Department to remain in substantial compliance with the federal regulations and ensure eligibility for the Federal Motor Carrier Safety Assistance Program (MCSAP) grant funding that the Arizona Department of Public Safety expects to receive each year.

On September 3, 2015, the Department received permission from the Governor's Office to proceed with rulemaking to incorporate by reference the October 1, 2015, edition of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs).

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 5, Article 2

Section B

Identical Information within Rule Groups

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 5, Article 2, Motor Carriers

Identical Information within Rule Groups

1. **General statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

The Director of the Department of Transportation (Department) has broad authority to adopt rules for collection of taxes and license fees, public safety and convenience, enforcement of the provisions of the laws the Director administers or enforces, and the use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes. The Department's general rulemaking authority is provided under A.R.S. §§ 28-366 and 28-5204 for the following rules:

R17-5-201. Definitions

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General

R17-5-204. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors

R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties

R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles

R17-5-207. Civil Penalties

R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision

R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability

R17-5-210. Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency

R17-5-211. Motor Carrier Safety: Inspection, Enforcement, Sanction

R17-5-212. Motor Carrier Safety: Hearing Procedure

3. **Effectiveness of the rule in achieving the objective, including a summary of any available data supporting the conclusion reached.**

The stated objectives of the following rules are effectively met:

R17-5-201. Definitions

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General

R17-5-204. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors

R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties

R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles

R17-5-207. Civil Penalties

R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision

R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability

R17-5-210. Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency

R17-5-211. Motor Carrier Safety: Inspection, Enforcement, Sanction

R17-5-212. Motor Carrier Safety: Hearing Procedure

The Arizona Department of Public Safety (DPS) inspected 50,303 commercial trucks and buses in 2015. Of these inspections, 5,221 (10.3%) of the drivers and 6,859 (13.6%) of the vehicles were placed out-of-service after the inspection, meaning that the violations were so severe that the driver was prohibited from driving and the vehicle was prohibited from being moved until the violations were corrected. There are currently 106,445 valid Arizona Commercial Driver Licenses (CDLs) and 3,772 Arizona Commercial Learner's Permits. Additionally, there are currently 630 Arizona CDL drivers restricted to "intrastate-only" operations and 90 Arizona CDL holders currently hold an Intrastate Medical Waiver.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The following rules are consistent with the 2012 edition of the Federal Motor Carrier Safety Regulations, as incorporated, but amendments may be necessary as the Department incorporates by reference the 2015 edition of the Federal Motor Carrier Safety Regulations as outlined under section C, item 6, of this report.

R17-5-201. Definitions

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General

R17-5-204. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors

R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties

R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles

R17-5-207. Civil Penalties

R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision

R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability

R17-5-210. Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency

R17-5-211. Motor Carrier Safety: Inspection, Enforcement, Sanction

R17-5-212. Motor Carrier Safety: Hearing Procedure

The Department used the 2014 edition of the Federal Motor Carrier Safety Regulations (49 CFR 350-399), the most current version available, to determine consistency with the rules incorporated by reference in this Section. The Department used the following Arizona statutes to determine consistency with the anticipated amendments to be incorporated by reference as provided under item 14 of this report:

A.R.S. § 28-1091. Violation; scope and effect

A.R.S. § 28-2167. Commercial vehicle registration; financial responsibility

A.R.S. § 28-2234. Owner-operators

A.R.S. § 28-2266. Registration requirements; fees; registration card

A.R.S. § 28-2514. Farm vehicle license plates; reciprocity; definitions

A.R.S. § 28-3101. Driver license classes

A.R.S. § 28-3102. Exceptions to driver license classes; definitions

A.R.S. § 28-3103. Driver license endorsements

A.R.S. § 28-3151. Driver license requirement

A.R.S. § 28-3152. Driver license; exemptions; limitation

A.R.S. § 28-3153. Driver license issuance; prohibitions

A.R.S. § 28-3154. Instruction permit for a class D or G license

A.R.S. § 28-3155. Restricted instruction permit

A.R.S. § 28-3158. Driver license or instruction permit application

A.R.S. § 28-3159. Restricted licenses

A.R.S. § 28-3164. Original applicants; examination

A.R.S. § 28-3169. Possession and display of driver license; defense

A.R.S. § 28-3170. Duplicate permit or license

A.R.S. § 28-3221. Commercial driver license

A.R.S. § 28-3222. State of domicile change

A.R.S. § 28-3223. Original applicant; requirements; expiration; renewal examination

A.R.S. § 28-3224. Nondomiciled commercial driver license

A.R.S. § 28-3225. Commercial driver instruction permit

A.R.S. § 28-3226. Limitation on number of driver licenses

A.R.S. § 28-3227. Commercial drivers; convictions; notification requirements; violation

A.R.S. § 28-3228. School bus drivers; requirements; rules; cancellation

A.R.S. § 28-3229. Military applicants; driving test waiver; requirements

A.R.S. § 28-3302. Nonresident driver privilege; suspension or revocation; reporting convictions

A.R.S. § 28-3303. Suspension or revocation of driver license or privilege for actions outside of state

A.R.S. § 28-3304. Mandatory revocation of license; definition

A.R.S. § 28-3306. Discretionary license suspension or revocation; traffic survival school; hearing

A.R.S. § 28-3312. Mandatory disqualification of commercial driver licenses; definition

A.R.S. § 28-3313. Record update

A.R.S. § 28-3314. License reexamination

A.R.S. § 28-3315. Period of suspension, revocation or disqualification; unlicensed drivers

A.R.S. § 28-3318. Service of notice; definition

A.R.S. § 28-3475. Permitting unauthorized person to drive

A.R.S. § 28-3481. Commercial motor vehicle drivers; violations; classification

A.R.S. § 28-5101. Third party authorization

A.R.S. § 28-5201. Definitions

A.R.S. § 28-5203. Motor carrier safety revolving fund

A.R.S. § 28-5204. Administration and enforcement; rules

A.R.S. § 28-5231. Records requirements; inspection

A.R.S. § 28-5232. Danger to public safety; suspension of registration or license; civil penalty; hearing; reinstatement

A.R.S. § 28-5237. Noncompliance; hearing; suspension of registration or license; civil penalty

A.R.S. § 28-5238. Civil penalty schedule; suspension of registration or license; reinstatement; enforcement

A.R.S. § 28-5240. Violation; classification; attorney general enforcement

A.R.S. § 28-5241. Out-of-service orders; violation; civil penalty; definition

A.R.S. § 28-5242. Registration requirements; interstate or foreign commerce; enforcement; violations; classification

A.R.S. § 28-5243. Railroad crossing violations; civil penalty

A.R.S. § 28-5244. Motor carriers; civil penalty; definition

5. **Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The Department currently enforces the following rules as written:

R17-5-201.	Definitions
R17-5-202.	Motor Carrier Safety: Incorporation of Federal Regulations; Applicability
R17-5-203.	Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General
R17-5-204.	Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors
R17-5-205.	Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties
R17-5-206.	Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles
R17-5-207.	Civil Penalties
R17-5-208.	Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision
R17-5-209.	Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability
R17-5-210.	Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency
R17-5-211.	Motor Carrier Safety: Inspection, Enforcement, Sanction
R17-5-212.	Motor Carrier Safety: Hearing Procedure

The Arizona Department of Transportation (ADOT) and the Department of Public Safety (DPS) are required to maintain substantial compliance with 49 U.S.C. 31311(a), by meeting every standard of 49 CFR 384.201 through 384.234, requiring state compliance with the federal commercial driver license programs through a combination of statutes, regulations, administrative procedures and practices, organizational structures, internal control mechanisms, resource assignments (facilities, equipment, and personnel), and enforcement practices. Failing to do so would subject the Department to a significant 5% reduction in the state's portion of federal-aid highway funding provided each fiscal year under 23 U.S.C. 104(b)(1), (b)(3), and (b)(4).

The Arizona Department of Public Safety is the lead agency for commercial motor vehicle inspections and the enforcement of Arizona's commercial motor vehicle and hazardous materials regulations. Commercial vehicle enforcement officers at ADOT and DPS work jointly with the Federal Motor Carrier Safety Administration to enforce the Federal Motor Carrier Safety Regulations and the Federal Hazardous

Materials Regulations adopted by all states in an effort to achieve national uniformity in both compliance and enforcement of the safety regulations. Both ADOT and DPS believe that investing grant monies in appropriate safety programs can increase the likelihood of detection and correction of safety defects, driver deficiencies, and unsafe motor carrier practices before they become contributing factors to accidents.

The Commercial Vehicle Enforcement Bureau of the Arizona Department of Public Safety's Highway Patrol helps to assure the safety of the motoring public by enforcing the Federal Motor Carrier Safety Regulations and providing educational programs for training local, county, and tribal officers to conduct commercial vehicle enforcement activities that include inspections, weighing, and traffic enforcement. All Arizona commercial vehicle enforcement officers work with industry and other organizations to help spread the word about the ongoing importance of motor carrier safety. Commercial vehicle enforcement officers located throughout the state currently conduct over 49,000 inspections annually.

In support of the North American Free Trade Agreement (NAFTA) and the Governor's vision to increase foreign trade with Mexico, commercial vehicle enforcement officers are currently conducting special enforcement details at the Arizona/Mexico border and ensure that all Mexican motor carriers are advised of the Federal Motor Carrier Safety Regulations. Officers are also now training Mexican officers to conduct inspections in Mexico.

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 have been received for the following rules:

R17-5-201.	Definitions
R17-5-202.	Motor Carrier Safety: Incorporation of Federal Regulations; Applicability
R17-5-203.	Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General
R17-5-204.	Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors
R17-5-205.	Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties
R17-5-206.	Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles
R17-5-207.	Civil Penalties

R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision

R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability

R17-5-210. Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency

R17-5-211. Motor Carrier Safety: Inspection, Enforcement, Sanction

R17-5-212. Motor Carrier Safety: Hearing Procedure

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 economic impact of the following rules has been the same as estimated in the economic impact statement prepared on the last amendment of the rules:

R17-5-201. Definitions

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General

R17-5-204. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors

R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties

R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles

R17-5-207. Civil Penalties

R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision

R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability

R17-5-210. Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency

R17-5-211. Motor Carrier Safety: Inspection, Enforcement, Sanction

R17-5-212. Motor Carrier Safety: Hearing Procedure

Some federal-aid highway program funds are apportioned to the State of Arizona and some are obtained through grants. These funds are administered through the highway safety improvement programs of the Arizona Department of Transportation (ADOT), the Governor's Office of Highway Safety (GOHS), and the Arizona Department of Public Safety (DPS).

FY 2015 apportionments of federal funding made available to the states under the Highway and Transportation Funding Act of 2014, as amended, and the estimated FY 2016 - FY 2020 apportionments made available under the ''Fixing America's Surface Transportation Act'' or "FAST Act" signed into law on December 4, 2015, were recently posted to the U.S. Department of Transportation's Federal Highway Administration (FHWA) website at http://www.fhwa.dot.gov/fastact/estfy20162020apports.pdf.

Funding opportunities made available through the various highway safety improvement programs provide added support for state and local agencies that support commercial motor vehicle safety activities and that demonstrate a capacity for working with highway traffic safety stakeholders. Entities that may apply for the federal funding of eligible projects through the various highway safety improvement programs may include county departments of transportation, state and local law enforcement agencies, state traffic records coordinating committees or associations that focus on commercial motor vehicle safety and training issues, and other industry stakeholders.

Arizona DPS is the lead agency for administration of the federal Motor Carrier Safety Assistance Program (MCSAP), a federal discretionary grant program that provides financial assistance to the states for programs and projects designed to reduce the number and severity of accidents, and hazardous materials incidents, involving commercial motor vehicles (CMVs). The goal of the MCSAP is to reduce CMV-involved accidents, fatalities, and injuries through consistent, uniform, and effective CMV safety programs. The MCSAP also sets forth the conditions for participation by states and local jurisdictions and promotes the adoption and uniform enforcement of safety rules, regulations, and standards compatible with the Federal Motor Carrier Safety Regulations (FMCSRs) and Federal Hazardous Material Regulations (HMRs) for both interstate and intrastate motor carriers and drivers. For FY 2016, DPS is able to apply for an estimated $4,000,000 in eligible federal MCSAP funding.

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.

For the following rules, no analysis was 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:

R17-5-201. Definitions

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General

R17-5-204. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors

R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties

R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles

R17-5-207. Civil Penalties

R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision

R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability

R17-5-210. Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency

R17-5-211. Motor Carrier Safety: Inspection, Enforcement, Sanction

R17-5-212. Motor Carrier Safety: Hearing Procedure

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

The Department completed each course of action indicated in its previous five-year review report by final rulemaking at 17 A.A.R 1691, August 26, 2011. The following final rules were effective August 2, 2011:

R17-5-201. Definitions

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General

R17-5-204. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors

R17-5-205. Repealed*

R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles

R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs or Monocular Vision; Federal Diabetes Exemption Program*

R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability

R17-5-210. Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency

R17-5-211. Motor Carrier Safety: Inspection, Enforcement, Sanction

R17-5-212. Motor Carrier Safety: Hearing Procedure

*Section titles subsequently amended by final rulemaking at 20 A.A.R. 2382, August 29, 2014.

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.

In rulemaking, the Department routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. The following rules are designed to minimally impact regulated persons and small businesses and the Department believes that the probable benefits of the rules outweigh the probable costs of the rules.

R17-5-201. Definitions

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General

R17-5-204. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors

R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties

R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles

R17-5-207. Civil Penalties

R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision

R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability

R17-5-210. Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency

R17-5-211. Motor Carrier Safety: Inspection, Enforcement, Sanction

R17-5-212. Motor Carrier Safety: Hearing Procedure

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.

All federal regulations in 49 CFR Parts 40, 107, 171, 172, 173, 177, 178, 180, 379, 382, 383, 385, 390, 391, 392, 393, 395, 396, 397, and 399 correspond to these rules. Although the Department has made a few modifications so that the rules are consistent with state law, the Department incorporates these federal regulations by reference so that the rules are not more stringent than any corresponding federal law. The Department routinely amends the incorporated material in the following rules only to minimize any statutory discrepancies that existed on the effective date of the rules:

R17-5-201.	Definitions
R17-5-202.	Motor Carrier Safety: Incorporation of Federal Regulations; Applicability
R17-5-203.	Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General
R17-5-204.	Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors
R17-5-205.	Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties
R17-5-206.	Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles
R17-5-208.	Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision
R17-5-209.	Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability
R17-5-210.	Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency
R17-5-211.	Motor Carrier Safety: Inspection, Enforcement, Sanction
R17-5-212.	Motor Carrier Safety: Hearing Procedure

The Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs) are the generally accepted standards for all motor carriers operating in commerce throughout North America. Since most motor carriers operate in interstate or global commerce, they routinely participate in the regulatory process at the federal level and have already embraced the resulting Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs) as the industry standard. Motor carrier employers tend to implement updated material as changes are made at the federal level to ensure that their drivers are compliant when crossing state lines and that their loads are not unexpectedly delayed.

This rule is not more stringent than a corresponding federal law. To the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities. For example, the pyrotechnic industry is a global logistics supply chain comprised of mostly foreign fireworks manufacturers and domestic importers, retailers, distributors, and consumers.

However, as provided under 49 CFR 390.3(d), the Federal Motor Carrier Safety Administration (FMCSA) does not prohibit an employer from requiring and enforcing more stringent requirements relating to the employer's operational safety or the safety and health of its employees.

The state is required under 49 CFR 350 to ensure that its laws and regulations are compatible with the FMCSRs and HMRs or the state could face a significant reduction in federal highway funding (see 49 CFR 355.21(c)(2)):

- As provided under 49 CFR 397.3, the federal HMRs govern when any state or local laws, ordinances, or regulations are less stringent than the federal regulation; and:
- As provided under 49 CFR 392.2, the FMCSRs govern when any state or local laws, ordinances, or regulations are less stringent than the federal regulations.

The Department is now able to allow the holder of a CDL permit issued by another state the ability to complete all CDL skills testing in Arizona if the CDL permit holder has chosen to complete CDL skills training in Arizona. The Department, or an authorized third party CDL examiner, can now upload official examination results to a Commercial Skills Test Information Management System (CSTIMS), which is an Internet-based tool that provides each state a consistent way to track the scheduling and entry of test results for commercial driver license skills tests by jurisdiction and third party examiners. CSTIMS produces reports for review by state officials and can reveal patterns of potential fraud. The system will alert the Department's CDL program when circumstances are encountered that may require investigation to determine if fraud has occurred.

The Department, by final rulemaking at 20 A.A.R. 2382, August 29, 2014, effective August 5, 2014, modified 49 CFR 383.153(e) in R17-5-205(E)(2) by removing the exception that allowed a nondomiciled CLP or CDL holder, someone who is domiciled in a foreign jurisdiction, to avoid providing the holder's social security number (SSN) on the application for a permit or license. Pursuant to Laws 2013, Chapter 128, the exception made for the SSN of nonresident CDL applicants was removed from A.R.S. § 28-3158. Laws 2013, Ch. 128 also replaced "nonresident CDL" with "nondomiciled CDL." These changes authorize the Department to require all CLP and CDL holders to provide their SSNs. This amendment is consistent with other federal laws (42 U.S.C. 405 and 42 U.S.C. 666) that require states to obtain SSNs and A.R.S. § 28-3158.

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, consistent with state statutes, require drivers to have a commercial learner's permit or commercial driver license and endorsements. The Department believes that the agency authorizations issued under these rules are "general permits" in that each licensee issued a particular class of license is subject to the same activities, practices, requirements, and restrictions applicable to all others issued the same license type. The statutes additionally provide authority for issuance, conditions, restrictions, approvals, and fees. Therefore, the Department believes that any licenses issued under the following rules fall within the definition of "general permit" under A.R.S. § 41-1001(10) and are therefore in compliance with A.R.S. § 41-1037.

R17-5-201.	Definitions
R17-5-202.	Motor Carrier Safety: Incorporation of Federal Regulations; Applicability
R17-5-203.	Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General
R17-5-204.	Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors
R17-5-205.	Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties
R17-5-206.	Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles
R17-5-207.	Civil Penalties
R17-5-208.	Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision
R17-5-209.	Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability
R17-5-210.	Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency
R17-5-211.	Motor Carrier Safety: Inspection, Enforcement, Sanction
R17-5-212.	Motor Carrier Safety: Hearing Procedure

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 September 3, 2015, the Department received permission from the Governor's Office to proceed with rulemaking to incorporate by reference the October 1, 2015, edition of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs). Some of the changes made to the

federal regulations since the 2012 edition last incorporated by the Department are outlined under section C, item 6, of this report. The Department must update these rules at least once every three years for the Department to remain in substantial compliance with the federal regulations and ensure eligibility for the Federal Motor Carrier Safety Assistance Program (MCSAP) grant funding that the Arizona Department of Public Safety expects to receive. Amendments will ensure conformity with the Administrative Procedure Act and the rulemaking format and style requirements of the Secretary of State's Office. The Department anticipates amending the following rules by filing final rulemaking with the Council on or before December 30, 2016:

R17-5-201. Definitions

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General

R17-5-204. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors

R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties

R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles

R17-5-207. Civil Penalties

R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision

R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability

R17-5-210. Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency

R17-5-211. Motor Carrier Safety: Inspection, Enforcement, Sanction

R17-5-212. Motor Carrier Safety: Hearing Procedure

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 5, Article 2

Section C

Analysis of Individual Rules

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 5, Article 2, Motor Carriers

Analysis of Individual Rules

R17-5-201. Definitions

1. Specific statutes authorizing the rule.

A.R.S. §§ 28-366 and 28-5204

2. Specific objective of the rule, including the purpose for the existence of the rule.

This rule provides industry representatives and members of the general public with a clearer understanding of the Department's intended meaning for the various terms specific to the rules contained in this Article.

6. Clarity, conciseness, and understandability of the rule.

This rule is clear, concise, and understandable as written.

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

1. Specific statutes authorizing the rule.

A.R.S. §§ 28-366 and 28-5204

2. Specific objective of the rule, including the purpose for the existence of the rule.

This rule incorporates by reference, and makes applicable to all manufacturers, shippers, motor carriers, and drivers operating in Arizona, certain Federal Motor Carrier Safety Regulations the Department deems reasonable and proper in governing safety operations.

The Department is required to comply with the Commercial Motor Vehicle Safety Act of 1986 (and associated federal regulations) regarding commercial motor vehicles and the fitness of persons who operate commercial motor vehicles. The federal government requires that each state adopt federal motor carrier safety and hazardous materials regulations that are current to within three years. Failing to do so may subject the state to a significant reduction in the federal funding currently used to support the enforcement efforts of Arizona's commercial motor vehicle safety programs.

6. Clarity, conciseness, and understandability of the rule.

This rule is consistent with the 2012 edition of the Federal Motor Carrier Safety Regulations (FMCSRs), having been the most current edition available to the Department when the regulations were last incorporated here by reference. However, the FMCSRs often change over time making it necessary for the Department to incorporate updated material on a routine basis. As provided under 49 CFR 350.335, a state that fails to adopt any new regulation or amendment to the FMCSRs within three years of its effective date will be deemed to have incompatible regulations and will not be eligible for federal Basic Program nor Incentive funds. Since motor carriers predominantly operate on a national level, the vast majority of Arizona motor carriers are already well versed in, and in compliance with, the latest edition of the FMCSRs

(even before the Department begins the process of incorporating any updates by reference). To provide the motor carrier industry with rules more clear, concise, and understandable, the Department will adopt the 2015 edition of the FMCSRs as outlined under section B, item 14, of this report, to incorporate by reference the following updates:

- Part 40. Changes were made to the Chain of Custody and Control Form to include electronic versions of the form.
- Part 107. Amendments will provide wider access to the regulatory flexibility offered in federal special permit issuance and eliminate the need for numerous renewal requests, thus reducing paperwork burdens and facilitating commerce while maintaining an appropriate level of safety. Amendments to the rules include incorporating by reference the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration's (PHMSA's) alternative method for approving Division 1.4G consumer fireworks more quickly and efficiently, without compromising safety. The alternative process allows manufacturers, or designated U.S. agents, to submit applications for certification to a DOT-approved Fireworks Certification Agency (FCA), in lieu of submitting applications for approval directly to PHMSA, which reduces regulatory burden and increases flexibility to industry, while maintaining an equivalent alternative review process and oversight.
- Part 379 Appendix A. Appendix A to Part 379 was amended to remove references to "water carriage", which is outside of FMCSA's authority.
- Section 382.107. Under the definition of "commercial motor vehicle," the phrase "or gross combination weight" was added in paragraph (1) following the phrase "gross combination weight rating". The phrase "whichever is greater" was added after the parenthetical "(26,001 pounds or more)". In paragraph (2); the phrase "or gross vehicle weight" was added after the phrase "gross vehicle weight rating", and the phrase "whichever is greater" was inserted following the parenthetical "(26,001 or more pounds)." These changes were intended to make the definition consistent with the definition of commercial motor vehicle in 49 U.S.C. 31301(4) and 49 CFR 383.5.
- Section 382.401. To conform to the structure of paragraph (b), paragraph (b)(2) was changed to a full sentence by appending to the end of the paragraph the phrase "shall be maintained for a minimum of 2 years." In addition, two cross references, which were incorrect in the original publication of the rule (66 FR 43103, August 17, 2001), were corrected. The reference to "§ 40.213(a)" in paragraph (c)(5)(iv) was corrected to read "§ 40.213(g)," which discusses documentation of training for breath alcohol technicians. Finally, the reference to "§ 390.31" in paragraph (d) was corrected to read "§ 390.29," which discusses locations of records.
- Section 382.403. In paragraph (e), the term "Consortia/Third party administrator" was changed to "Consortium/Third party administrator," as it is defined in § 382.107.
- Section 382.601. In paragraph (b)(11), the phrase ". . . program and or referral to management" was replaced by the phrase ". . . program and/or referral to management," to correct a typographical error.

- Sections 385.3, 385.407, and 385.421. An Act of Congress abolished the Research and Special Programs Administration (RSPA) and certain of its duties were transferred to the Pipeline and Hazardous Materials Safety Administration (PHMSA). FMCSA changed RSPA references in several sections to PHMSA to reflect the current name of the agency with the statutory authority to regulate the transportation of hazardous materials.
- Section 385.4. This section was revised for conformance with the style requirements of the Office of the Federal Register. The address and telephone number for the Commercial Vehicle Safety Alliance (CVSA) were updated and a cross reference to § 385.415(b)(1) was added. Additionally, in this section, FMCSA removed the name "Mr. Thomas Kelly" and added the title "Chief, Compliance Division" in its place. This change makes it clear that any questions should be addressed to the current Chief of the Compliance Division. Paragraph (b) was also changed to correct a typographical error in the address.
- Section 385.19(b). As authorized by § 32932 of MAP-21, both the phrase "Interstate Commerce Commission" and the acronym designation "(ICCMC)" were deleted.
- Section 385.403(d). Paragraph (d) was revised to reference "A `material poisonous by inhalation,' in `bulk packaging,' both as defined in § 171.8 of this title, that meets the criteria for `hazard zone B,' as specified in § 173.116(a) or § 173.133(a)". This change takes into account the quantities for solids and gases contained in the "Bulk Packaging" definition.
- Section 385.407(c). The reference to "Research and Special Programs Administration" was replaced with "Pipeline and Hazardous Materials Safety Administration" to reflect the name of the current modal administration with the responsibility to protect people and the environment from the risks inherent in the transportation of hazardous materials by pipeline and other modes of transportation.
- Sections 385.407(c) and 385.421(a)(9). These sections were both changed to remove terms related to the obsolete Research and Special Programs Administration and to add, in their place, the term "Pipeline and Hazardous Materials Safety Administration" or the acronym "PHMSA."
- Section 385.415(b)(1). Pursuant to an approval by the Director of the Office of the Federal Register, an incorporation by reference of the old edition (January 1, 2004 version) of the "North American Standard Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403" was amended by removing the edition date "January 1, 2004" and replacing it with the new edition date of "April 1, 2012". The reference to materials incorporated by reference and the address of the Commercial Vehicle Safety Alliance were replaced with a reference to § 385.4 that reads: "(See § 385.4 for information on incorporation by reference and availability of this document.)".
- Appendix B to Part 385. FMCSA updated Section II to add approximately 180 of the 49 CFR 172 and 173 violations to ASPEN and the Motor Carrier Management Information System (MCMIS). This was done in those instances where the FMCSA observes private carriers, because the parts 172/173 violations are shipper/offeror related. ASPEN is an application that captures and collects details on all

commercial driver/vehicle roadside inspections from remote sources. MCMIS is a web-enabled information system that captures inspection, crash, compliance review, safety audit, and registration data from FMCSA field offices.

- Section 387.303 (as referenced in 49 CFR §§ 385 and 390). FMCSA amended § 387.303 by restoring a previously removed provision that established minimum public liability limits of $300,000 for fleets that consist only of vehicles with Gross Vehicle Weight Ratings (GVWRs) of under 10,000 pounds, except that FMCSA revised 10,000 pounds to 10,001 pounds to be consistent with the statutory definition of CMV. The FMCSA removed former 49 CFR 387.303(b)(1)(i) in 2007 because section 4120 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) removed FMCSA's commercial jurisdiction over for-hire transportation of property in motor vehicles that did not meet the definition of a CMV under 49 U.S.C. 31132. However, the SAFETEA-LU Technical Corrections Act of 2008 restored the FMCSA's commercial jurisdiction over for-hire transportation of property in non-CMVs, so the FMCSA reinstated this regulatory provision. This section was also revised to remove obsolete references to effective dates in the table in § 387.303(b)(2). Additionally, revisions in insurance and carrier registration requirements that were to become effective October 23, 2015, were revised to extend the effective dates to December 12, 2015, September 30, 2016, or December 31, 2016.
- Section 393.3. The negative implications in § 393.3--that additional equipment or accessories that reduce operation safety are prohibited--was re-phrased as an affirmative prohibition.
- Section 393.11. In Footnote 12, the reference to "§ 392-22(a)" was replaced by a reference to "§ 392.22(a)." In Footnote 15(l), the reference to "Section 393.11" was replaced by a reference to "§ 393.11." These changes correct a typographical error.
- Section 393.17(b). Paragraph (b) was changed to correct a typographical error.
- Section 393.49. In paragraph (a), the word "busses" was replaced with the word "buses," to correct a typographical error.
- Section 393.52. The source note for this section was revised to read, "67 FR 51777", rather than "68 FR 51777", to correct a typographical error.
- Subpart E of Part 393. FMCSA removed the outdated authority citation for subpart E--Fuel Systems, which follows the subpart heading. The authority citation for part 393 adequately covers subpart E.
- Section 393.67. In paragraphs (a)(2) and (a)(3), the reference to "paragraph (c)(7)(iii)" were replaced with a reference to "paragraph (c)(7)(ii)," which is the correct citation for diesel fuel tanks. In paragraph (c)(9), the word "systems test" was replaced with the words "system test" to correct a typographical error.
- Section 393.71. In paragraph (h)(7), the words "Tow-bars of such design on in our condition as to permit . . ." were replaced with the words "Tow-bars of such design or in such condition as to permit . . ." to correct typographical errors. FMCSA removed the authority citation at the end of § 393.71

because it is outdated and because the authority citation for part 393 accurately describes the authority for the section.

- Section 393.77(b)(13). The reference to "(c)(14)" was replaced with "(b)(14)" to correct an error.
- Section 393.77. Paragraph "(b)(15)(i) Exception" was redesignated as "(c) Exception" to maintain alphabetical continuity with paragraph "(b) Heater," the preceding paragraph.
- Section 393.95. In paragraph (j), the words "See § 393.7(c)" were replaced with the words "See § 393.7" to correct the reference to matters or material incorporated by reference.
- Section 393.102. In paragraph (b), the reference to "Sec." in "Sec. 393.106(b)" was replaced with the section symbol (§), to read "§ 393.106(b)." In paragraph (c), the quotation mark (") following the words "if the cargo is" was replaced with a colon (:) to correct a typographical error.
- Section 393.118. In paragraph (d)(3)(iv)(B)(2)(i), the word "about" between the words "6 feet" and "the deck" were replaced with the word "above" to correct a typographical error. Also, paragraph (d)(5) was redesignated as paragraph (e), since the content in paragraph (d)(5) is not included within the scope of "securement of bundles transported using more than one tier."
- Section 393.120. In the italic, run-in headings of paragraphs (b), (c), and (d), the words "in an" were added after the words ". . . in a sided vehicle or" and before the words "intermodal container." In paragraph (b)(1)(iv), the words "must be used" were removed. In the introductory text of paragraph (b)(2), the word "the" was removed after the words "longitudinal row," and, in its place, was added the word "then." In paragraph (d)(1)(v), the comma was removed between the words "Either blocking" and "or friction mats." In the last sentence of paragraph (d)(3)(iv), the extraneous phrase "he forward direction." was deleted to correct a typographical error.
- Section 393.124. The paragraph that follows § 393.124(d)(5)(vi) was redesignated from paragraph "(a)" to paragraph "(e)." Currently, the paragraph is mislabeled as paragraph (a). In newly redesignated paragraph (e)(2)(ii)(B), the period at the end of the paragraph was replaced with a semicolon. In paragraph (f)(2)(i), the period at the end of the paragraph was removed and replaced with a semicolon.
- Section 393.136. In paragraph (b)(2), the words "hard wood" were replaced with the word "hardwood" to correct a typographical error.
- Section 393.203. In paragraph (a), the word "exist" was replaced with the word "exit" to correct a typographical error.
- Section 395.1. On August 25, 2005, the FMCSA modified substantially the sleeper berth regulations in § 395.1(g) (70 FR 50071). Among other things, the 2005 sleeper berth provisions referred to the 11- and 14-hour limits, which do not apply in Alaska. Inadvertently, FMCSA did not include alternative Alaska limits in that rulemaking. As a result, the current sleeper berth rules say that drivers can drive only 11 hours in a 14-hour window, while Alaska drivers can drive 15 hours in a non-consecutive 20-hour window. That oversight was corrected by adding the alternative limits for Alaska drivers to § 395.1(g).

- Section 395.1. The title of paragraph (m), "Construction materials and equipment," was italicized to stylistically conform to the titles of the other paragraphs in that section.
- Section 395.3. Paragraph (d), dealing with the once-a-week limit on restarting the 60- and 70-hour rules, was amended to include references to a weekly limit on restarting the special 70- and 80-hour rules effective in Alaska.
- Section 395.8. In the note to paragraph (c), the word "nerest" was replaced by the word "nearest," and in paragraph (f)(11) "ff duty" was replaced by "off duty" to correct typographical errors.
- Section 395.8. The reference to approval under the Office of Management and Budget (OMB) control number 2125-0016 was deleted for clarity. This reference to a specific OMB information collection approval is now outdated, confusing, and superfluous in the context of the rule's sample illustration of regulations, which generally outline drivers' record of duty status obligations and provide a sample duty status graph grid.
- Section 395.8(a)(1). The last sentence in the paragraph was deleted to remove a reference to obsolete forms.
- Section 396.9. In paragraph (c)(1), the phrase "out-of-Service Vehicle sticker" was replaced by the phrase "Out-of-Service Vehicle sticker," to correct a typographical error.
- Section 396.11. This section was amended to correct grammatical errors. In paragraph (a)(1)(xi), the semicolon at the end of the paragraph was replaced by a period. In paragraph (b)(1)(ix), a period was added at the end of the paragraph. In paragraph (b)(2)(ix), the semicolon at the end of the paragraph was replaced by a period. In paragraph (b)(2)(iv)(B), a period was added at the end of the paragraph.
- Section 396.11(b)(4). This paragraph was revised to delete the phrase "including the original driver report, the certification of repairs on all intermodal equipment," and replacing it with the phrase "including the original driver report and the certification of repairs on all intermodal equipment," to correct a typographical error.
- Section 396.15. In paragraphs (b) and (c), the word "towbar" was replaced by the word "tow-bar" to correct a typographical error.
- Section 397.5(d)(3). The word "in" was replaced with the word "is" to correct a typographical error.
- Section 397.19(a)(3). The word "contracted" was replaced with the word "contacted" to correct a typographical error.
- Section 397.65. Under the definition of "Indian tribe," the symbol (§) that precedes the section number of the statute was replaced by the term "section," to conform to the style manual of the Government Printing Office. The definition of "Radioactive material" was updated to reflect changes to the definition of the "radioactive material" as defined in 49 CFR 173.403. This definition was revised on January 26, 2004 at 69 FR 3670.
- Section 397.69. Paragraph (b) was amended to reflect statutory changes under § 33013(b) of MAP-21, which amended 49 U.S.C. 5125(c)(1) to require publication of highway route designations in the Department's hazardous materials route registry under 49 U.S.C. 5112(c). The citation to section

105(b)(4) of the Hazardous Materials Transportation Act was deleted since it is obsolete. Language regarding an effective date of November 14, 1996, was deleted since it is also obsolete. In paragraph (c), the phrase "of this subpart" was amended to read "of this part" to correct an inaccurate reference.

- Sections 397.67, 397.69, and 397.71. These three paragraphs were amended to correct certain grammatical errors. In the introductory text of § 397.67(b), the phrase "a NRHM routing designations," was replaced by the phrase "NRHM routing designations." In § 397.67(d), the word "or" was added after the words "Division 1.1, 1.2". The FMCSA corrected § 397.69(b) and § 397.71(b)(6), (b)(9)(i), and (b)(9)(iv) by replacing the words "a NRHM" with the words "an NRHM" wherever they appeared. In addition, in § 397.71(b)(2)(ii), the word "their" following ". . . the public will be afforded the opportunity to present" was replaced by the word "its."
- Section 397.73. In paragraph (a), the reference to "Section 2B-43" was replaced by a reference to "Section 2B-62," to reflect revisions in the updated "Manual on Uniform Traffic Control Devices." In paragraph (b), the phrase "their jurisdictions" following ". . . shall provide information identifying all NRHM routing designations which exist within" was replaced by the phrase "its jurisdiction" to correct a grammatical error.
- Section 397.73. In paragraph (a), footnote 2 was deleted and replaced by an internet link for convenience. Also, the reference to FMCSA was replaced by the "Federal Highway Administration (FHWA)," since the latter agency is the correct publisher of the "Manual on Uniform Traffic Control Devices for Streets and Highways." In paragraph (b), additional text was added since § 33013(a) of MAP-21 amended 49 U.S.C. section 5112(c) to add State reporting requirements, which include the name of the responsible agency for hazardous materials highway route designations. In addition, the phrase "regarding designations existing on November 14, 1994" was deleted as obsolete. Also, based on a new requirement from § 33013(b) of MAP-21, a State or Tribally-designated route is effective only after it is published in FMCSA's Hazardous Materials Route Registry. This requirement was added as new paragraph (c). Additionally, the reference to approval under the Office of Management and Budget (OMB) control number 2125-0554 at the end of the section was deleted for clarity. Such a reference to a specific OMB information collection approval was outdated, confusing, and superfluous in the context of the rule's public information and reporting requirements.
- Section 397.101. In paragraph (d), the words "shall prepared" were replaced by the words "shall prepare" to correct a typographical error. The introductory text to paragraph (g) was clarified to correctly refer the reader to 49 CFR 173.403 instead of 49 CFR 173.401(l) for the definition of a "Highway route controlled quantity" of a radioactive material, which corrected a misprint.
- Section 397.101. In paragraphs (b) [introductory text], (b)(2), and (d), references to 49 CFR 173.403 were corrected to remove incorrect paragraph references.
- Section 397.103. Based on a new publication requirement from § 33013(b) of MAP-21, the following sentence was added as a new paragraph (c)(3) to clarify when a new routing designation is effective for radioactive materials: "The route is published in FMCSA's Hazardous Materials Route Registry."

- Section 397.201. In paragraph (c), under the definition of "Administrator," the phrase "Federal Highway Administrator" was replaced by "Federal Motor Carrier Safety Administrator" to comply with the intent of the technical changes rule published in the Federal Register on October 1, 2001 (66 FR 49867).
- Section 397.213. In paragraph (b)(4), the phrase "subdivision thereof, our Indian tribe" was replaced by the phrase "subdivision thereof or Indian tribe" to correct a typographical error.
- Minor revisions were issued to correct errors and omissions, update cross references, and improve clarity and consistency of certain regulatory provisions.

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General

1. Specific statutes authorizing the rule.

A.R.S. §§ 28-366 and 28-5204

2. Specific objective of the rule, including the purpose for the existence of the rule.

This rule provides the amendments and exceptions needed to ensure that the corresponding Federal Motor Carrier Safety Regulations incorporated by reference under R17-5-202 are applicable to all motor carriers, shippers, and manufacturers operating in Arizona and that the incorporated material does not conflict with Arizona statute. The incorporated material provides general applicability, definitions, requirements, and other information for employers, employees, and commercial motor vehicles transporting property or passengers in commerce.

6. Clarity, conciseness, and understandability of the rule.

This rule is consistent with the 2012 edition of the Federal Motor Carrier Safety Regulations (FMCSRs), having been the most current edition available to the Department when the regulations were last incorporated here by reference. However, the FMCSRs often change over time making it necessary for the Department to incorporate updated material on a routine basis. As provided under 49 CFR 350.335, a state that fails to adopt any new regulation or amendment to the FMCSRs within three years of its effective date will be deemed to have incompatible regulations and will not be eligible for federal Basic Program nor Incentive funds. Since motor carriers predominantly operate on a national level, the vast majority of Arizona motor carriers are already well versed in, and in compliance with, the latest edition of the FMCSRs (even before the Department begins the process of incorporating any updates by reference). To provide the motor carrier industry with rules more clear, concise, and understandable, the Department will adopt the 2015 edition of the FMCSRs as outlined under section B, item 14, of this report, to incorporate by reference the following updates:

- Regulations were added regarding the lease and interchange of passenger-carrying vehicles.
- Section 390.3. In paragraph (f)(1), the list of exceptions was amended to include § 391.15(e), Disqualification for violation of prohibition of texting while driving a commercial motor vehicle, and § 391.15(f), Disqualification for violation of a restriction on using a hand-held mobile telephone while driving a commercial motor vehicle. The first citation (§ 391.15(e)) was originally included in the

September 27, 2010, texting final rule (75 FR 59118). When the paragraph was revised by the cell phone rule to add that exception in § 391.15(f) on December 2, 2011 (76 FR 75470), § 391.15(e)--the texting rule disqualification--was inadvertently omitted from the list of exceptions. Also, paragraph (f)(6) is amended to include an additional exception (§ 391.15(e)) for the texting provisions. This citation was included in the 2010 texting final rule, but inadvertently removed by the 2011 cell phone rule.

- Section 390.5. In the definition of "Bus," the phrase "and or used" was changed to "and/or used" to correct a typographical error.
- Section 390.5. First, under the definition of "Conviction," the word "probated" was removed and replaced with the word "prorated" to correct an error. Second, a definition of "Crash" that cross-references the existing definition of "Accident" in 49 CFR 390.5 was added to clarify that these terms are synonymous.
- Section 390.19. The section heading was changed to correspond to the entities listed in paragraph (a)(2) required to submit Form MCS-150B to the FMCSA. The new heading reads "§ 390.19 Motor carrier, hazardous material safety permit applicant/holder, and intermodal equipment provider identification reports."
- Section 390.19. In paragraph (d), the name of the office to file forms MCS-150, MCS-150B and MCS-150C was changed in the first sentence from "Office of Information Management" to "Office of Registration and Safety Information." Also, in the first sentence after the word "with" the word "the" was inserted to correct the grammar. In the second sentence, the office to file forms with was changed from "Office of Information Management, MC-RIO" to "Office of Registration and Safety Information (MC-RS)."
- Section 390.21(b)(5). This paragraph was removed because the referenced compliance provisions are now unnecessary since they have all been satisfied.
- Section 390.21. In paragraph (e)(2)(iv), the word "part" was inserted between the words "CFR" and "376," to conform with the style manual of the Office of the Federal Register. Also, in paragraph (g)(4)(iii), the acronyms "SCAC" and "VIN" are used, but they are not defined until § 390.21(g)(4)(v)(A). For clarity, the acronyms SCAC and VIN are spelled out in § 390.21(g)(4)(iii) as follows: "Standard Carrier Alpha Code (SCAC)" and "Vehicle Identification Number (VIN)" the first time they are used, but the acronyms alone are used in paragraph (g)(4)(v)(A).
- Section 390.27. This section was revised to reflect the address change resulting from the recent move of the Midwestern Service Center. Also, because Texas is now included in the Western Service Center, note 2 was revised to reflect that change.
- Section 390.40. In paragraph (f), the reference to "§ 396.12" was replaced with a reference to "§ 396.3(b)(3)," which is the correct citation for records of inspection, repair and maintenance. Also, paragraph (j) included a reference to § 386.72(b)(1), which was incorrect because the definition of

"imminent hazard" is no longer contained in that paragraph. Thus, in paragraph (j) of § 390.40, the reference to "§ 396.72(b)(1)" was removed and replaced with a reference to "§ 396.72(b)(3).

- Section 390.42(b). The reference to "§ 396.11(a)(2)" was revised to read "§ 396.11(b)(2)" to correct a typographical error.
- Section 390.107. In the introductory text of § 390.107, the comma was removed between the word "* * * in" and the phrase "accordance with the minimum specifications * * *" to correct a typographical error.

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.

This Section requires motor carriers conducting intrastate commerce in a commercial motor vehicle, except intrastate farm vehicles, to file a Motor Carrier Identification Report that requires each intrastate motor carrier to obtain a USDOT number from the Federal Motor Carrier Safety Administration (FMCSA) registry. This requirement, first adopted in 2007, assists the Department and the Department of Public Safety in tracking and identifying motor carriers that consistently receive poor safety ratings.

49 CFR 390.9 allows the state, or any subdivision thereof, to establish and enforce state or local laws relating to motor carrier safety if compliance with those laws would not prevent full compliance by persons subject to the federal motor carrier safety regulations. A.R.S. § 28-2266(A) prohibits the Department from registering a commercial motor vehicle unless the motor carrier provides a USDOT number, a federal taxpayer identification number, and the name of the party responsible for ensuring that the vehicle meets the applicable federal and state motor carrier safety laws and regulations.

R17-5-204. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors

1. Specific statutes authorizing the rule.

A.R.S. §§ 28-366 and 28-5204

2. Specific objective of the rule, including the purpose for the existence of the rule.

This rule provides the amendments and exceptions needed to ensure that the corresponding Federal Motor Carrier Safety Regulations incorporated by reference under R17-5-202 are applicable to all motor carriers, shippers, and manufacturers operating in Arizona and that the incorporated material does not conflict with Arizona statute. The rule provides the general, physical, and alternative physical qualifications necessary for an individual to qualify for licensing by the Department to operate a commercial motor vehicle. Additionally, the rule provides an intrastate waiver process for an individual that may not meet certain federal physical qualifications for interstate operation, but is otherwise qualified to drive a commercial motor vehicle.

6. Clarity, conciseness, and understandability of the rule.

This rule is consistent with the 2012 edition of the Federal Motor Carrier Safety Regulations (FMCSRs), having been the most current edition available to the Department when the regulations were last

incorporated here by reference. However, the FMCSRs often change over time making it necessary for the Department to incorporate updated material on a routine basis. As provided under 49 CFR 350.335, a state that fails to adopt any new regulation or amendment to the FMCSRs within three years of its effective date will be deemed to have incompatible regulations and will not be eligible for federal Basic Program nor Incentive funds. Since motor carriers predominantly operate on a national level, the vast majority of Arizona motor carriers are already well versed in, and in compliance with, the latest edition of the FMCSRs (even before the Department begins the process of incorporating any updates by reference). To provide the motor carrier industry with rules more clear, concise, and understandable, the Department will adopt the 2015 edition of the FMCSRs as outlined under section B, item 14, of this report, to incorporate by reference the following updates:

- Revise medical form and card, and recordkeeping and reporting procedures (Part 391).
- Section 391.2. In paragraphs (a), (b), and (c) of § 391.2, the references to "§ 391.15(e) and (g)" were removed and replaced with references to "§ 391.15(e) and (f)," to correct a typographical error. Section 391.2 was revised and § 391.15(f) was added on December 2, 2011 (76 FR 75487), with this incorrect cross reference. There has never been a § 391.15(g).
- Section 391.15. In paragraph (c)(1)(ii), the reference to "§ 395.2(a)" was removed and replaced with a reference to "§ 395.2," to correct a typographical error. Because it is now a definition section, § 395.2 is now arranged alphabetically, rather than by paragraphs. Also, in paragraph (c)(1)(ii), the semicolon was removed following the phrase "* * * or foreign commerce" and replaced with a period, to correct a typographical error and to be consistent with other instances in this section.
- Section 391.47. In paragraphs (c), (d)(1) and (d)(2), and (f), the phrase "Director of Bus and Truck Operations (MC-PSDPSD)" was changed to correctly refer to the position title and mail routing symbol, respectively, as "Director, Office of Carrier, Driver and Vehicle Safety Standards (MC-PS)."
- Section 391.49. In paragraphs (g), (h), (j)(1), (j)(2), and (k), the phrase "Division Administrator/" was added before the words "State Director" in each instance the term is used. As noted previously, except for the Puerto Rico Division, the head of each FMCSA State office is the Division Administrator.
- Section 391.63. The reference to approval under the Office of Management and Budget (OMB) control number 2125-0081 was deleted for clarity. The reference to a specific OMB information collection approval is now outdated, confusing, and superfluous in the context of the rules' description of the obligations for motor carriers employing multiple-employer drivers.
- Section 391.65. In paragraphs (a) introductory text, (a)(1), (a)(2), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), and the certification statement in (a)(2)(vii), the words "regularly employed" or variations of that phrase were replaced by the words "single-employer driver" or variations of that phrase. The reference in paragraph (a)(2)(iii) to the definition of a regularly employed driver in § 390.5 is no longer correct. The definition of "regularly employed driver" was replaced by the definition of "single-employer driver" (63 FR 33276, June 18, 1998).

R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties

1. Specific statutes authorizing the rule.

A.R.S. §§ 28-366 and 28-5204

2. Specific objective of the rule, including the purpose for the existence of the rule.

This rule provides the amendments and exceptions needed to ensure that the corresponding Federal Motor Carrier Safety Regulations incorporated by reference under R17-5-202 are applicable to all motor carriers, shippers, and manufacturers operating in Arizona and that the incorporated material does not conflict with Arizona statute. The incorporated material provides uniform standards, requirements, and penalties for commercial driver licenses.

6. Clarity, conciseness, and understandability of the rule.

This rule is consistent with the 2012 edition of the Federal Motor Carrier Safety Regulations (FMCSRs), having been the most current edition available to the Department when the regulations were last incorporated here by reference. However, the FMCSRs often change over time making it necessary for the Department to incorporate updated material on a routine basis. As provided under 49 CFR 350.335, a state that fails to adopt any new regulation or amendment to the FMCSRs within three years of its effective date will be deemed to have incompatible regulations and will not be eligible for federal Basic Program nor Incentive funds. Since motor carriers predominantly operate on a national level, the vast majority of Arizona motor carriers are already well versed in, and in compliance with, the latest edition of the FMCSRs (even before the Department begins the process of incorporating any updates by reference). To provide the motor carrier industry with rules more clear, concise, and understandable, the Department will adopt the 2015 edition of the FMCSRs as outlined under section B, item 14, of this report, to incorporate by reference the following updates:

- Section 383.3. In paragraph (f), the words "(except in the instances specified in § 383.21)" were removed because the exceptions previously referenced under § 383.21 were removed in a September 2, 1999, rulemaking (64 FR 48110).
- Section 383.3. The Interpretative rule referenced in Question 18 and responsive Guidance to § 383.3 was removed. Question 18, published April 4, 1997 (62 FR 16394), was rescinded by FMCSA and motor carriers should no longer rely on that guidance since it was made obsolete by the Hazardous Materials Transportation Uniform Safety Act of 1990 § 4, (Pub. L. 101-615, Nov. 16, 1990), which granted the Pipeline and Hazardous Materials Safety Administration jurisdiction over intrastate hazardous materials. The Hazardous Materials Regulations (HMRs) apply to the transport of hazardous materials requiring placarding, regardless of the type of vehicle utilized. Also note that this deletion ensures internal consistency with related guidance. Specifically, guidance to § 383.97, Question 7, clarifies that all drivers of vehicles required to be placarded need to have a Commercial Driver's License (CDL) with a Hazmat endorsement.

- Section 383.5. Under the definition for "Conviction," the closed quotation mark following the word "probated" was removed to correct a typographical error. Additionally, the word "probated" was removed and replaced with the word "prorated" to correct an error.
- Section 383.5. The definition of commercial motor vehicle was amended to add the names of the three vehicle groups listed in 49 CFR 383.91(a): Combination Vehicle (Group A), Heavy Straight Vehicle (Group B), and those vehicles that meet neither the Group A nor Group B requirements (Group C). This amendment does not change the applicability of the commercial driver's license (CDL) requirements in any way, but provides a practical means for the reader to understand how the four individual components of the definition in § 383.5 align with the three vehicle groups listed in § 383.91. As such, the amended definition provides a valuable reference tool for CDL applicants and holders, employers, and motor carrier enforcement personnel by eliminating the need to reference multiple sections within part 383.
- Section 383.51. In paragraph (b), the phrase "required to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F)" in the 4th column header in Table 1 was replaced with "as defined in § 383.5" to cover the expanded definition of "hazardous materials", contained in the USA PATRIOT Act, which includes select agents and toxins under 42 CFR part 73. In paragraph (c)(1), the phrase "regulated or" was inserted before "posted" in the first column because the current description in the table does not reflect the regulatory language. In paragraphs (b)(7), (c)(6), (c)(7), and (c)(8), the phrase "CLP or" was inserted before the abbreviation "CDL" to conform the column headers in Tables 1 and 2 to § 383.51. In paragraph (c)(9), the phrase "a CMV" was inserted after the word "driving" to conform to the wording in § 383.51(c)(10) and clarify that disqualification does not occur unless the offense is committed in a commercial motor vehicle (CMV).
- Section 383.51. In Table 2 to § 383.51, footnote 1 was changed to add a reference to the commercial learner's permit (CLP), so that the footnote agrees with the regulatory text in § 383.51(c)(7). Additionally, in paragraph (e)(2), Table 4, the phrase "required to be placarded under part 172 subpart F of this title" was replaced with "as defined in § 383.5" to reflect the expanded definition of "hazardous materials" in the USA PATRIOT Act, which includes select agents and toxins under 42 CFR part 73.
- Section 383.53. In paragraph (b)(2), the reference to "§ 383.37(c)" was changed to read "§ 383.37(d)." Also, in paragraph (c), the reference to "§ 383.37(d)" was changed to read "§ 383.37(e)." When 49 CFR 383.37 was revised on May 9, 2011 (76 FR 26879), old paragraphs (c) and (d) became paragraphs (d) and (e), respectively, but the corresponding changes in § 383.53 were not made.
- Section 383.71. Paragraph (b)(1)(i) was removed on October 1, 2012, because it was obsolete, and paragraph (b)(1)(ii) of that section was redesignated as paragraph (b)(1) (77 FR 59825). In paragraph (h)(2), the reference to § 383.73(j)(4) was changed to § 383.73(o)(4) to correct an inadvertent error in the Commercial Driver's License Testing and Commercial Learner's Permit Standards final rule (77

FR 26989; May 8, 2012). Numerous affected cross references were corrected throughout Sections 383.71 and 383.73.

- Sections 383.71, 383.73, and 383.153. In these three sections, FMCSA corrected the date "July 8, 2014" to read "July 8, 2015." This compliance date, which appears in § 384.301(f), was changed on March 25, 2013 (78 FR 17882). FMCSA, however, failed to change references to the compliance date in Sections 383.71(a)(1) and (2), 383.73(a)(1) and (2), and 383.153(g) and (h). In paragraph (o)(4), after the third instance of the word "medical" the following phrase was added: "examiner's certificate is voided or rescinded or a medical." This clarifies statutory authority granted to FMCSA under 49 U.S.C. section 31149(c)(2) for FMCSA to void a medical examiner's certificate for a CLP or CDL under certain circumstances.
- Section 383.73. The March 25, 2013 CDL Testing and CLP Standards final rule (78 FR 17875) made revisions to several provisions of parts 383 and 384 to include a prohibition on the transfer of Commercial Learner's Permits (CLPs) as provided in the Commercial Driver's License Information System (CDLIS) State Procedures Manual incorporated by reference in 49 CFR 384.107. The March 2013 final rule inadvertently omitted from paragraph (n)(1) conforming changes to reflect the CLP transfer prohibition. To correct this omission, first, in paragraph (n)(1), the phrase "or upgraded CLP, or an initial, renewed" was added after the word "renewed." Also, after the first instance of the word "upgraded" the phrase "or transferred CLP or" was removed. The other change in paragraph (n)(1) concerns knowledge and skills test scores verification before a transferred CDL is issued. Verification of test scores is not needed when a CDL is transferred to another State because the scores were previously verified when the CDL was initially issued in the former State of record. This change is consistent with the requirements in §§ 383.135(c) and 384.225 that exclude the test scores from being part of the CDLIS driver record (as defined by 49 CFR 383.5) that is required to be sent to the new State of record upon transfer of a CDL. Therefore, States cannot and need not enforce the knowledge and skills test scores verification requirements for a CDL transferred to a new State of record under § 383.73(n)(1). The requirement to verify knowledge and skills test scores when a CDL is transferred to a new State of record was removed to address the issue.
- Section 383.91(a)(3). The phrase "materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart E)" was replaced with "hazardous materials as defined in § 383.5" to reflect the expanded definition of "hazardous materials" in the USA PATRIOT Act, which includes select agents and toxins under 42 CFR part 73.
- Section 383.141(a). The phrase "Beginning on the date(s) listed in 49 CFR 1572.13(b)" was removed because the dates in the referenced paragraph were removed.

R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles

1. Specific statutes authorizing the rule.

A.R.S. §§ 28-366 and 28-5204

2. Specific objective of the rule, including the purpose for the existence of the rule.

This rule provides the amendments and exceptions needed to ensure that the corresponding Federal Motor Carrier Safety Regulations incorporated by reference under R17-5-202 are applicable to all motor carriers, shippers, and manufacturers operating in Arizona and that the incorporated material does not conflict with Arizona statute. The incorporated material provides uniform standards, limitations, and prohibitions regarding the driving of commercial motor vehicles.

6. Clarity, conciseness, and understandability of the rule.

This rule is consistent with the 2012 edition of the Federal Motor Carrier Safety Regulations (FMCSRs), having been the most current edition available to the Department when the regulations were last incorporated here by reference. However, the FMCSRs often change over time making it necessary for the Department to incorporate updated material on a routine basis. As provided under 49 CFR 350.335, a state that fails to adopt any new regulation or amendment to the FMCSRs within three years of its effective date will be deemed to have incompatible regulations and will not be eligible for federal Basic Program nor Incentive funds. Since motor carriers predominantly operate on a national level, the vast majority of Arizona motor carriers are already well versed in, and in compliance with, the latest edition of the FMCSRs (even before the Department begins the process of incorporating any updates by reference). To provide the motor carrier industry with rules more clear, concise, and understandable, the Department will adopt the 2015 edition of the FMCSRs as outlined under section B, item 14, of this report, to incorporate by reference the following updates:

- Section 392.5. In paragraph (a)(3), the word "and" was changed to "or" to correct an error.
- Section 392.9a. Now clarifies that a motor vehicle requiring operating authority must not be operated without such authority or beyond the scope of the operating authority granted or the motor carrier will be placed out-of-service and will be subject to penalties under 49 U.S.C. 14901.
- Section 392.9b. Now clarifies that USDOT registration is required for interstate operation and a motor carrier found responsible for operating without USDOT registration and an active USDOT number is subject to penalties under 49 U.S.C. 521.

R17-5-207. Civil Penalties

1. Specific statutes authorizing the rule.

A.R.S. §§ 28-366, 28-5204, and 28-5238

2. Specific objective of the rule, including the purpose for the existence of the rule.

This rule provides clarification on the amount of civil penalty due from a motor carrier for repeat findings of responsibility for the same class of motor carrier safety violations.

6. Clarity, conciseness, and understandability of the rule.

This rule is consistent with the 2012 edition of the Federal Motor Carrier Safety Regulations (FMCSRs), having been the most current edition available to the Department when the regulations were last incorporated here by reference. However, the FMCSRs often change over time making it necessary for the Department to incorporate updated material on a routine basis. As provided under 49 CFR 350.335, a state

that fails to adopt any new regulation or amendment to the FMCSRs within three years of its effective date will be deemed to have incompatible regulations and will not be eligible for federal Basic Program nor Incentive funds. Since motor carriers predominantly operate on a national level, the vast majority of Arizona motor carriers are already well versed in, and in compliance with, the latest edition of the FMCSRs (even before the Department begins the process of incorporating any updates by reference). To provide the motor carrier industry with rules more clear, concise, and understandable, the Department will adopt the 2015 edition of the FMCSRs as outlined under section B, item 14, of this report, to incorporate by reference the following updates:

- Revise the civil penalties for violations of the Federal Motor Carrier Safety Regulations and Federal Hazardous Materials Regulations.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

The Department indicated no course of action in its previous five-year review report for this rule.

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.

This rule is not more stringent than a corresponding federal law. Arizona's authority to assess civil penalties on manufacturers, motor carriers, shippers, and drivers that fail to attain compliance with rules relating to hazardous materials, hazardous substances, or hazardous wastes, results from A.R.S. § 28-5238. Although a more stringent federal regulatory structure exists under 49 CFR 386, the Department is unable to adopt a more stringent rule, because A.R.S. § 28-5238 limits the civil penalties the Director may impose.

R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision

1. Specific statutes authorizing the rule.

A.R.S. §§ 28-366 and 28-5204

2. Specific objective of the rule, including the purpose for the existence of the rule.

This rule provides the amendments and exceptions needed to ensure that the corresponding Federal Motor Carrier Safety Regulations incorporated by reference under R17-5-202 are applicable to all motor carriers, shippers, and manufacturers operating in Arizona and that the incorporated material does not conflict with Arizona statute. The incorporated material provides individuals disqualified from obtaining a commercial driver license for certain physical or medical conditions provided under 49 CFR 391.41(b), but are otherwise qualified to drive a commercial motor vehicle, with information regarding the Department's intrastate medical waiver process.

6. Clarity, conciseness, and understandability of the rule.

This rule applies only to motor carriers operating in intrastate commerce and is not associated with a specific federal regulation or requirement. However, the rule was designed to mirror the federal regulations that already provide certain alternative physical qualification standards for commercial motor vehicle

drivers as incorporated by reference under R17-5-204. Although, this rule is consistent with the alternative physical qualification standards allowed in 2012, the federal standards have changed over time and may now permit the Department more flexibility in granting certain medical waivers for drivers that can meet certain alternative physical qualification standards and only intend to operate within the borders of Arizona. To provide the motor carrier industry with rules more clear, concise, and understandable, the Department's Medical Review Program intends to update this Section for consistency with the 2015 edition of the FMCSRs as outlined under section B, item 14, of this report and will ensure that the Department's intrastate medical waiver processes are updated accordingly.

R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability

1. Specific statutes authorizing the rule.

A.R.S. §§ 28-366, 28-962, and 28-5204

2. Specific objective of the rule, including the purpose for the existence of the rule.

This rule incorporates by reference federal Hazardous Materials Regulations (HMRs) the Department deems reasonable and proper in governing motor carrier safety operations and making them applicable to all motor carriers, shippers, and manufacturers operating in Arizona that transport hazardous materials, hazardous substances, or hazardous wastes using a commercial motor vehicle defined under A.R.S. § 28-5201.

6. Clarity, conciseness, and understandability of the rule.

This rule is consistent with the 2012 edition of the Hazardous Materials Regulations (HMRs) of the federal Pipeline and Hazardous Materials Safety Administration (PHMSA), having been the most current edition available to the Department when the regulations were last incorporated here by reference. However, the HMRs often change over time making it necessary for the Department to incorporate updated material on a routine basis. As provided under 49 CFR 350.335, a state that fails to adopt any new regulation or amendment to the HMRs within three years of its effective date will be deemed to have incompatible regulations and will not be eligible for federal Basic Program nor Incentive funds. Since motor carriers predominantly operate on a national level, the vast majority of Arizona motor carriers subject to the HMRs are already well versed in, and in compliance with, the latest edition (even before the Department begins the process of incorporating any updates by reference). To provide the motor carrier industry with rules more clear, concise, and understandable, the Department will adopt the 2015 edition of the HMRs as outlined under section B, item 14, of this report, to incorporate by reference the following updates:

- Clarification that prior to being transported in the U.S., all explosives, including Division 1.4G consumer fireworks, are classed, approved, and issued a DOT classification approval number (EX number) by PHMSA. The EX number is a unique identifier that indicates a firework device has been classed and approved for transportation into, out of, and throughout the United States.
- Clarification that the PHMSA fireworks approval program now provides an alternative method for obtaining appropriate DOT classification. To avoid unnecessary delay in the processing of EX approval applications, Fireworks Certifying Agencies (FCA) may assist manufacturers and importers,

but the FCA, the manufacturers that seek certification by an FCA, and the importers of fireworks certified by an FCA, are required to retain certification records for five years indicating a Division 1.4G consumer fireworks classification has been certified in accordance with federal regulations.

- Parts 107, 171, 172, 173, 175, and 178 were updated to provide wider access to the regulatory flexibility offered in special permits and eliminate the need for numerous renewal requests, thus reducing paperwork burdens and facilitating commerce while maintaining an appropriate level of safety. Additionally, several other long-standing special permits and competent authority approvals with proven safety records were adopted into the HMRs. The special permits represent variances from current regulations on topics categorized as follows:
  - Limited quantities of liquids and solids containing ethyl alcohol.
  - Transportation of solid coal tar pitch compounds.
  - Transportation of certain ammonia solutions in UN1H1 and UN6HA1 drums.
  - Transportation of spent bleaching earth.
  - Requalification of non-DOT specification cylinders in life-saving appliances.
  - Use of regulated medical waste containers displaying alternative markings.
  - Adoption of special permits to harmonize with FAA Modernization and Reform Act of 2012.
- Part 171 was amended several times since the HMRs were last incorporated here by reference. Various technical, organizational, and conforming amendments were made for harmonization with international standards; transportation of lithium batteries; and compatibility with the regulations of the International Atomic Energy Agency.
- Section 171.22. Amendments were made regarding the authorization and conditions for use of international standards and regulations, the wording at the end of paragraph (f)(4) applicable to shipping paper retention, stated ‘‘§ 172.201(e) of this part’’, which incorrectly assigned it to 49 CFR part 171. As § 172.201(e), is not in part 171, the text was revised to read ‘‘§ 172.201(e) of this subchapter.’’
- Section 171.23. Regarding the requirements for specific materials and packagings transported under various international standards. Paragraph (a)(4)(ii) contained a grammatical error stating the word ‘‘drive’’ instead of ‘‘device.’’ Additionally, the text in the middle of paragraph (a)(5), applicable to cylinders not equipped with pressure relief devices, stated the cylinders must be ‘‘tested and marked in accordance with part 178 of this subchapter and otherwise conforms to the requirements of part 173 for the gas involved’’, but it did not reference that part 173 belongs to subchapter C. Paragraph (a)(5) was revised for clarification.
- Section 172.101. This section prescribes the purpose and instructions for use of the § 172.102 Hazardous Materials Table (HMT). A number of editorial corrections were made to several entries in the HMT.

- Section 172.203 prescribes additional shipping paper requirements for ‘‘n.o.s.’’ and generic shipping descriptions. The example in paragraph (k)(1) for ‘‘UN2924’’ was amended to include the missing Class 8 subsidiary risk language.
- Section 172.502 specifies prohibited and permissive placarding requirements. Paragraph (b)(3), applicable to use of a safety sign or safety slogan (e.g., ‘‘Drive Safely’’ or ‘‘Drive Carefully’’), was removed as the transitional provision has expired.
- Section 173.4 provides requirements for shipments of small quantities by highway and rail. In the HM–250 final rule, the paragraphs contained in § 173.421 were renumbered. Multiple sections referencing the previous paragraph numbering of § 173.421 were not amended in the HM–250 rulemaking. PHMSA has since revised paragraph (b) to reflect the appropriate paragraph of § 173.421.
- Section 173.25 provides requirements for packages utilizing overpacks. In the HM–250 final rule, paragraph (a)(4) was revised to require the ‘‘OVERPACK’’ marking for Class 7 (radioactive) material when a Type A, Type B(U), Type B(M) or industrial package is required. Paragraph (a)(4) was subsequently revised in the HM–215M final rule by specifying the minimum size requirement for the ‘‘OVERPACK’’ marking. In making the HM–215M revision the requirement added to the HM–250 final rule was inadvertently omitted. PHMSA has since revised paragraph (a)(4) to include the requirements added in both the HM–250 and HM–215 final rules.
- Section 173.127 provides a definition and criteria for the assignment of packing groups for Division 5.1 oxidizers. In the HM–215M final rule, PHMSA authorized an alternative test for assigning packing groups to Division 5.1 oxidizing solids. Due to an incorrect regulatory instruction, the paragraph (b)(2) was inadvertently removed. PHMSA has since reinstated the paragraph (b)(2) text.
- Section 173.302 specifies requirements for the filling of cylinders with nonliquefied (permanent) compressed gases. In the HM–215M final rule, PHMSA adopted the provisions in UN Model Regulations for the transportation of adsorbed gases in cylinders. PHMSA amended the title of this section and paragraph (a) to include and specify requirements for the transportation of adsorbed gases. Due to a regulatory instruction error, the revisions to paragraph (a) were not included in the CFR. PHMSA has since added the revisions to paragraph (a) as intended in the HM–215M final rule as published in 80 FR 1161, instruction number 48.
- Section 173.309 prescribes requirements for fire extinguishers. In the HM–215M final rule, provisions for transporting large fire extinguishers unpackaged were added in a new paragraph (e). Paragraph (e)(2) requires that the valves must be protected in accordance with § 173.301(c)(2)(i), (ii), (iii) or (v). The references to § 173.301(c) were rendered incorrect as the applicable requirements are located in § 173.301b(c). PHMSA has since revised paragraph (e)(2) to correctly reference § 173.301b(c)(2)(i), (ii), (iii) or (v).
- Section 177.838 prescribes specific loading and unloading requirements for Class 4 (flammable solid) materials, Class 5 (oxidizing) materials, and Division 4.2 (pyrophoric liquid) materials when carried by public highway. PHMSA has revised the section heading by replacing the word ‘‘pyroforic’’ with the

correct spelling ‘‘pyrophoric.’’ In addition, paragraph (g) of § 177.838 was revised to clarify that the limitation that a motor vehicle may only contain 45.4 kg (100 pounds) or less net mass of material described as ‘‘Smokeless powder for small arms, Division 4.1’’ also includes ‘‘Black powder for small arms, Division 4.1’’. This clarification provides consistency with the requirements and limitations of §§ 173.170 and 173.171 which respectively authorize Black powder for small arms that has been classed in Division 1.1 and Smokeless powder for small arms that has been classed as Division 1.3 or Division 1.4 to be reclassed as a Division 4.1 material for domestic transportation by highway, provided certain conditions are met. Sections 173.170 and 173.171 further provide, respectively, that the total quantity of the re-classed black powder or smokeless powder in one motor vehicle may not exceed 45.4 kg (100 pounds) net mass.

- Section 180.213 prescribes requirements for requalification markings for cylinders. PHMSA revised paragraph (f)(1) to correct the reference to § 173.309(b) to read ‘‘§ 173.309(a).’’

R17-5-210. Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency

1. Specific statutes authorizing the rule.

A.R.S. §§ 28-366 and 28-5204

2. Specific objective of the rule, including the purpose for the existence of the rule.

This rule provides the process that an employee of a public service corporation, a political subdivision of this state that is engaged in rendering public utility service, or a railroad must use to notify state officials that an emergency situation exists under A.R.S. § 28-5234(B).

6. Clarity, conciseness, and understandability of the rule.

This rule is clear concise and understandable as written.

R17-5-211. Motor Carrier Safety: Inspection, Enforcement, Sanction

1. Specific statutes authorizing the rule.

A.R.S. §§ 28-366 and 28-5204

2. Specific objective of the rule, including the purpose for the existence of the rule.

This rule provides inspection, enforcement, and sanction provisions applicable to a Transporter as defined under R17-5-201.

6. Clarity, conciseness, and understandability of the rule.

This rule is clear concise and understandable as written.

R17-5-212. Motor Carrier Safety: Hearing Procedure

1. Specific statutes authorizing the rule.

A.R.S. §§ 28-366 and 28-5204

2. Specific objective of the rule, including the purpose for the existence of the rule.

This rule provides the specific exceptions needed to make the Department's general administrative hearing procedures under 17 A.A.C. 1, Article 5, applicable to motor carrier enforcement actions under R17-5-202 through R17-5-209, and A.R.S. Title 28, Chapter 14.

6. Clarity, conciseness, and understandability of the rule.

This rule is clear concise and understandable as written.

Government Relations and Policy Development Office

A.A.C. Title 17 – Transportation

Chapter 5

Department of Transportation

Commercial Programs

Article 4 – Dealers

Five-Year Review Report

Submitted January 2016

FIVE-YEAR REVIEW REPORT

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION - COMMERCIAL PROGRAMS

ARTICLE 4. DEALERS

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FIVE-YEAR REVIEW SUMMARY - SECTION A

A.R.S. § 28-366 authorizes the Director of the Arizona Department of Transportation (ADOT) to establish rules deemed necessary for collecting taxes and license fees, ensuring public safety, enforcing the provisions of the transportation laws the Director administers, and preventing the abuse and unauthorized use of state highways. The Department has authority over state highways, performs statewide motor vehicle licensing and registration functions, and provides transportation planning services. A.R.S. Title 28, Chapter 10, Article 7, Dealer and Manufacturer License Plates, prescribes the licensing and regulatory provisions for new and used motor vehicle dealers, wholesale motor vehicle dealers, manufacturers, motor vehicle auction dealers, automotive recyclers, off-premises display and sales, and special events. A.R.S. § 28-4303 requires the ADOT Director to supervise and regulate licensees. A.R.S. § 28-4410 requires the Director to adopt rules on the minimum form and content of consignment contracts and dealer acquisition contracts. A.R.S. § 28-4543 gives the ADOT Director the authority to adopt rules on manufacturer test license plates and dealer license plates. A.R.S. § 28-4537 authorizes the ADOT Director to adopt rules to enforce and administer A.R.S. §§ 28-4532 through 28-4536.

A.A.C. Title 17, Chapter 5, Article 4 contains seven rules relating to motor vehicle dealers. R17-5-402 establishes the bonding levels required for motor vehicle dealers, brokers, and recyclers business licenses. R17-5-403 prescribes the bond for a motor vehicle title service company. R17-5-404 requires the dealer's name to be recorded on a title certificate as transferree or purchaser. R17-5-405 and R17-5-406, respectively, prescribe the requirements for motor vehicle dealer acquisition and motor vehicle dealer consignment contracts. The requirements for motor vehicle repossession are contained in R17-5-407. R17-5-408 contains the requirements for a written notice provided to a new motor vehicle purchaser if the dealer previously sold the vehicle to another purchaser.

The Department's review of these rules based on the factors in A.R.S. § 41-1056 follows.

INFORMATION THAT IS IDENTICAL FOR ALL RULES - SECTION B

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION - COMMERCIAL PROGRAMS

ARTICLE 4. DEALERS

1. General and specific statutes authorizing rulemaking.

The Department's general rulemaking authority is in A.R.S. § 28-366 and specific rulemaking authority is in A.R.S. §§ 28-4303, 28-4361, 28-4362, 28-4543, and 28-4410.

R17-5-402. Bond Amounts; Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses

R17-5-404. Dealer Title Requirement for Vehicle Sale

R17-5-405. Motor Vehicle Dealer Acquisition Contract

R17-5-406. Motor Vehicle Dealer Consignment Contract

R17-5-407. Motor Vehicle Repossession

R17-5-408. Resale of a New Motor Vehicle

3. Effectiveness of the rule in achieving its objective.

The stated objectives of the following rules are effectively met because the rules allow the Department to effectively administer the motor vehicle dealer licensing statutes. At the end of 2015, the Department has a total of 3,821 licensed motor vehicle dealers of nine different license types, as follows: Retail dealers, including "new", "used", and "public consignment auction" dealers and brokers total 2,492; wholesale and wholesale auction dealers total 859; manufacturer/distributor licenses total 266; and 204 licensed auto recyclers.

R17-5-402. Bond Amounts; Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses

R17-5-404. Dealer Title Requirement for Vehicle Sale

R17-5-405. Motor Vehicle Dealer Acquisition Contract

R17-5-406. Motor Vehicle Dealer Consignment Contract

R17-5-407. Motor Vehicle Repossession

R17-5-408. Resale of a New Motor Vehicle

4. Consistent with state and federal statutes and other rules made by the Department.

The following rules are consistent with A.R.S. §§ 28-4303, 4361, 4362, 4410, and other rules made by the Department:

R17-5-402. Bond Amounts; Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses

R17-5-404. Dealer Title Requirement for Vehicle Sale

R17-5-405. Motor Vehicle Dealer Acquisition Contract

R17-5-406. Motor Vehicle Dealer Consignment Contract

R17-5-407. Motor Vehicle Repossession

R17-5-408. Resale of a New Motor Vehicle

5. Agency enforcement policy, including whether the rule is currently being enforced.

The Department currently enforces the following rules as written:

R17-5-402. Bond Amounts; Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses

R17-5-404. Dealer Title Requirement for Vehicle Sale

R17-5-405. Motor Vehicle Dealer Acquisition Contract

R17-5-406. Motor Vehicle Dealer Consignment Contract

R17-5-407. Motor Vehicle Repossession

R17-5-408. Resale of a New Motor Vehicle

6. Clarity, conciseness, and understandability of the rules.

The following rules are generally clear, concise, and understandable:

R17-5-402. Bond Amounts; Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses

R17-5-403. Bond Amount; Motor Vehicle Title Service Business License

R17-5-404. Dealer Title Requirement for Vehicle Sale

R17-5-407. Motor Vehicle Repossession

R17-5-408. Resale of a New Motor Vehicle

Although the following rules are generally clear, concise, and understandable, rulemaking is proposed to update antiquated language and references.

R17-5-405. Motor Vehicle Dealer Acquisition Contract

R17-5-406. Motor Vehicle Dealer Consignment Contract

7. Written criticisms of the rules received during the previous five years, including any written analyses questioning whether the rule is based on valid scientific or reliable principles or methods.

The Department has not received any written criticisms for the following rules:

R17-5-402. Bond Amounts; Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses

R17-5-403. Bond Amount; Motor Vehicle Title Service Business License

R17-5-404. Dealer Title Requirement for Vehicle Sale

R17-5-405. Motor Vehicle Dealer Acquisition Contract

R17-5-406. Motor Vehicle Dealer Consignment Contract

R17-5-407. Motor Vehicle Repossession

R17-5-408. Resale of a New Motor Vehicle

8. Estimated economic, small business, and consumer impact compared with the last rulemaking.

The economic impact of the following rules is the same as estimated in the economic impact statement prepared on the last amendment of the rules:

R17-5-402. Bond Amounts; Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses

R17-5-404. Dealer Title Requirement for Vehicle Sale

R17-5-405. Motor Vehicle Dealer Acquisition Contract

R17-5-406. Motor Vehicle Dealer Consignment Contract

R17-5-407. Motor Vehicle Repossession

R17-5-408. Resale of a New Motor Vehicle

9. <u>An analysis submitted to the agency by another person that compares the rule's impact on this state's business competitiveness to the impact on businesses in other states</u>.

An analysis regarding any of the following rules was not submitted by another person that compares the rule's impact on this state's business competitiveness to the impact on business in other states:

R17-5-402. Bond Amounts; Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses

R17-5-403. Bond Amount; Motor Vehicle Title Service Business License

R17-5-404. Dealer Title Requirement for Vehicle Sale

R17-5-405. Motor Vehicle Dealer Acquisition Contract

R17-5-406. Motor Vehicle Dealer Consignment Contract

R17-5-407. Motor Vehicle Repossession

R17-5-408. Resale of a New Motor Vehicle

10. <u>If applicable, how the agency completed the course of action indicated in the agency's previous five-year review</u>.

The Department did not indicate a course of action in its previous five-year review for the following rules:

R17-5-402. Bond Amounts; Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses

R17-5-403. Bond Amount; Motor Vehicle Title Service Business License

R17-5-404. Dealer Title Requirement for Vehicle Sale

R17-5-407. Motor Vehicle Repossession

R17-5-408. Resale of a New Motor Vehicle

The Department proposed to make and submit rule changes to GRRC by July 2012. The Department initiated rulemaking on these rules, but was unable to complete the course of action to revise the following rules under rulemaking timelines due to other agency rulemaking priorities, which included rulemakings on relocation assistance, logo signs, rental vehicle surcharge, and other rules:

R17-5-405. Motor Vehicle Dealer Acquisition Contract

R17-5-406. Motor Vehicle Dealer Consignment Contract

11. <u>A determination that the rules impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective</u>.

In rulemaking, the Department routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. The Department has determined that the following rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying objectives:

R17-5-402. Bond Amounts; Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses

R17-5-404. Dealer Title Requirement for Vehicle Sale

R17-5-407. Motor Vehicle Repossession

R17-5-408. Resale of a New Motor Vehicle

To the extent that the following rules are not clear, concise, and understandable, the Department has determined that the following rules may not impose the least burden and costs to persons regulated by the rules:

R17-5-405. Motor Vehicle Dealer Acquisition Contract

R17-5-406. Motor Vehicle Dealer Consignment Contract

12. A determination that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

The following rules are not more stringent than a corresponding federal law and a corresponding federal law does not exist.

R17-5-402. Bond Amounts; Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses

R17-5-403. Bond Amount; Motor Vehicle Title Service Business License

R17-5-404. Dealer Title Requirement for Vehicle Sale

R17-5-405. Motor Vehicle Dealer Consignment Contract

R17-5-406. Motor Vehicle Dealer Acquisition Contract

R17-5-407. Motor Vehicle Repossession

R17-5-408. Resale of a New Motor Vehicle

13. If applicable, for rules adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rules comply with A.R.S. § 41-1037.

The following rules were adopted before July 29, 2010:

R17-5-402. Bond Amounts; Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses

R17-5-403. Bond Amount; Motor Vehicle Title Service Business License

R17-5-404. Dealer Title Requirement for Vehicle Sale

R17-5-405. Motor Vehicle Dealer Acquisition Contract

R17-5-406. Motor Vehicle Dealer Consignment Contract

R17-5-407. Motor Vehicle Repossession

R17-5-408. Resale of a New Motor Vehicle

14. Proposed course of action

No action is planned on the following rules since these rules meet their objective, are effective, consistent with statute, enforceable, and are clear, concise, and understandable:

R17-5-404. Dealer Title Requirement for Vehicle Sale

R17-5-407. Motor Vehicle Repossession

R17-5-408. Resale of a New Motor Vehicle

ANALYSIS OF INDIVIDUAL RULES - SECTION C

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION - COMMERCIAL PROGRAMS

ARTICLE 4. DEALERS

R17-5-402. Bond Amounts; Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses

2. Objective

A.R.S. § 28-4362 requires dealer applications to be accompanied by a bond in a form approved by the ADOT Director. This rule specifies the required bond amount for each dealer license type and states that a handwritten bond is not acceptable. The purpose of the bond requirement is to protect the public on motor vehicle transactions.

14. Proposed action

The Department plans to amend R17-5-402 to remove references to the "Division" and insert the "Department".

R17-5-403. Bond Amount; Motor Vehicle Title Service Business License

1. General and specific statutes authorizing rulemaking

Specific rule authority for motor vehicle title service businesses no longer exists. Specific rule authority was contained in A.R.S. Title 28, Chapter 12, which was repealed by Laws 2011, Chapter 190, § 15, effective April 1, 2012.

2. Objective

This rule defines the bond amount required for motor vehicle title service businesses and clarifies that a handwritten bond is not acceptable. The purpose of the bond was to protect the public when title service businesses were used in motor vehicle transactions.

3. Effectiveness of the rule in achieving its objective.

This rule is ineffective because motor vehicle title service companies were repealed from A.R.S. Title 28, Chapter 12, in Laws 2011, Ch. 190, § 15, effective April 1, 2012.

4. Consistent with state and federal statutes and other rules made by the Department.

The rule is not consistent with current state transportation statutes because the Legislature repealed the authority to license and regulate motor vehicle title service companies.

5. Agency enforcement policy, including whether the rule is currently being enforced.

The agency is not enforcing this rule.

8. Estimated economic, small business, and consumer impact compared with the last rulemaking.

Due to the fact that motor vehicle title service companies are no longer regulated and are not required to post a bond, the economic impact on motor vehicle title service companies has been reduced.

11. <u>A determination that the rules impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective</u>.

The Department does not currently require bonds for motor vehicle title service companies and does not regulate motor vehicle title service companies, so the rules do not impose a burden on title service companies.

14. <u>Proposed action</u>

The Department plans to repeal R17-5-403 because the Legislature repealed the motor vehicle title service statutes previously located in Title 28, Chapter 12, in Laws 2011, Ch. 190, § 15, effective April 1, 2012. The Department also plans to initiate rulemaking to adopt rules on motor vehicle dealer license plates and manufacturer test plates, and to submit rules to the Governor's Regulatory Review Council (GRRC) by January 2018. The Department has submitted a request to the Governor's Office for an exemption from the rulemaking moratorium to initiate this rulemaking.

R17-5-404. Dealer Title Requirement for Vehicle Sale

2. <u>Objective</u>

This rule requires the dealer's name to be recorded on a title certificate as the transferee or purchaser. The purpose of the rule is to clarify to the public and dealers the requirement for a dealer to serve as transferee.

R17-5-405. Motor Vehicle Dealer Acquisition Contract

2. <u>Objective</u>

This rule provides motor vehicle dealers and the public with a better understanding of terms specific to this rule and general requirements regarding the content and disposition of dealer acquisition contracts.

14. <u>Proposed course of action</u>

The Department plans to move the definitions in R17-5-405 to R17-5-401 to make the rules consistent with the rulemaking requirements of the Secretary of State. The statutory reference in R 17-5-405(A)(2) to "Dealer" or "Motor vehicle dealer" cites A.R.S. § 28-4301(23), which refers to "New house trailer dealer". This citation will be changed to A.R.S. § 28-4301. In (A)(4), the reference to "Vehicle" or "motor vehicle" cites A.R.S. § 28-4301(22), which refers to motor vehicle dealer and will be changed to A.R.S. § 28-4301. In (A)(5), the reference to "Owner" that cites A.R.S. § 28-101(36)(a) references "Motor vehicle fuel" and will be changed to A.R.S. § 28-101. The Department has submitted a request to the Governor's Office for an exemption from the rulemaking moratorium to make these changes.

R17-5-406. Motor Vehicle Dealer Consignment Contract

2. <u>Objective</u>

This rule provides motor vehicle dealers and the public with a better understanding of terms specific to this rule and general requirements regarding the content and disposition of dealer consignment contracts.

14. <u>Proposed course of action</u>

The Department plans to make the rules consistent with the rulemaking requirements of the Secretary of State. This includes moving the definitions in R17-5-406 to R17-5-401. In R17-5-406(A)(3), the Department will substitute use of the word "Department" to refer to actions of the Department of Transportation rather than "Division" to refer to the Motor Vehicle Division.

R17-5-407. Motor Vehicle Repossession

2. <u>Objective</u>

This rule provides vehicle owners, lienholders, and dealers with the procedures and requirements necessary for transferring title of a motor vehicle repossessed by a lienholder.

R17-5-408. Resale of a New Motor Vehicle

2. <u>Objective</u>

This rule provides the process a new motor vehicle dealer shall follow and the information that must be provided in a notice to a new purchaser when reselling as "new," a motor vehicle previously delivered to a purchaser.

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 5, Article 2

Section D

Rule Text and Material Incorporated by Reference

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 5, Article 2

ARTICLE 2. MOTOR CARRIERS

R17-5-201. Definitions

In addition to the definitions provided under A.R.S. §§ 28-3001 and 28-5201, the following definitions apply to this Article unless otherwise specified:

"Audit" means any inspection of a transporter's motor vehicle, equipment, books, or records to determine compliance with this Article and A.R.S. Title 28, Chapter 14.

"Co-applicant" means an employer or potential employer.

"Danger to public safety" means any condition of a transporter likely to result in serious peril to the public if not discontinued immediately.

"Director" means the Director of the Arizona Department of Transportation or the Director's designated agent.

"Executive Hearing Office" means the Arizona Department of Transportation's Executive Hearing Office.

"Medical waiver evaluation summary" means the form, provided by the Department, to be completed by either a board qualified or board certified orthopedic surgeon or physiatrist and mailed to the Department, at the address provided on the form, on behalf of an Arizona intrastate medical waiver applicant.

"Physiatrist" means a doctor of medicine specialized in physical medicine and rehabilitation.

"Transporter" means any person, driver, motor carrier, shipper, manufacturer, or motor vehicle, including any motor vehicle transporting a hazardous material, hazardous substance, or hazardous waste, subject to this Article and A.R.S. Title 28, Chapter 14.

"Violation" means any conduct, act, or failure to act required or prohibited under this Article and A.R.S. Title 28, Chapter 14.

"Vision examination report" means a form provided by the Department to be completed by an ophthalmologist or a licensed optometrist on behalf of a driver or driver applicant and mailed to the Department, at the address provided on the form, for use in determining whether or not a medical condition affects the driver's, or driver applicant's, ability to safely perform the functional skills involved with driving a motor vehicle.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

A. The Department incorporates by reference 49 CFR 40, 379, 382, 383, 385, 390, 391, 392, 393, 395, 396, 397, and 399, revised as of October 1, 2012, and no later amendments or editions, as amended under this Article. The

incorporated material is on file with the Department and is available from the U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000. The incorporated material can be ordered online by visiting the U.S. Government Online Bookstore at http://bookstore.gpo.gov.

B. The sections of 49 CFR incorporated under subsection (A) apply as amended under this Article to all intrastate and interstate motor carriers operating in Arizona and persons operating a commercial motor vehicle, except as provided under subsection (C).

C. The intrastate operator of a tow truck with a gross vehicle weight rating of 26,000 pounds or less is exempt from the requirements of 49 CFR 390 through 399, except that the driver is subject to the physical qualifications and examination requirements of 49 CFR 391, subpart E.

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General

A. 49 CFR 390.3, General applicability. Paragraph (a) is amended to read:

Regulations incorporated in this section are applicable to all motor carriers operating in Arizona and any vehicle owned or operated by the state, a political subdivision, or a state public authority that is used to transport a hazardous material in an amount requiring the vehicle to be placarded as prescribed under R17-5-209.

B. 49 CFR 390.5, Definitions. The definitions listed under 49 CFR 390.5 are amended as follows:

"Commercial Motor Vehicle" or "CMV" has the same meaning as prescribed under A.R.S. § 28-5201.

"Special agent" means an officer or agent of the Department, the Department of Public Safety, or a political subdivision, who is trained and certified by the Department of Public Safety to enforce Arizona's Motor Carrier Safety requirements.

"State" means a state of the United States or the District of Columbia.

"Tow truck," as used in the definition of emergency under 49 CFR 390.5, has the same meaning as prescribed under A.A.C. R13-3-701.

C. 49 CFR 390.19, Motor carrier, hazardous material shipper, and intermodal equipment provider identification reports. Paragraph (a)(1) is amended to read:

A U.S.-, Canada-, Mexico-, or non-North America-domiciled motor carrier conducting operations in interstate commerce or in intrastate commerce in a CMV, except for intrastate commerce in a farm vehicle as defined under A.R.S. § 28-2514, must file a Motor Carrier Identification Report, Form MCS-150.

D. 49 CFR 390.23, Relief from regulations.

1. Paragraph (a)(2), Local emergencies, is amended by adding:

   When a local emergency exists that justifies an exemption from parts 390 through 399 of this chapter, a motor carrier may request the exemption by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, Arizona 85005. The Arizona Department of Public Safety may grant the exemption with or without restrictions as necessary to provide vital service to the public.

2. Paragraph (a)(2)(i)(A) is amended to read:

An emergency has been declared by a federal, state or local government official having authority to declare an emergency; or an emergency situation exists under A.R.S. § 28-5234(B); or

E. 49 CFR 390.25, Extension of relief from regulations - emergencies, is amended by adding:

A motor carrier seeking to extend a period of relief from these regulations may request the extension by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, Arizona 85005. The Arizona Department of Public Safety may grant the extension with any restrictions it considers necessary to provide vital service to the public.

R17-5-204. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors

A. 49 CFR 391.11, General qualifications of drivers. Paragraph (b)(1) is amended to read:

Is at least 21 years of age for interstate operation or is at least 18 years of age for operations restricted to intrastate transportation not involving the transportation of a reportable quantity of hazardous substance, hazardous waste required to be manifested, or hazardous material in an amount requiring a vehicle to be placarded as prescribed under R17-5-209;

B. 49 CFR 391.51, General requirements for driver qualification files. Paragraph (b)(8) is amended to read:

A Skill Performance Evaluation Certificate obtained from a Field Administrator, Division Administrator, or state Director issued in accordance with § 391.49; or the Medical Exemption document, issued by a Federal medical program in accordance with part 381 of this chapter; or a copy of the Arizona intrastate medical waiver, if a waiver is granted by the Director as prescribed under R17-5-208; and

R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties

A. 49 CFR 383.5, Definitions. The definitions listed under 49 CFR 383.5 are amended as follows:

"Commercial motor vehicle" or "CMV" has the same meaning as prescribed under A.R.S. § 28-3001.

"Conviction" has the same meaning as prescribed under A.R.S. § 28-3001.

"Disqualification" has the same meaning as prescribed under A.R.S. § 28-3001.

"Motor vehicle" has the same meaning as prescribed under A.R.S. § 28-101.

"Out-of-service order" has the same meaning as prescribed under A.R.S. § 28-5241.

"School bus" has the same meaning as prescribed under A.R.S. § 28-101.

"Tank vehicle" has the same meaning as prescribed under A.R.S. § 28-3103.

B. 49 CFR 383.71, Driver application and certification procedures. Paragraphs (b)(1)(ii), Excepted interstate, and (b)(1)(iv), Excepted intrastate, are deleted.

C. 49 CFR 383.73, State procedures.

1. Paragraph (a)(2)(vi) is amended to read:

   Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(a)(2)(v) and proof of state of domicile specified in § 383.71(a)(2)(vi). Exception: A

state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

2. Paragraph (b)(6) is amended to read:

   Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

3. Paragraph (c)(4) is amended to read:

   If such applicant wishes to retain a hazardous materials endorsement, require compliance with standards for such endorsement specified in §§ 383.71(b)(8) and 383.141 and ensure that the driver has successfully completed a new test for such endorsement specified in § 383.121.

4. Paragraphs (c)(4)(i) and (c)(4)(ii) are deleted.

5. Paragraph (c)(7) is amended to read:

   Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

6. Paragraph (d)(7) is amended to read:

   Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done; and

7. Paragraph (e)(5) is amended to read:

   Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of state of domicile specified in § 383.71(b)(10). Exception: A state is

required to check the proof of citizenship or legal presence specified in this paragraph only for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade, or transfer of a CDL or non-domiciled CDL, for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

8. Paragraph (f)(2)(ii) is amended to read:

   The state must add the word "non-domiciled" to the face of the CLP or CDL, in accordance with § 383.153(c); and

9. Paragraph (m), Document verification, is amended to read:

   The state must require at least two persons within the driver licensing agency to participate substantively in the processing and verification of the documents involved in the licensing process for initial issuance, renewal or upgrade of a CLP or non-domiciled CLP and for initial issuance, renewal, upgrade or transfer of a CDL or non-domiciled CDL. The documents being processed and verified must include, at a minimum, those provided by the applicant to prove legal presence and domicile, the information filled out on the application form, and knowledge and skills test scores. This section does not require two people to process or verify each document involved in the licensing process. Exception: For offices with only one staff member, at least some of the documents must be processed or verified by a supervisor before issuance or, when a supervisor is not available, copies must be made of some of the documents involved in the licensing process and a supervisor must verify them within one business day of issuance of the CLP, non-domiciled CLP, CDL or non-domiciled CDL.

D. 49 CFR 383.75, Third party testing.

1. Paragraph (a)(7) is amended to read:

   A skills test examiner who is also a skills instructor either as a part of a school, training program or otherwise is prohibited from administering a skills test to an applicant who received skills training by that skills test examiner; and

2. Paragraph (a)(8)(v) is amended to read:

   Require the third party tester to initiate and maintain a bond in an amount pursuant to A.R.S. Title 28, Chapter 13 to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing of applicants for a CDL. Exception: A third party tester that is a government entity is not required to maintain a bond.

E. 49 CFR 383.153, Information on the CLP and CDL documents and applications.

1. Paragraph (b)(1) is amended to read:

   A CLP may, but is not required to, contain a digital color image or photograph or black and white laser engraved photograph.

2. Paragraph (e) is amended to read:

   Before a CLP or CDL may be issued:

(1) A driver applicant must provide the driver applicant's Social Security Number on the application of a CLP or CDL.

(2) The state must provide the Social Security Number to the CDLIS.

(3) The state must not display the Social Security Number on the CLP or CDL.

3. Paragraph (h) is amended to read:

On or after July 8, 2014 current CLP and CDL holders who do not have the standardized endorsement and restriction codes and applicants for a CLP or CDL are to be issued CLPs with the standardized codes upon initial issuance, renewal or upgrade and CDLs with the standardized codes upon initial issuance, renewal, upgrade or transfer.

R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles

49 CFR 392.5, Alcohol prohibition. Paragraph (e) is amended by adding:

Drivers who violate the terms of an out-of-service order as prescribed under this section are also subject to the provisions and sanctions of A.R.S. § 28-5241.

Historical Note

New Section recodified from R17-4-435.04 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

R17-5-207. Civil Penalties

To determine the amount of civil penalty for repeat findings of responsibility for the same class of violations involving vehicles required to be placarded, the higher level of civil penalty as prescribed under A.R.S. § 28-5238 applies.

Historical Note

New Section recodified from R17-4-435.05 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3).

R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision

A. A person who is not physically qualified to drive a commercial motor vehicle in interstate commerce due to loss of limb, limb impairment, an insulin-dependent diabetic condition, or monocular vision, as provided under 49 CFR 391.41(b)(1), (b)(2), (b)(3), or (b)(10), but otherwise meets all other requirements under 49 CFR 391.41, may operate a commercial motor vehicle in intrastate commerce if granted an intrastate medical waiver by the Director. Application for an intrastate medical waiver shall be submitted according to subsection (B).

B. A driver applicant, or a driver applicant jointly with the motor carrier co-applicant that will employ the driver applicant, may complete and submit an intrastate medical waiver application to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, which shall:

1. Identify the applicant:
   a. Name and complete address of the driver applicant;
   b. Name and complete address of the motor carrier co-applicant;
   c. U.S. Department of Transportation motor carrier identification number, if known; and
   d. A description of the driver applicant's limb or visual impairment or insulin-dependent diabetic condition as applicable to the type of waiver being requested;
2. Describe the type of operation the driver applicant will be employed to perform, including the following information (if known):
   a. Average period of time the driver will be driving or on duty, per day;
   b. Type of commodities or cargo to be transported;
   c. Type of driver operation (i.e., sleeper team, relay, owner operator, etc.); and
   d. Number of years experience operating each type of commercial motor vehicle requested in the intrastate medical waiver application and total years of experience operating all types of commercial motor vehicles;
3. Describe the commercial motor vehicles the driver applicant intends to drive:
   a. Truck, truck tractor, or bus make, model, and year (if known);
   b. Drive train:
      i. Transmission type (automatic or manual - if manual, designate number of forward speeds);
      ii. Auxiliary transmission (if any) and number of forward speeds; and
      iii. Rear axle (designate single speed, two-speed, or three-speed);
   c. Type of brake system;
   d. Steering, manual or power assisted;
   e. Description of types of trailers (i.e., van, flatbed, cargo tank, drop frame, lowboy, or pole);
   f. Number of semitrailers or full trailers to be towed at one time;
   g. For commercial motor vehicles designed to transport passengers, indicate the seating capacity of the commercial motor vehicle; and
   h. Description of any modifications made to the commercial motor vehicle for the driver applicant, attach photographs where applicable;
4. Include a certification statement:
   a. The driver applicant shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391 as adopted by the Department; and
   b. In case of a co-applicant, the co-applicant motor carrier shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391 as adopted by the Department; and

5. Contain signature of each applicant and date signed:
   a. The driver applicant's signature; and
   b. The motor carrier official's signature and title if the application has a co-applicant. Depending on the motor carrier's organizational structure (corporation, partnership, or proprietorship), the signer of the application shall be an officer, partner, or the proprietor.

C. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) or (2) shall be accompanied by:

1. A copy of the medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43;
2. The Department's medical waiver evaluation summary completed by either a board-qualified or board-certified physiatrist or orthopedic surgeon. The co-applicant motor carrier or the driver applicant shall provide the physiatrist or orthopedic surgeon with a description of the job-related tasks the driver applicant will be required to perform:
   a. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) shall include:
      i. An assessment of the functional capabilities of the driver as they relate to the ability of the driver to perform normal tasks associated with operating a commercial motor vehicle; and
      ii. A statement by a board-qualified or board-certified physiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately;
   b. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(2) shall include:
      i. An explanation as to how and why the impairment interferes with the ability of the applicant to perform normal tasks associated with operating a commercial motor vehicle;
      ii. An assessment and medical opinion of whether the condition will likely remain medically stable over the lifetime of the driver applicant; and
      iii. A statement by a board-qualified or board-certified physiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately;
3. A description of the driver applicant's prosthetic or orthotic device worn, if any; and
4. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained.

D. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(3) shall be accompanied by:

1. A copy of the medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43;
2. An evaluation by a board-certified or board-eligible endocrinologist. A complete endocrinologist evaluation shall consist of:
    a. A comprehensive evaluation of the applicant's five-year medical history and current status. The applicant shall provide the examining endocrinologist with a complete medical history as it pertains to the applicant's diabetes or its complications or both, including, the date insulin use began, all hospitalization reports, consultation notes for diagnostic examinations, special studies, follow-up reports, reports of any hypoglycemic insulin reactions within the 12 months prior to the date of application, and other reports as requested by the endocrinologist. The evaluation shall also include a review of:
        i. Daily glucose monitoring logs, glycosylated hemoglobin (A1c) indicating a result in the range of 7% to 10%, including lab reference page performed during the last six months unless recently diagnosed;
        ii. Insulin dosages and types, diet utilized for control, and all medications taken; and
        iii. Examinations to detect any peripheral neuropathy or circulatory insufficiency of the extremities;
    b. A statement that the applicant is free from insulin reactions. Insulin reactions include any severe hypoglycemic reaction, which can be a reaction that results in seizure, loss of consciousness, requiring the assistance of another person, or a period of impaired cognitive function that occurs without warning. To be eligible the applicant must not have hypoglycemia unawareness and must have had no more than one documented severe hypoglycemic reaction in the previous 12 months and must have had:
        i. No recurrent (two or more) severe hypoglycemic reactions resulting in a loss of consciousness or seizure within the past five years:
        ii. No recurrent severe hypoglycemic reactions requiring the assistance of another person within the past five years;
        iii. No recurrent severe hypoglycemic reactions resulting in impaired cognitive functions that occurred without warning symptoms within the past five years; and
        iv. A period of one year of demonstrated stability following the first period of severe hypoglycemia;
    c. A statement prepared and signed by the examining endocrinologist whose status as board-certified or board-eligible is indicated. The signed statement shall include separate declarations indicating the following medical determinations:
        i. The endocrinologist is familiar with the applicant's medical history for the past five years through a records review, treating the patient, or consultation with the treating physician;
        ii. The applicant is able to safely operate a commercial motor vehicle while using insulin; and
        iii. The applicant has been educated in diabetes, including the last education date, and its management and is informed of and understands how to individually manage and monitor the applicant's

diabetes mellitus and has demonstrated the ability and willingness to properly monitor and manage the applicant's diabetes and procedures to follow if complications arise;

3. A separate signed vision evaluation report from an ophthalmologist or optometrist indicating that the applicant has been examined and does not have diabetic retinopathy and meets the vision standard of 49 CFR 391.41(b)(10), or has been issued a valid intrastate medical waiver for monocular vision. If the applicant has any evidence of diabetic retinopathy, the applicant must be examined by an ophthalmologist and submit a separate signed statement from the ophthalmologist that the applicant does not have unstable proliferative diabetic retinopathy (i.e. unstable advancing disease of blood vessels in the retina); and
4. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained.

E. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(10) shall be accompanied by:

1. A copy of the medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43;
2. A current vision examination report issued within the last 90 days from the date the report is received by the Department, completed by an ophthalmologist or optometrist. The report shall indicate that the applicant has distant visual acuity of at least 20/40 (Snellen), with or without a corrective lens, in one eye, and the applicant's dominant eye has a visual field of at least 70° peripheral measurement in one direction and 35° in the opposite direction of the horizontal meridian and the ability to distinguish the colors of a traffic signal or device showing standard red, green, and amber, as applicable to the type of medical waiver being requested;
3. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained; and
4. A statement from the employer that the driver applicant has driven the type of vehicle for which the waiver is being requested for at least two of the previous five years.

F. Agreement. A motor carrier that employs a driver subject to an intrastate medical waiver granted by the Director under subsection (A), whether the waiver was granted unilaterally to the driver, or to the driver and co-applicant motor carrier, shall agree to:

1. Report to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, in writing, any suspension, revocation, disqualification, or withdrawal of the subject driver's driver license or permit, and any accident, arrest, or conviction involving the driver within 30 days after the occurrence;
2. Provide to the Department's Medical Review Program, on request, any documents and information pertaining to the driving activities, accidents, arrests, convictions, and driver license or permit suspensions, revocations, disqualifications, or withdrawals involving the subject driver;
3. Evaluate the subject driver with a road test using the trailer types the motor carrier intends the driver to transport, or alternatively accept a certificate of a trailer road test from another motor carrier if the trailer

types are similar, or accept the trailer road test completed during the skill performance evaluation if trailer types are similar to that of the prospective motor carrier;

4. Evaluate the subject driver for those non-driving safety related job tasks associated with each type of trailer that will be used and any other non-driving safety related or job related tasks unique to the operations of the employing motor carrier; and
5. Use the subject driver to operate the type of commercial motor vehicle indicated on the intrastate medical waiver only when the driver is in compliance with the conditions and limitations of the waiver.

G. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall supply each employing motor carrier with a copy of the intrastate medical waiver.

H. The Department may require the driver applicant to demonstrate the driver applicant's ability to safely operate the commercial motor vehicle the driver intends to drive.

I. If required by the Department during the application process, a driver applicant shall have a skill performance evaluation performed by a federally-certified state commercial driver license examiner at a Department commercial driver license facility when directed.

J. If the Director grants an intrastate medical waiver under subsection (A) to the driver applicant, the Department shall mail to the driver applicant and co-applicant motor carrier (if applicable) written approval of the intrastate medical waiver describing the terms, conditions, and limitations of the waiver.

K. The intrastate medical waiver granted by the Director under subsection (A) shall identify:

1. The power unit (bus, truck, truck tractor) for which the waiver is granted; and
2. The trailer type used in the skill performance evaluation, if applicable, without limiting the waiver to that specific trailer type.

L. A subject driver may use the intrastate medical waiver with other trailer types if the driver successfully completes:

1. A trailer road test administered by the motor carrier under subsection (F)(3) for each type of trailer, and
2. A non-driving safety related or job related task evaluation administered by the motor carrier under subsection (F)(4).

M. The intrastate medical waiver granted by the Director under subsection (A) is:

1. Valid for a period of not more than two years from the date of issuance;
2. Renewable 30 days prior to the expiration date; and
3. Transferable from an original motor carrier co-applicant employer to a new motor carrier employer or to the subject driver, as a unilateral applicant if becoming self-employed, upon written notification to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, stating the new employer's name and the type of equipment to be driven.

N. An intrastate medical waiver granted by the Director under subsection (A) to a driver applicant for monocular vision under subsection (E), shall prohibit the subject driver from transporting:

1. Passengers for hire; and

2. Reportable quantities of hazardous substances, manifested hazardous wastes, and hazardous material required to be placarded.

O. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall have the intrastate medical waiver (or a legible copy) in the subject driver's possession while on duty.

P. The motor carrier employing a subject driver shall maintain a copy of the intrastate medical waiver in its driver qualification file and retain the copy in the motor carrier's file for a period of three years after the driver's employment is terminated.

Q. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for insulin-dependent diabetes under subsection (D), must comply with the following conditions:

1. Maintain appropriate medical supplies for glucose management while preparing for the operation of a commercial motor vehicle and during its operation. The supplies shall include the following:
   a. A digital glucose monitor with computerized memory,
   b. Supplies needed to obtain adequate blood samples and to measure blood glucose,
   c. Insulin to be used as necessary, and
   d. An amount of rapidly absorbable glucose to be used as necessary;
2. Maintain a daily record of actual driving time to correlate with the daily glucose measurements;
3. Monitor and maintain blood glucose levels in the range of 100 to 400 milligrams per deciliter (mg/dl) prior to and while driving.
   a. Check glucose before starting to drive and take corrective action if necessary. If glucose is less than 100 mg/dl, take glucose or food and recheck in 30 minutes. Repeat the process until glucose is greater than 100 mg/dl. Do not drive if glucose is less than 100 mg/dl;
   b. While driving, stop the vehicle in a safe location and check glucose every two to four hours and take appropriate action to maintain it in the range of 100 to 400 mg/dl;
   c. Have food available at all times when driving. If glucose is less than 100 mg/dl, stop driving and eat. Recheck in 30 minutes and repeat procedure until glucose is greater than 100 mg/dl; and
   d. If glucose is greater than 400 mg/dl, stop driving until glucose returns to the 100 to 400 mg/dl range. If more than two hours have passed since last insulin injection and eating, take additional insulin. Recheck blood glucose in 30 minutes. Do not resume driving until glucose is less than 400 mg/dl;
4. Participate in a diabetes education program annually;
5. Undergo the following evaluations and examinations and submit to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, within 10 days of the date of the evaluation or exam:
   a. A quarterly evaluation completed by a board-certified or board-eligible endocrinologist. A quarterly endocrinologist evaluation shall include a review of the driver's daily glucose logs and glucose levels (from the subject driver's required monitoring device), a comparison of monitoring dates to the driving log to ensure that the subject driver is checking glucose levels prior to operating a commercial motor vehicle, a certifying statement indicating that the subject driver is maintaining a glucose level in the

range of 100 to 400 mg/dl while driving a commercial motor vehicle, a certifying statement indicating that the subject driver is maintaining a stable insulin regimen and that the subject driver's quarterly A1c result continues to reflect stable control, reports of any severe hypoglycemic episodes, any hypoglycemic-related hospitalization, and any treatment regimen changes since the last hypoglycemic episode;

b. An annual evaluation completed by a board-certified or board-eligible endocrinologist. In addition to the requirements of a quarterly endocrinologist evaluation under subsection (Q)(5)(a), an annual endocrinologist evaluation shall also include a general physical examination, an indication that the driver has continued to participate in a diabetes education program with the last education date provided, a certifying statement indicating that the driver understands how to individually manage and monitor the driver's diabetes mellitus, an indication of the development of, or progression, or both, in diabetes complications (i.e. renal disease, cardiovascular disease, and neurological disease), a list of all medications taken and whether any of the medications may compromise the driver's ability to operate a commercial motor vehicle, the endocrinologist's belief that the driver has demonstrated the ability and willingness to properly manage the driver's diabetes, and a certifying statement indicating that the driver is able to safely operate a commercial motor vehicle while using insulin;

c. An annual vision evaluation report, as prescribed under subsection (D)(3). If there is any evidence of diabetic retinopathy, provide annual documentation by an ophthalmologist that the driver does not have unstable proliferative diabetic retinopathy; and

d. An annual medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43. Provide copies of the endocrinologist evaluation and the vision evaluation report to the medical examiner for review; and

6. Report the following information to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, within two days of occurrence;

a. All episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; and

b. Any involvement in an accident or any other adverse event in a commercial motor vehicle or personal vehicle, related to an episode of hypoglycemia or hyperglycemia.

R. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for monocular vision under subsection (E), must be physically examined every year and shall submit the following to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100:

1. A vision examination report issued within the last 90 days from the date the report is received by the Department, as prescribed under subsection (E)(2); and

2. A current medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43 within the past year.

S. A driver subject to an intrastate medical waiver, or a driver subject to an intrastate medical waiver jointly with a motor carrier co-applicant, may renew an intrastate medical waiver by submitting to the Department's Medical

Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, Arizona 85001-2100, a new intrastate medical waiver application. The intrastate medical waiver application shall contain the following:

1. Name and complete address of the motor carrier currently employing the applicant;
2. Name and complete address of the subject driver;
3. Total miles driven under the current intrastate medical waiver;
4. Number of accidents incurred while driving under the current intrastate medical waiver, including the date of each accident, number of fatalities, number of injuries, and the estimated dollar amount of any property damage;
5. A current medical examination report and medical examination certificate completed pursuant to 49 CFR 391.43;
6. A current medical examination or evaluation as applicable to the medical condition:
   a. A current medical waiver evaluation summary, as prescribed under subsection (C)(2), for a driver with a loss of limb or limb impairment;
   b. A current endocrinologist evaluation, as prescribed under subsection (D)(2), and a current vision evaluation report, as prescribed under subsection (D)(3), for a driver who is an insulin-dependent diabetic; or
   c. A current vision examination report, as prescribed under subsection (E)(2), for a driver with monocular vision;
7. A copy of the subject driver's current state motor vehicle driving record for the period of time the current intrastate medical waiver has been in effect;
8. Notification of any change in the type of tractor the driver will operate;
9. Subject driver's signature and date signed; and
10. Motor carrier co-applicant's signature and date signed (if applicable).

T. The Director may deny an application for the intrastate medical waiver or may grant the waiver in whole or in part and issue the waiver subject to such terms, conditions, and limitations as the Director deems consistent with the public interest.

U. The Director may revoke an intrastate medical waiver after providing the driver subject to an intrastate medical waiver written notice of the proposed revocation and a reasonable opportunity to request a hearing pursuant to the procedure prescribed under 17 A.A.C. 1, Article 5. The Director may revoke an intrastate medical waiver if the:

1. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both provided false information in the application,
2. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both failed to comply with the terms and conditions of the intrastate medical waiver, or
3. Issuance of the intrastate medical waiver resulted in a lower level of safety than before the waiver was granted.

V. If the enforcement of any provision of this Section would result in the loss or disqualification of federal funding for any state agency or program, that provision is invalid.

R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability

A. Incorporation of federal regulations.

1. As relevant to the transportation of hazardous materials by highway, the Department incorporates by reference, as amended under this Section, the following Parts of the Federal Hazardous Materials Regulations; revised as of October 1, 2012, and no later amendments or editions, as 49 CFR - Transportation, Subtitle B - Other Regulations Relating to Transportation, Chapter I - Pipeline and Hazardous Materials Safety Administration, Department of Transportation:
   a. Subchapter A - Hazardous Materials and Oil Transportation; Part 107 - Hazardous materials program procedures; and
   b. Subchapter C - Hazardous Materials Regulations; Parts:
      i. 171 - General information, regulations, and definitions;
      ii. 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans;
      iii. 173 - Shippers - general requirements for shipments and packagings;
      iv. 177 - Carriage by public highway;
      v. 178 - Specifications for packagings; and
      vi. 180 - Continuing qualification and maintenance of packagings.
2. The material incorporated by reference under this subsection is on file with the Department and is available from the U.S. Government Printing Office, P.O. Box 979050, St. Louis, Missouri 63197-9000. The incorporated material can be ordered online by visiting the U.S. Government Online Bookstore at http://bookstore.gpo.gov.

B. Application and exceptions.

1. Application.
   a. Regulations incorporated under subsection (A) apply as amended by subsection (C) to motor carriers, shippers, and manufacturers as defined under A.R.S. § 28-5201.
   b. Regulations incorporated under subsection (A) also apply to any vehicle owned or operated by the state, a political subdivision, or a state public authority, used to transport a hazardous material, including hazardous substances and hazardous waste.
2. Exceptions. An authorized emergency vehicle, as defined under A.R.S. § 28-101, is excepted from the provisions of this Section.

C. Amendments. The following sections of the Federal Hazardous Materials Regulations, incorporated under subsection (A), are amended as follows:

1. Part 171, General information, regulations, and definitions. Section 171.8, Definitions and abbreviations. Section 171.8 is amended by revising the definitions for "Carrier," "Hazmat employer," and "Person," and adding a definition for "Highway" as follows:

   "'Carrier' means a person engaged in the transportation of passengers or property by highway as a common, contract, or private carrier and also includes the state, a political subdivision, and a state public authority engaged in the transportation of hazardous material."

   "'Hazmat employer' means a person who uses one or more employees in connection with: transporting hazardous material; causing hazardous material to be transported or shipped; or representing, marking, certifying, selling, offering, reconditioning, testing, repairing, or modifying containers, drums, or packagings as qualified for use in the transportation of hazardous material. This term includes motor carriers, shippers, and manufacturers defined under A.R.S. § 28-5201 and includes the state, political subdivisions, and state public authorities."

   "'Highway' means a public highway defined under A.R.S. § 28-5201."

   "'Person' has the same meaning as defined under A.R.S. § 28-5201."
2. Part 172, Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans. Section 172.3, Applicability. Paragraph (a)(2) is amended to read: "Each motor carrier that transports hazardous materials, and each state agency, political subdivision, and state public authority that transports hazardous material by highway."
3. Part 177, Carriage by public highway.
   a. Section 177.800, Purpose and scope of this part and responsibility for compliance and training. In paragraph (a), the phrase "by private, common, or contract carriers by motor vehicle" is amended to read, "by a motor carrier operating in Arizona, a state agency, a political subdivision, or a state public authority that transports hazardous material by highway."
   b. Section 177.802, Inspection. Section 177.802 is amended to read: "Records, equipment, packagings, and containers under the control of a motor carrier or other persons subject to this part, affecting safety in transportation of hazardous material by motor vehicle, must be made available for examination and inspection by an authorized representative of the Department as prescribed under A.R.S. §§ 28-5204 and 28-5231."

R17-5-210. Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency

A. A public service corporation, a political subdivision of this state that is engaged in rendering public utility service, or a railroad shall notify Commercial Vehicle Enforcement, through the Arizona Department of Public Safety Duty Office, that an emergency situation under A.R.S. § 28-5234(B) exists. Notification shall be made on a form provided by the Arizona Department of Public Safety and sent by fax transmission to (602) 223-2929 immediately, but in no case longer than three hours from the time the public service

corporation, political subdivision of this state that is engaged in rendering public utility service, or railroad determines that the emergency situation exists. The information to be provided includes:

1. Date of the emergency situation,
2. Time that the emergency situation started,
3. Description of the emergency situation,
4. Location of the emergency situation,
5. Projected duration of the emergency situation,
6. Authorized party's signature for determining that an emergency situation exists,
7. Name and contact number of responsible party in the field, and
8. The utility's self-generated Emergency ID or tracking number.

B. A public service corporation, a political subdivision of this state that is engaged in rendering public utility service, or a railroad shall maintain supporting documentation for no less than three years from the date of an emergency situation and shall make the supporting documentation available to a special agent upon request. Supporting documentation includes:

1. A list of drivers involved in the emergency situation;
2. The duration of the emergency situation;
3. The off-duty time provided for the affected drivers after the emergency situation concluded; and
4. Any United States Department of Transportation recordable accidents, as defined under 49 CFR 390.5, which occurred during the emergency situation.

C. After an emergency situation terminates and a driver returns to the principal place of business, the driver shall not drive a commercial motor vehicle unless the driver remains off duty under 49 CFR 395.

Historical Note

New Section recodified from R17-4-438 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4259, effective September 13, 2001 (Supp. 01-3). Section repealed by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). New Section made by final rulemaking at 11 A.A.R. 862, effective February 1, 2005 (Supp. 05-1). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

R17-5-211. Motor Carrier Safety: Inspection, Enforcement, Sanction

A. Scope. This Section applies to any transporter subject to:

1. R17-5-201 through R17-5-209; and
2. A.R.S. Title 28, Chapter 14.

B. Audits.

1. The Department may conduct an audit for cause or without cause.
2. The Department may enter the premises of any transporter for the purpose of conducting an audit.
3. The Department may inspect a motor vehicle:
   a. Within Arizona at:

i. A transporter's place of business, or

ii. Any other in-state location, or

b. Outside Arizona at a transporter's place of business.

4. A transporter shall make records available for audit:

a. During the transporter's normal business hours, and

b. In a specific location as follows:

i. The transporter's Arizona place of business, or

ii. Either an Arizona location designated by the Director or the transporter's out-of-state place of business.

5. The Department shall charge a transporter in advance for all expenses to be incurred in performance of an out-of-state audit.

C. Violation notification. Within five days after audit completion, the Department shall notify an audited transporter in writing of all violations. The notification shall specify a deadline date for remedy of all violations.

D. Obligation to remedy violations. After receipt of a violation notification, a transporter shall remedy all violations by the specified date to comply with:

1. R17-5-201 through R17-5-209; and

2. A.R.S. Title 28, Chapter 14.

E. Noncompliance: Failure to remedy violations. If the Department determines a transporter does not remedy a violation by the date specified in a violation notice, the Department shall initiate further enforcement action as prescribed under A.R.S. §§ 28-5237 and 28-5238.

F. Danger to public safety. If the Director determines a written violation report establishes probable cause of danger to public safety, the Director shall issue an order by 5:00 p.m. the next business day suspending the Arizona registration of the motor vehicle owned or leased by the transporter, or a driver's Arizona driver license or nonresident driving privilege.

R17-5-212. Motor Carrier Safety: Hearing Procedure

A. Scope.

1. This Section applies only to a motor carrier enforcement action under:

a. R17-5-201 through R17-5-209; and

b. A.R.S. Title 28, Chapter 14.

2. In an enforcement hearing involving a manufacturer, motor carrier, shipper, or driver under this Section, the Department shall follow the procedures prescribed under 17 A.A.C. 1, Article 5, except as modified under subsections (B) through (I).

B. Initiation of proceedings, pleadings.

1. The Director shall initiate a hearing under this Section by:

a. Signing and serving a complaint in the form prescribed under subsection (G) that cites a manufacturer, motor carrier, shipper, or driver for an alleged infraction; and

b. Serving the cited manufacturer, motor carrier, shipper, or driver with a hearing notice within 15 days after the date the complaint is signed.

2. After the Director signs a complaint, the Executive Hearing Office shall act on the Director's behalf through completion of an administrative proceeding under this Section.

C. Order to show cause.

1. When a complaint is served, the Executive Hearing Office shall immediately issue a summons for a respondent to appear at an administrative hearing to explain why the Executive Hearing Office should not grant the requested relief.
2. The Executive Hearing Office shall hold a hearing under this Section within 60 days after the date the complaint is served.
3. The parties may resolve a complaint before the hearing date.
   a. The respondent shall file any settlement condition with the Executive Hearing Office.
   b. Complaint settlement terminates the right of both petitioner and respondent to receive additional administrative review.

D. Service.

1. The Executive Hearing Office shall:
   a. Send an order to show cause by certified mail as prescribed under A.R.S. § 28-5232(B), and
   b. Maintain a proof-of-service file.
2. The date of service is the date of mailing.

E. Answer.

1. Within 15 days after service of a complaint, a respondent shall respond to the complaint by:
   a. Filing a written answer with the Executive Hearing Office; and
   b. Serving the Assistant Attorney General, Transportation Division, representing the Department with a copy of the answer.
2. A respondent's written answer shall contain:
   a. An admission or denial of each complaint allegation, and
   b. A list of all defenses that the respondent intends to raise during the hearing.
3. In a hearing, the Executive Hearing Office shall consider any allegation not denied in the answer as an admission to the allegation.

F. Default.

1. The Executive Hearing Office shall find in default a respondent that fails to file an answer within 15 days after the service date of a complaint.
2. If the Executive Hearing Office finds a respondent in default, the Executive Hearing Office shall:
   a. Consider the respondent's default as an admission of all complaint allegations unless the default is cured under subsection (F)(3), and
   b. Enter an order granting the relief requested in the Department's complaint.
3. A respondent may cure a default by following Rule 60(c) of the Arizona Rules of Civil Procedure.

G. Emergency motor carrier hearings; scope.

1. The Director shall initiate an emergency motor carrier hearing process according to R17-5-211(E) by:
   a. Issuing a complaint and order to show cause according to the hearing scope under A.R.S. § 28-5232(C); and
   b. Ordering immediate suspension of the registration of the motor vehicle owned or leased by the manufacturer, shipper, or motor carrier, or the driver license or driver's nonresident operating privilege, as prescribed under A.R.S. § 28-5232(A).
2. The Executive Hearing Office shall set an emergency hearing date to occur within 30 days after the date on the complaint.
3. The complaint and order to show cause shall contain the following:
   a. The Department as the designated petitioner on the state's behalf;
   b. The respondent's name and the basis of fact for the complaint, including a listing of any alleged violation of Department statute or rule;
   c. The relief sought by the Department; and
   d. An original copy of the written violation notice issued by a law enforcement agency that was served upon the respondent.
4. At an emergency motor carrier hearing, an Executive Hearing Office administrative law judge shall determine whether the respondent:
   a. Was operating on a public highway and the operation created a danger to the public safety,
   b. Was responsible for the danger, and
   c. Is responsible for preventing or remedying further danger to public safety.
5. Upon a finding that the factors in subsection (G)(4) are present, the administrative law judge shall order that the motor carrier's registration and operator's driver license or driver's nonresident operating privilege suspension continue.
6. If a respondent fails to appear at an emergency motor carrier hearing, any suspension previously ordered remains in effect until the respondent appears and meets all requirements under A.R.S. § 28-5232(F).

H. Upon a finding that the factors in subsection (G)(4) are present, the Director shall impose a civil penalty as prescribed under A.R.S. §§ 28-5232, 28-5237 and 28-5238.

I. A respondent may request judicial review of a motor carrier safety hearing as prescribed under A.R.S. § 28-5239.

Historical Note

New Section recodified from R17-4-440 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4230, effective November 15, 2002 (Supp. 02-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

Material Incorporated by Reference

Incorporated by Reference under R17-5-202

49 CFR 40 - Procedures for Transportation Workplace Drug an Alcohol Testing Programs

49 CFR 379 - Preservation of Records

49 CFR 382 - Controlled Substances and Alcohol Use and Testing

49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties

49 CFR 385 - Safety Fitness Procedures

49 CFR 390 - Federal Motor Carrier Safety Regulations; General

49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors

49 CFR 392 - Driving of Commercial Motor Vehicles

49 CFR 393 - Parts and Accessories Necessary for Safe Operation

49 CFR 395 - Hours of Service of Drivers

49 CFR 396 - Inspection, Repair, and Maintenance

49 CFR 397 - Transportation of Hazardous Materials; Driving and Parking Rules

49 CFR 399 - Employee Safety and Health Standards

Incorporated by Reference under R17-5-209

49 CFR 107 - Hazardous Materials Program Procedures

49 CFR 171 - General Information, Regulations, and Definitions

49 CFR 172 - Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements

49 CFR 173 - Shippers - General Requirements for Shipments and Packagings

49 CFR 177 - Carriage by Public Highway

49 CFR 178 - Specifications for Packagings

49 CFR 180 - Continuing Qualification and Maintenance of Packagings

R17-5-402. Bond Amounts; Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses
A. As prescribed under A.R.S. § 28-4362, the Division shall require a bond in the amount specified for the following motor vehicle business license applicants:
1. $100,000 from a motor vehicle dealer engaged in selling new or used motor vehicles,
2. $25,000 from a wholesale motor vehicle dealer,
3. $25,000 from a wholesale motor vehicle auction dealer,
4. $25,000 from a motor vehicle broker, and
5. $20,000 from an automotive recycler.
B. An applicant shall submit a bond in a form prescribed by the Division Director. The Division shall not accept a handwritten bond.

Historical Note
New Section recodified from R17-4-240 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1864, effective August 2, 2003 (Supp. 03-2).

R17-5-403. Bond Amount; Motor Vehicle Title Service Business License
A. As prescribed under A.R.S. § 28-5005, the Division shall require a $25,000 bond for a motor vehicle title service company applying for a business license.
B. An applicant shall submit a bond in a form prescribed by the Division Director. The Division shall not accept a handwritten bond.

Historical Note
New Section made by final rulemaking at 9 A.A.R. 1864, effective August 2, 2003 (Supp. 03-2).

R17-5-404. Dealer Title Requirement for Vehicle Sale
For purposes of A.R.S. § 28-4409(A), the dealer's name shall be recorded on a title certificate as transferee or purchaser.

Historical Note
New Section recodified from R17-4-241 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section heading corrected as recodified at 7 A.A.R. 3483 (Supp. 09-2).

R17-5-405. Motor Vehicle Dealer Acquisition Contract
A. Definitions.
1. "Contract" or "Dealer acquisition contract" has the meaning prescribed under A.R.S. § 28-4410(G)(2).
2. "Dealer" or "Motor vehicle dealer" has the meaning prescribed in A.R.S. § 28-4301(23).
3. "Division" means the "Motor Vehicle Division" of the Arizona Department of Transportation and any authorized agent.
4. "Vehicle" or "motor vehicle" has the meaning prescribed under A.R.S. § 28-4301(22).
5. "Owner" means a person prescribed under A.R.S. § 28-101(36)(a), that has the legal right to sell or dispose of the motor vehicle.
6. "State" means the "state of Arizona" and all its agencies and political subdivisions and their officers and agents.
B. General Requirements. For purposes of A.R.S. § 28-4410, a dealer shall prepare a dealer acquisition contract on a form with contents as prescribed under subsection (C).
C. Content. A dealer acquisition contract shall contain the following information:
1. The heading "Dealer Acquisition Contract;"
2. The dealer's name and dealer license number;
3. The dealer's business address and telephone number;
4. The owner's name, address, and telephone number;
5. The vehicle identification number; license plate number; licensing state; and model, make, and year;
6. If there is a lien holder:

a. The lien holder's name, address, telephone number;
b. Lien balance;
c. Prepayment penalties, if any; and
d. Other information relevant to the terms and conditions of the lien repayment;
7. A statement by the owner that the vehicle is free and clear of all liens and encumbrances, except those disclosed under subsection (C)(6)(a) and the unpaid lien balance is no greater than disclosed under subsection (C)(6)(b);
8. The contracted purchase price and a recital that this amount has been either paid directly to the owner or credited to the owner against the purchase price of another vehicle;
9. A statement indicating that the owner is selling and transferring the described vehicle to the dealer;
10. An authorization by the owner permitting the dealer to obtain all information necessary to verify the accuracy of the lien balance and assure that the balance is paid and the lien is released;
11. A statement by the owner that the registration document provided to the dealer is the original and most recent registration issued for the vehicle;
12. An agreement indicating whether the owner or dealer is responsible to satisfy the lien balance;
13. An authorization by the owner permitting the dealer to obtain the original title certificate from the lien holder; endorse the owner's name on the title; and if necessary, transfer the title to the dealer;
14. A statement that if the owner receives the certificate of title, the owner shall immediately deliver the title to the dealer and provide any signature and acknowledgment necessary to complete the title transfer to the dealer;
15. The date the contract is executed;
16. The dealer's signature; and
17. The owner's signature.
D. A dealer or an owner who adds to a dealer acquisition contract a provision not described in this Section shall ensure that the provision does not conflict with or alter the meaning of a provision of this Section.
E. Disposition. When a dealer prepares a dealer acquisition contract as prescribed under this Section, the dealer shall give a copy to the owner and keep the original at the dealer's established place of business for three years after the date that the contract expires or terminates, or the date the vehicle is sold.
F. Disclaimer. In complying with this Section, a dealer shall not interpret or claim compliance to be an approval by the state of the fairness, validity, or legality of a dealer acquisition contract. This Section furnishes only information required in a dealer acquisition contract. It does not detail any additional contractual requirements that may be defined under other Arizona statutes.

Historical Note
New Section recodified from R17-4-245 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4234, effective November 15, 2002 (Supp. 02-3).

R17-5-406. Motor Vehicle Dealer Consignment Contract
A. Definitions.
1. "Contract" or "Dealer consignment contract" has the meaning prescribed under A.R.S. § 28-4410(G)(1).
2. "Dealer" or "Motor vehicle dealer" has the meaning prescribed under A.R.S. § 28-4301(23).
3. "Division" means the "Motor Vehicle Division" of the Arizona Department of Transportation and any authorized agent.
4. "Vehicle" or "motor vehicle" has the meaning prescribed under A.R.S. § 28-4301(22).
5. "Owner" means a person prescribed under A.R.S. § 28-101(36)(a), that has the legal right to sell or dispose of the motor vehicle.
6. "State" means the "state of Arizona" and all its agencies and political subdivisions and their officers and agents.
B. General Requirements. For purposes of A.R.S. § 28-4410, a dealer shall prepare a dealer consignment contract on a form
with contents as prescribed under subsection (C).
C. Content. A dealer consignment contract shall contain the following information:
1. The heading "Dealer Consignment Contract;"
2. The dealer's name and dealer license number;
3. The dealer's business address and telephone number;
4. The owner's name, address, and telephone number;
5. The vehicle identification number; license plate number; licensing state; and model, make, and year;
6. If there is a lien holder:
a. The lien holder's name, address, telephone number;

b. Lien balance;
c. Prepayment penalties, if any; and
d. Other information relevant to the terms and conditions of the lien repayment;
7. A statement by the owner that the vehicle is free and clear of all liens and encumbrances, except those disclosed under subsection (C)(6)(a) and the lien balance is no greater than that disclosed under subsection (C)(6)(b);
8. An authorization by the owner permitting the dealer to market and sell the vehicle on behalf of the owner at a mutually-agreed upon, specified, minimum price;
9. An agreement by the dealer to inform any prospective purchaser that the vehicle is on consignment;
10. An agreement by the dealer that, upon receiving the sale proceeds, the dealer shall immediately satisfy all disclosed liens and ensure that the liens are released;
11. An agreement by the owner that, upon the completion of the sale and after receiving the sale proceeds, the owner shall promptly deliver and endorse the title certificate for reassignment to the purchaser;
12. The expiration date of the consignment contract;
13. An agreement by the dealer to deliver the vehicle to the owner at a specified location on the date that the contract expires or terminates;
14. An agreement by the owner to pay any specified fees due the dealer upon the return of the vehicle, after the expiration or termination of the consignment contract;
15. The date the contract is executed;
16. The dealer's signature; and
17. The owner's signature.
D. A dealer or an owner who adds to a dealer consignment contract a provision not described in this Section shall ensure that
the provision does not conflict with or alter the meaning of a provision of this Section.
E. Disposition. When a dealer prepares a dealer consignment contract as prescribed under this Section, the dealer shall give a copy to the owner and keep the original at the dealer's established place of business for three years after the date that the contract expires or terminates, or the vehicle is sold.
F. Disclaimer. In complying with this Section, a dealer shall not interpret or claim compliance to be an approval by the state of the fairness, validity, or legality of a dealer consignment contract. This Section furnishes only information required in a dealer consignment contract. It does not detail any additional contractual requirements that may be defined under other Arizona statutes.

Historical Note
New Section recodified from R17-4-246 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4234, effective November 15, 2002 (Supp. 02-3).

R17-5-407. Motor Vehicle Repossession
A. The Division shall not transfer a title when the ownership of a motor vehicle titled in this state or another state reverts through operation of state law to a lienholder of record through repossession unless the following conditions are met:
1. The vehicle is physically located in this state;
2. A notice of lien is filed with the Division;
3. A completed affidavit from the lienholder is submitted to the Division stating that the vehicle is physically located in this state and was repossessed on default pursuant to the terms of the lien and applicable law and that this state, its agencies, employees, and agents shall not be held liable for relying on the contents of the affidavit; and
4. In addition to the information required in subsection (A)(3), the affidavit contains the following information:
a. The Vehicle Identification Number (VIN),
b. The vehicle model year,
c. The vehicle make,
d. The registered owner's name,
e. The date of repossession,
f. The state in which the vehicle is titled,
g. The lienholder company name,
h. The lienholder agent or representative name,
i. Lienholder signature, and
j. Notary or Motor Vehicle Division agent signature.

B. The Division shall accept out-of-state affidavits of repossession that comply with the requirements in subsections (A)(3) and (4) and subsection (C) if all of the following apply:
1. The affidavit is submitted by an Arizona licensed dealer, and
2. The Arizona licensed dealer is transferring the title into the dealership's name.
C. A lienholder may sell a repossessed vehicle without transferring the title into the lienholder's name by completing a Bill of Sale for submission to the Division. The Bill of Sale may be combined with the affidavit of repossession and shall contain the following information:
1. The buyer's name;
2. The sale date;
3. Buyer's street address, including the city, state, and zip code;
4. Name of new lienholder, if applicable;
5. New lien date, if applicable;
6. Odometer certification statement, including odometer reading, and an area for the buyer's name and signature to acknowledge the odometer certification;
7. A statement that the buyer is aware of the odometer certification made by the seller;
8. The seller's name;
9. The seller's notarized signature;
10. The seller's address, including city, state, and zip code; and
D. A completed repossession affidavit as prescribed in this Section is proof of ownership, right of possession, and right of transfer.
E. Disclaimer. The Division has no responsibility relating to foreclosure on real property under A.R.S Title 33, Chapter 7.

Historical Note
New Section recodified from R17-4-260 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 10 A.A.R. 3399, effective October 2, 2004 (Supp. 04-3).

R17-5-408. Resale of a New Motor Vehicle
A. A new motor vehicle dealer, as defined in A.R.S. § 28-4301, that sells a new motor vehicle that was delivered to a previous purchaser, shall provide written notice to the new purchaser under subsection (B).
B. A dealer shall ensure that the notice under A.R.S. § 28-4422 contains the following information:
1. The name of the dealership;
2. A vehicle description, including year, make, and vehicle identification number (VIN);
3. A statement that the vehicle was delivered to a previous purchaser;
4. The printed name of the new purchaser; and 5. The signature of the new purchaser (initials are not acceptable) indicating that the new purchaser has received the notice.
C. The new motor vehicle dealer shall:
1. Provide a copy of the notice under subsection (B) to the new purchaser, and
2. Keep a copy of the signed notice under subsection (B) at the new motor vehicle dealer's established place of business for at least three years.
D. The new motor vehicle dealer is not required to submit to the Division the notice under subsection (B) unless otherwise required by state or federal law.
E. A new motor vehicle dealer shall not add additional language to the notice that would conflict with, or alter, the intent of the provisions specified in subsection (B).

Historical Note
New Section made by final rulemaking at 12 A.A.R. 225,
effective March 11, 2006 (Supp. 06-1).

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 5, Article 2

Section E

Statutory Authority

Arizona Department of Transportation

Five-year Review Report

17 A.A.C. Chapter 5, Article 2

Statutory Authority

General Authority for Rulemaking

A.R.S. § 28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.

2. Public safety and convenience.

3. Enforcement of the provisions of the laws the director administers or enforces.

4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

Specific Authority for Rulemaking

A.R.S. § 28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.

2. Public safety and convenience.

3. Enforcement of the provisions of the laws the director administers or enforces.

4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

A.R.S. § 28-962. Vehicles transporting explosives; rules

A. A person operating a vehicle transporting an explosive on a highway shall comply at all times with the following provisions:

1. The vehicle shall be placarded in accordance with the placarding requirements specified in 49 Code of Federal Regulations part 172.

2. The vehicle shall be equipped with a fire extinguisher as required in 49 Code of Federal Regulations part 393.

B. The director shall adopt additional rules governing the transportation of explosives and other dangerous articles by vehicles on the highways as the director deems advisable for the protection of the public.

A.R.S. § 28-5204. Administration and enforcement; rules

A. In the administration and enforcement of this chapter, the department of transportation shall adopt:

1. Reasonable rules it deems proper governing the safety operations of motor carriers, including rules governing safety operations of motor carriers, shippers and vehicles transporting hazardous materials, hazardous substances or hazardous wastes and shall prescribe necessary forms. In determining reasonable rules, the department of transportation shall consider:

(a) The nature of the operations and regulation of public service corporations as defined in article XV, sections 2 and 10, Constitution of Arizona.

(b) Rules adopted by the director of environmental quality pursuant to section 49-855.

2. Rules necessary to enforce and administer this chapter, including rules setting forth reasonable procedures to be followed in the enforcement of this chapter and rules adopting transporter safety standards for hazardous materials, hazardous substances and hazardous waste. In adopting the rules, the department shall consider, as evidence of generally accepted safety standards, the publications of the United States department of transportation and the environmental protection agency.

B. Rules adopted by the department of transportation also apply to a manufacturer, shipper, motor carrier and driver.

C. The department of public safety shall and a political subdivision may enforce this chapter and any rule adopted pursuant to this chapter by the department of transportation. A person acting for a political subdivision in enforcing this chapter is required to be certified by the department of public safety as qualified for the enforcement activities.

D. The department may audit records and inspect vehicles that are subject to this chapter.

A.R.S. § 28-5238. Civil penalty schedule; suspension of registration or license; reinstatement; enforcement

A. If the director imposes a civil penalty on the manufacturer, motor carrier, shipper or driver, the civil penalty is determined pursuant to the following schedule:

1. A minimum civil penalty of one thousand dollars but not more than five thousand dollars, or if the director determines that the manufacturer, motor carrier, shipper or driver failed to attain compliance with a rule relating to hazardous materials, hazardous substances or hazardous wastes, a minimum civil penalty of five thousand dollars but not more than twenty-five thousand dollars.

2. For a second finding of responsibility within a sixty month period involving the same manufacturer, motor carrier, shipper or driver and the same class of violation, as prescribed by subsection E of this section, either:

(a) A minimum civil penalty of five thousand dollars but not more than ten thousand dollars.

(b) If the director determines that the manufacturer, motor carrier, shipper or driver failed to attain compliance with a rule relating to hazardous materials, hazardous substances or hazardous wastes, a minimum civil penalty of ten thousand dollars but not more than twenty-five thousand dollars.

3. For a third and any subsequent finding of responsibility within a sixty month period involving the same manufacturer, motor carrier, shipper or driver and the same class of violation, as prescribed by subsection E of this section, either:

(a) A minimum civil penalty of ten thousand dollars but not more than twenty-five thousand dollars.

(b) If the director determines that the manufacturer, motor carrier, shipper or driver failed to attain compliance with a rule relating to hazardous materials, hazardous substances or hazardous wastes, a minimum civil penalty of fifteen thousand dollars but not more than twenty-five thousand dollars.

B. On the third and any subsequent finding of responsibility within a sixty month period involving the same manufacturer, motor carrier, shipper or driver and the same class of violation, in addition to imposing the civil penalties prescribed in subsection A, paragraph 3 of this section, the director shall suspend the registrations of any motor vehicles owned or leased by the manufacturer, shipper or motor carrier or the driver license or nonresident operating privilege of the driver for thirty days, except that in the case of noncompliance the suspension may exceed thirty days until the department of public safety states in writing to the director of the department of transportation that the cause for the finding of responsibility has been remedied.

C. The manufacturer, motor carrier, shipper or driver shall pay the civil penalty imposed in the order to the department no later than ten days after the order is final.

D. If a civil penalty is imposed and if the civil penalty is not paid when due, the director shall suspend the registrations of any motor vehicles owned or leased by the manufacturer, shipper or motor carrier or shall suspend the driver license or nonresident operating privilege of the driver.

E. For the purpose of determining the amount of civil penalty for repeat findings of responsibility for the same class of violation, the director may adopt rules categorizing violations of this chapter or violations of rules adopted under this chapter into the following classes:

1. Equipment.

2. Commodities transport, including hazardous materials, hazardous substances or hazardous wastes.

3. Driver, shipper or manufacturer records or requirements.

4. Other records.

F. In addition to any other requirements imposed in this section, the director shall not reinstate any suspended registrations of the motor vehicles of the manufacturer, shipper or motor carrier or any suspended driver license or nonresident operating privilege of the driver, manufacturer, shipper or motor carrier until both of the following conditions are met:

1. All fees prescribed by statute to reinstate the vehicle registration or driving privileges are paid.

2. Any civil penalty that has been imposed is paid.

G. The director shall immediately deposit, pursuant to sections 35-146 and 35-147, all monies from civil penalties imposed under this chapter in the motor carrier safety revolving fund established by section 28-5203.

H. A city, town or county shall not enact an ordinance or resolution imposing civil penalties against any shipper, manufacturer or motor carrier for a motor carrier safety violation.

I. The attorney general shall enforce this section.

Definitions Applicable to the Incorporated Material

A.R.S. § 28-101. Definitions

In this title, unless the context otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propynol and isopropynol.

2. "Alcohol concentration" if expressed as a percentage means either:

(a) The number of grams of alcohol per one hundred milliliters of blood.

(b) The number of grams of alcohol per two hundred ten liters of breath.

3. "All-terrain vehicle" means either of the following:

(a) A motor vehicle that satisfies all of the following:

(i) Is designed primarily for recreational nonhighway all-terrain travel.

(ii) Is fifty or fewer inches in width.

(iii) Has an unladen weight of one thousand two hundred pounds or less.

(iv) Travels on three or more nonhighway tires.

(v) Is operated on a public highway.

(b) A recreational off-highway vehicle that satisfies all of the following:

(i) Is designed primarily for recreational nonhighway all-terrain travel.

(ii) Is sixty-five or fewer inches in width.

(iii) Has an unladen weight of one thousand eight hundred pounds or less.

(iv) Travels on four or more nonhighway tires.

4. "Authorized emergency vehicle" means any of the following:

(a) A fire department vehicle.

(b) A police vehicle.

(c) An ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or a local authority.

(d) Any other ambulance, fire truck or rescue vehicle that is authorized by the department in its sole discretion and that meets liability insurance requirements prescribed by the department.

5. "Autocycle" means a three-wheeled motorcycle on which the driver and passengers ride in a completely enclosed seating area that is equipped with a roll cage, safety belts for each occupant and antilock brakes and that is designed to be controlled with a steering wheel and pedals.

6. "Aviation fuel" means all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating an internal combustion engine for use in an aircraft but does not include fuel for jet or turbine powered aircraft.

7. "Bicycle" means a device, including a racing wheelchair, that is propelled by human power and on which a person may ride and that has either:

(a) Two tandem wheels, either of which is more than sixteen inches in diameter.

(b) Three wheels in contact with the ground, any of which is more than sixteen inches in diameter.

8. "Board" means the transportation board.

9. "Bus" means a motor vehicle designed for carrying sixteen or more passengers, including the driver.

10. "Business district" means the territory contiguous to and including a highway if there are buildings in use for business or industrial purposes within any six hundred feet along the highway, including hotels, banks or office buildings, railroad stations and public buildings that occupy at least three hundred feet of frontage on one side or three hundred feet collectively on both sides of the highway.

11. "Combination of vehicles" means a truck or truck tractor and semitrailer and any trailer that it tows but does not include a forklift designed for the purpose of loading or unloading the truck, trailer or semitrailer.

12. "Controlled substance" means a substance so classified under section 102(6) of the controlled substances act (21 United States Code section 802(6)) and includes all substances listed in schedules I through V of 21 Code of Federal Regulations part 1308.

13. "Conviction" means:

(a) An unvacated adjudication of guilt or a determination that a person violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal.

(b) An unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court.

(c) A plea of guilty or no contest accepted by the court.

(d) The payment of a fine or court costs.

14. "County highway" means a public road that is constructed and maintained by a county.

15. "Dealer" means a person who is engaged in the business of buying, selling or exchanging motor vehicles, trailers or semitrailers and who has an established place of business.

16. "Department" means the department of transportation acting directly or through its duly authorized officers and agents.

17. "Digital network or software application" has the same meaning prescribed in section 28-9551.

18. "Director" means the director of the department of transportation.

19. "Drive" means to operate or be in actual physical control of a motor vehicle.

20. "Driver" means a person who drives or is in actual physical control of a vehicle.

21. "Driver license" means a license that is issued by a state to an individual and that authorizes the individual to drive a motor vehicle.

22. "Electric personal assistive mobility device" means a self-balancing two nontandem wheeled device with an electric propulsion system that limits the maximum speed of the device to fifteen miles per hour or less and that is designed to transport only one person.

23. "Farm" means any lands primarily used for agriculture production.

24. "Farm tractor" means a motor vehicle designed and used primarily as a farm implement for drawing implements of husbandry.

25. "Foreign vehicle" means a motor vehicle, trailer or semitrailer that is brought into this state other than in the ordinary course of business by or through a manufacturer or dealer and that has not been registered in this state.

26. "Golf cart" means a motor vehicle that has not less than three wheels in contact with the ground, that has an unladen weight of less than one thousand eight hundred pounds, that is designed to be and is operated at not more than twenty-five miles per hour and that is designed to carry not more than four persons including the driver.

27. "Hazardous material" means a material, and its mixtures or solutions, that the United States department of transportation determines under 49 Code of Federal Regulations is, or any quantity of a material listed as a select agent or toxin under 42 Code of Federal Regulations part 73 that is, capable of posing an unreasonable risk to health, safety and property if transported in commerce and that is required to be placarded or marked as required by the department's safety rules prescribed pursuant to chapter 14 of this title.

28. "Implement of husbandry" means a vehicle designed primarily for agricultural purposes and used exclusively in the conduct of agricultural operations, including an implement or vehicle whether self-propelled or otherwise that meets both of the following conditions:

(a) Is used solely for agricultural purposes including the preparation or harvesting of cotton, alfalfa, grains and other farm crops.

(b) Is only incidentally operated or moved on a highway whether as a trailer or self-propelled unit. For the purposes of this subdivision, "incidentally operated or moved on a highway" means travel between a farm and another part of the same farm, from one farm to another farm or between a farm and a place of repair, supply or storage.

29. "Limousine" means a motor vehicle providing prearranged ground transportation service for an individual passenger, or a group of passengers, that is arranged in advance or is operated on a regular route or between specified points and includes ground transportation under a contract or agreement for services that includes a fixed rate or time and is provided in a motor vehicle with a seating capacity not exceeding fifteen passengers including the driver.

30. "Livery vehicle" means a motor vehicle that:

(a) Has a seating capacity not exceeding fifteen passengers including the driver.

(b) Provides passenger services for a fare determined by a flat rate or flat hourly rate between geographic zones or within a geographic area.

(c) Is available for hire on an exclusive or shared ride basis.

(d) May do any of the following:

(i) Operate on a regular route or between specified places.

(ii) Offer prearranged ground transportation service as defined in section 28-141.

(iii) Offer on demand ground transportation service pursuant to a contract with a public airport, licensed business entity or organization.

31. "Local authority" means any county, municipal or other local board or body exercising jurisdiction over highways under the constitution and laws of this state.

32. "Manufacturer" means a person engaged in the business of manufacturing motor vehicles, trailers or semitrailers.

33. "Moped" means a bicycle that is equipped with a helper motor if the vehicle has a maximum piston displacement of fifty cubic centimeters or less, a brake horsepower of one and one-half or less and a maximum speed of twenty-five miles per hour or less on a flat surface with less than a one percent grade.

34. "Motor driven cycle" means a motorcycle, including every motor scooter, with a motor that produces not more than five horsepower.

35. "Motor vehicle":

(a) Means either:

(i) A self-propelled vehicle.

(ii) For the purposes of the laws relating to the imposition of a tax on motor vehicle fuel, a vehicle that is operated on the highways of this state and that is propelled by the use of motor vehicle fuel.

(b) Does not include a motorized wheelchair, an electric personal assistive mobility device or a motorized skateboard. For the purposes of this subdivision:

(i) "Motorized skateboard" means a self-propelled device that has a motor, a deck on which a person may ride and at least two tandem wheels in contact with the ground.

(ii) "Motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

36. "Motor vehicle fuel" includes all products that are commonly or commercially known or sold as gasoline, including casinghead gasoline, natural gasoline and all flammable liquids, and that are composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Motor vehicle fuel does not include inflammable liquids that are specifically manufactured for racing motor vehicles and that are distributed for and used by racing motor vehicles at a racetrack, use fuel as defined in section 28-5601, aviation fuel, fuel for jet or turbine powered aircraft or the mixture created at the interface of two different substances being transported through a pipeline, commonly known as transmix.

37. "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the rider and that is designed to travel on not more than three wheels in contact with the ground but excludes a tractor and a moped.

38. "Motorized quadricycle" means a self-propelled motor vehicle to which all of the following apply:

(a) The vehicle is self-propelled by an emission-free electric motor and may include pedals operated by the passengers.

(b) The vehicle has at least four wheels in contact with the ground.

(c) The vehicle seats at least eight passengers, including the driver.

(d) The vehicle is operable on a flat surface using solely the electric motor without assistance from the pedals or passengers.

(e) The vehicle is a commercial motor vehicle as defined in section 28-5201.

(f) The vehicle is licensed by the department of weights and measures to operate as a limousine pursuant to section 28-9503.

(g) The vehicle is manufactured by a motor vehicle manufacturer that is licensed pursuant to chapter 10 of this title.

(h) The vehicle complies with the definition and standards for low-speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations section 571.3(b) and 571.500, respectively.

39. "Neighborhood electric vehicle" means a self-propelled electrically powered motor vehicle to which all of the following apply:

(a) The vehicle is emission free.

(b) The vehicle has at least four wheels in contact with the ground.

(c) The vehicle complies with the definition and standards for low speed vehicles set forth in federal motor vehicle safety standard 500 and 49 Code of Federal Regulations sections 571.3(b) and 571.500, respectively.

40. "Nonresident" means a person who is not a resident of this state as defined in section 28-2001.

41. "Off-road recreational motor vehicle" means a motor vehicle that is designed primarily for recreational nonhighway all-terrain travel and that is not operated on a public highway. Off-road recreational motor vehicle does not mean a motor vehicle used for construction, building trade, mining or agricultural purposes.

42. "Operator" means a person who drives a motor vehicle on a highway, who is in actual physical control of a motor vehicle on a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.

43. "Owner" means:

(a) A person who holds the legal title of a vehicle.

(b) If a vehicle is the subject of an agreement for the conditional sale or lease with the right of purchase on performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, the conditional vendee or lessee.

(c) If a mortgagor of a vehicle is entitled to possession of the vehicle, the mortgagor.

44. "Pedestrian" means any person afoot. A person who uses an electric personal assistive mobility device or a manual or motorized wheelchair is considered a pedestrian unless the manual wheelchair qualifies as a bicycle. For the purposes of this paragraph, "motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

45. "Power sweeper" means an implement, with or without motive power, that is only incidentally operated or moved on a street or highway and that is designed for the removal of debris, dirt, gravel, litter or sand whether by broom, vacuum or regenerative air system from asphaltic concrete or cement concrete surfaces, including parking lots, highways, streets and warehouses, and a vehicle on which the implement is permanently mounted.

46. "Public transit" means the transportation of passengers on scheduled routes by means of a conveyance on an individual passenger fare-paying basis excluding transportation by a sightseeing bus, school bus or taxi or a vehicle not operated on a scheduled route basis.

47. "Reconstructed vehicle" means a vehicle that has been assembled or constructed largely by means of essential parts, new or used, derived from vehicles or makes of vehicles of various names, models and types or that, if originally otherwise constructed, has been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles. For the purposes of this paragraph, "essential parts" means integral and body parts, the removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.

48. "Residence district" means the territory contiguous to and including a highway not comprising a business district if the property on the highway for a distance of three hundred feet or more is in the main improved with residences or residences and buildings in use for business.

49. "Right-of-way" when used within the context of the regulation of the movement of traffic on a highway means the privilege of the immediate use of the highway. Right-of-way when used within the context of the real property on which transportation facilities and appurtenances to the facilities are constructed or maintained means the lands or interest in lands within the right-of-way boundaries.

50. "School bus" means a motor vehicle that is designed for carrying more than ten passengers and that is either:

(a) Owned by any public or governmental agency or other institution and operated for the transportation of children to or from home or school on a regularly scheduled basis.

(b) Privately owned and operated for compensation for the transportation of children to or from home or school on a regularly scheduled basis.

51. "Semitrailer" means a vehicle that is with or without motive power, other than a pole trailer, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that some part of its weight and that of its load rests on or is carried by another vehicle. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.

52. "State" means a state of the United States and the District of Columbia.

53. "State highway" means a state route or portion of a state route that is accepted and designated by the board as a state highway and that is maintained by the state.

54. "State route" means a right-of-way whether actually used as a highway or not that is designated by the board as a location for the construction of a state highway.

55. "Street" or "highway" means the entire width between the boundary lines of every way if a part of the way is open to the use of the public for purposes of vehicular travel.

56. "Taxi" means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, that is registered as a taxi in this state or any other state, that provides passenger services and that:

(a) Does not primarily operate on a regular route or between specified places.

(b) Offers local transportation for a fare determined on the basis of the distance traveled or prearranged ground transportation service as defined in section 28-141 for a predetermined fare.

57. "Traffic survival school" means a school that offers educational sessions to drivers who are required to attend and successfully complete educational sessions pursuant to this title that are designed to improve the safety and habits of drivers and that are approved by the department.

58. "Trailer" means a vehicle that is with or without motive power, other than a pole trailer, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that no part of its weight rests on the towing vehicle. A semitrailer equipped with an auxiliary front axle commonly known as a dolly is deemed to be a trailer. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.

59. "Transportation network company" has the same meaning prescribed in section 28-9551.

60. "Transportation network company vehicle" has the same meaning prescribed in section 28-9551.

61. "Transportation network service" has the same meaning prescribed in section 28-9551.

62. "Truck" means a motor vehicle designed or used primarily for the carrying of property other than the effects of the driver or passengers and includes a motor vehicle to which has been added a box, a platform or other equipment for such carrying.

63. "Truck tractor" means a motor vehicle that is designed and used primarily for drawing other vehicles and that is not constructed to carry a load other than a part of the weight of the vehicle and load drawn.

64. "Vehicle" means a device in, on or by which a person or property is or may be transported or drawn on a public highway, excluding devices moved by human power or used exclusively on stationary rails or tracks.

65. "Vehicle transporter" means either:

(a) A truck tractor capable of carrying a load and drawing a semitrailer.

(b) A truck tractor with a stinger-steered fifth wheel capable of carrying a load and drawing a semitrailer or a truck tractor with a dolly mounted fifth wheel that is securely fastened to the truck tractor at two or more points and that is capable of carrying a load and drawing a semitrailer.

A.R.S. § 28-601. Definitions

In this chapter, unless the context otherwise requires:

1. "Commercial motor vehicle" means a motor vehicle or combination of vehicles that is designed, used or maintained to transport passengers or property in the furtherance of a commercial enterprise, that is a commercial motor vehicle as defined in section 28-5201 and that is not exempt from gross weight fees as prescribed in section 28-5432, subsection B.

2. "Controlled access highway" means a highway, street or roadway to or from which owners or occupants of abutting lands and other persons have no legal right of access except at such points only and in the manner determined by the public authority that has jurisdiction over the highway, street or roadway.

3. "Crosswalk" means:

(a) That part of a roadway at an intersection included within the prolongations or connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in absence of curbs, from the edges of the traversable roadway.

(b) Any portion of a roadway at an intersection or elsewhere that is distinctly indicated for pedestrian crossing by lines or other markings on the surface.

4. "Escort vehicle" means a vehicle that is required pursuant to rules adopted by the department to escort motor vehicles or combinations of vehicles that require issuance of a permit pursuant to article 18 or 19 of this chapter for operation on the highways of this state.

5. "Explosives" means any chemical compound, mixture or device that is commonly used or intended for the purpose of producing an explosion and that is defined in 49 Code of Federal Regulations part 173.

6. "Flammable liquid" means any liquid that has a flash point of less than one hundred degrees Fahrenheit and that is defined in 49 Code of Federal Regulations section 173.120.

7. "Gross weight" means the weight of a vehicle without a load plus the weight of any load on the vehicle.

8. "Intersection" means the area embraced within the prolongation or connection of the lateral curb lines, or if none, the lateral boundary lines of the roadways of two highways that join one another at, or approximately at, right angles, or the area within which vehicles traveling on different highways joining at any other angle may come in conflict. If a highway includes two roadways thirty or more feet apart, each crossing of each roadway of the divided highway by an intersecting highway is a separate intersection. If the intersecting highway also includes two roadways thirty or more feet apart, each crossing of two roadways of the highways is a separate intersection.

9. "License" means any license, temporary instruction permit or temporary license issued under the laws of this state or any other state that pertain to the licensing of persons to operate motor vehicles.

10. "Low emission and energy efficient vehicle" means a vehicle that has been certified by the United States environmental protection agency administrator in accordance with 23 United States Code section 166 or that is part of a federally approved pilot program.

11. "Motorized wheelchair" means any self-propelled wheelchair that is used by a person for mobility.

12. "Official traffic control device" means any sign, signal, marking or device that is not inconsistent with this chapter and that is placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning or guiding traffic.

13. "Park", if prohibited, means the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading.

14. "Photo enforcement system" means a device substantially consisting of a radar unit or sensor linked to a camera or other recording device that produces one or more photographs, microphotographs, videotapes or digital or other recorded images of a vehicle's license plate for the purpose of identifying violators of articles 3 and 6 of this chapter.

15. "Pneumatic tire" means a tire in which compressed air is designed to support the load.

16. "Pole trailer" means a vehicle that is all of the following:

(a) Without motive power.

(b) Designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle.

(c) Used ordinarily for transporting long or irregularly shaped loads such as poles, pipes or structural members capable generally of sustaining themselves as beams between the supporting connections.

17. "Police officer" means an officer authorized to direct or regulate traffic or make arrests for violations of traffic rules or other offenses.

18. "Private road or driveway" means a way or place that is in private ownership and that is used for vehicular travel by the owner and those persons who have express or implied permission from the owner but not by other persons.

19. "Railroad" means a carrier of persons or property on cars operated on stationary rails.

20. "Railroad sign or signal" means a sign, signal or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

21. "Railroad train" means a steam engine or any electric or other motor that is with or without cars coupled to the steam engine or electric or other motor and that is operated on rails.

22. "Roadway" means that portion of a highway that is improved, designed or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two or more separate roadways, roadway refers to any such roadway separately but not to all such roadways collectively.

23. "Safety zone" means the area or space that is both:

(a) Officially set apart within a roadway for the exclusive use of pedestrians.

(b) Protected or either marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone.

24. "Sidewalk" means that portion of a street that is between the curb lines or the lateral lines of a roadway and the adjacent property lines and that is intended for the use of pedestrians.

25. "Stop", if required, means complete cessation from movement.

26. "Stop, stopping or standing", if prohibited, means any stopping or standing of an occupied or unoccupied vehicle, except when necessary to avoid conflict with other traffic or in compliance with directions of a police officer or traffic control sign or signal.

27. "Through highway" means a highway or portion of a highway at the entrances to which vehicular traffic from intersecting highways is required by law to stop before entering or crossing and when stop signs are erected as provided in this chapter.

28. "Traffic" means pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together while using a highway for purposes of travel.

29. "Traffic control signal" means a device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.

30. "Truck" means a motor vehicle that is designed, used or maintained primarily for the transportation of property.

A.R.S. § 28-1301. Definitions

In this chapter, unless the context otherwise requires:

1. "Certified ignition interlock device" means an ignition interlock device that is certified pursuant to article 5 of this chapter.

2. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle either:

(a) Has a gross combined weight rating of twenty-six thousand one or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds.

(b) Has a gross vehicle weight rating of twenty-six thousand one or more pounds.

(c) Is a school bus.

(d) Is a bus.

(e) Is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation act (49 United States Code sections 5101 through 5127) and is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to chapter 14 of this title.

3. "Education" means a program in which a person participates in at least sixteen hours of classroom instruction relating to alcohol or other drugs.

4. "Ignition interlock device" means a device that is based on alcohol specific electrochemical fuel sensor technology that meets the national highway traffic safety administration specifications, that connects a breath analyzer to a motor vehicle's ignition system, that is constantly available to monitor the concentration by weight of alcohol in the breath of any person attempting to start the motor vehicle by using its ignition system and that deters starting the motor vehicle by use of its ignition system unless the person attempting to start the motor vehicle provides an appropriate breath sample for the device and the device determines that the concentration by weight of alcohol in the person's breath is below a preset level.

5. "Installer" means a person who is certified by the department to install ignition interlock devices and provide services to the public related to ignition interlock devices.

6. "License" means any license, temporary instruction permit or temporary license issued under the laws of this state or any other state pertaining to the licensing of persons to operate motor vehicles.

7. "Manufacturer" means a person who is certified by the department to offer ignition interlock devices for installation in motor vehicles in this state.

8. "Screening" means a preliminary interview and assessment of an offender to determine if the offender requires alcohol or other drug education or treatment.

9. "Tampering" means an overt or conscious attempt to physically disable, circumvent or otherwise disconnect the certified ignition interlock device from its power source that allows the operator to start the engine without taking and passing the requisite breath test.

10. "Treatment" means a program consisting of at least twenty hours of participation in a group setting dealing with alcohol or other drugs in addition to the sixteen hours of education.

A.R.S. § 28-3001. Definitions

In this chapter, unless the context otherwise requires:

1. "Cancellation" means the annulment or termination of a driver license because of an error or defect or because the licensee is no longer entitled to the license.

2. "Commercial driver license" means a license that is issued to an individual and that authorizes the individual to operate a class of commercial motor vehicles.

3. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles that is used in commerce to transport passengers or property and that includes any of the following:

(a) A motor vehicle or combination of motor vehicles that has a gross combined weight rating of twenty-six thousand one or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds.

(b) A motor vehicle that has a gross vehicle weight rating of twenty-six thousand one or more pounds.

(c) A bus.

(d) A motor vehicle or combination of motor vehicles that is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation authorization act of 1994 (49 United States Code sections 5101 through 5128) and is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to chapter 14 of this title.

4. "Conviction" has the same meaning prescribed in section 28-101 and also means a final conviction or judgment, including an order of a juvenile court finding that a juvenile has violated a provision of this title or has committed a delinquent act that if committed by an adult constitutes any of the following:

(a) Criminal damage to property pursuant to section 13-1602, subsection A, paragraph 1.

(b) A felony offense in the commission of which a motor vehicle was used, including theft of a motor vehicle pursuant to section 13-1802, unlawful use of means of transportation pursuant to section 13-1803 or theft of means of transportation pursuant to section 13-1814.

(c) A forfeiture of bail or collateral deposited to secure a defendant's appearance in court that has not been vacated.

5. "Disqualification" means a prohibition from obtaining a commercial driver license or driving a commercial motor vehicle.

6. "Employer" means a person, including the United States, a state or a political subdivision of a state, that owns or leases a commercial motor vehicle or that assigns a person to operate a commercial motor vehicle.

7. "Endorsement" means an authorization that is added to an individual's driver license and that is required to permit the individual to operate certain types of vehicles.

8. "Foreign" means outside the United States.

9. "Gross vehicle weight rating" means the weight that is assigned by the vehicle manufacturer to a vehicle and that represents the maximum recommended total weight including the vehicle and the load for the vehicle.

10. "Judgment" means a final judgment and any of the following:

(a) The finding by a court that an individual is responsible for a civil traffic violation.

(b) An individual's admission of responsibility for a civil traffic violation.

(c) The voluntary or involuntary forfeiture of deposit in connection with a civil traffic violation.

(d) A default judgment entered by a court pursuant to section 28-1596.

11. "License class" means, for the purpose of determining the appropriate class of driver license required for the type of motor vehicle or vehicle combination a driver intends to operate or is operating, the class of driver license prescribed in section 28-3101.

12. "Nondomiciled commercial driver license" means a commercial driver license issued to an individual domiciled in a foreign country or to an individual domiciled in another state if that state is prohibited from issuing commercial driver licenses.

13. "Original applicant" means any of the following:

(a) An applicant who has never been licensed or cannot provide evidence of licensing.

(b) An applicant who is applying for a higher class of driver license than the license currently held by the applicant.

(c) An applicant who has a license from a foreign country.

14. "Revocation" means that the driver license and driver's privilege to drive a motor vehicle on the public highways of this state are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted on by the department after one year from the date of revocation.

15. "State of domicile" means the state or jurisdiction where a person has the person's true, fixed and permanent home and principal residence and to which the person has the intention of returning after an absence.

16. "Suspension" means that the driver license and driver's privilege to drive a motor vehicle on the public highways of this state are temporarily withdrawn during the period of the suspension and until application for reinstatement is made.

17. "Vehicle combination" means a motor vehicle and a vehicle in excess of ten thousand pounds gross vehicle weight that it tows, if the combined gross vehicle weight rating is more than twenty-six thousand pounds.

A.R.S. § 28-5201. Definitions

In this chapter, unless the context otherwise requires:

1. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles that is designed, used or maintained to transport passengers or property in the furtherance of a commercial enterprise on a highway in this state, that is not exempt from the gross weight fees as prescribed in section 28-5432, subsection B and that includes any of the following:

(a) A single vehicle or combination of vehicles that has a gross vehicle weight rating of eighteen thousand one or more pounds and that is used for the purposes of intrastate commerce.

(b) A single vehicle or combination of vehicles that has a gross vehicle weight rating of ten thousand one or more pounds and that is used for the purposes of interstate commerce.

(c) A school bus.

(d) A bus.

(e) A vehicle that transports passengers for hire and that has a design capacity for eight or more persons.

(f) A vehicle that is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation authorization act of 1994 (49 United States Code sections 5101 through 5128) and that is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to this chapter.

2. "Declared gross weight" has the same meaning prescribed in section 28-5431. If a declaration has not been made, declared gross weight means gross weight.

3. "Gross weight" has the same meaning prescribed in section 28-5431.

4. "Hazardous material" means a substance that has been determined by the United States department of transportation under 49 Code of Federal Regulations to be capable of posing an unreasonable risk to health, safety and property if transported in commerce.

5. "Hazardous substance" means a material and its mixtures or solutions that has been determined by the United States department of transportation under 49 Code of Federal Regulations to be capable of posing an unreasonable risk to health, safety and property if transported in commerce.

6. "Hazardous waste" means a material that is subject to the hazardous waste manifest requirements of the department of environmental quality or the United States environmental protection agency.

7. "Manufacturer" means a person who transports or causes to be transported or shipped by a motor vehicle a material that is represented, marked, certified or sold by a person for transportation in commerce.

8. "Motor carrier" means a person who operates or causes to be operated a commercial motor vehicle on a public highway.

9. "Motor vehicle" means any vehicle, machine, truck, tractor, trailer or semitrailer that is propelled or drawn by mechanical power and that is used on a public highway in the transportation of passengers or property in the furtherance of a commercial enterprise.

10. "Person" means a public or private corporation, company, partnership, firm, association or society of persons, the federal government and its departments or agencies, this state or any of its agencies, departments, political subdivisions, counties, towns or municipal corporations or a natural person.

11. "Public highway" means a public street, alley, road, highway or thoroughfare of any kind in this state that is used by the public or that is open to the use of the public as a matter of right, for the purpose of vehicular travel.

12. "Shipper" means a person who offers a material for motor vehicle transportation in commerce.

13. "Transportation" means a movement of person or property by a motor vehicle and any loading, unloading or storage incidental to the movement.

14. "Vehicle combination" has the same meaning prescribed in section 28-5431.

Statutory References Applicable to the Incorporated Material

A.R.S. § 28-2325. Single trip permit; fees

A. An owner or operator of a vehicle that is required to be registered pursuant to section 28-2321 may apply to the department for a single trip permit. The single trip permit authorizes the interstate operation of the vehicle:

1. For a single trip through this state.

2. From any point on the Arizona border to a point within this state and back to the border.

3. From a railhead within this state and return to a railhead.

4. From a point within this state to the border of this state.

B. In order to obtain a single trip permit pursuant to this section, the owner or operator shall provide evidence of each of the following to the department:

1. An insurance policy that satisfies all of the following:

(a) Meets the financial responsibility requirements prescribed in chapter 9 of this title.

(b) Is issued by an insurer that has been issued a certificate of authority or that has been permitted to transact surplus lines insurance by the public official that supervises insurance in a state of the United States or the District of Columbia.

(c) Provides valid insurance coverage in this state.

2. A current driver license of a class and type recognized by the department as valid in the United States.

3. Current compliance with vehicle safety inspection requirements prescribed in 49 Code of Federal Regulations sections 396.17 through 396.23.

C. If satisfied as to the facts stated in the application and the evidence provided pursuant to subsection B of this section, the department shall register the vehicle by issuing a single trip permit on payment by the owner or operator of the following fees:

1. For a one or two axle vehicle, two dollars for each fifty miles or fraction of fifty miles to be traveled on the highways in any one trip.

2. For a three axle vehicle or combination of vehicles with not more than three axles, three dollars for each fifty miles or fraction of fifty miles to be traveled on the highways in any one trip.

3. For a vehicle or combination of vehicles with four axles, four dollars for each fifty miles or fraction of fifty miles to be traveled on the highways in any one trip.

4. For a vehicle or combination of vehicles with five axles, five dollars for each fifty miles or fraction of fifty miles to be traveled on the highways in any one trip.

5. For a vehicle or combination of vehicles with six axles, six dollars for each fifty miles or fraction of fifty miles to be traveled on the highways in any one trip.

6. For a vehicle or combination of vehicles with more than six axles, seven dollars for each fifty miles or fraction of fifty miles to be traveled on the highways in any one trip.

D. The director shall deposit, pursuant to sections 35-146 and 35-147, all fees collected pursuant to subsection C of this section at ports of entry on the border between this state and Mexico in the safety enforcement and transportation infrastructure fund established by section 28-6547.

E. The application for a single trip permit to the department does not qualify the applicant for eligibility in an assigned risk plan approved pursuant to section 28-4008.

F. The single trip permit shall contain information, be in the form and be issued and displayed in or on the vehicle as prescribed by department rules.

G. A single trip permit expires on completion of the specific trip for which the permit is issued and shall not exceed a period of ninety-six hours from the time of issuance unless an extension of time is authorized in writing by the department.

H. If a person operates a vehicle for which a single trip permit has been issued otherwise than as authorized in the permit, the owner or operator shall apply for and obtain annual registration of the vehicle and shall pay the fees applicable at the time the terms of the permit are violated.

A.R.S. § 28-3159. Restricted licenses

A. With good cause, the department may issue the following restricted driver licenses:

1. A driver license with any of the following:

(a) Restrictions suitable to the licensee's driving ability for the type of motor vehicle or special mechanical control devices required on a motor vehicle that the licensee may operate.

(b) Restrictions suitable to the licensee's ability to drive a motor vehicle in areas, at locations or on highways or during certain times.

(c) Other restrictions as the department determines appropriate to ensure the safe operation of a motor vehicle by the licensee.

2. A class A, B or C driver license that restricts the driver from operating:

(a) A commercial motor vehicle equipped with air brakes, if the applicant either fails the air brake component of the knowledge examination or performs the skills test in a vehicle that is not equipped with air brakes.

(b) A vehicle in interstate commerce, if the applicant is not subject to 49 Code of Federal Regulations part 391.

(c) A motor vehicle for the purposes of interstate commerce, if an applicant for a class A, B or C license is at least eighteen years of age.

3. A class A, B or C driver license with other restrictions that the department determines are appropriate to ensure the safe operation of a commercial motor vehicle by the licensee.

4. A class M license that restricts the driver from driving a vehicle other than a motorcycle, motor driven cycle or moped with a maximum piston displacement of one hundred cubic centimeters or less, if the applicant performs the driving examination with a motorcycle, motor driven cycle or moped with a maximum piston displacement of one hundred cubic centimeters or less.

5. A special ignition interlock restricted driver license pursuant to chapter 4, article 3.1 of this title.

B. The department may either issue a special restricted license or display the restrictions on the usual driver license form.

A.R.S. § 28-3224. Nondomiciled commercial driver license

A. The department may issue a nondomiciled commercial driver license to a resident of another jurisdiction if the United States secretary of transportation determines that the commercial motor vehicle testing and licensing standards in the other jurisdiction do not meet the testing standards established in 49 Code of Federal Regulations part 383.

B. On receipt of a proper application, the department may issue a nondomiciled commercial driver license to an applicant who meets the requirements for a class A, B or C license pursuant to section 28-3223.

C. The department shall mark a license issued pursuant to this section as a nondomiciled commercial driver license or a nondomiciled CDL.

D. A person applying for a nondomiciled commercial driver license shall surrender any nondomiciled commercial driver license issued by another state as a condition of receiving a nondomiciled commercial driver license in this state.

A.R.S. § 28-3228. School bus drivers; requirements; rules; cancellation

A. A person shall not operate a school bus transporting school children unless the person possesses the appropriate license class for the size of school bus being operated that is issued by the department of transportation, a bus endorsement that is issued by the department of transportation and a school bus certificate that is issued by the department of public safety.

B. To be certified as a school bus driver a person shall do both of the following:

1. Meet and maintain the minimum standards prescribed by this section and rules adopted by the department of public safety in consultation with the school bus advisory council established by section 28-3053.

2. Complete an initial instructional course on school bus driver safety and training including behind the wheel training.

C. The department of public safety in consultation with the school bus advisory council established by section 28-3053 shall adopt rules that establish minimum standards for the certification of school bus drivers. In cooperation with local school districts, the department of public safety shall provide for school bus driver safety and training courses. The standards established shall:

1. Include requirements concerning moral character, knowledge of school bus operation, pupil and motor vehicle safety, physical impairments that might affect the applicant's ability to safely operate a school bus or that might endanger the health or safety of school bus passengers, knowledge of first aid, establishment of school bus safety and training courses, a refresher course to be completed on at least a biennial basis and other matters as the department of public safety and the school bus advisory council established by section 28-3053 prescribe for the protection of the public.

2. Require tests to detect the presence of alcohol or the use of a drug in violation of title 13, chapter 34 that may adversely affect the ability of the applicant to safely operate a school bus.

3. Authorize the performance of hearing tests with or without the use of a hearing aid as provided in 49 Code of Federal Regulations section 391.41.

D. Each applicant for a school bus driver certificate shall submit a full set of fingerprints to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation. For the purposes of this subsection, each applicant shall pay a fee to the department of public safety to reimburse the department of public safety for the cost of obtaining the criminal records check required by this subsection. The fee shall not exceed the actual cost of obtaining the criminal records check.

E. The department of public safety shall issue a school bus driver certificate to an applicant who meets the requirements of this section. The certificate is valid if the applicant maintains the minimum standards established by this section.

F. The department of public safety may cancel the certificate if the person's license to drive is suspended, canceled, revoked or disqualified. The department of public safety shall cancel the certificate if the person fails to maintain the minimum standards established pursuant to this section. A person whose application for a certificate is refused or whose certificate is canceled for failure to meet or maintain the minimum standards may request and receive a hearing from the department of public safety.

G. The department of public safety shall enforce the rules adopted pursuant to this section.

A.R.S. § 28-3229. Military applicants; driving test waiver; requirements

A. The department may waive the requirement that an original applicant for a class A, B or C license take the driving test prescribed by section 28-3223, subsection A, paragraph 5 if the applicant is on active duty in the armed forces of the United States or has separated from the armed forces of the United States under honorable conditions and certifies that during the two-year period immediately before application all of the following apply:

1. The applicant has not had more than one driver license, other than a military license.

2. The applicant has not had any driver license suspended, revoked or canceled.

3. The applicant has not been convicted of an offense committed while operating any type of motor vehicle that would subject the applicant to mandatory disqualification pursuant to section 28-3312.

4. The applicant has not been found responsible for or guilty of a moving traffic violation that results in a motor vehicle accident and has no record of a motor vehicle accident in which the applicant is at fault.

B. The department may waive the driving test pursuant to subsection A of this section if the applicant certifies and provides evidence as prescribed by the department that all of the following apply:

1. The applicant is regularly employed or within the time period prescribed in the United States department of transportation commercial driver's license standards, requirements and penalties, 49 Code of Federal Regulations section 383.77, was regularly employed in a military position requiring operation of a commercial motor vehicle.

2. The applicant is exempt from commercial driver licensing requirements pursuant to section 28-3152, subsection A, paragraph 1 or a comparable law of another state implementing 49 Code of Federal Regulations section 383.3(c).

3. For at least two years immediately before separating from the armed forces of the United States under honorable conditions the applicant operated a motor vehicle that is representative of the class of motor vehicle that the applicant operates or expects to operate.

C. An applicant who obtains a driving test waiver under this section shall take and successfully pass any knowledge test required pursuant to this chapter.

A.R.S. § 28-4032. Persons subject to financial responsibility requirements

A. Notwithstanding any other statute:

1. A person who operates in the furtherance of a commercial enterprise in this state a motor vehicle or vehicle combination that has a declared gross weight of more than twenty thousand pounds shall comply with the financial responsibility requirements of this article and article 4 of this chapter.

2. A person who operates a motor vehicle or vehicle combination for the purpose of transporting hazardous materials, hazardous substances or hazardous wastes as defined by the department shall comply with the financial responsibility requirements of this article and article 4 of this chapter unless any of the following applies:

(a) The transportation of hazardous materials, hazardous substances or hazardous wastes is incidental to the principal purpose of the vehicular travel at the time the transportation occurs.

(b) The transportation of hazardous materials, hazardous substances or hazardous wastes is not in the furtherance of a commercial enterprise.

(c) The transportation of an amount of hazardous material listed in 49 Code of Federal Regulations section 172.504(a) table two is less than one thousand pounds or not more than one hundred ten gallons for a combustible liquid.

B. A person who operates a bus used to transport passengers for hire, other than a car pool operator, shall comply with the financial responsibility requirements of this article and article 4 of this chapter. This subsection does not apply to a car pool operator. For the purposes of this subsection, "car pool operator" means a natural person when engaged either regularly or occasionally in carrying one or more other persons by motor vehicle on a public highway, with or without compensation, if the carriage of the other person or persons is both:

1. Not for profit. A car pool operator is conclusively presumed not to be carrying persons for profit if either:

(a) The operator receives compensation of not more than twenty cents per mile for total vehicle miles traveled, except that the proportionate share of the car pool operator shall be included in the amount.

(b) The operator carries one or more of the operator's passengers in consideration of the operator being carried in like situations by the passenger or passengers. The receipt of compensation of more than twenty cents per mile for total vehicle miles traveled does not preclude a car pool operator from showing that this compensation does not result in a profit to the operator or that the operator did not intend that a profit result.

2. Incidental to another purpose of the car pool operator. Except in unusual circumstances, the carriage is incidental to another purpose of the operator if the operator is not making the trip solely for the purpose of carrying a passenger. A car pool operator is conclusively presumed not to be transporting passengers for hire.

C. A person who is listed on the department's records as the owner of a taxi, livery vehicle or limousine used to transport passengers for hire shall comply with the financial responsibility requirements of this article and article 4 of this chapter.

A.R.S. § 28-4033. Financial responsibility requirements

A. A person that is subject to the requirements of this article shall maintain motor vehicle combined single limit liability insurance as follows:

1. For the transportation of nonhazardous property:

(a) For a vehicle with a gross vehicle weight of more than twenty-six thousand pounds, minimum coverage in the amount of seven hundred fifty thousand dollars.

(b) For a vehicle with a gross vehicle weight of twenty thousand one pounds to twenty-six thousand pounds, minimum coverage in the amount of three hundred thousand dollars.

2. For the transportation of passengers:

(a) In a vehicle with a seating capacity of sixteen passengers or more, minimum coverage in the amount of five million dollars and uninsured motorist coverage in the amount of at least three hundred thousand dollars.

(b) In a vehicle with a seating capacity of less than sixteen passengers including the driver, but more than eight passengers including the driver, minimum coverage in the amount of seven hundred fifty thousand dollars and uninsured motorist coverage in the amount of at least three hundred thousand dollars.

(c) In a vehicle with a seating capacity of not more than eight passengers including the driver, a policy containing one of the following:

(i) Minimum coverage in the amount of two hundred fifty thousand dollars and uninsured motorist coverage in the amount of at least two hundred fifty thousand dollars issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state.

(ii) Minimum coverage as prescribed by section 28-4038 or 28-4039, as applicable.

3. For the transportation of hazardous materials, hazardous substances or hazardous wastes:

(a) Minimum coverage in the amount of five million dollars for the transportation of:

(i) Hazardous substances, as defined in 49 Code of Federal Regulations part 171, transported in a cargo tank, portable tank or hopper-type vehicle with capacities in excess of three thousand five hundred water gallons.

(ii) Any quantity of class A or B explosives.

(iii) Any quantity of poison gas (poison A).

(iv) Liquefied compressed gas or compressed gas transported in a cargo tank, portable tank or hopper-type vehicle with capacities in excess of three thousand five hundred water gallons.

(v) The quantity of radioactive materials that requires specialized handling and transportation controls as indicated in 49 Code of Federal Regulations part 173.

(b) Minimum coverage in the amount of one million dollars for the transportation of the following:

(i) Any quantity of oil listed in 49 Code of Federal Regulations part 172.

(ii) Any quantity of hazardous wastes, hazardous materials or hazardous substances as defined and listed in 49 Code of Federal Regulations part 171 and in 49 Code of Federal Regulations part 172 but not included in subdivision (a) of this paragraph.

B. If a motor vehicle is leased or rented, the lessor shall ensure that the lessee is covered under the lessor's liability insurance as provided by this section or the lessor shall require that the lessee meet the financial responsibility requirements of this section. In the case of taxis, livery vehicles or limousines, a person who is listed on the department's records as the owner shall comply with the financial responsibility requirements of this article and article 4 of this chapter.

C. If a lessee uses the motor vehicle for a purpose that is required under this section to have a higher amount of financial responsibility than was required of the lessor or renter, the lessee shall maintain the higher financial responsibility requirements of this section.

D. The uninsured motorist coverage required by this section is not required until June 1, 1987 and may be provided by a self-insurance program authorized under section 28-4007. A person who is under contract with this state or a political subdivision of this state, who operates a motor vehicle owned by this state or a political subdivision of this state and who is included in the self-insurance program of this state or a political subdivision of this state is exempt from the uninsured motorist requirements of this section.

A.R.S. § 28-5234. Exemption from rules on drivers' qualification and hours of service; definitions

A. If the department adopts 49 Code of Federal Regulations parts 390 through 397 as a rule, a telecommunications corporation engaged in rendering public utility service or a railroad and its employees whose work necessarily involves the operation of a motor vehicle weighing more than eighteen thousand pounds gross vehicle weight rating but which operation is only incidental to the performance of their principal nondriving duties and purpose of employment are exempted from compliance with 49 Code of Federal Regulations parts 391 and 395, except that 49 Code of Federal Regulations part 391, subparts A and E apply unless it is the practice of the telecommunications corporation engaged in rendering public utility service or the railroad to assign regular drivers, qualified in accordance with 49 Code of Federal Regulations parts 390 through 397, to motor vehicles weighing more than eighteen thousand pounds gross vehicle weight rating, and if such driver becomes unavailable or unable to operate the motor vehicle on a given occasion due to an unavoidable or unforeseen circumstance against which provisions could not be reasonably made, compliance with 49 Code of Federal Regulations parts 391 and 395 is not required.

B. A person who is an employee of a public service corporation, a political subdivision of this state that is engaged in rendering public utility service or a railroad is exempt from any hours of service requirements at any time when relief assistance is needed to supplement state or local efforts and capabilities to save lives, protect against substantial loss of property, protect the public health and safety or lessen or avert the consequence of a catastrophe. If an emergency respondent independently identifies an occasion or instance that jeopardizes life or

property or that endangers public health and safety, an emergency situation exists, and the respondent is exempt from any hours of service requirements if the respondent contacts with due diligence and coordinates with state or local officials.

C. The following intrastate drivers may begin to calculate hours of service requirements at any point at which the driver goes on duty after the driver has been off duty for twenty-four or more consecutive hours:

1. Drivers who are primarily involved in the transportation of groundwater drilling rigs.

2. Drivers used primarily in the transportation of construction materials and equipment en route to or from an active construction site that is within a seventy-five air mile radius of the driver's normal work reporting location and is at a stage between initial mobilization of equipment and materials to the site and final completion of the construction project. This paragraph does not apply to drivers transporting hazardous materials in a quantity that requires placarding.

3. Drivers of public utility service vehicles that are operated primarily within the service area of the public utility's subscribers, that are used in furtherance of repairing, maintaining or operating any physical facilities necessary for the delivery of public utility services and that are engaged in any activity necessarily related to the ultimate delivery of public utility services to the consumer, including travel to, from, on or between activity sites. The public utility is not required to be the owner of the vehicle.

D. For the purposes of this section:

1. "Public service corporation" means a public service corporation as defined in article XV, section 2, Constitution of Arizona.

2. "Railroad" means a railway or railroad that is regulated as a common carrier under article XV, section 10, Constitution of Arizona, and that is subject to title 40, chapter 4, article 3.

3. "Telecommunications corporation" means an entity as defined in section 40-201 that is subject to regulation by the corporation commission.

A.R.S. § 28-5236. Violations; inspection; material containment

A. A person shall not operate a vehicle that transports hazardous materials, hazardous substances or hazardous wastes on a highway in this state unless the vehicle has been properly inspected pursuant to 49 Code of Federal Regulations.

B. A person shall not transport or cause the transportation of hazardous materials, hazardous substances or hazardous wastes unless the material is properly contained and manifested as prescribed by applicable statutes and rules.

A.R.S. § 28-5244. Motor carriers; civil penalty; definition

A. Notwithstanding any other law, A foreign motor carrier or foreign private motor carrier that is required to have a certificate of registration issued by the United States secretary of the Department of Transportation pursuant to 49 Code of Federal Regulations sections 368.1 through 368.8 shall not do any of the following:

1. Operate in this state without the required certificate in the vehicle.

2. Operate beyond the limitations or restrictions specified in the certificate as issued.

3. Refuse to show the certificate on request of a peace officer or an employee of the department.

4. Provide point-to-point transportation services, including express delivery services, in the United States for goods other than international cargo that is incidental to the engagement of that vehicle in international traffic. Any such carriage by the motor carrier in the general direction of an export move or as a part of the return of the vehicle to its base country shall be considered incidental to that vehicle's engagement in international traffic.

B. Notwithstanding any other law, a motor carrier that is required to be registered with the United States secretary of the department of transportation pursuant to 49 United States Code section 13902 or 49 Code of Federal Regulations sections 390.1 through 390.37 shall not do any of the following:

1. Operate in this state without the required registration.

2. Operate beyond the limitations or restrictions specified in its registration.

3. Operate in this state without the required operating authority.

C. A motor carrier that violates subsection A or B is subject to a civil penalty of one thousand dollars.

D. A law enforcement agency may impound a vehicle operated in violation of subsection A or B and its cargo until the citation and all charges related to the impoundment are cleared. The impoundment charges are the responsibility of the vehicle's owner.

E. A motor carrier granted permanent operating authority pursuant to 49 Code of Federal Regulations sections 368.1 through 368.8 shall not operate a vehicle on a highway unless the vehicle is inspected by a Commercial vehicle safety alliance-certified inspector at least every three months and shall display a current safety inspection decal attesting to the successful completion of those inspections for at least three years after receiving permanent operating authority.

F. Subsection E does not apply to a motor carrier that is granted authority to operate solely in a commercial zone on the United States-Mexico international border.

G. For the purposes of this section, "limitations or restrictions" includes commercial zones, municipality, contiguous municipalities, unincorporated area, and terminal areas, as defined in 49 Code of Federal Regulations sections 372.101 through 372.221.

References to Federal Law or Authority

Code of Federal Regulations

Title 49 - Transportation

Volume: 5

Date: 2012-10-01

Original Date: 2012-10-01

Title: Section 384.301 - Substantial compliance-general requirements.

Context: Title 49 - Transportation. Subtitle B - Other Regulations Relating to Transportation (Continued). CHAPTER III - FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION. SUBCHAPTER B - FEDERAL MOTOR CARRIER SAFETY REGULATIONS. PART 384 - STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM. Subpart C - Procedures for Determining State Compliance.

§ 384.301 Substantial compliance-general requirements.

(a) To be in substantial compliance with 49 U.S.C. 31311(a), a State must meet each and every standard of subpart B of this part by means of the demonstrable combined effect of its statutes, regulations, administrative procedures and practices, organizational structures, internal control mechanisms, resource assignments (facilities, equipment, and personnel), and enforcement practices.

(b) (1) A State must come into substantial compliance with the requirements of subpart B of this part in effect as of September 30, 2002 as soon as practical, but, unless otherwise specifically provided in this part, not later than September 30, 2005.

(2) Exception. A State must come into substantial compliance with 49 CFR 383.123 not later than September 30, 2006.

(c) A State must come into substantial compliance with the requirements of subpart B of this part in effect as of September 4, 2007 as soon as practical but, unless otherwise specifically provided in this part, not later than September 4, 2010.

(d) A State must come into substantial compliance with the requirements of subpart B of this part in effect as of January 30, 2009, as soon as practical, but not later than January 30, 2012.

(e) A State must come into substantial compliance with the requirements of subpart B of this part in effect as of October 27, 2010 as soon as practical, but not later than October 28, 2013.

(f) A State must come into substantial compliance with the requirements of subpart B of this part in effect as of July 8, 2011, as soon as practical but, unless otherwise specifically provided in this part, not later than July 8, 2014.

(g) A State must come into substantial compliance with the requirements of subpart B of this part, which is effective as of December 5, 2011, as soon as practicable, but not later than January 30, 2012.

(h) A State must come into substantial compliance with the requirements of subpart B of this part in effect as of January 3, 2012) as soon as practical, but not later than January 3, 2015.

[67 FR 49763, July 31, 2002, as amended at 70 FR 56593, Sept. 28, 2005; 72 FR 36788, July 5, 2007; 73 FR 73126, Dec. 1, 2008; 75 FR 59135, Sept. 27, 2010; 76 FR 26896, May 9, 2011; 76 FR 39018, July 5, 2011; 76 FR 68332, Nov. 4, 2011; 76 FR 75486, Dec. 2, 2011]

49 CFR 350.333 What are the guidelines for the compatibility review?

(a) The State law or regulation must apply to all segments of the motor carrier industry (i.e., for-hire and private motor carriers of property and passengers).

(b) Laws and regulations reviewed for the CDL compliance report are excluded from the compatibility review.

(c) Definitions of words or terms must be consistent with those in the FMCSRs and HMRs.

(d) A State must identify any law or regulation that is not the same as the corresponding Federal regulation and evaluate it in accordance with the table to this section as follows:

Table to 49 CFR 350.333—Guidelines for the State Law and Regulation Compatibility Review

Law or regulation has same effect as corresponding Federal regulation	Applies to interstate or intrastate commerce	Less stringent or more stringent	Action authorized
(1) Yes			Compatible—Interstate and intrastate commerce enforcement authorized.
(2) No	Intrastate		Refer to § 350.341
(3) No	Interstate	Less stringent	Enforcement prohibited.
(4) No	Interstate	More stringent	Enforcement authorized if the State can demonstrate the law or regulation has a safety benefit or does not create an undue burden upon interstate commerce (See 49 CFR Part 355).

49 CFR 350.335 What are the consequences if my State has laws or regulations incompatible with the Federal regulations?

(a) A State that currently has compatible CMV safety laws and regulations pertaining to interstate commerce (i.e., rules identical to the FMCSRs and HMRs) and intrastate commerce (i.e., rules identical to or within the tolerance guidelines for the FMCSRs and identical to the HMRs) but enacts a law or regulation which results in an incompatible rule will not be eligible for Basic Program Funds nor Incentive Funds.

(b) A State that fails to adopt any new regulation or amendment to the FMCSRs or HMRs within three years of its effective date will be deemed to have incompatible regulations and will not be eligible for Basic Program nor Incentive Funds.

(c) Those States with incompatible laws or regulations pertaining to intrastate commerce and receiving 50 percent of their basic formula allocation on April 20, 2000 will continue at that level of funding until those incompatibilities are removed, provided no further incompatibilities are created.

(d) Upon a finding by the FMCSA, based upon its own initiative or upon a petition of any person, including any State, that your State law, regulation or enforcement practice pertaining to CMV safety, in either interstate or intrastate commerce, is incompatible with the FMCSRs or HMRs, the FMCSA may initiate a proceeding under § 350.215 for withdrawal of eligibility for all Basic Program and Incentive Funds.

(e) Any decision regarding the compatibility of your State law or regulation with the HMRs that requires an interpretation will be referred to the Pipeline and Hazardous Materials Safety Administration of the DOT for such interpretation before proceeding under § 350.215.

[65 FR 15102, Mar. 21, 2000, as amended at 77 FR 59823, Oct. 1, 2012]

49 CFR 350.339 What are tolerance guidelines?

Tolerance guidelines set forth the limited deviations from the FMCSRs allowed in your State's laws and regulations. These variances apply only to motor carriers, CMV drivers and CMVs engaged in intrastate commerce and not subject to Federal jurisdiction.

49 CFR 350.341 What specific variances from the FMCSRs are allowed for State laws and regulations governing motor carriers, CMV drivers, and CMVs engaged in intrastate commerce and not subject to Federal jurisdiction?

(a) A State may exempt a CMV from all or part of its laws or regulations applicable to intrastate commerce, provided that neither the GVW, GVWR, GCW, nor GCWR of the vehicle equals or exceeds 11,801 kg (26,001 lbs.). However, a State may not exempt a CMV from such laws or regulations if the vehicle:

(1) Transports hazardous materials requiring a placard.

(2) Is designed or used to transport 16 or more people, including the driver.

(b) State laws and regulations applicable to intrastate commerce may not grant exemptions based upon the type of transportation being performed (e.g., for-hire, private, etc.).

(c) A State may retain those exemptions from its motor carrier safety laws and regulations that were in effect before April, 1988, are still in effect, and apply to specific industries operating in intrastate commerce.

(d) State laws and regulations applicable to intrastate commerce must not include exemptions based upon the distance a motor carrier or driver operates from the work reporting location. This prohibition does not apply to those exemptions already contained in the FMCSRs nor to the extension of the mileage radius exemption contained in 49 CFR 395.1(e) from 100 to 150 miles.

(e) Hours of service—State hours-of-service limitations applied to intrastate transportation may vary to the extent of allowing the following:

(1) A 12-hour driving limit, provided driving a CMV after having been on duty more than 16 hours is prohibited.

(2) Driving prohibitions for drivers who have been on duty 70 hours in 7 consecutive days or 80 hours in 8 consecutive days.

(f) Age of CMV driver—All CMV drivers must be at least 18 years of age.

(g) Grandfather clauses—States may provide grandfather clauses in their rules and regulations if such exemptions are uniform or in substantial harmony with the FMCSRs and provide an orderly transition to full regulatory adoption at a later date.

(h) Driver qualifications:

(1) Intrastate drivers who do not meet the physical qualification standards in 49 CFR 391.41 may continue to be qualified to operate a CMV in intrastate commerce if the following three conditions are met:

(i) The driver was qualified under existing State law or regulation at the time the State adopted physical qualification standards compatible with the Federal standards in 49 CFR 391.41.

(ii) The otherwise non-qualifying medical or physical condition has not substantially worsened.

(iii) No other non-qualifying medical or physical condition has developed.

(2) The State may adopt or continue programs granting variances to intrastate drivers with medical or physical conditions that would otherwise be non-qualifying under the State's equivalent of 49 CFR 391.41 if the variances are based upon sound medical judgment combined with appropriate performance standards ensuring no adverse affect on safety.

(3) The State may decide not to adopt laws and regulations that implement a registry of medical examiners trained and qualified to apply physical qualification standards or variances continued in effect or adopted by the State under this paragraph that apply to drivers of CMVs in intrastate commerce.

[65 FR 15102, Mar. 21, 2000, as amended at 77 FR 24126, Apr. 20, 2012]

49 CFR 355.21 Regulatory review.

(a) General. Each State shall annually analyze its laws and regulations, including those of its political subdivisions, which pertain to commercial motor vehicle safety to determine whether its laws and regulations are compatible with the Federal Motor Carrier Safety Regulations. Guidelines for the regulatory review are provided in the appendix to this part.

(b) Responsibility. The State agency designated as lead agency for the administration of grants made pursuant to part 350 of this subchapter is responsible for reviewing and analyzing State laws and regulations for compliance with this part. In the absence of an officially designated Motor Carrier Safety Assistance Program (MCSAP) lead agency or in its discretion, the State shall designate another agency responsible to review and determine compliance with these regulations.

(c) State review. (1) The State shall determine which of its laws and regulations pertaining to commercial motor vehicle safety are the same as the Federal Motor Carrier Safety or Federal Hazardous Materials Regulations. With respect to any State law or regulation which is not the same as the FMCSRs (FHMRs must be identical), the State shall identify such law or regulation and determine whether:

(i) It has the same effect as a corresponding section of the Federal Motor Carrier Safety Regulations;

(ii) It applies to interstate commerce;

(iii) It is more stringent than the FMCSRs in that it is more restrictive or places a greater burden on any entity subject to its provisions.

(2) If the inconsistent State law or regulation applies to interstate commerce and is more stringent than the FMCSRs, the State shall determine:

(i) The safety benefits associated with such State law or regulation; and

(ii) The effect of the enforcement of such State law or regulation on interstate commerce.

(3) If the inconsistent State law or regulation does not apply to interstate commerce or is less stringent than the FMCSRs, the guidelines for participation in the Motor Carrier Safety Assistance Program in §§ 350.341, 350.343, and 350.345 of this subchapter shall apply.

[57 FR 40962, Sept. 8, 1992, as amended at 65 FR 15109, Mar. 21, 2000]

49 CFR 355.25 Adopting and enforcing compatible laws and regulations.

(a) General. No State shall have in effect or enforce any State law or regulation pertaining to commercial motor vehicle safety in interstate commerce which the Administrator finds to be incompatible with the provisions of the Federal Motor Carrier Safety Regulations.

(b) New state requirements. No State shall implement any changes to a law or regulation which makes that or any other law or regulation incompatible with a provision of the Federal Motor Carrier Safety Regulations.

(c) Enforcement. To enforce compliance with this section, the Administrator will initiate a rulemaking proceeding under part 389 of this subchapter to declare the incompatible State law or regulation pertaining to commercial motor vehicle safety unenforceable in interstate commerce.

(d) Waiver of determination. Any person (including any State) may petition for a waiver of a determination made under paragraph (c) of this section. Such petition will also be considered in a rulemaking proceeding under part 389. Waivers shall be granted only upon a satisfactory showing that continued enforcement of the incompatible State law or regulation is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles.

(e) Consolidation of proceedings. The Administrator may consolidate any action to enforce this section with other proceedings required under this section if the Administrator determines that such consolidation will not adversely affect any party to any such proceeding.

Code of Federal Regulations

Title 49 - Transportation

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Title: Section 384.401 - Withholding of funds based on noncompliance.

Context: Title 49 - Transportation. Subtitle B - Other Regulations Relating to Transportation (Continued). CHAPTER III - FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION. SUBCHAPTER B - FEDERAL MOTOR CARRIER SAFETY REGULATIONS. PART 384 - STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM. Subpart D - Consequences of State Noncompliance.

§ 384.401 Withholding of funds based on noncompliance.

(a) Following the first year of noncompliance. An amount up to 5 percent of the Federal-aid highway funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23 U.S.C. shall be withheld from a State on the first day of the fiscal year following such State's first year of noncompliance under this part.

(b) Following second and subsequent year(s) of noncompliance. An amount up to 10 percent of the Federal-aid highway funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23 U.S.C. shall be withheld from a State on the first day of the fiscal year following such State's second or subsequent year(s) of noncompliance under this part.

[72 FR 36788, July 5, 2007]

49 CFR 390.3 General applicability.

(a) The rules in subchapter B of this chapter are applicable to all employers, employees, and commercial motor vehicles, which transport property or passengers in interstate commerce.

(b) The rules in part 383, Commercial Driver's License Standards; Requirements and Penalties, are applicable to every person who operates a commercial motor vehicle, as defined in § 383.5 of this subchapter, in interstate or intrastate commerce and to all employers of such persons.

(c) The rules in part 387, Minimum Levels of Financial Responsibility for Motor Carriers, are applicable to motor carriers as provided in § 387.3 or § 387.27 of this subchapter.

(d) Additional requirements. Nothing in subchapter B of this chapter shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(e) Knowledge of and compliance with the regulations. (1) Every employer shall be knowledgeable of and comply with all regulations contained in this subchapter which are applicable to that motor carrier's operations.

(2) Every driver and employee shall be instructed regarding, and shall comply with, all applicable regulations contained in this subchapter.

(3) All motor vehicle equipment and accessories required by this subchapter shall be maintained in compliance with all applicable performance and design criteria set forth in this subchapter.

(f) Exceptions. Unless otherwise specifically provided, the rules in this subchapter do not apply to—

(1) All school bus operations as defined in § 390.5, except for the provisions of §§ 391.15(f), 392.80, and 392.82 of this chapter.

(2) Transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States;

(3) The occasional transportation of personal property by individuals not for compensation nor in the furtherance of a commercial enterprise;

(4) The transportation of human corpses or sick and injured persons;

(5) The operation of fire trucks and rescue vehicles while involved in emergency and related operations;

(6) The operation of commercial motor vehicles designed or used to transport between 9 and 15 passengers (including the driver), not for direct compensation, provided the vehicle does not otherwise meet the definition of a commercial motor vehicle, except that motor carriers and drivers operating such vehicles are required to comply with §§ 390.15, 390.19, 390.21(a) and (b)(2), 391.15(f), 392.80 and 392.82 of this chapter.

(7) Either a driver of a commercial motor vehicle used primarily in the transportation of propane winter heating fuel or a driver of a motor vehicle used to respond to a pipeline emergency, if such regulations would prevent the driver from responding to an emergency condition requiring immediate response as defined in § 390.5.

(g) Motor carriers that transport hazardous materials in intrastate commerce. The rules in the following provisions of subchapter B of this chapter apply to motor carriers that transport hazardous materials in intrastate commerce and to the motor vehicles that transport hazardous materials in intrastate commerce:

(1) Part 385, subparts A and E, for carriers subject to the requirements of § 385.403 of this chapter.

(2) Part 386, Rules of practice for motor carrier, broker, freight forwarder, and hazardous materials proceedings, of this chapter.

(3) Part 387, Minimum Levels of Financial Responsibility for Motor Carriers, to the extent provided in § 387.3 of this chapter.

(4) Section 390.19, Motor carrier identification report, and § 390.21, Marking of CMVs, for carriers subject to the requirements of § 385.403 of this chapter. Intrastate motor carriers operating prior to January 1, 2005, are excepted from § 390.19(a)(1).

(h) Intermodal equipment providers. On and after December 17, 2009, the rules in the following provisions of subchapter B of this chapter apply to intermodal equipment providers:

(1) Subpart F, Intermodal Equipment Providers, of Part 385, Safety Fitness Procedures.

(2) Part 386, Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings.

(3) Part 390, Federal Motor Carrier Safety Regulations; General, except § 390.15(b) concerning accident registers.

(4) Part 393, Parts and Accessories Necessary for Safe Operation.

(5) Part 396, Inspection, Repair, and Maintenance.

[53 FR 18052, May 19, 1988, as amended at 54 FR 12202, Mar. 24, 1989; 58 FR 33776, June 21, 1993; 59 FR 8752, Feb. 23, 1994; 59 FR 67554, Dec. 29, 1994; 62 FR 1296, Jan. 9, 1997; 63 FR 33276, June 18, 1998; 64 FR 48516, Sept. 3, 1999; 66 FR 2766, Jan. 11, 2001; 68 FR 47875, Aug. 12, 2003; 69 FR 39372, June 30, 2004; 72 FR 36790, July 5, 2007; 73 FR 76820, Dec. 17, 2008; 75 FR 5002, Feb. 1, 2010; 75 FR 59135, Sept. 27, 2010; 76 FR 75487, Dec. 2, 2011]

49 CFR 397.3 State and local laws, ordinances, and regulations.

Every motor vehicle containing hazardous materials must be driven and parked in compliance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated, unless they are at variance with specific regulations of the Department of Transportation which are applicable to the operation of that vehicle and which impose a more stringent obligation or restraint.

§31305. General driver fitness, testing, and training

(a) Minimum Standards for Testing and Fitness.—The Secretary of Transportation shall prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle. The regulations—

(1) shall prescribe minimum standards for written and driving tests of an individual operating a commercial motor vehicle;

(2) shall require an individual who operates or will operate a commercial motor vehicle to take a driving test in a vehicle representative of the type of vehicle the individual operates or will operate;

(3) shall prescribe minimum testing standards for the operation of a commercial motor vehicle and may prescribe different minimum testing standards for different classes of commercial motor vehicles;

(4) shall ensure that an individual taking the tests has a working knowledge of—

(A) regulations on the safe operation of a commercial motor vehicle prescribed by the Secretary and contained in title 49, Code of Federal Regulations; and

(B) safety systems of the vehicle;

(5) shall ensure that an individual who operates or will operate a commercial motor vehicle carrying a hazardous material—

(A) is qualified to operate the vehicle under regulations on motor vehicle transportation of hazardous material prescribed under chapter 51 of this title;

(B) has a working knowledge of—

(i) those regulations;

(ii) the handling of hazardous material;

(iii) the operation of emergency equipment used in response to emergencies arising out of the transportation of hazardous material; and

(iv) appropriate response procedures to follow in those emergencies; and

(C) is licensed by a State to operate the vehicle after having first been determined under section 5103a of this title as not posing a security risk warranting denial of the license.

(6) shall establish minimum scores for passing the tests;

(7) shall ensure that an individual taking the tests is qualified to operate a commercial motor vehicle under regulations prescribed by the Secretary and contained in title 49, Code of Federal Regulations, to the extent the regulations apply to the individual; and

(8) may require—

(A) issuance of a certification of fitness to operate a commercial motor vehicle to an individual passing the tests; and

(B) the individual to have a copy of the certification in the individual's possession when the individual is operating a commercial motor vehicle.

(b) Requirements for Operating Vehicles.—

(1) Except as provided in paragraph (2) of this subsection, an individual may operate a commercial motor vehicle only if the individual has passed written and driving tests that meet the minimum standards prescribed by the Secretary under subsection (a) of this section to operate the vehicle and has a commercial driver's license to operate the vehicle.

(2) The Secretary may prescribe regulations providing that an individual may operate a commercial motor vehicle for not more than 90 days if the individual—

(A) passes a driving test for operating a commercial motor vehicle that meets the minimum standards prescribed under subsection (a) of this section; and

(B) has a driver's license that is not suspended, revoked, or canceled.

(c) Standards for Training.—Not later than 1 year after the date of enactment of the Commercial Motor Vehicle Safety Enhancement Act of 2012, the Secretary shall issue final regulations establishing minimum entry-level training requirements for an individual operating a commercial motor vehicle—

(1) addressing the knowledge and skills that—

(A) are necessary for an individual operating a commercial motor vehicle to safely operate a commercial motor vehicle; and

(B) must be acquired before obtaining a commercial driver's license for the first time or upgrading from one class of commercial driver's license to another class;

(2) addressing the specific training needs of a commercial motor vehicle operator seeking passenger or hazardous materials endorsements;

(3) requiring effective instruction to acquire the knowledge, skills, and training referred to in paragraphs (1) and (2), including classroom and behind-the-wheel instruction;

(4) requiring certification that an individual operating a commercial motor vehicle meets the requirements established by the Secretary; and

(5) requiring a training provider (including a public or private driving school, motor carrier, or owner or operator of a commercial motor vehicle) that offers training that results in the issuance of a certification to an individual under paragraph (4) to demonstrate that the training meets the requirements of the regulations, through a process established by the Secretary.

ARTICLE 4. DEALERS

A.R.S. § 28-366. Director; rules

The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:

1. Collection of taxes and license fees.
2. Public safety and convenience.
3. Enforcement of the provisions of the laws the director administers or enforces.
4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

A.R.S. § 28-4303. Administration

The director shall supervise and regulate all persons required by this chapter to be licensed. In the supervision and regulation required by this section, the director may:

1. Investigate as the director deems necessary and for that purpose the director may require the aid and assistance of the highway patrol division.
2. Conduct hearings.
3. Compel the attendance of witnesses at the hearings.

28-4361. License application; criminal records check

A. A person shall apply for a license to the director in writing on forms prescribed by the director. The person shall include with the application all documents and bonds required and the annual license fees prescribed by section 28-4302.

B. The application shall be verified and shall contain:

1. The name and residence of either:

(a) The applicant.

(b) If the applicant is a partnership, each partner.

(c) If the applicant is a corporation, each principal officer, director, agent or stockholder who owns twenty per cent or more of the corporation and the name of the state in which the corporation was organized.

2. The principal place of business of the applicant.
3. The established place of business or the place of business at or from which the applicant will conduct the business.
4. The make or makes of new motor vehicles, if any, that the applicant will sell or offer for sale in this state.
5. The business hours of the applicant.
6. Other information that the director requires.

C. Each applicant who owns twenty per cent or more of an entity, and each partner or stockholder who owns twenty per cent or more of an entity, and who seeks a new license shall provide:

1. A full set of fingerprints to the department for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
2. A nonrefundable fee to be paid to the department of public safety for the criminal records check.
D. If a licensee adds or changes a partner or stockholder who owns twenty per cent or more of the entity and who was not included in the criminal records check on a prior application, the licensee shall notify the department within thirty days of the change. At the time of notification, an application and, if applicable, a full set of fingerprints and the fee for a criminal records check shall be submitted to the department. If any individual who is added or changed by the licensee is found to be ineligible pursuant to section 28-4365, the director, on completion of the criminal records check, shall advise the licensee and the individual in writing that the license will be revoked, unless the individual is removed from the position, and of the grounds for the action.
E. The requirement for a criminal records check:
1. Does not apply to a manufacturer, importer, factory branch or distributor or a person who is under eighteen years of age on the date the application is filed with the department.
2. May not apply if the application is for a subsequent license and each applicant who owns twenty per cent or more of an entity, and each partner or stockholder who owns twenty per cent or more of an entity, either:
(a) Have submitted to a criminal records check during the past five years.
(b) Are currently licensed under this section.

28-4362. Application; fee; bond
Applications shall be accompanied by:
1. The filing fees prescribed in section 28-4302, and each licensee shall pay the annual license fee prescribed in section 28-4302.
2. A bond that:
(a) Is in a form to be approved by the director.
(b) Is in an amount prescribed by the director of at least twenty thousand dollars for an automotive recycler's license and not more than one hundred thousand dollars for all other licenses.
(c) Is executed by a surety company authorized to transact business in this state as surety on the bond with the applicant as principal obligor on the bond and the state as obligee.
(d) Is cancellable only on at least sixty days' prior notice to the director.
(e) Inures to the benefit of a person who suffers loss because of either:
(i) Nonpayment by the dealer of customer prepaid title, registration or other related fees or taxes.
(ii) The automotive recycler's or the dealer's failure to deliver in conjunction with the sale of a vehicle a valid vehicle title certificate free and clear of any prior owner's interests and all liens except a lien created by or expressly assumed in writing by the buyer of the vehicle.
3. A copy of the dealer's current transaction privilege tax license.

28-4410. Consignment contracts; definitions

A. A dealer in motor vehicles, trailers and semitrailers may possess and offer for sale a motor vehicle, trailer or semitrailer without having a duly or regularly assigned certificate of title in the dealer's possession if the dealer possesses all of the following:

1. A consignment contract or dealer acquisition contract.

2. The most recent registration card for the vehicle.

3. A statement by the lienholder disclosing all unsatisfied liens, if applicable.

B. A dealer may complete the sale of a motor vehicle, trailer or semitrailer offered for sale under subsection A of this section when the dealer possesses verification that all liens on the motor vehicle, trailer or semitrailer have been satisfied by the dealer or assumed by the purchaser.

C. A dealer who offers a vehicle for sale on consignment shall inform a prospective customer that the vehicle is on consignment to the dealer.

D. The director shall adopt rules on the minimum form and content of consignment contracts and dealer acquisition contracts.

E. This chapter does not allow the consignment of motor vehicles from one licensee to another licensee.

F. A dealer in motor vehicles, trailers or semitrailers may offer for sale or sell a motor vehicle, trailer or semitrailer without having a duly or regularly assigned certificate of title in the dealer's possession if the dealer possesses a complete photocopy of the duly or regularly assigned certificate of title, the original of which has been delivered to a financial institution or a subsidiary of the financial institution pursuant to an inventory financing arrangement.

G. For the purposes of this section:

1. "Consignment contract" means an agreement executed by both the owner of a vehicle and a licensed motor vehicle dealer pursuant to which the vehicle is delivered to the dealer to sell for the owner.

2. "Dealer acquisition contract" means an agreement that both:

(a) Is executed by both the owner of a vehicle, the title for which is in possession of a lienholder in accordance with the laws of this state or another state, and a licensed motor vehicle dealer.

(b) Transfers ownership of the vehicle described in subdivision (a) to a licensed dealer from a person other than a manufacturer, distributor, franchisor or dealer.

3. "Inventory financing arrangement" means an agreement under which a dealer grants a security interest to a financial institution under the provisions of title 47, chapter 9.

28-4543. <u>Rules; manufacturer unladen vehicle test license plates; suspension of use</u>

A. The director shall adopt rules for the enforcement and administration of sections 28-4539 through 28-4542.

B. The rules shall provide for the suspension of the use of any or all of the unladen vehicle test license plates that were previously issued to a manufacturer for a violation of sections 28-4539 through 28-4542 or the rules adopted under this section.

C. The director shall not suspend the use of the test license plates under subsection B of this section for failure, neglect or refusal to file for timely renewal or for more than three months.

D-5

ARIZONA STATE LOTTERY COMMISSION (F-16-0305)
Title 19, Chapter 3, Article 10, Promotions

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: April 5, 2016 **AGENDA ITEM: D-5**

TO: Members of the Governor's Regulatory Review Council

FROM: Shama Thathi, Staff Attorney

DATE : March 18, 2016

SUBJECT: **ARIZONA STATE LOTTERY COMMISSION (F-16-0305)**
Title 19, Chapter 3, Article 10, Promotions

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The Arizona State Lottery Commission oversees the Arizona Lottery and is charged with maximizing net revenue while maintaining the dignity of the state. Unless otherwise indicated by context, this memo refers to the agency as "Commission."

This five-year review report covers six rules related to Promotions in Title 19, Chapter 3, Article 10.

Article Contents

Article 10 contains six rules that set forth provisions to the conduct of Lottery promotions to increase sales, public awareness of Lottery games and benefits, and retailer participation in Lottery programs. The rules also explain how to determine a winning promotion, the procedures required to claim promotional items, and disputes concerning promotions.

Year that Each Rule was Last Amended or Newly Made

The rules were made by final exempt rulemaking on September 15, 2007.

Proposed Action

The Commission intends to submit a final rulemaking package to the Attorney General's Office by June 2018. According to A.R.S. § 41-1057(A)(4), the Commission is exempt from GRRC, "if making rules that relate…to design, operation, or prize structure of a lottery game."

Summary of Reasons for the Proposed Action

All of the rules need to be amended to improve clarity, conciseness, and understandability.

Exemption or Request and Approval for Exception from the Moratorium

In May 2015, the Commission sent a request to the Governor's Office for an exception from the rulemaking moratorium on a number of articles, including Article 10. The Governor's Office only granted approval to amend Retailer, Procurement, and Instant/On-Line game rules. The Commission intends to submit another request for an exemption from the Executive Order 2016-03 for Article 10.

Substantive or Procedural Concerns

None

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. <u>Has the agency certified that it is in compliance with A.R.S. § 41-1091?</u>

Yes. The Commission has certified that it is in compliance with A.R.S. § 41-1091.

2. <u>Has the agency analyzed the rules' effectiveness in achieving their objectives?</u>

Yes. The Commission indicates that all of the rules should be amended to be effective.

- R19-3-1001 should include "social media" in the definition of "media."
- R19-3-1002 is ineffective because it is burdensome to follow for every promotion. The number of promotions has increased significantly, making it extremely difficult to conduct necessary promotions if specific Commission approval is required for each separate promotion. The rule should be amended to provide the Commission with more flexibility in promotional activities.
- R19-3-1003 should redefine "public contest" to include contests that are related to specific Lottery games and include playstyles for "coupon" and "buy one, get one" promotions.
- R19-3-1004 should include descriptions of "coupon" and "buy one, get one" promotions, as well as redefine "public contest" to include contests that are related to specific Lottery games.
- R19-3-1007 is generally ineffective because the claim procedures are no longer included in the Promotion Profile. The rule should be revised to allow for the official promotion rules, which are posted on the Lottery's website, to govern the claim procedure.
- R19-3-1008 should indicate that a replacement ticket is the "sole and exclusive remedy."

3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?

No. The Commission indicates that it has not received any written criticisms of the rules during the last five years.

4. Has the agency analyzed whether the rules are authorized by statute?

Yes. As general authority, the Commission cites to A.R.S. § 5-554(B), under which the Commission shall "authorize the director to adopt rules in accordance with [T]itle 41, [C]hapter 6 [Administrative Procedure]." Also, the Commission has authority under A.R.S. § 5-554(B)(7) to adopt rules for "[m]atters necessary or desirable for the efficient and economical operation and administration of the [L]ottery." Further, the Commission has specific authority to approve orders pertaining to the sale of tickets for promotional purposes. See A.R.S. § 5-554(C)(3).

5. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes. The Commission indicates that the rules are consistent with state statutes and rules. No federal statutes apply to these rules.

6. Has the agency analyzed the current enforcement status of the rules?

Yes. The Commission indicates that it enforces the rules as written, with the following exceptions:

- R19-3-1002 is not enforced as written for every promotion due to the burden it imposes on the Commission's ability to conduct timely marketing promotions. Currently, the Commission is utilizing generic profiles that it has approved. Generic profiles accomplish the same purpose as "Promotion Profiles," as long as there are official promotion rules under the profile for each promotion. The official promotion rules are posted on the Lottery's website.
- R19-3-1007 is not enforced as written. The procedure for claiming prizes is posted on the Lottery's website for each promotion as part of promotion's official rules instead of in the Promotion Profile as noted in the rule.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Commission notes that several of the rules contain outdated terminology and obsolete cross-references. The Commission has identified the following changes that would make the rules more clear, concise, and understandable:

- In R19-3-1001, the term "social media" should be added to the definition of "media."
- Subsections (C) and (D) in R19-3-1003 are duplicative of the Promotional Profile requirements under R19-3-1002. The two provisions should be removed.
- In R19-3-1004, the promotion playstyle "customer service" needs to be redefined.

- R19-3-1007 needs to provide more comprehensive information relevant to current practice for claim procedure.
- R19-3-1008 should reflect the Commission's current language in the Lottery's instant game rules.

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

Not applicable. The Commission indicates that the rules do not correspond to any federal laws.

b. There is statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010, has the agency analyzed whether:

a. The rules require issuance of a regulatory permit, license or agency authorization?

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

b. It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. There is no previous five-year review report for this Article. These rules were last reviewed by the Attorney General pursuant to A.R.S. § 41-1057(A)(4) and this is the first five-year review presented to the Council.

11. Has the agency included a proposed course of action?

Yes. As stated above, the Commission plans to amend all of the rules in Title 19, Chapter 3, Article 10. The Commission intends to submit a final rulemaking to the Attorney General's Office by June 2018.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: April 5, 2016 **AGENDA ITEM: D-5**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economist

DATE : March 18, 2016

SUBJECT: **ARIZONA STATE LOTTERY COMMISSION (F-16-0305)**
Title 19, Chapter 3, Article 10, Promotions

I have reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

The economic, small business, and consumer impact statement (EIS) from the most recent Commission rulemaking completed in 2007 was reviewed. The rules address procedures involved in Arizona Lottery promotions. The Commission is the agency charged with increasing state revenues through lottery games in a manner befitting the dignity of the State of Arizona.

Key stakeholders that are impacted are the Commission, lottery retailers, lottery players, and state revenues. The Commission notes that these rules do not adversely affect consumers because participation in Lottery promotions is entirely voluntary.

Lottery retailers are the only businesses that are directly affected by these rules. The Commission expects that these rules benefit retailers by increasing opportunities to earn commissions. For example, the 2,900 licensed retailers in the State of Arizona earned $49.8 million in commissions in FY15, which is an increase of approximately 35% over FY 2010 commission levels of $36.9 million. A.R.S. § 5-555 specifies that compensation to retailers will be at least 5.5% but not more than 8% of non-Tab Ticket sales. The actual appropriation equates to 6.5% of these sales.

Lottery proceeds totaled $750 million in FY 2015. These dollars funded the Commission's FY 2015 operating budget of $93.3 million and prize winnings of $486.6 million. Pursuant to A.R.S. § 5-572, lottery revenues of $176 million were distributed to other state funds (*detail below from the Commission's Audited Financial Statement).*

Recipients of lottery transfers include:

- $103 million for the General Fund (Includes $37.5 million in debt service)
- $22 million for the University Bond Fund
- $20 million for Health and Welfare Programs
- $11 million for Maricopa Mass Transit
- $10 million for Game and Fish Commission's Heritage Fund
- $3.5 million for ACA's Arizona Competes Fund
- $1 million for Economic Security Homeless Services

The Commission concludes that the economic impact has generally been as predicted in the prior EIS for the rules in the Article cited above.

2. <u>Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?</u>

The Commission determines that the rules require revisions because they are not clear and ineffective as written. In order to address the lack of clarity and effectiveness due to outdated language, the Commission intends to submit a final rulemaking package by June 2018 provided the moratorium is ended or the Commission is granted an exemption.

3. <u>Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?</u>

No analysis was submitted to the Commission by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. <u>Conclusion</u>

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Douglas A. Ducey
Governor

Tony V. Bouie
Executive Director

January 20, 2016

Nicole A. Ong, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 402
Phoenix, AZ 85007

Re: Five Year Review Report
19 A.A.C. 3
Article 10: Promotions

Dear Ms. Ong:

Pursuant to A.R.S. § 41-1056, the Lottery has reviewed 19 A.A.C. 3, Article 10 and is submitting its five year review of the rules. Attached to the report are copies of the existing rules, the previous economic impact statement, and authorizing statutes.

The Lottery is also in compliance with the requirements of A.R.S. § 41-1091 that governs the directory of rules and substantive policy statements.

Should you have any questions, please contact Pam DiNunzio at (480) 921-4489, or email pdinunzio@azlottery.gov

Sincerely,

Tony V. Bouie

Tony V. Bouie, MA, MS, MBA
Executive Director

Enclosures

ARIZONA LOTTERY

Five-Year-Review Report

19 A.A.C. 3

Article 10: Promotions

January 2016

HISTORICAL OVERVIEW OF AGENCY

Agency Mission:

To support Arizona programs for the public benefit by maximizing net revenue in a responsible manner.

Agency Background:

The Arizona Lottery was approved by a statewide public initiative in November 1980, becoming the first state west of the Mississippi to have a legal, state-administered lottery. Although the initial approval margin was slim – 51 to 49 percent – subsequent referendums showed high public support. In November 1997, 68 percent of the voters approved the Lottery for five years and in November 2002, 73 percent of Arizonans voted to extend the Lottery for an additional 10 years. As a result of legislative action in the 2010 Legislative 6th Special Session, the original voter-established Lottery was replaced by a legislatively-established Lottery. This "new" Lottery began operations July 2012 and will be subject to sunset in 2035.

Lottery sales began July 1, 1981, with a single $1 "Scratch it Rich" instant game that sold out 21.4 million tickets in 10 days! Scratchers remained the only product until 1984 when the Lottery introduced its first on-line (draw) game, The Pick. Over the years, additional draw games have periodically been introduced and the number of instant ticket games has grown significantly. The Lottery currently offers seven draw games and has more than 50 instant ticket games in market each year. As a result of legislation in the 2010 Legislative Session, the Lottery also became the provider of instant tab games that are sold by charitable organizations. These organizations earned approximately $1 million in commissions to help support charitable activities in FY15. Legislation passed in the 2015 Legislative Session authorized the Lottery to sell game products in age-restricted locations, with $1 million of proceeds allocated to the Internet Crimes Against Children Fund and the Victim's Rights Enforcement Fund.

Since its inception, the Lottery's mandate has been to maximize net revenue consonant with the dignity of the state. The Lottery is overseen by an Executive Director appointed by the Governor,

in addition to a 5-member Commission, also appointed by the Governor. The Lottery is entirely self-supporting, receiving no General Fund monies. The Lottery sells products and redeems prizes through a state-wide network of approximately 2900 licensed retailers, who receive a commission on each ticket sold.

A portion of Lottery proceeds is appropriated to pay for Lottery operating costs, and at least 50% of revenues must be utilized for payment of prizes. Remaining Lottery funds are statutorily directed to various benefiting funds including the General Fund. In FY10, the State issued bonds against future Lottery revenues in the amount of $450 million. As a result, the Lottery is responsible for meeting bond debt service payments through 2029, in addition to traditional beneficiary obligations.

The Lottery has achieved record sales levels in recent years, despite challenging economic conditions. For FY15, total sales were a record $750 million and transfers to state beneficiaries were $176 million.

OVERVIEW OF 5-YEAR REVIEW

A.R.S. § 5-554(B) requires the Commission to authorize the Lottery Director to adopt rules in accordance with Title 41, Chapter 6. Rules adopted may include matters necessary or desirable for the efficient and economical operation and administration of the Lottery, as provided in A.R.S. § 5-554(B)(7). The Lottery may adopt rules relating to the payment of prizes as provided by A.R.S. § 5-554(B)(3) and A.R.S. § 5-554(C)(3) specifically authorizes the Lottery Commission to approve orders pertaining to the sale of tickets for promotional purposes.

The most recent amendments to 19 A.A.C. 3, Article 10 were effective in September 2007. The Lottery submits rule amendments for this Article to the Attorney General's Office in accordance with A.R.S. § 41-1057(A)(4). The rules were primarily amended to improve efficiency by grouping a lengthy list of existing promotions into more general categories. The promotions rules set forth provisions unique to the conduct of Arizona Lottery promotions with the objective of stimulating sales, as well as public and retailer awareness of Lottery games and benefits.

The review of this rule was conducted by Arizona Lottery staff and the Lottery's Assistant Attorney General. The rules were reviewed for consistency with actual practice, for future promotional needs, and for overall clarity. As a result of the evaluation, the agency intends to amend the rules - although the rules continue to provide an adequate framework, the promotion approval process could be more efficient. The Lottery will strive to submit a final rulemaking package to the Attorney General by June 2018 provided the rulemaking moratorium has been lifted. The Lottery can request an exemption in order to complete the amendments, but recognizes the proposed changes may not sufficiently meet exemption requirements set forth in Executive Order.

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

1. Statutory authority:

General: A.R.S. § 5-554(B).

Specific: A.R.S. § 5-554(C).

4. Consistency with state and federal statutes and other rules made by the agency:

All rules are consistent with the Lottery's enabling legislation, A.R.S. §§ 5-551 *et seq.*, as well as other Lottery rules in 19 A.A.C. 3. There are no federal statutes applicable to these rules.

7. Written criticisms:

No written criticisms of the rules have been received within the last five years.

8. Economic, small business and consumer impact comparison:

The promotions rules were last approved by the Attorney General's Office in August 2007 and an economic impact statement was prepared at that time. After review, the Lottery believes the actual economic impact of the rules is consistent with the 2007 economic impact statement.

The rules continue to primarily affect the agency, Lottery retailers, Lottery players, and to some degree, state revenues. Costs to the Lottery include expenditures associated with cash or merchandise prizes, point-of-sale items, and any dedicated advertising related to promotions. These expenses continue to be included in the agency's annual appropriation. Consistent with the previous economic impact statement, the Lottery has not experienced any additional, unanticipated costs as a result of the rulemaking.

Promotions are used as a tool to expand knowledge and visibility of various game products. In FY15, the Lottery conducted 93 total promotions, which included a combination of game, retailer, and marketing promotions. The corresponding applicable playstyles for these promotions were: Second Chance Drawing – Player (3); Buy X and Get Y Free - Player (77); Media Promotion (11); Sell X and Get Y Free, Every Nth Transaction – Retailer (1); Retailer Incentive (1).

Lottery retailers were identified as the only businesses that would be impacted by these rules. Lottery promotions were expected to benefit retailers through the potential to earn incremental commissions and the Lottery believes the actual impact has been as projected. There are currently about 2900 licensed Lottery retailers that receive a

commission of 6.5% for each Lottery transaction. Although there is no practical way to separate commissions due to promotional activities, traditional retailers earned $49.8 million in commissions in FY15 as compared to $36.9 million five years ago in FY10. Charitable organizations earned approximately $1.0 million in commission for FY15, but typically are not participants in targeted Lottery promotions.

As estimated in the previous economic impact statement, Lottery game promotions provide financial benefit to the state. Although not directly measurable, incremental revenues generated by promotions are revenues that would not have been realized otherwise. A percentage of Lottery game revenue is returned to the state to fund various beneficiary programs as specified in A.R.S. § 5-572. In FY15, the overall percentage returned to the state was about 23% of revenues, for a total of $176 million.

As expected, these rules have not had any negative impact on consumers or the public. Player participation in Lottery promotions is voluntary, offering the potential to win promotional prizes. The rules have not had an identifiable economic impact on political subdivisions of the state or private and public employment.

9. <u>Analysis submitted by another person regarding business competitiveness:</u>

No person has submitted an analysis to the agency that compares the rules' competitive impact on businesses in this state to the competitive impact on businesses in other states.

10. <u>Completion of course of action in previous five-year review:</u>

No previous five-year review was prepared for this Article. These rules were reviewed by the Attorney General pursuant to A.R.S. § 41-1057(A)(4) and this is the first five-year review as mandated by Laws 2012, Chapter 352.

11. <u>Probable benefit compared to burden and costs to persons regulated by the rule:</u>

While the review report notes that individual rules can be improved, the agency has confidence that the rules as a whole impose the least burden and costs to persons regulated by the rules. These rules provide for fair and consistent procedures with respect to the conduct of Lottery promotions, while also serving to protect the interests of the Lottery and the state. Promotion costs are included in the agency's budget and player participation is voluntary.

12. <u>Stringency of the rule compared to corresponding federal law:</u>

There are no federal laws applicable to these rules.

13. <u>Compliance with § 41-1037 regarding the issuance of a permit, license, or agency authorization:</u>

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

ANALYSIS OF INDIVIDUAL RULES

R19-3-1001. Definitions

2. Objective/Purpose:

The objective of the rule is to define terms used in 19 A.A.C. 3, Article 10. The purpose is to clarify meanings that are not self-evident and to allow for consistent interpretation of Article requirements.

3. Effectiveness in achieving the objective:

The rule is mostly effective, but requires minor rewording for certain existing definitions.

5. Agency enforcement of the rule:

The Lottery adheres to the rule as written. The rule is fairly and consistently enforced.

6. Clarity, conciseness and understandability:

The rule is generally clear, concise, and understandable to the general public, but clarity could be improved by including "social media" in the definition for "media" and by redrafting the definition for "category."

14. Proposed course of action:

The Lottery plans to amend this rule by revising the definition of "media."

R19-3-1002. Promotion Profile

2. <u>Objective/Purpose:</u>

The objective of the rule is to explain that each promotion must have a promotion profile and to describe promotion profile requirements. The purpose is to provide a consistent format for all profiles.

3. <u>Effectiveness in achieving the objective:</u>

The rule does not effectively achieve its objective. In practice, the rule is burdensome to follow for every promotion. The rule could be more effective by allowing for some flexibility in promotional activities, such as providing separate criteria for marketing and game promotions, and establishing certain generic marketing promotion profiles that would not require Lottery Commission approval for every individual promotion.

5. <u>Agency enforcement of the rule:</u>

The Lottery does not enforce the rule as written for every promotion. The provision requiring Lottery Commission approval for each promotion profile would vitiate the Lottery's ability to conduct timely marketing promotions. As an interim solution, the agency has developed generic profiles approved by the Commission to accommodate these types of promotions. The official rules adopted under those generic profiles for each individual promotion are posted on the Lottery's website.

6. <u>Clarity, conciseness and understandability:</u>

The rule is partially clear, concise, and understandable to the general public, but requires additional provisions as described in item #3.

14. <u>Proposed course of action:</u>

The Lottery plans to amend this rule by restructuring promotion criteria in order to provide greater flexibility in developing and implementing promotions.

R19-3-1003. Promotion Playstyle – Promotion Type

2. <u>Objective/Purpose:</u>

The objective of the rule is to describe the various methods of play for Lottery promotions. The purpose is to disclose the types of promotions that may be utilized.

3. <u>Effectiveness in achieving the objective:</u>

The rule is mostly effective, but could be more effective by adding playstyles for "coupon" and "buy one, get one" promotions, in addition to redefining "public contest" to include contests that are related to specific Lottery games. This will enhance the Lottery's ability to design effective promotions.

5. <u>Agency enforcement of the rule:</u>

The Lottery adheres to the rule as written. The rule is fairly and consistently enforced.

6. <u>Clarity, conciseness and understandability:</u>

The rule is somewhat clear, concise, and understandable to the general public, but subsections (C) and (D) can be deleted. These provisions are redundant because they are delineated in Promotion Profile requirements under R19-3-1002.

14. <u>Proposed course of action:</u>

The Lottery plans to amend this rule to add new playstyles and clarify existing language.

R19-3-1004. Determination of a Winning Promotion

2. <u>Objective/Purpose:</u>

The objective of the rule is to explain the mechanics of each promotion playstyle. The purpose is to clarify how to win the associated promotional prize.

3. <u>Effectiveness in achieving the objective:</u>

The rule is mostly effective, but could be more effective by adding descriptions for a new "coupon" promotion and a "buy one, get one" promotion, as well as redefining "public contest" to include contests that are related to specific Lottery games.

5. <u>Agency enforcement of the rule:</u>

The Lottery adheres to the rule as written. The rule is fairly and consistently enforced.

6. <u>Clarity, conciseness and understandability:</u>

The rule is partially clear, concise, and understandable to the general public, but clarity could be improved by generally ensuring term usage is consistent throughout the rule and rewriting the description for "customer service" to clarify this promotion playstyle pertains to generic customer service issues, such as instances where a retailer may not comply with a specific level of service dictated by the Lottery.

14. <u>Proposed course of action:</u>

The Lottery plans to amend this rule to add new playstyle language and clarify existing language.

R19-3-1005. Repealed

R19-3-1006. Repealed

R19-3-1007. Procedure for Claiming Prizes and Claim Period

2. <u>Objective/Purpose:</u>

The objective of the rule is to explain prize redemption procedures. The purpose is to clarify how to claim a prize for a particular promotion.

3. <u>Effectiveness in achieving the objective:</u>

The rule does not effectively achieve its objective. Claim procedures for a given promotion are no longer included in the Promotion Profile, but instead are part of the promotion's official rules that are posted on the Lottery's website. Language in this section should be revised to allow for official promotion rules that will govern the procedure for claiming a prize. This will provide consistency with proposed changes for R19-3-1002.

5. <u>Agency enforcement of the rule:</u>

The Lottery does not enforce the rule as written. Detailed claim procedures are posted to the Lottery website for each promotion as part of the promotion's official rules.

6. <u>Clarity, conciseness and understandability:</u>

The rule itself is generally clear, concise, and understandable to the general public, but is inconsistent with current practice. Clarity could be improved by amending the rule to address the issues identified in item #3. The inaccurate procedure detracts from clarity.

14. <u>Proposed course of action:</u>

The Lottery plans to amend this rule so provisions are consistent with actual practice.

R19-3-1008. Disputes Concerning a Promotion Ticket or a Promotion Winner

2. <u>Objective/Purpose:</u>

The objective of the rule is to describe the remedy the Director may authorize in the event of a dispute involving a promotion ticket, and explain that the Lottery is discharged from all liability upon payment and acceptance of a prize. The purpose is to protect the Lottery from liability.

3. <u>Effectiveness in achieving the objective:</u>

This rule is mostly effective, but language should be added that indicates a replacement ticket is the "sole and exclusive remedy" with respect to disputes. This mirrors current language in the Lottery's instant game rules (A.A.C. R19-3-709) and serves to further limit liability.

5. <u>Agency enforcement of the rule:</u>

The Lottery adheres to the rule as written. The rule is fairly and consistently enforced.

6. <u>Clarity, conciseness and understandability:</u>

This rule is somewhat clear, concise and understandable to the general public, but clarity could be improved by addressing the issue in item #3.

14. <u>Proposed course of action:</u>

The Lottery plans to amend the rule by adding language that clarifies that a replacement ticket is the "sole and exclusive remedy" for disputes.

ATTACHMENT A:

Current Rules

ARIZONA ADMINISTRATIVE CODE
TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING
CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION
ARTICLE 10. PROMOTIONS

R19-3-1001. Definitions

In this Article, unless the context otherwise requires:

1. "Category" means player, consumer, retailer, vendor, or other person who participates in the promotion.
2. "Charitable organization" means a non-profit organization organized and operated exclusively for charitable purposes and is qualified under § 502(c)(3) of the United States Internal Revenue Code.
3. "Media" means the method of communication, as in television, radio, print, outdoor, or Internet, with wide reach and influence.
4. "Prize type" means cash, free ticket or tickets, coupon or coupons, merchandise, retailer or vendor product or service, or discount on retailer or vendor product or service.
5. "Promotion" means a program designed to increase awareness of the Lottery, Lottery beneficiaries, and Lottery games that is intended to increase the sale of Lottery tickets to produce the maximum amount of net revenue for the state.
6. "Promotion playstyle" means the type of process or procedure used to control the promotion.
7. "Promotion Profile" means the written document in which the Lottery Commission authorizes the Director to issue an order that contains all of the non-confidential promotion fundamentals required by these rules for a promotion.
8. "Promotional merchandise" means Lottery related goods, consumer products, or services provided by the Lottery for use in a promotion.
9. "Promotional ticket" means a Lottery ticket from a current, active game or a specially designed game provided by the Lottery for use in a promotion.
10. "Targeted game or targeted games" means the specific game or games a promotion is intended to increase sales or awareness of.
11. "Tickets" means one or more Lottery game plays from the targeted game or games.

R19-3-1002. Promotion Profile

A. Each promotion shall have a Promotion Profile and at a minimum, the Profile shall contain the following information:

1. Promotion name;
2. Promotion playstyle;
3. Category;
4. Targeted game, games or Lottery beneficiaries involved in the promotion;
5. Promotion description;
6. Promotion selection criteria, if applicable;
7. Prize type and structure, including the estimated number and size of monetary prizes, free tickets, coupons, certificates, discounts, and merchandise prizes available, if applicable;
8. Retail sales price, if applicable;
9. Promotion date range (beginning and ending promotion dates);
10. Time range, if applicable;

11. Day or days of the week, if applicable;
12. Special feature, if any; and
13. Prize draw eligibility requirements, including filing period for eligibility in a winners drawing, if applicable.

B. The Commission shall approve the Promotion Profile prior to the promotion being introduced to the public for participation.

R19-3-1003. Promotion Playstyle - Promotion Type

A. The playstyle for a specific promotion shall be fully described in the Promotion Profile and shall be one of the following methods of play unless a different method is prescribed by another rule:

1. Second Chance Drawing – Player.
2. Second Chance Drawing – Retailer.
3. Retailer's Second Chance Drawing – Retailer/Player.
4. Increased Prize Payment.
5. Buy X and Get Y Free – Player.
6. Sell X and Get Y Free – Retailer.
7. Validate X and Get Y Free – Retailer.
8. Buy X and Get Y Free, Every Nth Transaction – Player.
9. Sell X and Get Y Free, Every Nth Transaction – Retailer.
10. Complete Survey.
11. Special Events – Player.
12. Retailer Incentive.
13. Cross Promotion.
14. Media Promotion.
15. Customer Service.
16. Mystery Shopper – Retailer.
17. Ask For the Sale – Retailer.
18. Charitable Organization.
19. Public Contest – not related to specific Lottery game.
20. Multi-State Lottery (MUSL) Promotions.

B. More than one promotion may run concurrently.

C. Promotion may be held only on specific days of the week.

D. Promotion may be held only during specific hours of the day.

E. Promotion may be available for selected regions, zones, retailer groups or player groups. Groups may be made by business codes, regions, county, zip code, chain designator, field representative or sales quota.

R19-3-1004. Determination of a Winning Promotion

Eligibility to win a prize is based on compliance with the designated promotion playstyle as follows:

1. Second Chance Drawing – Player. The player shall submit, as entry into a second chance drawing, the required coupon, tickets or entry form as defined in the Promotion Profile. The player or players selected in the prize drawing procedure shall win the prize type designated in the Promotion Profile.

2. Second Chance Drawing – Retailer. The retailer shall submit, as entry into a second chance drawing, the required coupon, tickets or entry form as defined in the Promotion Profile, or the Lottery may use information collected on its database as defined in the Promotion Profile to qualify the retailer. The retailer or retailers selected in the prize drawing procedure shall win the prize type designated in the Promotion Profile.
3. Retailer's Second Chance Drawing – Retailer/Player. Retailers participating in the promotion shall ask players to deposit the required coupon, tickets or entry form into a Drawing Container at the retailer's location. The retailer shall perform random drawings according to the Promotion Profile. The players selected in the drawings shall win the prize type designated in the Promotion Profile. The Lottery shall provide the participating retailer with a predetermined number of prizes for the promotion.
4. Increased Prize Payout. Players who win a particular prize denomination in the target game or games shall win an additional amount specified in the Promotion Profile. The Promotion Profile shall define any required level of participation to be eligible.
5. Buy X and Get Y Free – Player. Each time a player buys a predetermined number of tickets from the targeted game or games, the player shall receive the prize type designated in the Promotion Profile. The Buy X requirement and the Get Y Free shall be specified in the Promotion Profile.
6. Sell X and Get Y Free – Retailer. Each time a retailer sells a predetermined number of tickets from the targeted game or games, the retailer shall receive the prize type designated in the Promotion Profile. The Sell X requirement and the Get Y Free shall be specified in the Promotion Profile.
7. Validate X and Get Y Free – Retailer. Each time a retailer validates a predetermined number or prize amount from the targeted game or games, the retailer shall receive the prize type designated in the Promotion Profile. The Validate X requirement and the Get Y Free shall be specified in the Promotion Profile.
8. Buy X and Get Y Free, Every Nth Transaction – Player. Each time a player buys a predetermined number or type of ticket or tickets from the target game or games and that purchase is the Nth transaction produced by the on-line system, the player shall receive the prize type designated in the Promotion Profile. The Buy X requirement, the Get Y Free, and the Nth transaction shall be specified in the Promotion Profile.
9. Sell X and Get Y Free, Every Nth Transaction – Retailer. Each time a retailer sells a predetermined number of tickets from the target game or games and that sale is the Nth transaction produced by the on-line system, the retailer shall receive the prize type designated in the Promotion Profile. The Sell X requirement, the Get Y Free, and the Nth transaction shall be specified in the Promotion Profile.
10. Complete Survey. The player or retailer who completes a designated survey shall receive the prize type designated in the Promotions Profile.
11. Special Events – Players. Players who attend a Lottery sponsored special event may participate in activities designed to promote Lottery products. Player participation may include spinning the Lottery prize wheel, various carnival type games of little or no skill, or purchase of tickets for targeted game or games. The prize type shall be designated and awarded according to the Promotion Profile.
12. Retailer Incentive. The retailer shall become eligible to earn the designated prize type through participation as defined in the Promotion Profile.

13. Cross Promotion. Players who present a predetermined number of non-winning tickets of the targeted game or games to a participating retailer or vendor shall win the prize type designated in the Promotion Profile.
14. Media Promotion. Players who participate in media-related promotions shall be eligible to receive the prize type designated in the Promotion Profile. The Lottery shall provide the participating media outlet with coupons or tickets from the targeted game or games or promotional merchandise items.
15. Customer Service. If a player is inconvenienced or dissatisfied as a result of Lottery actions below the usual level of service the Lottery provides, the Lottery may provide the player with the prize type designated in the Promotions Profile.
16. Mystery Shopper – Retailer. The Lottery shall send mystery shoppers or spotters to visit randomly selected retailers in the promotional area. Each retailer who meets the requirements specified in the Promotion Profile shall win the designated prize type.
17. Ask For The Sale – Retailer. Each retailer participating in the promotion shall ask all customers who are determined to be of legal gaming age if they want to purchase a Lottery ticket for the targeted game or games. If the retailer does not ask an eligible customer, the customer shall receive a free coupon or ticket from the designated game. The Lottery shall provide the participating retailer with a predetermined number of coupons or tickets from the targeted game or games according to the Promotion Profile.
18. Charitable Organization. The Lottery shall provide a qualifying charitable organization with a predetermined number of tickets, coupons, or promotional merchandise from a targeted game or games to distribute during their charitable event.
19. Public Contest – not related to specific Lottery game. The Lottery may conduct a contest not related to any specific Lottery game as defined in the Promotion Profile.
20. Multi-State Lottery (MUSL) Promotions. The Lottery may participate in a Multi-State Lottery game-related promotion adopted by the MUSL board.

R19-3-1005. Repealed

R19-3-1006. Repealed

R19-3-1007. Procedure for Claiming Prizes and Claim Period

A. To claim a promotion prize, a claimant must follow the procedure provided in the Promotion Profile.

B. Promotion details are subject to the terms of the Promotion Profile which may modify or specify the ownership, authentication, validation procedures, or the time period for claiming a prize.

R19-3-1008. Disputes Concerning a Promotion Ticket or a Promotion Winner

A. If a dispute between the Lottery and a claimant occurs concerning a promotion ticket or the winning of a promotion prize, the Director is authorized to replace the disputed ticket or promotion prize with a ticket or promotion prize of equivalent value from any current promotion. The decision of the Director is a final, appealable agency action.

B. Upon claim verification and payment of a prize, the Lottery shall be discharged of all liability to the claimant.

C. By accepting a prize, the winner, his or her heirs, or legal representative agrees to indemnify and hold harmless, release, and discharge the Lottery, its employees, directors, and Commissioners from and against loss, claim, damage, suit, or injury arising out of or relating to the acceptance of the prize.

ATTACHMENT B:

General & Specific Statutes

ARIZONA REVISED STATUTES
TITLE 5. AMUSEMENTS AND SPORTS
CHAPTER 5.1. STATE LOTTERY

5-554. Commission; director; powers and duties; definitions

A. The commission shall meet with the director not less than once each quarter to make recommendations and set policy, receive reports from the director and transact other business properly brought before the commission.

B. The commission shall oversee a state lottery to produce the maximum amount of net revenue consonant with the dignity of the state. To achieve these ends, the commission shall authorize the director to adopt rules in accordance with title 41, chapter 6. Rules adopted by the director may include provisions relating to the following:

1. Subject to the approval of the commission, the types of lottery games and the types of game play-styles to be conducted.
2. The method of selecting the winning tickets or shares for noncomputerized online games, except that no method may be used that, in whole or in part, depends on the results of a dog race, a horse race or any sporting event.
3. The manner of payment of prizes to the holders of winning tickets or shares, including providing for payment by the purchase of annuities in the case of prizes payable in installments, except that the commission staff shall examine claims and may not pay any prize based on altered, stolen or counterfeit tickets or based on any tickets that fail to meet established validation requirements, including rules stated on the ticket or in the published game rules, and confidential validation tests applied consistently by the commission staff. No particular prize in a lottery game may be paid more than once, and in the event of a binding determination that more than one person is entitled to a particular prize, the sole remedy of the claimants is the award to each of them of an equal portion of the single prize.
4. The method to be used in selling tickets or shares, except that no elected official's name may be printed on such tickets or shares. The overall estimated odds of winning some prize or some cash prize, as appropriate, in a given game shall be printed on each ticket or share.
5. The licensing of agents to sell tickets or shares, except that a person who is under eighteen years of age shall not be licensed as an agent.
6. The manner and amount of compensation to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public, including provision for variable compensation based on sales volume.
7. Matters necessary or desirable for the efficient and economical operation and administration of the lottery and for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares.

C. The commission shall authorize the director to issue orders and shall approve orders issued by the director for the necessary operation of the lottery. Orders issued under this subsection may include provisions relating to the following:

1. The prices of tickets or shares in lottery games.

2. The themes, game play-styles, and names of lottery games and definitions of symbols and other characters used in lottery games, except that each ticket or share in a lottery game shall bear a unique distinguishable serial number.
3. The sale of tickets or shares at a discount for promotional purposes.
4. The prize structure of lottery games, including the number and size of prizes available. Available prizes may include free tickets in lottery games and merchandise prizes.
5. The frequency of drawings, if any, or other selections of winning tickets or shares, except that:
   (a) All drawings shall be open to the public.
   (b) The actual selection of winning tickets or shares may not be performed by an employee or member of the commission.
   (c) Noncomputerized online game drawings shall be witnessed by an independent observer.
6. Requirements for eligibility for participation in grand drawings or other runoff drawings, including requirements for the submission of evidence of eligibility within a shorter period than that provided for claims by section 5-568.
7. Incentive and bonus programs designed to increase sales of lottery tickets or shares and to produce the maximum amount of net revenue for this state.
8. The method used for the validation of a ticket, which may be by physical or electronic presentation of a ticket.

D. Notwithstanding title 41, chapter 6 and subsection B of this section, the director, subject to the approval of the commission, may establish a policy, procedure or practice that relates to an existing online game or a new online game that is the same type and has the same type of game play-style as an online game currently being conducted by the lottery or may modify an existing rule for an existing online game or a new online game that is the same type and has the same type of game play-style as an online game currently being conducted by the lottery, including establishing or modifying the matrix for an online game by giving notice of the establishment or modification at least thirty days before the effective date of the establishment or modification.

E. The commission shall maintain and make the following information available for public inspection at its offices during regular business hours:
1. A detailed listing of the estimated number of prizes of each particular denomination expected to be awarded in any instant game currently on sale.
2. After the end of the claim period prescribed by section 5-568, a listing of the total number of tickets or shares sold and the number of prizes of each particular denomination awarded in each lottery game.
3. Definitions of all play symbols and other characters used in each lottery game and instructions on how to play and how to win each lottery game.

F. Any information that is maintained by the commission and that would assist a person in locating or identifying a winning ticket or share or that would otherwise compromise the integrity of any lottery game is deemed confidential and is not subject to public inspection.

G. The commission, in addition to other games authorized by this article, may establish multistate lottery games to be conducted concurrently with other lottery games authorized under subsection B of this section. The monies for prizes, for operating expenses and for payment to the state general fund shall be accounted for separately as nearly as practicable in the lottery commission's general accounting system. The monies shall be derived from the revenues of multistate lottery games.

H. The commission, in addition to other games authorized by this article, shall establish special instant ticket games with play areas protected by paper tabs designated for use by charitable organizations. The monies for prizes and for operating expenses shall be accounted for separately as nearly as practicable in the lottery commission's general accounting system. Monies saved from the revenues of the special games, by reason of operating efficiencies, shall become other revenue of the lottery commission and revert to the state general fund, except that the commission shall transfer the proceeds from any games that are sold from a vending machine in an age-restricted area to the state treasurer for deposit in the following amounts:

1. Nine hundred thousand dollars each fiscal year in the internet crimes against children enforcement fund established by section 41-199.
2. One hundred thousand dollars each fiscal year in the victims' rights enforcement fund established by section 41-1727.
3. Any monies in excess of the amounts listed in paragraphs 1 and 2 of this subsection, in the state lottery fund established by section 5-571.

I. The commission or director shall not establish or operate any online or electronic keno game or any game played on the internet.

J. The commission or director shall not establish or operate any lottery game or any type of game play-style, either individually or in combination, that uses gaming devices or video lottery terminals as those terms are used in section 5-601.02, including monitor games that produce or display outcomes or results more than once per hour.

K. The director shall print, in a prominent location on each lottery ticket or share, a statement that help is available if a person has a problem with gambling and a toll-free telephone number where problem gambling assistance is available. The director shall require all licensed agents to post a sign with the statement that help is available if a person has a problem with gambling and the toll-free telephone number at the point of sale as prescribed and supplied by the director. The requirements of this subsection apply to tickets and shares printed after July 18, 2000.

L. For the purposes of this section:

1. "Charitable organization" means any nonprofit organization, including not more than one auxiliary of that organization, that has operated for charitable purposes in this state for at least two years before submitting a license application under this article.
2. "Game play-style" means the process or procedure that a player must follow to determine if a lottery ticket or share is a winning ticket or share.
3. "Matrix" means the odds of winning a prize and the prize payout amounts in a given game.

ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-0403)
Title 9, Chapter 8, Article 7, Public Schools

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: April 5, 2016 **AGENDA ITEM: D-6**

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

FROM: Chris Kleminich, Staff Attorney

DATE: March 18, 2016

SUBJECT: **ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-0403)**
Title 9, Chapter 8, Article 7, Public Schools

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Department of Health Services (Department) is to "protect the physical and mental health of the people of this state and to promote the highest standards for licensed health care institutions, emergency services, and care facilities for adults and children." Laws 2000, Ch. 310, § 3. This five-year-review report covers 11 rules in A.A.C. Title 9, Chapter 8, Article 7, related to food, recreational, and institutional sanitation for public schools.

Article Contents, Including the Subject Matter of Each Rule in the Report

Article 6 contains 11 rules that address definitions; general provisions; restroom, bathroom, and shower room requirements; cafeterias and food service; indoor areas; water supply; sewage disposal; refuse management; animal standards; pest control; and inspections.

Year that Each Rule was Last Amended or Newly Made

All of the rules were newly made on March 11, 2006.

Proposed Action

The Department notes that it has almost 60 five-year-review reports due in 2017, 2018, and 2019. For this reason, the Department indicates that it does not plan to amend the rules until after the next five-year-review report is due in 2021, unless a substantive matter with the rules arises before the next five-year-review report.

Summary of Reasons for the Proposed Action

The Department indicates that the rules should be amended to improve clarity, conciseness, and understandability.

Substantive or Procedural Concerns

Council staff empathizes with the pending workload faced by the Department's rulewriting staff, and understands that the Department is engaging in higher priority rulemakings. It is never staff's preference, however, for an agency to identify issues in a five-year-review report without proposing action on those issues within a reasonable period of time.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The Department has certified its compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. The Department indicates that the rules are effective in achieving their objectives.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

Yes. The Department indicates that it has received no written criticisms of the rules during the last five years.

4. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Department cites to A.R.S. § 36-136(F) as general statutory authority, under which the Department "may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health." The Department cites to A.R.S. § 36-136(H)(9) as specific statutory authority, under which the Department 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."

5. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes. The Department indicates that the rules are consistent with other rules and statutes.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department indicates that the rules are enforced as written.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Department indicates that the rules are clear, concise, and understandable, with the following exceptions:

- Section 701: The terms "calendar year" and "complaint" is used only in R9-8-711 and the term "hydration" is used only in R9-8-706(F)(2). These terms do not need to be defined in this section. Similarly, other terms are used only in other definitions and could be described in those definitions. For example, the terms "aquifer," "constructed underground storage facility," and "managed underground storage facility" all cite statutory references and are used only in subsection (50) "underground water source."
- Section 703: The rule should clarify that a lavatory is not required to have multiple hand dryers, and that if a school provides cloth towels, the cloth towels are machine washed with detergent and machine dried after each use.

8. Stringency of the Rules:

a. Are the rules more stringent than corresponding federal law?

No. The Department indicates that the rules do not correspond to any federal laws.

b. If so, is there statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010:

a. Do the rules require issuance of a regulatory permit, license or agency authorization?

Not applicable, as the rules were adopted prior to July 29, 2010 and do not establish licensing, certification, or permit requirements.

b. If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. The Department planned to amend Section 710 to add requirements that would prevent bats from roosting on school buildings. During 2009 and 2010, the Department had received four incident reports of children in public schools being exposed to a rabid bat. The Department anticipated submitting a Notice of Final Rulemaking by March 2014. In the interim, the Department, county sanitarians, and county health officials provided technical assistance to

public schools concerning roosting bats. Since that assistance was provided, the Department has not received any incident reports involving children in public schools being exposed to a rabid bat. As a result, the Department has determined that amending Section 710 to add requirements to prevent bats from roosting on school buildings is no longer required.

11. Has the agency included a proposed course of action?

Yes. As noted above, the Department indicates that it does not plan to amend the rules until after the next five-year-review report is due in 2021, unless a substantive matter with the rules arises before the next five-year-review report.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: April 5, 2016 **AGENDA ITEM: D-6**

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

FROM: GRRC Economist

DATE: March 18, 2016

SUBJECT: **ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-0403)**
Title 9, Chapter 8, Article 7, Public Schools

I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the Article 7 rules.

The rules provide minimum standards for maintaining reasonable sanitary conditions for sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation at public schools. The rules also provide minimum standards for inspection of public schools premises.

The Department believes that the economic impact has been as predicted for the rules. Once implemented, the amendments did not result in a substantial increase in the number of inspections. In FY 2015, 1,832 inspections were conducted at the 1,722 public schools in Arizona, and 33 enforcement actions were taken. Of the 1,832 inspections in 2015, 1,788 were routine and 45 were complaint initiated. The table below details the number of public schools in Arizona, the number of inspections conducted, and the number of enforcement actions taken in the past five years.

Measures	**2011**	**2012**	**2013**	**2014**	**2015**
No. of schools	1,730	1,382	1,699	1,718	1,722
No. of inspections	1,592	1,683	1,993	1,979	1,832
No. of enforcement actions	69	15	25	16	33

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department has determined that the rules in Article 7 are effective and enforced as written.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Arizona Department of Health Services

Division for Policy & Intergovernmental Affairs
Administrative Counsel and Rules

1740 W. Adams, Suite 203
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DOUGLALS A. DUCEY, GOVERNOR
CARA M. CHRIST, MD, DIRECTOR

January 26, 2016

RECEIVED
JAN 26 2016
GRRC

Nicole A. Ong, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 8, Article 7

Dear Ms. Nicole Ong:

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 8, Article 7 is due to the Council no later than January 31, 2016. The Arizona Department of Health Services (Department) has reviewed A.A.C. Title 9, Chapter 8, Article 7, Public Schools, and is enclosing a report to the Council for these rules.

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, copies of authorizing statutes, and copies of each rule reviewed are included in this package. As stated in the report, the Department does not intend to amend these rules.

The Department certifies that the Department is in compliance with A.R.S. § 41-1091.

If you need any further information, please contact me at (602) 542-1020.

Sincerely,

Robert Lane
Director's Designee

RL:tk

Enclosures

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES

FOOD, RECREATIONAL, AND INSTITUTIONAL SANITIATION

ARTICLE 7. PUBLIC SCHOOLS

January 2016

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES

FOOD, RECREATIONAL, AND INSTITUTIONAL SANITIATION

ARTICLE 7. PUBLIC SCHOOLS

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TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES

FOOD, RECREATIONAL, AND INSTITUTIONAL SANITIATION

ARTICLE 7. PUBLIC SCHOOLS

FIVE-YEAR-REVIEW SUMMARY

Arizona Revised Statutes (A.R.S.) § 36-136(H)(9) requires the Arizona Department of Health Services (Department) to “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." In addition to prescribing minimum standards for sanitary conditions that shall be maintained in all public schools, A.R.S. § 36-136(H)(9) requires the Department to provide minimum standards for inspection of public schools and for abatement of a public nuisance identified on the premises of a public school.

The Department has adopted in Arizona Administrative Code (A.A.C.) Title 9, Chapter 8, Article 7 rules to implement A.R.S. § 36-136(H)(9). These rules provide standards pertaining to public schools' water supply, sewage disposal, refuse management, pest control, animals in schools, inspections, cafeterias and food service, indoor areas, and restrooms, bathrooms and shower rooms. The rules are used by county sanitarians, who perform sanitary inspections in public schools under delegation agreements with the Department, and by Department sanitarians, who perform sanitary inspections in public schools in Graham County. In FY 2015, 1,832 inspections were conducted at the 1,722 public schools in Arizona, and 33 enforcement actions were taken.

The current rules in 9 A.A.C. 8, Article 7 were made in response to the 2001 Five-year-review Report, approved by the Governor’s Regulatory Review Council on August 6, 2002, and were adopted effective March 11, 2006. Through an analysis of the rules in 9 A.A.C. 8, Article 7, the Department has determined that all rules are effective; are consistent with state and federal statutes and rules; are enforced; and are mostly clear, concise, and understandable. The Department has received no written criticism of the rules. The Department estimates that the actual economic impact of the rules is consistent with the 2006 EIS for the rulemaking. The Department does not plan to amend the rules in 9 A.A.C. 8, Article 7 as indicated in this report.

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

1. Authorization of the rule by existing statutes

The general statutory authority for the rules in 9 A.A.C. 8 Article 7 is A.R.S. § 36-136(F).
The specific statutory authority for the rules in 9 A.A.C. 8 Article 7 is A.R.S. § 36-136(H)(9).

2. The purpose of the rule

The purpose of the rules in Article 7 is to provide minimum standards for maintaining reasonable sanitary conditions for sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation at public schools. The rules also provide minimum standards for inspection of public schools premises.

3. Analysis of effectiveness in achieving the objective

All of the rules in Articles 7 are effective in achieving their respective objectives.

4. Analysis of consistency with state and federal statutes and rules

The rules in Article 7 are consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The rules in Article 7 are enforced as written without difficulty by Department sanitarians or by county sanitarians according to delegation agreements.

6. Analysis of clarity, conciseness, and understandability

Despite for minor issues identified in R9-8-701 and R9-8-703, the rules in Article 7 are clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years

The Department did not receive any written criticisms of the rules in 9 A.A.C. 8, Article 7 in the past five years.

8. Economic, small business, and consumer impact comparison

The actual economic impact of the rules is as estimated in the 2006 Economic, Small Business, and Consumer Impact Statement (EIS). The Department determined that the probable impacts and effects to state and local government agencies, school districts, privately owned business, and consumers are as reported is the 2006 EIS.

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

In the previous five-year-review report, the Department planned to amend the rule in R9-8-710 to add requirements to prevent bats from roosting on school buildings. During 2009 and 2010, the Department had received four incident reports of public school children's exposure to a rabid bat. At that time, the Department, county sanitarians, and county health officials provided technical assistance to public schools concerning roosting bats. The Department anticipated submitting a Notice of Final Rulemaking by March 2014. The Department also stated that the submission date could change based on the Department's priorities, the length of the moratorium, and staffing. Since the Department, county sanitarians, and county health officials provided technical assistance to public schools concerning roosting bats, the Department has not received any incident reports involving public school children's exposure to a rabid bat. The Department has determined that amending R9-15-710 to add requirements to prevent bats from roosting on school buildings would impose an undue burden on persons regulated by the rule and is no longer required. Therefore, the Department did not amend the rules.

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

Except for minor issues identified in R9-8-701 and R9-8-703, the rules in Article 7 impose the least burden and costs to persons regulated by the rule while achieving the regulatory objective consistent with statutory requirements.

12. Analysis of stringency compared to federal laws

The rules are not related to federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

The rules were adopted before July 29, 2010 and do not establish licensing, certification, or permit requirements.

14. Proposed course of action

With the Department having almost 60 five-year-review reports due in 2017, 2018, and 2019, the Department does not plan to amend the rules to address format and clarity issues in R9-8-701 and R9-8-703 until after the next five-year-review report is due in 2021 unless a substantive matter with the rules arises before the next five-year-review report.

INFORMATION FOR INDIVIDUAL RULES

ARTICLE 1. GENERAL

R9-8-701. Definitions

2. <u>Objective of the rule</u>

The objective of the rule is to define terms used in the Article to help members of the general public read and understand the rules, as well as allow for consistent interpretation of the rules.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable, however, could be improved. For example, the terms "calendar year" and "complaint" is used only in R9-8-711 and the term "hydration" is used only in R9-8-706(F)(2). The rule would be clearer if these terms were described in the rule were the terms are located rather than defining the terms in this Section. Similarly, other terms are used only in other definitions and could be described in those definitions. For example, the terms "aquifer," "constructed underground storage facility," and "managed underground storage facility" all cite statutory references and are used only in subsection (50) "underground water source."

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

Although the rule contains minor formatting issues as described in paragraph 6, the rule provides the least burden and costs to persons regulated by the rule and achieves the regulatory objective consistent with statutory requirements.

R9-8-702. General Provisions

2. <u>Objective of the rule</u>

The objective of the rule is to specify responsible persons, defined in R9-8-701, who shall ensure that a school complies with the requirements of this Article and with federal and state statutes and rules and local ordinances governing subjects included in A.R.S. § 36-136(H)(9). The rule also identifies that a violation of this Article is a public nuisance under A.R.S. § 36-601. A.R.S. § 36-601 specifies the conditions that constitute public nuisances and authority for abatement.

R9-8-703. Restroom, Bathroom, and Shower Room Requirements

2. <u>Objective of the rule</u>

The objective of the rule is to specify requirements related to restrooms, bathrooms, and shower rooms in a public school.

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable, however, could be improved by clarifying that a lavatory is not required to have multiple hand dryers and that if a school provides cloth towels, the cloth towels are machine washed with detergent and machine dried after each use.

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

In the past five years, the Department has not received any reports from a county health department that this rule, specifically the matters discussed in paragraph 6, has created a burden to regulated persons. Therefore, even though the rule could be improved as described in paragraph 6, the Department has determined that the rule continues to provide the least burden and costs to persons regulated by the rule and achieves the regulatory objective consistent with statutory requirements.

R9-8-704. Cafeterias and Food Service

2. <u>Objective of the rule</u>

The objective of the rule is to specify requirements related to cafeterias and food service in a public school.

R9-8-705. Indoor Areas

2. <u>Objective of the rule</u>

The objective of the rule is to specify requirements related to indoor areas of a public school.

R9-8-706. Water Supply

2. <u>Objective of the rule</u>

The objective of the rule is to specify requirements related to the water supply in a public school.

R9-8-707. Sewage Disposal

2. <u>Objective of the rule</u>

The objective of the rule is to specify requirements related to the disposal of sewage in a public school.

R9-8-708. Refuse Management

2. <u>Objective of the rule</u>

The objective of the rule is to specify requirements related to the management of refuse at a public school.

R9-8-709. Animal Standards

2. <u>Objective of the rule</u>

The objective of the rule is to specify requirements related to keeping an animal at a public school.

R9-8-710. Pest Control

2. <u>Objective of the rule</u>

The objective of the rule is to specify requirements related to the control of pests in a public school.

R9-8-711. Inspections

2. <u>Objective of the rule</u>

The objective of the rule is to specify requirements for inspections of public schools by the Department.

ATTACHMENT A

ARTICLE 7. PUBLIC SCHOOLS

R9-8-701. Definitions

In this Article, unless otherwise specified:

1. "Ample water supply" means sufficient water quantity and water pressure to operate all of a school's drinking fountains, bathtubs, showers, lavatories, water closets, and urinals at all times from:
   a. A public water system that complies with 18 A.A.C. 4; or
   b. An underground water source that complies with 18 A.A.C. 11, Articles 4 and 5 or with A.R.S. § 45-811.01.
2. "Animal" means a mammal, bird, reptile, amphibian, fish or invertebrate, such as an insect, spider, worm, snail, clam, crab, or starfish.
3. "Aquifer" means the same as in A.R.S. § 49-201.
4. "Bathroom" means a restroom that contains a shower head or bathtub.
5. "Bathtub" means a receptacle, in which a user sits, with a faucet that supplies hot and cold water, or warm water, for filling the receptacle and a drain connected to a sanitary sewer.
6. "Bottled water" means the same as in R9-8-201.
7. "Bottled water cooler" means a device that is not connected to a plumbing system and provides a vertically falling stream of drinking water from a source approved by the Department under 9 A.A.C. 8, Article 2, or that complies with 18 A.A.C. 4; 18 A.A.C. 11, Articles 4 and 5, or A.R.S. § 45-811.01.
8. "Calendar year" means January 1 through December 31.
9. "Classroom" means an interior area of a school used primarily for instruction of students.
10. "Clean" means free of dirt or debris.
11. "Cold water" means water with a temperature from 33° F to 74° F.
12. "Common drinking cup" means a hand-held container not connected to a plumbing system that:
    a. Holds liquid for human consumption,
    b. Comes into contact with a user's mouth, and
    c. Is used by more than one individual.
13. "Complaint" means information indicating the need for inspection due to possible violations of this Article.
14. "Constructed underground storage facility" means the same as in A.R.S. § 45-802.01.
15. "Debris" means litter or the remains of something that has been broken or torn into pieces.
16. "Department" means the Arizona Department of Health Services.
17. "Device" means a piece of equipment that performs a specific function.
18. "Drinking fountain" means a fixture connected to a plumbing system that provides a non-vertical stream of drinking water from an opening and drains into a sanitary sewer.
19. "Drinking water" means water for human consumption that meets the requirements of 18 A.A.C. 4, or 18 A.A.C. 11, Article 4.
20. "Dumpster" means a container designed for mechanical lifting and dumping by a refuse collection vehicle that transports the container's contents.
21. "Faucet" means a fixture connected to a plumbing system that provides and regulates the flow of drinking water from the plumbing system.
22. "Fixture" means a permanent attachment to a structure.
23. "Floor drain" means an opening in a floor surface that leads to a sanitary sewer.
24. "Food establishment" means an entity that stores, prepares, packages, serves, or otherwise provides food for human consumption directly to a consumer or indirectly through a delivery service.
25. "Habitat" means a place where an animal is kept while on school grounds.
26. "Hot water" means water with a temperature from 95° F to 120° F.
27. "Human consumption" means an individual's use of water for activities such as drinking, bathing, showering, handwashing, cooking, dishwashing, laundering, cleaning, or using a water closet.
28. "Hydration" means the process of replacing fluids lost by a human body.
29. "Lavatory" means a sink or a basin with a faucet that supplies hot and cold water, or warm water, and with a drain connected to a sanitary sewer.
30. "Local health department" means:
    a. The administrative division of an Arizona county, city, or town that manages environmental and health-related issues; or
    b. A public health services district under A.R.S. Title 48, Chapter 33.
31. "Managed underground storage facility" means the same as in A.R.S. § 45-802.01.

32. "Non-absorbent" means not capable of absorbing or soaking up liquids.
33. "Non-classroom" means an indoor area in a school, such as the school office, nurse's office, library, or cafeteria, that are not used primarily for instruction of students
34. "Overflow rim" means the raised edge around a drinking fountain's basin
35. "Participant" means:
    a. A member of the staff or a student of a school, or
    b. A member of the staff or a student from another school, when the individual is present on the grounds of the school specified in subsection (a) for a school-organized activity
36. "Plumbing system" means fixtures, pipes, and related parts assembled to carry drinking water into a structure and carry sewage out of the structure
37. "Portable water container" means any type of device, not connected to a plumbing system, provided by a school, such as a bottle, cup, pitcher, or insulated cylindrical cooler, in which drinking water is held or carried.
38. "Private school" means the same as in A.R.S. § 15-101
39. "Public water system" means the same as in A.R.S. § 49-352
40. "Refuse" means the same as in A.A.C. R18-13-302.
41. "Refuse container" means a portable receptacle used for refuse storage until the refuse is placed into a dumpster.
42. "Responsible person" means:
    a. For an accommodation school defined in A.R.S. § 15-101, the county school superintendent with the powers and duties prescribed in A.R.S. Title 15, Chapter 3, Article 1;
    b. For a charter school defined in A.R.S. § 15-101, the governing board defined in A.A.C. R7-2-1401;
    c. For the Arizona State Schools for the Deaf and the Blind, the board of directors for the Arizona State Schools for the Deaf and the Blind established under A.R.S. Title 15, Chapter 11, Article 2;
    d. For a school operated by a school district, the school district's governing board defined in A.R.S. § 15-101
43. "Restroom" means a structure or room that contains at least one lavatory and water closet or at least one lavatory, water closet, and urinal
44. "Sanitary sewer" means the same as in A.R.S. § 45-101
45. "Sanitize" means the same as in A.A.C. R9-5-101
46. "School" means an institution offering instruction:
    a. That is:
        i. An accommodation school defined in A.R.S. § 15-101;
        ii. The Arizona State Schools for the Deaf and the Blind established under A.R.S. Title 15, Chapter 11, Article 1;
        iii. A charter school defined in A.R.S. § 15-101; or
        iv. A school operated by a school district defined in A.R.S. § 15-101; and
    b. That is not a private school
47. "Sewage" means the same as in A.A.C. R18-13-1102.
48. "Shower head" means a fixture connected to a plumbing system that allows drinking water to fall on a user's body
49. "Shower room" means a structure or room that contains at least one shower head and one floor drain, but does not contain a bathtub, lavatory, water closet, or urinal
50. "Underground water source" means:
    a. An aquifer,
    b. A constructed underground storage facility, or
    c. A managed underground storage facility.
51. "Urinal" means the same as in A.R.S. § 45-311
52. "Warm water" means water with a temperature from 75° F to 94° F.
53. "Water closet" means the same as in A.R.S. § 45-311.
54. "Water cooler" means a fixture connected to a plumbing system for cooling water and dispensing a vertically falling stream of drinking water

Historical Note

New Section made by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1)

R9-8-702. General Provisions

A. A responsible person shall ensure that a school complies with the provisions of this Article and with federal and state statutes and rules and local ordinances governing subjects included in A.R.S. § 36-136(H)(9).

B. A violation of this Article is a public nuisance under A.R.S. § 36-601.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1).

R9-8-703. Restroom, Bathroom, and Shower Room Requirements

A. A responsible person shall ensure that a school provides restrooms or bathrooms that:

1. Are clean; and
2. Have:
   a. Floors of a non-absorbent material;
   b. Floors that slope to a drain connected to a sanitary sewer;
   c. Water closets with seats of the split or U-shaped type made of non-absorbent material;
   d. Interior surfaces that are clean, washable, and free from gaps;
   e. Toilet paper at all water closets; and
   f. Soap and single-use paper towels or air hand dryers at all lavatories.

B. If a school provides a shower room, the responsible person shall ensure that the shower room:

1. Is clean;
2. Does not have a school-provided cloth towel unless, after each use, the cloth towel is machine washed with detergent and machine dried; and
3. Has:
   a. Hot and cold, or warm water from all shower heads;
   b. Floors of a non-absorbent material;
   c. Floors that slope to a drain connected to a sanitary sewer; and
   d. Interior surfaces that are clean, washable, and free of gaps.

C. A responsible person shall ensure that restrooms, bathrooms, and shower rooms are maintained to avoid odors.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1).

R9-8-704. Cafeterias and Food Service

A. A responsible person for a school that stores, prepares, or serves food on the premises shall ensure that the school complies with 9 A.A.C. 8, Article 1, except when the food is brought to the school by staff or a student for personal consumption.

B. If a school contracts with a food establishment to prepare and deliver food to the school, the responsible person shall:

1. Ensure that the food establishment has a current license or permit issued under 9 A.A.C. 8, Article 1; and
2. Retain a copy of the food establishment's current license or permit, required in subsection (B)(1), for inspection.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1).

R9-8-705. Indoor Areas

A responsible person shall ensure that:

1. Indoor classroom and non-classroom areas are clean; and
2. If a classroom has a lavatory in it, the lavatory has soap and single-use paper towels or air hand dryers.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1).

R9-8-706. Water Supply

A. A responsible person shall ensure that a school has an ample water supply.

B. A responsible person shall ensure that a school's drinking water is dispensed from:

1. A clean drinking fountain that:
   a. Provides, from an opening, a stream of water that does not touch anything before reaching a user's mouth;
   b. Has an opening that is higher than the overflow rim to prevent the opening's submersion; and
   c. Has a device to prevent a user's mouth from touching the opening from which the water streams;
2. A clean and sanitized water cooler;

3 A clean and sanitized bottled water cooler;
4 A clean and sanitized lavatory faucet; or
5. A clean and sanitized portable water container

C If a portable water container or the bottle from a school's bottled water cooler is to be refilled, a responsible person shall ensure that the portable water container or the bottle is:
1 Washed, rinsed, and sanitized, as specified in 9 A A.C 8, Article 1;
2 Stored in a clean area; and
3 Refilled with drinking water from any of the sources of drinking water specified in subsection (B).

D A responsible person shall ensure that a school does not provide a common drinking cup unless the common drinking cup is washed, rinsed, and sanitized, as specified in 9 A A C 8, Article 1, after each use

E A responsible person shall ensure that a school provides:
1 Drinking fountains, water coolers, or bottled water coolers according to Tables 1 and 2; and
2. At least one drinking fountain, water cooler, or bottled water cooler on each floor of the school that contains a classroom, regardless of the number of students.

Table 1. Kindergarten to Eighth Grade

Number of Students	Minimum Number of Drinking Fountains, Water Coolers, or Bottled Water Coolers*
1-50	1
51-100	2
101-150	3
151-200	4
201-250*	5

* For each additional 1-50 students, another drinking fountain, water cooler, or bottled water cooler is required

Table 2. Ninth Grade to Twelfth Grade

Number of Students	Minimum Number of Drinking Fountains, Water Coolers, or Bottled Water Coolers*
1-100	1
101-200	2
201-300	3
301-400	4
401-500*	5

* For each additional 1-100 students, another drinking fountain, water cooler, or bottled water cooler is required.

F. A responsible person shall ensure a school provides drinking water that is:
1 Accessible from the school grounds; and
2 Sufficient to maintain the hydration of all participants at school-organized outdoor activities

Historical Note
New Section made by final rulemaking at 12 A A R 282. effective March 11, 2006 (Supp 06-1)

R9-8-707. Sewage Disposal

A responsible person shall ensure that a school's:
1 Water closets and urinals flush sewage to a sanitary sewer;
2 Lavatories, showers, bathtubs, and other plumbing fixtures drain sewage to a sanitary sewer; and
3 Sanitary sewer lines are maintained in accordance with the recommendations of the local health department.

Historical Note
New Section made by final rulemaking at 12 A A R 282. effective March 11, 2006 (Supp 06-1)

R9-8-708. Refuse Management

A responsible person shall ensure that a school:

1. Stores refuse in durable, non-absorbent, and washable containers;
2. Provides:
   a. Indoor refuse containers in each classroom and in each non-classroom area; and
   b. Accessible outdoor refuse containers;
3. Maintains refuse containers so that refuse does not accumulate in school buildings or on school grounds; and
4. Disposes of refuse according to 18 A.A.C. 13, Article 3

Historical Note
New Section made by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1).

R9-8-709. Animal Standards

A. A responsible person shall ensure that an animal in a school:
1. Is kept in a habitat that:
   a. Has water free of algae, insects, and particulate matter;
   b. Is maintained to avoid odors from rotting food or excess animal wastes; and
   c. Is not in the same room as food preparation areas, as specified in 9 A.A.C. 8, Article 1;
2. May be removed from the animal's habitat at the direction of a teacher;
3. When out of the animal's habitat, is under the control of a teacher or a student of the school, if the animal is:
   a. A bird, reptile, amphibian, or invertebrate;
   b. A large mammal, such as a horse, sheep, pig, goat, or cow;
   c. A rabbit or hare; or
   d. A rodent, such as a mouse, rat, hamster, guinea pig, or gerbil;
4. Has a current immunization against rabies, if the animal is a dog, cat or ferret, as documented by:
   a. A dog license issued by a state or county agency;
   b. A rabies immunization certificate from a veterinarian licensed under 3 A.A.C. 11;
   c. A receipt for veterinary services, showing the administration of a rabies vaccine; or
   d. A written statement attesting to the current immunization of the animal against rabies; and
5. Is not:
   a. A non-human primate;
   b. A deer mouse, or other wild mouse of the genus Peromyscus; and
   c. A bat, skunk, raccoon, fox, wolf-hybrid or coyote, except when brought into a classroom for an educational display, as defined in R12-4-401, by a person who has complied with provisions in 12 A.A.C. 4, Article 4, obtained a permit or license issued by the Arizona Game and Fish Department, and is experienced in handling the animal

B. A responsible person shall ensure that a room, in which an animal in a school is kept:
1. Is free of animal waste, except in the habitat; and
2. Has:
   a. A lavatory with soap and single-use paper towels or air hand dryers; or
   b. A product to sanitize the hands of an individual who touches an animal or its habitat

Historical Note
New Section made by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1).

R9-8-710. Pest Control

A responsible person shall ensure that indoor classroom and non-classroom areas are kept free of insects and rodents, except when the insects or rodents are being kept as specified in R9-8-709 or are food for animals being kept as specified in R9-8-709.

Historical Note
New Section made by final rulemaking at 12 A.A.R. 282, effective March 11, 2006 (Supp. 06-1).

R9-8-711. Inspections

The Department shall inspect:
1. A school for compliance with this Article at least once each calendar year, and
2. Areas of a school pertinent to the details of a complaint upon receipt of the complaint

Historical Note
Section repealed; new Section made by final rulemaking at 12 A.A.R. 282, effective March 11, 2006.

ATTACHMENT B

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, but not be limited to, 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, but not be limited to:

(i) Consumer health protection programs, to include, but not be limited to, the functions of community water supplies, general sanitation, vector control and food and drugs.

(ii) Epidemiology and disease control programs, to include, but not be limited to, 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, but not be limited to:

(i) Medical services programs, to include, but not be limited to, 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, to include, but not be limited to, the functions of need determination, availability of health resources to medically dependent, quality control, utilization control and industry monitoring.

(iii) Crippled children's services programs.

(iv) Programs for the prevention and early detection of mental retardation.

(d) Program planning, which shall include, but not be limited to:

(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, but not be limited to, 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 situation is determined to exist, the director shall immediately report such situation to the legislature and the governor. Such 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.

7. Make contracts and incur obligations within the general scope of its 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 its 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 its 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 which 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, that provide educational programs on the repercussions of methamphetamine use. State general fund monies shall not be spent

for the purposes of this paragraph. If the director does not receive sufficient monies from private sources to carry out the purposes of this paragraph, the director shall not provide the educational programs prescribed in this paragraph. Grant monies received pursuant to this paragraph are nonlapsing 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 sections 36-1691, 36-1692 and 36-1693, 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 or 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 sections 36-1691, 36-1692 and 36-1693 and, in consultation with the Arizona poison control system, informing the public as to potential public health risks from the environmental exposure. Pursuant to sections 36-1691, 36-1692 and 36-1693, 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. For the purposes of this paragraph, "chemical or other toxic fire event" means a fire at a building that is required to be tracked in the municipal hazardous material tracking process program pursuant to section 26-343.01.

36-136. <u>Powers and duties of director; compensation of personnel</u>
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 the state.
6. Exercise general supervision over all matters relating to sanitation and health throughout the state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of the 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 the 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 the state, the director may inspect any person or property in transportation through the 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 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.
D. 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.
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 assure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.
E. The compensation of all personnel shall be as determined pursuant to section 38-611.
F. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.
G. Notwithstanding subsection H, 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.
H. 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, 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 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 assure 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 and drink that is:
(a) Served at a noncommercial social event that takes place at a workplace, such as a potluck.
(b) Prepared at a cooking school that is conducted in an owner-occupied home.
(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on site for immediate consumption.
(f) Offered at locations that sell only commercially prepackaged food and drink that is not potentially hazardous and that is displayed in an area of less than ten lineal feet.
5. Prescribe reasonably necessary measures to assure 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 assure 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 assure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.
8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules.
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.
I. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or

county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.
J. 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.
K. 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.
L. 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.
M. Until the department adopts exemptions by rule as required by subsection H, paragraph 4, subdivision (b) of this section, a kitchen in a private home that is used as a cooking school and that prepares and offers food to students is exempt from the rules prescribed in subsection H of this section if all of the following are true:
1. Only one cooking school meal per day is prepared and served.
2. The meal is served to not more than fifteen cooking school students.
3. The students are informed by a statement contained in a published advertisement, mailed brochure and placard posted at the cooking school's registration that the food is prepared in a kitchen that is not regulated and inspected by the department or by a local health authority.

36-601. <u>Public nuisances dangerous to public health</u>
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.
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 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.

D-7

ARIZONA GAME AND FISH COMMISSION (F-16-0407)
Title 12, Chapter 4, Article 7, Heritage Grants

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: April 5, 2016 **AGENDA ITEM: D-7**

TO: Members of the Governor's Regulatory Review Council

FROM: Shama Thathi, Staff Attorney

DATE : March 18, 2016

SUBJECT: **ARIZONA GAME AND FISH COMMISSION (F-16-0407)**
Title 12, Chapter 4, Article 7, Heritage Grants

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Game and Fish Commission ("Commission") is "to manage wildlife and wildlife habitat in this state as provided by law." Laws 2012, Ch. 283, § 3. The Commission oversees the Game and Fish Department, which is in charge of administering state laws regarding wildlife.

This five-year review report covers eight rules that relate to the Heritage Fund ("Fund") in Title 12, Chapter 4, Article 7. The Heritage Fund is funded by monies from the state lottery and is used for identification and protection of sensitive habitats, general habitat evaluation and protection, urban wildlife programs, environmental education, and public access.

Article Contents

Article 7 contains eight rules that establish procedures and substantive requirements for receiving Heritage Grant Fund monies, requirements for participation agreements, and reporting and record-keeping for grant recipients.

Year that Each Rule was Last Amended or Newly Made

The rules were made by final rulemaking on June 1, 2013.

Proposed Action

The Commission proposes to amend all rules by combining them into R12-4-702 as indicated in this memo. The Commission anticipates submitting the Notice of Final Rulemaking to the Council by October 2017.

Summary of Reasons for the Proposed Action

The majority of the rules need to be amended to improve clarity, conciseness, and understandability. The Commission indicates that R12-4-702 should be amended to incorporate the requirements under R12-4-703, R12-4-704, R12-4-705, R12-4-706, R12-4-707, and R12-4-708. This amendment will streamline and restructure the rule to provide requirements in chronological order for ease of understanding.

Exemption or Request and Approval for Exception from the Moratorium

On February 26, 2016, the Commission submitted a request to the Governor's Office for an exception from the rulemaking moratorium. At this time, the Commission is waiting on a response from the Governor's Office.

Substantive or Procedural Concerns

None

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. <u>Has the agency certified that it is in compliance with A.R.S. § 41-1091?</u>

Yes. The Commission has certified that it is in compliance with A.R.S. § 41-1091.

2. <u>Has the agency analyzed the rules' effectiveness in achieving their objectives?</u>

Yes. The Commission indicates that the rules are effective in achieving their objective.

3. <u>Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?</u>

Yes. In 2012, the Commission received a written comment from the Willow Creek Riparian Preserve, Inc. ("Preserve"). The Preserve is a for-profit business that has been working with the Commission to conserve and protect its watershed area outside of Kingman, Arizona. However, in order to continue its work, the Preserve wants to be able to apply for grants through the Heritage Grant Program or the Arizona Wildlife Conservation Fund Grant Program. At that time, the Commission responded that it restricts Heritage Grant Program funding to public agencies and non-profit organizations sponsored by public agencies because it believes the voter-approved funds should not be

used to provide support to for-profit business ventures. The Commission also indicated that for-profit organizations are not eligible for Arizona Wildlife Conservation Fund monies under A.R.S. § 17-299(C). Recently, the Commission revised its response and stated that it supports restricting Heritage Grant funding to public agencies and non-profit organizations, but the Commission does enter into agreements with for-profit businesses when doing so is in the public's best interest. In this five-year review report, the Commission proposes to amend R12-4-701 to add non-governmental organizations to the definition of "eligible applicant" to expand the applicant pool for Heritage Fund Grants.

4. <u>Has the agency analyzed whether the rules are authorized by statute?</u>

Yes. As general authority, the Commission cites to A.R.S. § 17-231(A)(1), under which the Commission shall "[a]dopt rules and establish services it deems necessary to carry out the provisions and purposes of this title." Also, the Commission has authority under A.R.S. § 17-231(A)(6) to make rules on expenditure of funds received.

The Commission also cites to the following statutes that provide specific authority for the rules:

- Under A.R.S. §§ 17-296 through 17-298.01, the Commission has authority over the Heritage Fund.

5. <u>Has the agency analyzed the rules' consistency with other rules and statutes?</u>

Yes. The Commission indicates that the rules are consistent with state statutes and rules.

6. <u>Has the agency analyzed the current enforcement status of the rules?</u>

Yes. The Commission indicates that the rules are enforced as written.

7. <u>Has the agency analyzed whether the rules are clear, concise, and understandable?</u>

Yes. The Commission identifies the following changes that would make the rules more clear, concise, and understandable:

- In R12-4-701, the term "sensitive elements" should be repealed. In addition, the rule should be amended to add non-governmental organizations to the definition of "eligible applicant" to expand opportunities for Heritage Grant funds to additional applicants and remove the stipulation that an eligible applicant cannot have a Heritage Fund Grant in extension. The stipulation that an eligible applicant who is a nonprofit organization must be sponsored by a public agency should be removed. Furthermore, the definition of "public agency" should include "administrative subunit."
- In R12-4-702, "Participant" should be allowed to deposit Heritage Grant Funds to an interest bearing account, provided the earned interest is used to further the project or returned to the Commission upon the completion of the project. The

rule should be amended to clarify potential grant recipients must have a project that is either located in Arizona or benefits Arizona wildlife or its habitat. In addition, this rule should incorporate the requirements under R12-4-703, R 12-4-704, R12-4-705, R12-4-706, and R12-4-707 to streamline and restructure the rule to provide those requirements in chronological order for the ease of understanding.

- R12-4-703 should be repealed to provide the Commission greater flexibility in granting heritage funds. Currently, the language in the rule binds the Commission and fails to meet the Commission's evolving objectives and goals based on the participant projects and the environment.
- R12-4-704 should be repealed and incorporated into R12-4-702 to provide Heritage Grant requirements into one overarching rule for ease of understanding. In addition, requirement that a nonprofit provide proof of their tax exempt status should be removed. The requirement is unnecessary because the rule does not require a nonprofit to have tax exempt status in order to qualify for a Heritage Fund grant. Further, the Commission intents to modify the rule to reflect that the amendments to an agreement require the consent of both parties.
- R12-4-705 should be repealed and incorporated into R12-4-702 to provide Heritage grant requirements into one overarching rule for ease of understanding.
- R12-4-706 should be repealed and incorporated into R12-4-702 to provide Heritage grant requirements into one overarching rule for ease of understanding.
- R12-4-707 should be repealed and incorporated into R12-4-702 to provide Heritage grant requirements into one overarching rule for ease of understanding. In addition, allow the Commission to extend the project period to complete the final closure documents to reduce the burden on the Commission.
- R12-4-708 should be repealed and incorporated into R12-4-702 to provide Heritage grant requirements into one overarching rule for ease of understanding.

8. <u>Has the agency analyzed whether:</u>

a. <u>The rules are more stringent than corresponding federal law?</u>

Not applicable. The Commission indicates that the rules do not correspond to any federal laws.

b. <u>There is statutory authority to exceed the requirements of federal law?</u>

Not applicable.

9. <u>For rules adopted after July 29, 2010, has the agency analyzed whether:</u>

a. <u>The rules require issuance of a regulatory permit, license or agency authorization?</u>

Not applicable. The rules do not require issuance of a permit or license.

b. It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. As indicated in the previous five-year review report, the Commission submitted a final rulemaking to the Council in April 2013.

11. Has the agency included a proposed course of action?

Yes. The Commission intends to take action on all of the rules reviewed and submit a final rulemaking by October 2017.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: April 5, 2016 **AGENDA ITEM: D-7**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economist

DATE : March 18, 2016

SUBJECT: **ARIZONA GAME AND FISH COMMISSION (F-16-0407)**
Title 12, Chapter 4, Article 7, Heritage Grants

I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the rules.

The Department is responsible for establishing policies and rules for the management, preservation, and harvest of Arizona's wildlife. The Arizona Game and Fish Commission makes rules and regulations for managing, conserving, and protecting wildlife and fisheries resources, and safe and regulated watercraft and off-highway vehicle operations for the benefit of the citizens of Arizona. The Heritage Fund grants are supported by revenue from Arizona Lottery sales and are available for projects that focus on wildlife, including wildlife education, schoolyard habitats, and wildlife conservation efforts. Potential grant recipients must have a project that is either located in Arizona or benefits Arizona wildlife or its habitat. Since inception, the Department has awarded more than $15 million through the Heritage Fund grants program to support more than 790 projects throughout the state.

The rules clarify the application process, criteria, and information that the applicant is required to include with a completed application to qualify for a Heritage Fund grant. Additionally, the rules provide applicants with guidance on applying for Heritage Fund grants and explain Heritage Grant recordkeeping and reporting requirements and ensure compliance with established State Historic Preservation Act policies. The rules were adopted to facilitate consistent interpretation and to prevent the regulated community from misinterpreting the intent of Commission rules.

The Department believes that the economic impact has been as predicted for the rules in Article 7. The proposed amendments would have little or no economic impact on the regulated community. The amendments have alleviated administrative burdens and allowed further dissemination of Heritage Grant funds. For the 2012 Heritage Grant cycle year, the first year after revising the application process, a total of 99 applications were received and the Department awarded 23 Heritage Grants totaling $415,647. Of the $432,000 available in FY 2015, $408,092 was awarded. In the 2015 grant cycle, total of 48 Heritage Grant applications were received and 25 were selected.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department indicates that the rules will impose the least burden and costs once amendments are completed.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

THE STATE OF ARIZONA
GAME AND FISH DEPARTMENT
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January 21, 2016

Nicole A. Ong, Chairperson
Governor's Regulatory Review Council
100 N 15th Ave, Suite 402
Phoenix, AZ 85007

RE: Five-year Review Report for 12 A.A.C. 4, Article 7, Heritage Grants

Dear Ms Ong:

On January 15, 2016, the Arizona Game and Fish Commission adopted the enclosed five-year-review report for 12 A.A.C. 4, Article 7, Heritage Grants, for submission to the Council. The report is prepared in accordance with A.R.S. § 41-1056 and the rules and guidelines adopted by the Council. The established due date for the report is February 2016.

The Commission believes the report complies with the Council's requirements as stated under R1-6-301.

The Arizona Game and Fish Commission also certifies compliance with the requirements of A.R.S. § 41-1091. The Commission certifies the following:

1. The Department publishes an annual directory summarizing the subject matter of all currently applicable rules and substantive policy statements;
2. The Department maintains a copy of the directory and all substantive policy statements at the Arizona Game and Fish Department Headquarters, 5000 W. Carefree Highway, Phoenix, AZ 85086 and online at www.azgfd.gov;
3. The Department includes the notice specified under A.R.S. § 41-1091(B) on the first page of each substantive policy statement; and

4. The Department's directory, rules, substantive policy statements, and any other material incorporated by reference in the directory, rules or substantive policy statements are open to public inspection at the Department Headquarters, 5000 W. Carefree Highway, Phoenix, AZ.

If you require additional information concerning the report or its contents, please contact Celeste Cook at (623) 236-7390.

Please let us know if you require anything further.

Sincerely,

Larry D. Voyles
Director

Arizona Game and Fish Commission
2016 Five-Year-Review Report

TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 7. HERITAGE GRANTS

Prepared for the
Governor's Regulatory Review Council

ARIZONA GAME AND FISH COMMISSION

12 A.A.C. 4, ARTICLE 7. HERITAGE GRANTS

2016 FIVE-YEAR REVIEW REPORT

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REPORT - ARTICLE 7. HERITAGE GRANTS

Under A.R.S. § 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. Each agency shall prepare a report summarizing its findings, its supporting reasons, and any proposed course of action; and obtain approval of the report from the Governor's Regulatory Review Council (G.R.R.C.).

G.R.R.C. determines the review schedule. The Arizona Game and Fish Commission's rules listed under Article 7, Heritage Grants, are scheduled to be reviewed by February 2016.

The Arizona Game and Fish Department (Department) tasked a team of employees to review the rules contained within Article 7. The Department prepared a report of its findings based on G.R.R.C. standards. In its report, the review team addressed all internal comments from agency staff; no comments were received from the public. The team took a customer-focused approach, considering each comment from a resource perspective and determining whether the request would cause undue harm to the state's wildlife or negatively affect the Department's wildlife objectives. The review team then determined whether the request was consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public.

The Department anticipates submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by October 2017, provided the current moratorium is not extended or the Commission is granted permission to implement the recommendations made in this report.

The Department also certifies it's compliance with the requirements of A.R.S. § 41-1091. The Department certifies the following:

1. The Department publishes an annual directory summarizing the subject matter of all currently applicable rules and substantive policy statements;
2. The Department maintains a copy of the directory and all substantive policy statements at the Arizona Game and Fish Department Headquarters, 5000 W. Carefree Highway, Phoenix, Arizona 85086;
3. The Department has included the notice specified under A.R.S. § 41-1091(B) on the first page of each substantive policy statement; and
4. The Department provides the directory, rules, substantive policy statements, and any other material incorporated by reference in the directory, rules or substantive policy statements online at azgfd.gov and makes them open to public inspection at the Department Headquarters, 5000 W. Carefree Highway, Phoenix, Arizona 85086.

R12-4-701. HERITAGE GRANT DEFINITIONS

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

   Authorizing statute: A.R.S. § 17-231(A)(1)
   Implementing statute: A.R.S. §§ 17-297 and 17-298

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

   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 12 A.A.C. Chapter 4, Article 7. The rule was adopted to facilitate consistent interpretation and to prevent the regulated community from misinterpreting the intent of Commission rules.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

   The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the definitions are understandable and applicable. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

   The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 12 A.A.C. Chapter 4.

5. **Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

   The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. **Clarity, conciseness, and understandability of the rule.**

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public. However, the Department proposes to amend the rule to repeal "sensitive elements" as the rule that contained the term is recommended for repeal.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

The following comment was submitted in response to the Notice of Proposed Rulemaking**,** 18 A.A.R. 2463, October 5, 2012:

Written Comment: November 05, 2012. The Willow Creek Riparian Preserve, Inc. is a for-profit habitat conservation and preservation organization developed to specifically begin the process and actively manage natural resources within the Willow Creek watershed approximately 30 miles east of Kingman. We would like to request that for-profit organizations, that are qualified, be added to the definition of those that can apply for both the Heritage Grant Program funds and the Arizona Wildlife Conservation Fund Grant program (see sections referenced above). We are currently in the process of creating one of the first ACOE mitigation banks in the State of Arizona and although this process will be a lengthy one there should be no reason that we should incur the full financial burden of continued habitat and natural resource protection within Willow Creek (we took out a second mortgage on our home in order to purchase the first 10 acres on Willow Creek). We have already partnered with the Commission on many aspects of our endeavors to conserve and protect our vanishing riparian system in this watershed. We would like to be able to continue this partnering to full effect through the application process in being able to obtain this vital grant funding.

Revised Agency Response: Arizona voters created the Heritage Fund in 1990, designating up to $10 million a year from lottery ticket sales for the conservation and protection of the state's wildlife and natural areas. The Arizona Game and Fish Commission spends its voter-approved Heritage Fund dollars to recover threatened and endangered species, to help urban residents appreciate and coexist with our unique wildlife, to educate children about the environment, and to create new opportunities for outdoor recreation. While the Commission supports restricting Heritage Grant funding to public agencies and non-profit organizations, the Commission does enter into agreements with for-profit businesses when doing so is in the best interest of the public (which can include providing funding); as in October 2008 when the Department funded fencing materials to construct exclusion and wildlife-friendly fencing on the Willow Creek Riparian Preserve.

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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to remove definitions already provided in statute and reword or add definitions. The Commission anticipated the proposed amendment would have little or no impact on the regulated community.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

   The Department did not receive any analyses.

10. **If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

    In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by January 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

    - Notice of Rulemaking Docket Opening: 18 A.A.R. 2506, October 5, 2012.
    - Notice of Proposed Rulemaking: 18 A.A.R. 2463, October 5, 2012.
    - Public Comment Period: October 5, 2012 through November 5, 2012.
    - G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting.
    - Notice of Final Rulemaking: 19 A.A.R. 768, April 19, 2013.

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

    The 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 12 A.A.C. Chapter 4, Article 7. The rule was

adopted to facilitate consistent interpretation and to prevent the regulated community from misinterpreting the intent of Commission rules. However, the Department proposes to amend the rule to add non-governmental organizations to the definition of "eligible applicant" to expand opportunities for Heritage Grant funds to additional applicants and remove the stipulation that an eligible applicant cannot have a Heritage Fund Grant in extension to make the rule more concise, because this stipulation is addressed under R12-4-702. In addition, the Department proposes to amend the rule to remove the stipulation that an eligible applicant who is a nonprofit organization must be sponsored by a public agency and include "administrative subunit" in the definition of "public agency." The Department anticipates these amendments will reduce the burden on nonprofits and state agency sponsors and make the process more efficient by removing administrative levels. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. **A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

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

13. **For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-5037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. **Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-701 as indicated in this report and anticipates submitting the Notice of Final Rulemaking to the Council by October 2017, provided the current moratorium is not extended or the Commission is granted permission to implement the recommendations made in this report.

R12-4-702. GENERAL PROVISIONS

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)
Implementing statute: A.R.S. §§ 17-297 and 17-298

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

The objective of the rule is to establish the general provisions that apply to all grant fund applicants. The rule was adopted to provide grant applicants with the information necessary to successfully apply for a grant and ensure efficient administration of the application and monitoring processes. The Heritage grants are supported by revenue from Arizona Lottery sales and are available for projects that focus on wildlife, including wildlife education, schoolyard habitats, and wildlife conservation efforts. Potential grant recipients must have a project that is either located in Arizona or benefits Arizona wildlife or its habitat.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 12 A.A.C. Chapter 4.

5. **Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. However, the Department proposes to amend the rule to allow a participant to deposit Heritage Grant Funds to an interest bearing account, provided the earned interest is used to further the project or returned to the Department upon completion of the project. This is proposed to reduce the burden on the regulated community.

6. **Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public. However, the Department proposes to amend the rule to clarify potential grant recipients must have a project that is either located in Arizona or benefits Arizona wildlife or its habitat. In addition, the Department proposes to amend the rule to incorporate the requirements under R12-4-704, R12-4-705, R12-4-706, R12-4-707, and R12-4-708 into this rule to streamline and restructure

the rule to provide those requirements in chronological order for ease of understanding. As a result, R12-4-704, R12-4-705, R12-4-706, R12-4-707, and R12-4-708 will be repealed.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No written criticisms were received.

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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. Because the proposed amendments were either nonsubstantive in nature or rule language previously included in other Article 7 rules, the Commission anticipated the proposed amendment would benefit the regulated community and the Department by clarifying Heritage Grant requirements. The rule was amended to:

   - Update group applicant and participant responsibilities to eliminate redundancy and improve clarity;
   - Direct eligible applicants to the Grant application materials for the most up-to-date project information; require applicants to provide written permission from property owners authorizing project activities and public access, when applicable for eligibility;
   - Eliminate the requirement that proposals be over $1000;
   - Require the participant's project to be in compliance and void of extensions before applying for any future Heritage Grants;
   - Require participants to bear full responsibility for acceptable performance by subcontractors (not a new requirement, previously included in other Article 7 rule);
   - Require the participant to deposit Heritage Grant Funds in a dedicated non-interest bearing account (previously included in other Article 7 rule);
   - Specify a participant shall only use awarded Heritage Grant Funds for eligible purposes (previously included in other Article 7 rule);
   - Specify a participant shall use State equipment purchased with Heritage Grant funds in a manner consistent with the purposes of the Grant Agreement (previously included in other Article 7 rule);
   - Require a participant to surrender to the Department any equipment with an acquisition cost of more than

$500 upon completion of the project (previously included in other Article 7 rule);

- Prohibit a participant from using Heritage Grant funds to pay any portion of a public employee's salary (previously included in other Article 7 rule);
- Require a participant to allow Department employees or agents to conduct inspections and reviews to ensure compliance with all Grant Agreement terms and conditions before release of the final payment (previously included in other Article 7 rule);
- Require a participant to return any remaining unused awarded Heritage Grant funds upon completion of an approved project, unless the Department approved use of those funds for an additional project (previously included in other Article 7 rule);
- Specify restrictions and limitations for use of funds to produce income, unless authorized by the Department (previously included in other Article 7 rule);
- Establish the Department may audit participant and subcontractor records (previously included in other Article 7 rule); and
- Establish the participant is accountable for the subcontractor's performance (previously included in other Article 7 rule).

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by January 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2506, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2463, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 768, April 19, 2013.

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

The rule establishes the general provisions that apply to all grant fund applicants. The rule was adopted to provide grant applicants with the information necessary to successfully apply for a grant and ensure efficient administration of the application and monitoring processes. Heritage Fund money comes from Arizona Lottery ticket sales and was established by voter initiative in 1990. The Heritage Fund Grant Program was established by the Arizona Game and Fish Department in 1992 as part of the overall Heritage Fund program and was initially developed as a way to promote outreach, enhance important partnerships, and generate fresh approaches in support of the Department's mission. Since inception, the Department has had the opportunity to award more than $15 million through the Heritage Fund grants program and support more than 790 projects throughout the state. Applicants and successful grant recipients bear the administrative costs of complying with the provisions, including provisions on the disposal of equipment acquired with grant funding, and the administrative burdens of monitoring and reporting to the Department regarding the use of those funds. To protect Heritage Fund money from potential misuse, the Department must require information and documentation sufficient to ensure that the person submitting the application is an eligible applicant and the proposed project is eligible for grant funds. The Department proposes to amend the rule to prohibit a participant from comingling grant funds with any other funds. The Department estimates the costs and burdens resulting from the rule requirements for both applicants and recipients are not significant and do not deter applications. The rule is beneficial to the regulated community and the public directly impacted, as they enforce the beneficial use of the grants, while protecting them from misuse. It is important to note that the requirements established under this Article apply only to an eligible applicant who elects to apply for the Heritage Grant. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. **A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

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

13. **For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-5037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-702 as indicated in this report and anticipates submitting the Notice of Final Rulemaking to the Council by October 2017, provided the current moratorium is not extended or the Commission is granted permission to implement the recommendations made in this report.

R12-4-703. HERITAGE GRANT PROGRAM FUNDS

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)
Implementing statute: A.R.S. §§ 17-297 and 17-298

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

The objective of the rule is to establish the specific requirements that a project proposal must meet in order to be considered for the various Heritage Grant Program Funds. The rule was adopted to provide grant applicants with specific guidance for goals and objectives listed within each grant sub-category. The Heritage Fund is used to protect endangered species, acquire habitat for the benefit of sensitive species, provide access to outdoor recreational opportunities, and educate children and adults about wildlife. Because the department receives no state tax dollars to cover its operating budget, the Heritage Fund is critical to recovering or sustaining Arizona's unique native wildlife and to managing more than 800 species. Initially, separate Heritage Grant Fund rules were adopted; however, the most recent rulemaking combined those rules into one overarching rule, Heritage Grant Program Funds.

3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

   The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 12 A.A.C. Chapter 4.

5. **Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

   The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. Heritage Funds are used to support activities in six primary areas, each of which may have one or more projects: Environmental Education; Identification, Inventory, Acquisition, Protection, and Management (IIAPM); Outdoor Education; Public Access; Schoolyard Habitat; and Urban Wildlife. However, the Department proposes to repeal the rule to provide the Department with greater flexibility in granting heritage funds in compliance with the manner prescribed under A.R.S. § 17-298.

6. **Clarity, conciseness, and understandability of the rule.**

   The rule is clear, concise, and understandable. The rules are logically organized and are generally written in the active voice so they will be understood by the general public.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No written criticisms were received.

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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to renumber and combine the previous grant fund rules into one overarching rule, Heritage Grant Program Funds. The Commission

anticipated the amendments would benefit the regulated community and the Department by providing Heritage Grant Fund Program information in one concise rule.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by January 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2506, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2463, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 768, April 19, 2013.

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

The rule establishes the specific requirements that a project proposal must meet in order to be considered for the various Heritage Grant Program Funds. The rule was adopted to provide grant applicants with provide specific guidance for goals and objectives listed within each grant sub-category. Heritage funding goes toward conservation efforts such as protecting endangered species, educating students and the general public about wildlife and the outdoors, and creating new opportunities for outdoor recreation. In the 2015 grant cycle, total of 48 Heritage Grant applications were received and, of the $432,000 available, $408,092 was awarded as follows: Environmental Education (EE) of the four applications received, three applicants were awarded EE grants totaling $23,591 of the $24,000 available; Outdoor Education (OE) of the six applications received, five applicants were awarded OE grants totaling $7,920 of the $8,000 available; Schoolyard Habitat (Schoolyard) of

the eleven applications received, five were awarded Schoolyard grants totaling $37,500 of the $37,500 available; Urban Wildlife (Urban) of the ten applications received, five applicants were awarded Urban grants totaling $112,500 of the $112,500 available; Public Access (Access) of the three applications received, three applicants were awarded Access grants totaling $50,000 of the $50,000 available; and Identification, Inventory, Acquisition, Protection and Management (IIAPM) of the fourteen applications received, four applicants were awarded IIAPM grants totaling $176,581 of the $200,000 available. The Department proposes to repeal the rule to provide the Department with greater flexibility in granting heritage funds in compliance with the manner prescribed under A.R.S. § 17-298. The Department believes that once the proposed amendments indicated in the report are made, the rule will no longer exist; thus, the rule will not impose any burden and costs to persons regulated by the rule.

12. **A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

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

13. **For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-5037.**

    The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. **Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

    The Department proposes to amend R12-4-703 as indicated in this report and anticipates submitting the Notice of Final Rulemaking to the Council by October 2017, provided the current moratorium is not extended or the Commission is granted permission to implement the recommendations made in this report.

R12-4-704. GRANT APPLICATION

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

   Authorizing statute: A.R.S. § 17-231(A)(1)
   Implementing statute: A.R.S. §§ 17-297 and 17-298

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

The objective of the rulemaking is to establish the application process, criteria, and information that the applicant is required to include with a completed application. The rule was adopted to provide applicants with guidance on applying for Heritage Fund grants.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 12 A.A.C. Chapter 4.

5. **Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. **Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rules are logically organized and are generally written in the active voice so they will be understood by the general public. However, the Department proposes to repeal the rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements into one overarching rule for ease of understanding.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the**

authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The Commission anticipated the proposed amendments would benefit the regulated community and the Department by clarifying Heritage Grant application requirements. The rule was amended to:

- Revise the title;
- Remove the number of copies an applicant is required to submit to the Department;
- Remove the requirement that an applicant submit a completed checklist; and
- Require an applicant to provide supporting information when applicable.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

10. **If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by January 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2506, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2463, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 768, April 19, 2013.

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

The rule establishes the application process, criteria, and information that the applicant is required to include with a completed application. The rule was adopted to provide applicants with guidance on applying for Heritage Fund grants. Since inception, the Department has awarded more than $15 million through the Heritage Fund grants program to support more than 790 projects throughout the state. To protect Heritage Fund money from potential misuse, the Department must require information and documentation sufficient to ensure that the person submitting the application is an eligible applicant and the proposed project is eligible for grant funds. The Department estimates the costs and burdens resulting from the rule requirements for both applicants and recipients are not significant and do not deter applications. The Department proposes to amend the rule (R12-4-702) to remove the requirement that a nonprofit provide proof of their tax exempt status. As a result of this review, the Department determined that this requirement is unnecessary because the rule does not require a nonprofit to have tax exempt status in order to qualify for a Heritage Fund grant. The Department believes that once the proposed amendments indicated in the report are made, the rule will no longer exist; thus, the rule will not impose any burden and costs to persons regulated by the rule.

12. **A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

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

13. **For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-5037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. **Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-704 as indicated in this report and anticipates submitting the Notice of Final Rulemaking to the Council by October 2017, provided the current moratorium is not extended or the Commission is granted permission to implement the recommendations made in this report.

R12-4-705. REVIEW OF PROPOSALS

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

   Authorizing statute: A.R.S. § 17-231(A)(1)
   Implementing statute: A.R.S. §§ 17-297 and 17-298

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

   The objective of the rulemaking is to establish the Department's guidelines for the review of proposals. The rule was adopted to notify the regulated community that grant awards are made available through a competitive application process. Applications are not evaluated, compared or scored against each other, but are reviewed and judged on the basis of their compatibility with goals, needs, and priorities of the Arizona Game and Fish Department, project feasibility, merit, and usefulness of results consistent with the conservation and management of wildlife and their habitats. All applications received by the deadline date will undergo an initial pre-screening process by Department staff as they are received. Applications successfully pre-screened, will transition to the grant proposal review and scoring process. If the Department feels an application proposal is better aligned within a different Heritage Grant Program Fund, the proposal is moved to that category for evaluation and scoring, and the applicant notified. The Department establishes evaluation scoring teams, comprised of three to five subject matter experts. The Scoring Team's evaluate and score each individual proposal against established evaluation criteria.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

   The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective. In addition, the majority of proposals make it through the initial review, very few are rejected. In 2015, of the 48 proposals received, only 2 were rejected for noncompliance. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

   The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining

consistency include A.R.S. Title 17 and 12 A.A.C. Chapter 4.

5. **Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

   The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. **Clarity, conciseness, and understandability of the rule.**

   The rule is clear, concise, and understandable. The rules are logically organized and are generally written in the active voice so they will be understood by the general public. However, the Department proposes to repeal the rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements into one overarching rule for ease of understanding.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No written criticisms were received.

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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to specify the award of Heritage Grant funds are based on a proposed project's compatibility with Department priorities. The Commission anticipated the proposed amendment would benefit the regulated community and the Department by clarifying Heritage Grant proposals review requirements.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by January 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2506, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2463, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 768, April 19, 2013.

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

The rule establishes the Department's guidelines for the review of proposals. The Department may require persons regulated by the rule to modify an application in order to receive grant funds. Examples of required modifications include, but are not limited to: collecting additional data related to the project, adding species specific guidelines, and signage requirements. The only other option available to the Department is to return the application to the applicant. The Department believes that once the proposed amendments indicated in the report are made, the rule will no longer exist; thus, the rule will not impose any burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

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

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-5037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-705 as indicated in this report and anticipates submitting the Notice of Final Rulemaking to the Council by October 2017, provided the current moratorium is not extended or the Commission is granted permission to implement the recommendations made in this report.

R12-4-706. STATE HISTORIC PRESERVATION OFFICE REVIEW

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. § 17-231(A)(1)
Implementing statute: A.R.S. §§ 41-861 and 41-864

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

The objective of the rulemaking is to notify applicants that Heritage Grant Funds shall not be released until after the Department has consulted with the State Historic Preservation Office and has determined that the project proposal will not have a negative impact on the state's prehistorical, historical, architectural or culturally significant values. The rule was adopted to ensure compliance with established State Historic Preservation Act policies, (*A.R.S.* §§ 41–861 through 865) and the Arizona Antiquities Act (*A.R.S.* §§ 41–841 through 844). These statutes require that specific steps be taken to protect and preserve such properties and or discoveries, and are a condition and precedent to the award of any grant funds.

3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

   The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 12 A.A.C. Chapter 4.

5. **Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

   The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. **Clarity, conciseness, and understandability of the rule.**

   The rule is clear, concise, and understandable. The rules are logically organized and are generally written in the active voice so they will be understood by the general public. However, the Department proposes to repeal the rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements into one overarching rule for ease of understanding.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No written criticisms were received.

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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule title was revised to clarify the State Historic Preservation Office's role and the rule was amended to make the rule more concise. Because the amendments were nonsubstantive in nature, the Commission anticipated the amendments would have no impact on the Department or regulated community.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

10. **If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by January 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2506, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2463, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 768, April 19, 2013.

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

The objective of the rulemaking is to notify eligible applicants that the Department shall not release Heritage Grant Funds until after the Department has consulted with the State Historic Preservation Office and has determined that the project proposal will not have a negative impact on the state's prehistorical, historical, architectural or culturally significant values. The rule was adopted to ensure compliance with established State Historic Preservation Act policies, (*A.R.S.* §§ 41–861 through 865) and the Arizona Antiquities Act (*A.R.S.* §§ 41–841 through 844). These statutes require that specific steps be taken to protect and preserve such properties and or discoveries, and are a condition and precedent to the award of any grant funds. The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. The Department believes that once the proposed amendments indicated in the report are made, the rule will no longer exist; thus, the rule will not impose any burden and costs to persons regulated by the rule.

12. **A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

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

13. **For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-5037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. **Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-706 as indicated in this report and anticipates submitting the Notice of Final Rulemaking to the Council by October 2017, provided the current moratorium is not extended or the Commission is granted permission to implement the recommendations made in this report.

R12-4-707. GRANT AGREEMENT

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. § 17-231(A)(1)
Implementing statute: A.R.S. §§ 17-297 and 17-298

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

The objective of the rulemaking is to establish the minimum terms and conditions that a grant participant must comply with. The rule was adopted to provide applicants notice of the basic terms and conditions that must be met when awarded a Heritage Fund Grant. This allows the person to decide whether they can comply with the minimum requirements before applying for a Heritage Fund Grant.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review,

Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

   The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 12 A.A.C. Chapter 4.

5. **Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

   The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. **Clarity, conciseness, and understandability of the rule.**

   Overall, the rule is clear, concise, and understandable. The rules are logically organized and are generally written in the active voice so they will be understood by the general public. The rule states the Department has the sole discretion to amend a Grant Agreement, which implies the participant is not allowed to provide any input in amending an agreement. This is not an accurate portrayal of the process as the participant may also make recommendations when amending an agreement and both parties are required to sign the amendment. The Department proposes to amend the rule to clarify the grant amendment process. In addition, the term "default" is somewhat ambiguous; the Department proposes to amend the rule to replace the term "default" with "not in compliance." However, the Department proposes to repeal the rule and incorporate its requirements and the proposed amendments into R12-4-702 to provide Heritage Grant requirements into one overarching rule for ease of understanding.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No written criticisms were received.

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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The Commission anticipated the proposed amendments would benefit the regulated community and the Department by clarifying Heritage Grant agreement requirements. The rule was amended to:

- Remove language stating a participant shall not exceed the Heritage Grant allocation unless the parties amend the Grant;
- Remove language stating that once program funds are allocated, the only funds remaining are made up of the 10% withheld by the Department to be released once a project is completed;
- Provide the Department with greater latitude when seeking recovery of grant monies; and
- Transfer provisions to the General Provisions rule that are more appropriately considered general provisions rather than grant conditions or stipulations.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

10. **If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by January 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2506, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2463, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 768, April 19, 2013.

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

The rule establishes the minimum terms and conditions that a grant participant must comply with. The rule was adopted to provide applicants notice of the basic terms and conditions that must be met when awarded a Heritage Fund Grant. This allows the person to decide whether they can comply with the minimum requirements before applying for a Heritage Fund Grant. The Department must place some requirements on a participant sufficient to ensure that funds are used appropriately and the project is carried out as specified in the Grant Agreement to protect the funds from misuse. It is important to note that the requirements established under this Article apply only to an eligible applicant who elects to apply for the Heritage Grant. The Department proposes to amend the rule (R12-4-702) to allow the Department to extend the project period to complete the final closure documents to reduce the burden on the Department. The Department anticipates extending the project period to complete final closure documents the will have no significant impact on the participant. The Department believes that once the proposed amendments indicated in the report are made, the rule will no longer exist; thus, the rule will not impose any burden and costs to persons regulated by the rule.

12. **A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

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

13. **For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-5037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. **Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-707 as indicated in this report and anticipates submitting the Notice of Final Rulemaking to the Council by October 2017, provided the current moratorium is not extended or the Commission is granted permission to implement the recommendations made in this report.

R12-4-708. REPORTING AND RECORDKEEPING REQUIREMENTS

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

   Authorizing statute: A.R.S. § 17-231(A)(1)
   Implementing statute: A.R.S. §§ 17-297, 17-298, 17-298.01, and 35-214

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

   The objective of the rulemaking is to establish the reporting and record keeping requirements that a participant must comply with. The rule was adopted to provide applicants notice of the basic recordkeeping and reporting requirements that must be met to ensure compliance with the agreement.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

   The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

   The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 17 and 12 A.A.C. Chapter 4.

5. **Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

   The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. **Clarity, conciseness, and understandability of the rule.**

   The rule is clear, concise, and understandable. The rules are logically organized and are generally written in the active voice so they will be understood by the general public. However, the Department proposes to repeal the

rule and incorporate its requirements into R12-4-702 to provide Heritage Grant requirements into one overarching rule for ease of understanding.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

   No written criticisms were received.

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 rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on April 2, 2013. The rule was amended to include additional financial reporting requirements; clarify compliance certification and record retention requirements; and establish participants are required to deposit grant funds in a non-interest bearing account. The Commission anticipated the proposed amendments would benefit the regulated community and the Department by clarifying Heritage Grant recordkeeping and reporting requirements.

9. **Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

   The Department did not receive any analyses.

10. **If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

    In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting

the final rules to the Council by January 2013. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2506, October 5, 2012.
- Notice of Proposed Rulemaking: 18 A.A.R. 2463, October 5, 2012.
- Public Comment Period: October 5, 2012 through November 5, 2012.
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting.
- Notice of Final Rulemaking: 19 A.A.R. 768, April 19, 2013.

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

The objective of the rulemaking is to establish the reporting and record keeping requirements that a participant must comply with. The rule was adopted to provide applicants notice of the basic recordkeeping and reporting requirements that must be met to ensure compliance with the agreement. The rule is beneficial to the regulated community and the public directly impacted, as they enforce the beneficial use of the grants, while protecting them from misuse. The Department believes that once the proposed amendments indicated in the report are made, the rule will no longer exist; thus, the rule will not impose any burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

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

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-5037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-708 as indicated in this report and anticipates submitting the Notice of Final Rulemaking to the Council by October 2017, provided the current moratorium is not extended or the Commission is granted permission to implement the recommendations made in this report.

ARTICLE 7. HERITAGE GRANTS

Section

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R12-4-711. Renumbered

R12-4-712. Renumbered

R12-4-701. Heritage Grant Definitions

In addition to the definitions provided under A.R.S. §§ 17-101 and 17-296, the following definitions apply to this Article:

"Administrative subunit" means a branch, chapter, department, division, section, school, or other similar divisional entity of an eligible applicant. For example, an individual:

a. School, but not an entire school district;

b. Field office or project office, but not an entire agency; or

c. Administrative department, but not an entire city government.

"Eligible applicant" means any public agency or non-profit organization sponsored by a public agency that meets the applicable requirements of this Article and does not have a Heritage Fund Grant in extension as authorized under R12-4-707(B).

"Facilities" means any structure or site improvements.

"Fund" means the Arizona Game and Fish Commission Heritage Fund, established under A.R.S. § 17-297.

"Grant agreement" means a document that details the terms and conditions of a grant project.

"Grant effective date" means the date the Department Director signs the Grant Agreement.

"In-kind" means contributions other than cash, which include individual and material resources that the applicant makes available to the project, e.g. a permanent public employee's' salary, volunteer time, materials, supplies, space, or other donated goods and services.

"Participant" means an eligible applicant who has been awarded a grant from the Heritage Fund.

"Project" means an activity, or series of related activities, or services described in the specific project scope of work and results in specific end products.

"Project period" means the time during which a participant shall complete all approved work and related expenditures associated with an approved project.

"Public agency" means the federal government or any federal department or agency, an Indian tribe, this state, all state departments, agencies, boards, and commissions, counties, school districts, public charter schools, cities, towns, all municipal corporations, and any other political subdivision.

"Publicly held lands" means federal, public, and reserved land, State Trust Land, and other lands within Arizona that are owned, controlled, or managed by the federal government, a state agency or political subdivision.

"Sensitive elements" means the specific areas within the geographical area, historically or currently occupied by a species or community of species, which comprise those physical or biological features essential to the establishment or continued existence of the species. These 'sensitive elements' may require special management, conservation or protection considerations.

"Term of public use" means the time period during which the project or facility is expected to be maintained for public use.

Historical Note

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2692, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 4587, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2).

R12-4-702. General Provisions

A. An applicant shall submit to the Department a Heritage Fund Grant application according to a schedule of due dates determined by the Director. In compliance with A.R.S. § 41-2702, the Department shall:

1. Provide public notice of the time, location, and due date for application submission; and
2. Furnish materials necessary to complete the application.

B. An eligible applicant, seeking Heritage Grant funding shall submit a Heritage Grant Application as established under this Article and in compliance with the Heritage Grant application materials.

C. An applicant shall demonstrate ownership or control of the project. Ownership or control may be demonstrated through fee title, lease, easement, or agreement. For all other project types related to sites not controlled by an applicant, an applicant shall provide written permission from the property owner authorizing the project activities and access. The applicant's proof of ownership or control or written permission shall demonstrate:

1. Permission for access is not revocable at will by the property owner, and
2. Public access will be granted to the project site for the life of the project, unless the purpose of the project proposal is to limit access.

D. The Department shall notify an applicant in writing of the results of the applicant's submission and announce Heritage Grant awards at a regularly scheduled open meeting of the Commission.

E. A participant shall not begin a project described in an application until after the grant effective date.

F. A participant shall complete the project as specified under the terms and conditions of the Grant Agreement.

G. A participant shall deposit transferred Heritage Grant Funds in a dedicated non-interest bearing account carrying the name and number of the project.

H. A participant shall use awarded Heritage Grant Funds solely for eligible purposes of the funding program as defined by law and as approved by the Department.

I. A participant shall not use Heritage Grant Funds for the purpose of producing income unless authorized by the Department. A participant shall use income generated to further the purpose of the approved project or surrender the income to the original funding source.

J. If a balance of awarded Heritage Grant funds remain upon completion of approved project elements, the participant may, with Department approval, use those unexpended funds for an additional project consistent with the original scope of work or surrender those unexpended funds to the Department.

K. A participant shall use equipment purchased with Heritage Grant funds in a manner consistent with the purposes of the Grant Agreement, and surrender the equipment to the Department upon completion of the project, if the equipment has an acquisition cost of more than $500.

L. A participant shall not use Heritage Grant funds to pay the salary of any permanent public employee. A participant may use a permanent employee's time as in-kind match for the project specified in the Grant Agreement.

M. A participant shall allow Department employees or agents to conduct inspections and reviews:

1. To ensure compliance with all terms and conditions established under the Grant Agreement.
2. Before release of the final payment.

N. A participant shall submit records that substantiate the expenditure of Heritage Grant funds.

O. A participant shall bear full responsibility for performance by subcontractors to ensure compliance with the Grant Agreement.

P. A participant shall pay all costs associated with the operation and maintenance of properties, facilities, equipment, services, publications, and other media funded by a Heritage Grant for the term of public use as specified in the Grant Agreement.

Q. A participant shall give public acknowledgment of Heritage Fund grant assistance for the term of public use of a project. If a project involves acquisition of property, development of public access, or renovation of a habitat site, the participant shall install a permanent sign describing the funding sources. The participant may include the cost of this signage as part of the original project. The participant is responsible for maintenance or replacement of the sign as required. For other project types, the participant shall include Heritage Fund grant funding acknowledgment on any publicly available or accessible products resulting from the project.

R. An administrative subunit that failed to comply with the terms and conditions of a Grant Agreement shall not apply for, nor be considered for, further Heritage Grants until the administrative subunit's project is brought into compliance.

S. An administrative subunit that has a Heritage Grant funded project in extension shall not apply for, nor be considered for, further Heritage Grants until the administrative subunit's project under extension is completed.

ARTICLE 7. HERITAGE GRANTS

Historical Note

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2692, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 4587, effective February 2, 2008 (Supp. 07-4). Amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2).

R12-4-703. Heritage Grant Program Funds

A. Environmental Education Grant. An eligible applicant shall ensure a proposed project is designed to:

1. Develop awareness, appreciation, and understanding of Arizona's wildlife and its environment and increase responsible actions toward wildlife;
2. Use Arizona wildlife as its focus and present wildlife issues in a balanced and fair manner; and
3. Benefit Arizona public schools, public charter schools, and students.

B. IIAPM Grant: Identification, Inventory, Acquisition, Protection, and Management of Sensitive Elements. An eligible applicant shall ensure a proposed project is designed to:

1. Preserve and enhance Arizona's natural biological diversity; and
2. Incorporate identification, inventory, acquisition, protection, or management of sensitive elements.

C. Outdoor Education Grant: An eligible applicant shall ensure a proposed project is designed to:

1. Provide a meaningful outdoor educational experience;
2. Develop awareness, appreciation, and stewardship of Arizona's wildlife and wildlife habitats; and
3. Benefit Arizona public schools, public charter schools, and students.

D. Public Access Grant: An eligible applicant shall ensure a proposed project:

1. Is designed to increase or maintain public access for recreational use related to wildlife;
2. Is in cooperation with federal land managers, local and state governments, private landowners, or public users, as applicable; and
3. Is designed to inform and educate the public about recreational use of publicly held lands and public access to those lands.

E. Schoolyard Habitat Grant: An eligible applicant shall ensure a proposed project is designed to:

1. Develop awareness, appreciation, and understanding of Arizona's wildlife and its environment;
2. Encourage wildlife educational activities on Arizona school sites or adjacent areas;
3. Encourage native wildlife species, utilize native plant materials, and demonstrate water conservation techniques;
4. Allow Arizona students to actively participate in the planning, development, and construction process;
5. Be integrated into the school curriculum; and
6. Benefit Arizona public schools, public charter schools, and students.

F. Urban Wildlife and Urban Wildlife Habitat Grant. An eligible applicant shall ensure a proposed project:

1. Is designed to conserve, enhance, and establish wildlife habitats and populations consistent with urban environments, and increase public awareness and support for urban wildlife resources; and
2. Meets one of the following criteria:

a. Is within the incorporated limits of a city or town;

b. Is within five miles, in straight distance, of the boundary of an incorporated area; or

c. Is an area that receives significant impact from residential development, as determined by the Department.

Historical Note

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2692, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 4587, effective February 2, 2008 (Supp. 07-4). R12-4-703 renumbered to R12-4-705; new Section R12-4-703 made by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2).

R12-4-704. Grant Application

A. To be considered for a Heritage Grant, an eligible applicant shall submit a grant application as established under this Article and in compliance with the Heritage Grant Application materials.

B. An applicant who is applying for multiple projects, shall submit a separate application for each project.

C. An applicant shall provide the following information on the Heritage Grant application form:

1. The name of the applicant;
2. Any county and legislative district where the project will be developed or upon which the project will have a direct impact;
3. The name, title, mailing address, e-mail address, and telephone number of the individual responsible for the day-to-day management of the proposed project;
4. Identification of the specific Heritage Grant program fund;
5. A descriptive project title;
6. The name of the site, primary location, and any other locations of the project;
7. Description of the:
   a. Scope of work and the objective of the proposed project,
   b. Methods for achieving the objective, and
   c. Desired result of the project;
8. The beginning and ending dates for the project;
9. The resources needed to accomplish the project, including grant monies requested, and, if applicable, evidence of secured matching funds or contributions;
10. If the eligible applicant is a non-profit organization exempt from federal income taxation under Section 501(c) of the Internal Revenue Code, documentation or other evidence of the exemption; and
11. Any additional supporting information required by the Department.

D. The person signing the grant application form shall have the authority to enter into agreements, accept funding, and fulfill the terms of the Grant Agreement on behalf of the applicant.

ARTICLE 7. HERITAGE GRANTS

Historical Note

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 13 A.A.R. 4587, effective February 2, 2008 (Supp. 07-4). R12-4-704 repealed; new Section R12-4-704 renumbered from R12-4-709 and amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2).

R12-4-705. Review of Proposals

A. Heritage Grant proposals are competitive and the Department shall make awards based on a proposed project's compatibility with the priorities of the Department, as approved by the Commission.

B. The Department may require an applicant to modify the application prior to awarding a Heritage Grant, if the Department determines that the modification is necessary for the successful completion of the project.

Historical Note

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2692, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 4587, effective February 2, 2008 (Supp. 07-4). R12-4-705 repealed; new Section R12-4-705 renumbered from R12-4-703 and amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2).

R12-4-706. State Historic Preservation Office Review

When applicable, the Department shall not release Heritage Grant Funds until after the Department has consulted with the State Historic Preservation Office regarding the proposed project's potential impact on historic and archaeological properties and resources.

Historical Note

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2692, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 4587, effective February 2, 2008 (Supp. 07-4). R12-4-706 repealed; new Section R12-4-706 renumbered from R12-4-710 and amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2).

R12-4-707. Grant Agreement

A. Before the Department transfers any grant funds, the applicant shall sign the Grant Agreement.

B. A participant may request an extension beyond the approved project period by writing to the Department. Requests for an extension shall be submitted by the participant no later than 30 days before the end of the project period. If approved, an extension shall be signed by both the participant and the Department.

C. Notwithstanding subsection (B), the Department may extend the project period for good cause such as, but not limited to, inclement weather or internal personnel changes.

D. The Department and the participant may amend the Grant Agreement during the project period. A participant seeking to amend the Grant Agreement shall submit a written request that includes justification to amend the

Grant Agreement. The Department shall prepare any approved amendment in writing and both the Department and the participant shall sign the amendment.

E. If a participant is in default of the Grant Agreement, the Department may:
   1. Terminate the Grant Agreement,
   2. Seek recovery of grant monies awarded, and
   3. Classify the participant as ineligible for Heritage Fund Grants for a period of up to five years.

F. The Department, at its sole discretion, has the authority to include additional conditions in the Grant Agreement prior to signing the Agreement and through Amendment.

Historical Note

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 13 A.A.R. 4587, effective February 2, 2008 (Supp. 07-4). R12-4-707 repealed; new Section R12-4-707 renumbered from R12-4-711 and amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2).

R12-4-708. Reporting and Recordkeeping Requirements

A. A participant shall submit project status reports to the Department as specified in the Grant Agreement. The project status report shall include the following information, as applicable:
   1. Progress in completing approved work;
   2. Itemized, cumulative project expenditures;
   3. A financial accounting of:
      a. Heritage Grant Funds,
      b. Matching funds,
      c. Donations, and
      d. Income derived from project funds;
   4. Any delays or problems that may prevent the on-time completion of the project; and
   5. Any other information required by the Department.

B. At the end of the project period and for each year until the end of the term of public use, a participant shall:
   1. Certify compliance with the Grant Agreement, and
   2. Complete a post-completion report form furnished by the Department.

C. A participant shall submit project status reports, as required in the grant materials. If a participant fails to submit a project status report, the Department may not release any remaining grant monies until the participant has submitted all past due project status reports.

D. Each participant shall retain and shall contractually require each subcontractor to retain all books, accounts, reports, files, and any other records relating to the acquisition and performance of the contract for a period of five years from the end date of the project period. The Department may inspect and audit participant and subcontractor records as prescribed under A.R.S. § 35-214. Upon the Department's request, a participant or subcontractor shall produce a legible copy of these records.

ARTICLE 7. HERITAGE GRANTS

Historical Note

Adopted effective July 12, 1996 (Supp. 96-3). Amended by final rulemaking at 8 A.A.R. 2692, effective June 6, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 4587, effective February 2, 2008 (Supp. 07-4). R12-4-708 repealed; new Section R12-4-708 renumbered from R12-4-712 and amended by final rulemaking at 19 A.A.R. 768, effective June 1, 2013 (Supp. 13-2).

TITLE 17 - GAME AND FISH,
ARTICLE 6. ARIZONA GAME AND FISH COMMISSION HERITAGE FUND

5-572. Use of monies in state lottery fund; report

A. If there are any bonds or bond related obligations payable from the state lottery revenue bond debt service fund, the state lottery revenue bond debt service fund shall be secured by a first lien on the monies in the state lottery fund after the payment of operating costs of the lottery, as prescribed in section 5-555, subsection A, paragraph 1, until the state lottery bond debt service fund contains sufficient monies to meet all the requirements for the current period as required by the bond documents. Debt service for revenue bonds issued pursuant to this chapter shall be paid first from monies that would have otherwise been deposited pursuant to this section in the state general fund. After the requirements for the current period have been satisfied as required by the bond documents, the monies in the state lottery fund shall be expended for the expenses of the commission incurred in carrying out its powers and duties and in the operation of the lottery.

B. Of the monies remaining in the state lottery fund each fiscal year after appropriations and deposits authorized in subsection A of this section, ten million dollars shall be deposited in the Arizona game and fish commission heritage fund established by section 17-297.

C. Of the monies remaining in the state lottery fund each fiscal year after appropriations and deposits authorized in subsections A and B of this section, five million dollars shall be allocated to the department of child safety for the healthy families program established by section 8-481, four million dollars shall be allocated to the Arizona board of regents for the Arizona area health education system established by section 15-1643, three million dollars shall be allocated to the department of health services to fund the teenage pregnancy prevention programs established in Laws 1995, chapter 190, sections 2 and 3, two million dollars shall be allocated to the department of health services for the health start program established by section 36-697, two million dollars shall be deposited in the disease control research fund established by section 36-274 and one million dollars shall be allocated to the department of health services for the federal women, infants and children food program. The allocations in this subsection shall be adjusted annually according to changes in the GDP price deflator as defined in section 41-563 and the allocations are exempt from the provisions of section 35-190 relating to lapsing of appropriations. If there are not sufficient monies available pursuant to this subsection, the allocation of monies for each program shall be reduced on a pro rata basis.

D. If the state lottery director determines that monies available to the state general fund may not equal eighty-four million one hundred fifty thousand dollars in a fiscal year, the director shall not authorize deposits to the Arizona game and fish commission heritage fund pursuant to subsection B of this section until the deposits to the state general fund equal eighty-four million one hundred fifty thousand dollars in a fiscal year.

E. Of the monies remaining in the state lottery fund each fiscal year after appropriations and deposits authorized in subsections A through D of this section, one million dollars or the remaining balance in the fund, whichever is less, is appropriated to the department of economic security for grants to nonprofit organizations, including faith based organizations, for homeless emergency and transitional shelters and related support services. The department of economic security shall submit a report on the amounts, recipients, purposes and results of each grant to the governor, the speaker of the house of representatives and the president of the senate on or before December 31 of each year for the prior fiscal year and shall provide a copy of this report to the secretary of state.

F. Of the monies remaining in the state lottery fund each fiscal year after appropriations and deposits authorized in subsections A through E of this section, and after a total of at least ninety-nine million six hundred forty thousand dollars has been deposited in the state general fund, three million five hundred thousand dollars shall be deposited in the Arizona competes fund established by section 41-1545.01. The balance in the state lottery fund remaining after deposits into the Arizona competes fund shall be deposited in the university capital improvement lease-to-own and bond fund established by section 15-1682.03, up to a maximum of eighty percent of the total annual payments of lease-to-own and bond agreements entered into by the Arizona board of regents.

G. All monies remaining in the state lottery fund after the appropriations and deposits authorized in this section shall be deposited in the state general fund.

H. Except for monies expended for debt service of revenue bonds as provided in subsection A of this section, monies expended under subsection A of this section are subject to legislative appropriation.

I. The commission shall transfer monies prescribed in this section on a quarterly basis.

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. xercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties that relate to adopting and carrying out policies of the department and control of its financial affairs.
8. Prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the director of the division of emergency management.
9. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The commission may:
1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.
2. Establish game management units or refuges for the preservation and management of wildlife.
3. Construct and operate game farms, fish hatcheries, fishing lakes or other facilities for or relating to the preservation or propagation of wildlife.
4. Expend funds to provide training in the safe handling and use of firearms and safe hunting practices.
5. Remove or permit to be removed from public or private waters fish which hinder or prevent propagation of game or food fish and dispose of such fish in such manner as it may designate.
6. Purchase, sell or barter wildlife for the purpose of stocking public or private lands and waters and take at any time in any manner wildlife for research, propagation and restocking purposes or for use at a game farm or fish hatchery and declare wildlife salable when in the public interest or the interest of conservation.
7. Enter into agreements with the federal government, with other states or political subdivisions of the state and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife and expend funds for carrying out such agreements.
8. Prescribe rules for the sale, trade, importation, exportation or possession of wildlife.
9. Expend monies for the purpose of producing publications relating to wildlife and activities of the department for sale to the public and establish the price to be paid for annual subscriptions and single copies of such publications. All monies received from the sale of such publications shall be deposited in the game and fish publications revolving fund.
10. Contract with any person or entity to design and produce artwork on terms that, in the commission's judgment, will produce an original and valuable work of art relating to wildlife or wildlife habitat.
11. Sell or distribute the artwork authorized under paragraph 10 of this subsection on such terms and for such price as it deems acceptable.
12. Consider the adverse and beneficial short-term and long-term economic impacts on resource dependent communities, small businesses and the state of Arizona, of policies and programs for the management, preservation and harvest of wildlife by holding a public hearing to receive and consider written comments and public testimony from interested persons.
13. Adopt rules relating to range operations at public shooting ranges operated by and under the jurisdiction of the commission, including the hours of operation, the fees for the use of the range, the regulation of groups and events, the operation of related range facilities, the type of firearms and ammunition that may be used at the range, the safe handling of firearms at the range, the required safety equipment for a person using the range, the sale of firearms, ammunition and shooting supplies at the range, and the authority of range officers to enforce these rules, to remove violators from the premises and to refuse entry for repeat violations.
14. Solicit and accept grants, gifts or donations of money or other property from any source, which may be used for any purpose consistent with this title.

C. The commission shall confer and coordinate with the director of water resources with respect to the commission's activities, plans and negotiations relating to water development and use, restoration projects under the restoration acts pursuant to chapter 4, article 1 of this title, where water development and use are involved, the abatement of pollution injurious to wildlife and in the formulation of fish and wildlife aspects of the director of water resources' plans to develop and utilize water resources of the state and shall have jurisdiction over fish and wildlife resources and fish and wildlife activities of projects constructed for the state under or pursuant to the jurisdiction of the director of water resources.
D. The commission may enter into one or more agreements with a multi-county water conservation district and other parties for participation in the lower Colorado river multispecies conservation program under section 48-3713.03, including the collection and payment of any monies authorized by law for the purposes of the lower Colorado river multispecies conservation program.

17-296. Definitions

In this article:

1. "Public access" means providing entry to publicly held lands for recreational use where such entry is consistent with the provisions establishing those lands.
2. "Sensitive habitat" means the specific areas within the geographical area historically or currently occupied by a species or community of species in which are found those physical or biological features essential to the establishment or continued existence of the species and which may require special management, conservation or protection considerations.
3. "Endangered species" means a species or subspecies of native Arizona wildlife whose population has been reduced due to any cause whatsoever to such levels that it is in imminent danger of elimination from its range in Arizona, or has been eliminated from its range in Arizona.
4. "Threatened species" means a species or subspecies of native Arizona wildlife that, although not presently in imminent danger of being eliminated from its range in Arizona, is likely to become an endangered species in the foreseeable future.
5. "Candidate species" means a species or subspecies of native Arizona wildlife for which habitat or population threats are known or suspected but for which substantial population declines from historic levels have not been documented.
6. "Urban wildlife" means the wildlife that occurs within the limits of an incorporated area or in close proximity to an urban area that receives significant impact from human use.
7. "Environmental education" means educational programs dealing with basic ecological principles and the effects of natural and man related processes on natural and urban systems and programs to enhance public awareness of the importance of safeguarding natural resources.
8. "Habitat evaluation" means the assessment of the status, condition and ecological value of habitat and subsequent recommendations of management, conservation or other protection measures, or mitigation measures, including but not limited to, recommendation of reasonable alternatives for the proposed projects that might otherwise affect the habitat under assessment.
9. "Habitat protection" means the process of protecting the quality, diversity, abundance, and serviceability of habitats for the purposes of maintaining or recovering populations of Arizona wildlife.

17-297. Arizona game and fish commission heritage fund

A. The Arizona game and fish commission heritage fund is established consisting of monies deposited from the state lottery fund pursuant to section 5-572 and interest earned on those monies.
B. The fund shall be administered by the Arizona game and fish commission and is not subject to appropriation and expenditures from the fund are not subject to outside approval notwithstanding any provision of section 17-241 or 17-261 or any other statutory provision to the contrary. Monies received pursuant to section 5-572 shall be deposited directly with the Arizona game and fish commission heritage fund. On notice from the Arizona state game and fish commission, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.
C. All monies in the Arizona game and fish commission heritage fund shall be spent by the Arizona game and fish commission only for the purposes and in the percentages set forth in this article. In no event shall any monies in the fund revert to the state general fund and monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.
D. The commission shall not use its rights of eminent domain to acquire property to be paid for with money from the Arizona game and fish commission heritage fund.

TITLE 17 - GAME AND FISH,
ARTICLE 6. ARIZONA GAME AND FISH COMMISSION HERITAGE FUND

17-298. Expenditures from fund; purpose and amounts; annual report

A. Monies received pursuant to section 5-572 shall be spent as follows:
   1. Five per cent on public access, including maintenance and operation expenses.
   2. Sixty per cent on the identification, inventory, acquisition, protection and management, including maintenance and operations, of sensitive habitat. At least forty per cent of the monies available under this paragraph shall be spent on the acquisition of sensitive habitat utilized by endangered, threatened and candidate species. The commission may dispose of any lands acquired for use as habitat by an endangered, threatened or candidate species under this paragraph when the species no longer qualifies as an endangered, threatened or candidate species. The Arizona game and fish commission shall dispose of the land in a manner consistent with the preservation of the species of concern. The disposal may include conservation easements and fee simple transfers with associated instruments of protection. The commission shall follow the guidelines established pursuant to section 37-803 relating to the disposition of real property by a state agency. In addition, disposal shall include a written agreement between the commission and the purchaser requiring the purchaser to incorporate management actions to ensure proper maintenance of the species of concern. Management actions may include maintenance of habitat, selective control of nonnative species, maintenance of genetic viability, monitoring of populations and habitat, coordinating conservation activities, funding conservation actions and assessing conservation progress.
   3. Fifteen per cent on habitat evaluation or habitat protection.
   4. Fifteen per cent on urban wildlife and urban wildlife habitat programs.
   5. Five per cent on environmental education.

B. All monies earned as interest on monies received pursuant to section 5-572 shall be spent only in the percentages and for the purposes described in subsection A of this section or for costs of administering the Arizona game and fish commission heritage fund in such amounts as determined by the Arizona game and fish commission.

C. On or before December 31 each year the commission shall submit its annual report to the president of the senate, the speaker of the house of representatives and the chairmen of the senate and house of representatives committees on natural resources and agriculture, or their successor committees. The annual report shall include information on:
   1. The amount of monies spent or encumbered in the fund during the preceding fiscal year and a summary of the projects, activities and expenditures relating to:
      (a) Property acquisition.
      (b) Identification, inventory, protection and management of sensitive habitat.
      (c) Habitat evaluation and protection.
      (d) Urban wildlife.
      (e) Environmental education.
      (f) Public access.
   2. The number and location of parcels of property acquired during the preceding fiscal year.
   3. For personal and real properties acquired with fund monies during the preceding fiscal year, the amount of property tax revenue paid to each taxing jurisdiction during the last full tax year prior to acquisition.
   4. The amount of money spent from the fund during the preceding fiscal year for employee personal services.
   5. The number of full-time employees employed in the preceding fiscal year in connection with property acquisition, including survey, appraisal and other related activities.
   6. The total number of full-time employees employed in the preceding fiscal year for the programs listed in subsection A of this section.
   7. A list of the grants awarded during the preceding fiscal year including information on the recipients, purposes and amounts.

17-298.01. Decennial performance audit

Beginning in 2001 and every tenth succeeding year thereafter, the auditor general shall conduct a performance audit, as defined in section 41-1278, of the programs and expenditures of the Arizona game and fish commission heritage fund pursuant to this article. The auditor general shall submit copies of the performance audit to the president of the senate, the speaker of the house of representatives and the chairmen of the senate and house of representatives committees on natural resources and agriculture, or their successor committees.

17-299. Arizona wildlife conservation fund (Caution: 1998 Prop. 105 applies)

TITLE 17 - GAME AND FISH,
ARTICLE 6. ARIZONA GAME AND FISH COMMISSION HERITAGE FUND

A. The Arizona wildlife conservation fund is established consisting of monies deposited pursuant to section 5-601.02(H)(3)(b)(iii) and interest earned on those monies. The Arizona state game and fish commission shall administer the fund. The fund is not subject to appropriation, and expenditures from the fund are not subject to outside approval notwithstanding any provision of sections 17-241 or 17-261 or any other statutory provisions to the contrary.

B. Monies received pursuant to section 5-601.02 shall be deposited directly with the Arizona wildlife conservation fund. On notice from the Arizona state game and fish commission, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund. No monies in the Arizona wildlife conservation fund shall revert to or be deposited in any other fund, including the state general fund. Monies in the Arizona wildlife conservation fund are exempt from the provisions of section 35-190 relating to the lapsing of appropriations. Monies provided from the Arizona wildlife conservation fund shall supplement, not supplant, existing monies.

C. All monies in the Arizona wildlife conservation fund shall be spent by the Arizona state game and fish commission to conserve, enhance, and restore Arizona's diverse wildlife resources and habitats for present and future generations, and which may include the acquisition of real property. The commission may grant monies to any agency of the state or any political subdivision, Indian tribe, or non-profit organization exempt from federal income taxation under section 501(c) of the internal revenue code for the purpose of conservation of wildlife or wildlife habitat or acquisition of real property or interest in real property that is wildlife habitat. A grant of money under this subsection to a nonprofit organization is conditioned on the organization providing reasonable public access to any land that is wholly or partly purchased with that money.

41-2701. Definitions

In this chapter, unless the context otherwise requires:

1. "Grant" means the furnishing of financial or other assistance, including state funds or federal grant funds, by any state governmental unit to any person for the purpose of supporting or stimulating educational, cultural, social or economic quality of life.
2. "Person" means any corporation, business, individual, committee, club or other organization or group of individuals.
3. "State governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of this state.

41-2702. Solicitation and award of grant applications

A. State governmental units shall award any grant in accordance with the competitive grant solicitation requirements of this chapter.

B. A state governmental unit shall prepare and issue a request for grant applications that includes at least the following information:
   1. A description of the nature of the grant project, including the scope of the work to be performed by an awardee.
   2. An identification of the funding source and the total amount of available funds.
   3. Whether a single award or multiple awards may be made.
   4. Encouragement of collaboration by entities for community partnerships, if appropriate.
   5. Any additional information required by the applications.
   6. The criteria or factors under which applications will be evaluated for award and the relative importance of each criteria or factor.
   7. The due date for submittal of applications and the anticipated time the awards may be made.

C. Adequate public notice of the request for grant applications shall be given at least six weeks before the due date for the submittal of applications. Adequate notification of the request for grant applications shall also be provided to the central state permitting program pursuant to section 41-1505.08.

D. A preapplication conference may be conducted before the due date for the submittal of applications to explain the grant application requirements. If a preapplication conference is held, it shall be held at least twenty-one days before the due date. Statements made at a preapplication conference are not amendments to the request for grant applications unless a written amendment is issued.

E. Grant applications shall be publicly received at the time and place designated in the request for grant applications. The name of each applicant shall be publicly read and recorded. All other information in the grant application is confidential during the process of evaluation. All applications shall be open for public inspection

after grants are awarded. To the extent the applicant designates and the state concurs, trade secrets and other proprietary information contained in the application shall remain confidential.

F. Applications shall be evaluated by at least three evaluators who are peers or other qualified individuals. The evaluators may allow applicants to make oral or written presentations regarding the scope of work, terms and conditions of the grant, budget and other relevant matters set forth in the request for grant applications. Applicants shall be accorded fair treatment with respect to any opportunity for oral or written presentations. The evaluators may require an applicant to revise its application to reflect information provided in an oral or written presentation. Any person who has information contained in the application of competing applications shall not disclose that information.

G. The evaluators shall review each application based solely on the evaluation criteria or factors set forth in the request for grant applications. The evaluators shall maintain a written record of the assessment of each application, which shall include comments regarding compliance with each evaluation criteria or factor, the citation of a specific criteria or factor as the basis of each stated strength or weakness and a clear differentiation between comments based on facts presented in the application and comments based on professional judgment. Evaluator assessments shall be made available for public inspection no later than thirty days after a formal award is made.

H. The evaluators shall make award recommendations to the head of the state governmental unit based on the evaluators' reviews of each application. The evaluators' recommendations may include the adjustment of the budgets of the applicants individually or collectively.

I. The head of the state governmental unit may affirm, modify or reject the evaluators' recommendations in whole or in part. Modification of the evaluators' recommendations may include the adjustment of the budget on any proposed award individually or on all awards by an amount or percentage. If the head of the state governmental unit does not affirm the recommendations, the head of the state governmental unit shall document in writing the specific justifications for the action taken. The specific justifications shall be made available for public inspection no later than thirty days after the action is taken.

J. The head of a state governmental unit may enter into agreements with other state governmental units to furnish assistance in conducting the solicitation of grant applications.

41-2703. Waiver of solicitation and award procedures

A. Notwithstanding any other provision of this chapter, the director of the department of administration or the director's designee may waive the solicitation and award procedures if a situation exists that makes compliance with section 41-2702 impracticable, unnecessary or contrary to the public interest, except that the grant solicitation and award shall be made with competition that is practicable under the circumstances.

B. A state governmental unit seeking a waiver of solicitation and award procedures shall prepare a written request documenting and explaining the situation justifying the waiver. The request shall be submitted to the director of the department of administration or the director's designee, who shall determine in writing whether to grant the request. If the request is granted, the determination shall state the manner in which the grant is to be solicited and awarded and the limits of the determination.

C. A copy of each request and determination shall be kept on file in the office of the state governmental unit requesting the waiver and the office of the director of the department of administration or the office of the director's designee.

41-2704. Remedies

The head of the state governmental unit may resolve protests of the award or proposed award of a grant. An appeal from a decision of the head of a state governmental unit may be made to the director of the department of administration. A protest of an award or proposed award of a grant and any appeal shall be resolved in accordance with the rules of procedure adopted by the director pursuant to section 41-2611.

41-2705. Violation; classification; liability; enforcement authority

A. A person who violates this chapter is personally liable for the recovery of all public monies paid plus twenty per cent of the amount and legal interest from the date of payment and all costs and damages arising out of the violation.

B. A person who intentionally or knowingly participates in the award of a grant pursuant to a scheme or artifice to avoid the requirements of this chapter is guilty of a class 4 felony.

C. A person who serves as an evaluator of grant applications pursuant to this chapter shall sign a statement before reviewing applications that the person has no interest in any application other than that disclosed and shall not have contact with any representative of an applicant during the evaluation of applications, except those contacts specifically authorized by this chapter. The person shall disclose on the statement any contact unrelated to the review of the grant applications that the person may need to have with a representative of an applicant and any contact with a representative of an applicant during evaluation of applications except those specifically authorized by this chapter. A person who serves as an evaluator and who fails to disclose contact with a representative of an applicant or who fails to provide accurate information on the statement is subject to a civil penalty of at least one thousand dollars but no more than ten thousand dollars.

D. The attorney general on behalf of this state shall enforce the provisions of this chapter.

41-2706. Applicability of chapter

A. This chapter applies to the solicitation of grants initiated after August 6, 1999.

B. This chapter does not apply to:

1. Any grant program that was exempt from chapter 23, article 3 of this title and for which administrative rules establishing grant solicitation procedures were adopted pursuant to chapter 6 of this title before August 6, 1999.
2. The Arizona board of regents and schools, colleges, institutions and universities under its control if the Arizona board of regents adopts rules or policies governing the award of grants that encourage as much competition as practicable.
3. Grants made by the cotton research and protection council for research programs related to cotton production or protection.
4. Grants made by the Arizona iceberg lettuce research council for research programs under section 3-526.02, subsection C, paragraph 3 or 5.
5. Grants made by the Arizona citrus research council for research programs under section 3-468.02, subsection C, paragraph 3 or 5.
6. Grants made by the Arizona grain research and promotion council for research projects and programs under section 3-584, subsection C, paragraph 5.
7. Grants made under section 3-268, subsection C.
8. Grants made by the Arizona commerce authority from the Arizona competes fund pursuant to chapter 10, article 5 of this title. With respect to other grants, the authority shall adopt policies, procedures and practices, in consultation with the department of administration, that are similar to and based on the policies and procedures prescribed by this chapter for the purpose of increased public confidence, fair and equitable treatment of all persons engaged in the process and fostering broad competition while accomplishing flexibility to achieve the authority's statutory requirements. The authority shall make its policies, procedures and practices available to the public.
9. Grants of less than five thousand dollars from the veterans' donations fund if the department of veterans' services adopts rules or policies governing these grants that encourage as much competition as practicable.

ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-0409)
Title 9, Chapter 14, Article 7, Health Screening Services

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: April 5, 2016 **AGENDA ITEM: D-8**

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

FROM: Chris Kleminich, Staff Attorney

DATE: March 18, 2016

SUBJECT: **ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-0409)**
Title 9, Chapter 14, Article 7, Health Screening Services

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Department of Health Services (Department) is to "protect the physical and mental health of the people of this state and to promote the highest standards for licensed health care institutions, emergency services, and care facilities for adults and children." Laws 2000, Ch. 310, § 3. This five-year-review report covers one rule in A.A.C. Title 9, Chapter 14, Article 7.

Article Contents, Including the Subject Matter of Each Rule in the Report

Article 7 contains one rule addressing health screening laboratory services.

Year that Each Rule was Last Amended or Newly Made

The rule was last amended on February 3, 2007.

Proposed Action

The Department does not plan to amend the rule unless a substantive issue with the rule arises.

Summary of Reasons for the Proposed Action

The Department indicates that the rule is effective, is consistent with other rules and statutes, is enforced as written, and is clear, concise, and understandable.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The Department has certified its compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rule's effectiveness in achieving its objective?**

Yes. The Department indicates that the rule is effective in achieving its objective.

3. **Has the agency received any written criticisms of the rule during the last five years, including any written analysis questioning whether the rule is based on valid scientific or reliable principles or methods?**

Yes. The Department has not received any written criticisms of the rule during the last five years.

4. **Has the agency analyzed whether the rule is authorized by statute?**

Yes. The Department cites to A.R.S. §§ 36-132(A)(1) and 36-136(F) as general statutory authority. Under A.R.S. § 36-136(F), the Department "may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health." The Department cites to A.R.S. § 36-405.01, related to health screening services, as specific statutory authority.

5. **Has the agency analyzed the rule's consistency with other rules and statutes?**

Yes. The Department indicates that the rule is consistent with state and federal rules and statutes.

6. **Has the agency analyzed the current enforcement status of the rule?**

Yes. The Department indicates that the rule is enforced as written.

7. **Has the agency analyzed whether the rule is clear, concise, and understandable?**

Yes. The Department indicates that the rule is clear, concise, and understandable.

8. Stringency of the Rule:

a. Is the rule more stringent than corresponding federal law?

No. The Department indicates that the rule is not more stringent than any federal laws.

b. If so, is there statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010:

a. Does the rule require issuance of a regulatory permit, license or agency authorization?

Not applicable, as the rule was adopted prior to July 29, 2010.

b. If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. The Department did not propose any action in its 2011 five-year-review report, and no actions were taken.

11. Has the agency included a proposed course of action?

Yes. As noted above, the Department does not plan to amend the rule unless a substantive issue with the rule arises.

Conclusion

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: April 5, 2016 **AGENDA ITEM: D-8**

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

FROM: GRRC Economist

DATE: March 18, 2016

SUBJECT: **ARIZONA DEPARTMENT OF HEALTH SERVICES (F-16-0409)**
Title 9, Chapter 14, Article 7, Health Screening Services

I have reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the rule.

A.R.S. § 36-405.01 specifies the manner in which health screening services are required to be conducted and authorizes the Department to "adopt such ... regulations necessary or appropriate to carry out the purposes of this section." "Health screening services" is defined in A.R.S. § 36-401 as "the acquisition, analysis and delivery of health-related data of individuals to aid in the determination of the need for medical services."

In 2007, the rule was revised to include necessary definitions and requirements for health screening laboratory services consistent with Clinical Laboratory Improvement Amendments (CLIA) of 1988, 42 C.F.R. 493, Laboratory Requirements, to accomplish the purpose of A.R.S. § 36-405.01. The purpose of the rule is to provide clearer definitions and requirements for persons conducting health screening laboratory services and specifies situations in which the rules does not apply. The Department conducts surveys of clinical laboratories, under a federal contract, to ensure compliance with CLIA.

DHS believes the economic impact has been as predicted for the rules in Article 7. The 2006 Economic, Small Business, and Consumer Impact Statement (EIS) stated that the Department might incur minimal-to-moderate costs if more persons applied for

and received a CLIA certificate due to the rule. Since 2006, the Department has received no requests for CLIA applications in conjunction with individuals inquiring about health screenings. All of the facilities that inquire about health screenings were already CLIA-certified facilities.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department has determined that the rules in Article 7 are effective and enforced as written.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Arizona Department of Health Services

Division for Policy & Intergovernmental Affairs
Administrative Counsel and Rules

1740 W. Adams, Suite 203
Phoenix, Arizona 85007-2670
(602) 542-1020
(602) 364-1150 FAX

DOUGLALS A. DUCEY, GOVERNOR
CARA M. CHRIST, MD, DIRECTOR

RECEIVED
FEB 12 2016
GRRC

February 12, 2016

Nicole A. Ong, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 14, Article 7

Dear Ms. Nicole Ong:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for Arizona Administrative Code (A.A.C.) Title 9, Chapter 14, Article 7, is due to the Council no later than February 29, 2016. The Arizona Department of Health Services (Department) has reviewed A.A.C. Title 9, Chapter 14, Article 7, Health Screening Services, and is enclosing a report to the Council for the reviewed 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, copies of authorizing statutes, and copies of each rule reviewed are included in this package. As stated in the report, the Department does not intend to amend these rules.

The Department certifies that the Department is in compliance with A.R.S. § 41-1091.

If you need any further information, please contact me at (602) 542-1020.

Sincerely,

Robert Lane
Director's Designee

RL:tk

Enclosures

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 14. DEPARTMENT OF HEALTH SERVICES LABORATORIES

ARTICLE 7. HEALTH SCREENING SERVICES

February 2016

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 14. DEPARTMENT OF HEALTH SERVICES LABORATORIES

ARTICLE 7. HEALTH SCREENING SERVICES

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5.	2006 ECONOMIC IMPACT STATEMENT	Attachment C

TITLE 9. HEALTH SERVICES

CHAPTER 14. DEPARTMENT OF HEALTH SERVICES LABORATORIES

ARTICLE 7. HEALTH SCREENING SERVICES

FIVE-YEAR-REVIEW SUMMARY

Arizona Revised Statutes (A.R.S.) § 36-405.01 specifies the manner in which health screening services are required to be conducted and authorizes the Arizona Department of Health Services (Department) to "adopt such ... regulations necessary or appropriate to carry out the purposes of this section." "Health screening services" is defined in A.R.S. § 36-401 as "the acquisition, analysis and delivery of health-related data of individuals to aid in the determination of the need for medical services." In the 2006, effective February 2007, the Department allowed all Sections of Article 7 to expire except Arizona Administrative Code R9-14-701. The Department revised R9-14-701 to include necessary definitions and requirements for health screening laboratory services to accomplish the purpose of A.R.S. § 36-405.01.

The Department adopted in R9-14-701 all definitions and requirements for health screening laboratory services consistent with Clinical Laboratory Improvement Amendments (CLIA) of 1988, 42 C.F.R. 493, Laboratory Requirements. After an analysis of R9-14-701, the Department has determined that the rule is effective; is consistent with state and federal statutes and rules; is enforced; and is clear, concise, and understandable. The Department has received no written criticism of the rule. The Department estimates that the actual economic impact of the rules is consistent with the 2006 Economic Impact Statement for the rulemaking. The Department does not plan to amend the rule as indicated in the report.

INFORMATION FOR INDIVIDUAL RULES

R9-14-701. Health Screening Laboratory Services

1. Authorization of the rule by existing statute

The general statutory authority for the rule is A.R.S. §§ 36-132(A)(1) and 36-136(F).

The specific statutory authority for the rule is A.R.S. § 36-405.01.

2. The purpose of the rule

The purpose of the rule is to provide definitions and requirements for persons conducting health screening laboratory services and specifies situations in which the rules does not apply.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective.

4. Analysis of consistency with state and federal statutes and rules

The rule is consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The rule is enforced as written without difficulty.

6. Analysis of clarity, conciseness, and understandability

The rule is clear, concise, and understandable.

7. Summary of the written criticisms of the rule received within the last five years

The Department has not received any written criticisms of the rule in the past five years.

8. Economic, small business, and consumer impact comparison

The Department conducts surveys of clinical laboratories, under a federal contract, to ensure compliance with CLIA. The 2006 Economic, Small Business, and Consumer Impact Statement (EIS) stated that the Department might incur minimal-to-moderate costs if more persons applied for and received a CLIA certificate due to the rule. Since 2006, the Department has received no requests for CLIA applications in conjunction with individuals inquiring about health screenings. All of the facilities that inquire about health screenings were already CLIA-certified facilities. The Department has determined that the actual economic impact of the rule is as stated in the 2006 EIS.

9. Summary of business competitiveness analyses of the rules

The Department did not receive a business competitiveness analysis of the rule in the last five years.

10. Status of the completion of action indicated in the previous five-year-review report

As stated in the 2011 Five-year-review Report, the Department did not amend the rules.

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

The rule imposes the least burden and costs to persons regulated by the rule while achieving the regulatory objective consistent with statutory requirements.

12. Analysis of stringency compared to federal laws

The rule is not more stringent than federal laws.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

The rule was adopted in 2006 and has not been changed.

14. Proposed course of action

The Department does not plan to amend the rule in 9 A.A.C. 14 Article 7 until a substantive issue with the rule arises.

ATTACHMENT A

ARTICLE 7. HEALTH SCREENING SERVICES

R9-14-701. Health Screening Laboratory Services

A. In this Section, unless otherwise specified, the following definitions apply:

1. "Activities of daily living" means the tasks that support everyday life, such as toileting, bathing, dressing, eating, moving about, and getting in or out of bed
2. "Assist" means to give help, support, or aid to an individual in performing a task.
3. "Caregiver" means an individual, such as a home health aide, who receives monetary compensation for assisting another individual with activities of daily living.
4. "Certified laboratory" means the same as in A.R.S. § 36-451.
5. "Drug of abuse" means a chemical substance, such as a narcotic or hallucinogen, that is used by an individual for non-medicinal reasons.
6. "Family member" means an individual related to another individual by birth, marriage, or adoption.
7. "Forensic" means relating to the use of science or technology in the investigation and establishment of facts or evidence intended for use in a court of law
8. "Guardian" means an individual appointed as a legal guardian by a court of competent jurisdiction
9. "Health screening laboratory services" means health screening services that determine the need for medical services, as defined in A.R.S. § 36-401, through the performance of laboratory analyses.
10. "Health screening services" means the same as in A.R.S. § 36-401.
11. "Home health aide" means an individual who receives monetary compensation from a home health agency, as defined in A.R.S. § 36-151, or a hospice service agency, as defined in A.R.S. § 36-401, to provide assistance to another individual who is not physically or mentally able to perform one or more of the activities of daily living.
12. "In vitro diagnostic device" means a piece of equipment or tool:
    a. Approved by the U.S. Food and Drug Administration for home use,
    b. Used for the measurement of specific chemicals in materials derived from the human body,
    c. Sold without a prescription, and
    d. Specified in a list available at http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfIVD/Search.cfm
13. "Laboratory analysis" means a test performed by a laboratory on body fluid, tissue, or excretion for the purpose of determining the presence, absence, or concentration of various substances in the human body.
14. "Research" means a systematic investigation to establish facts that may contribute to knowledge from which an individual may draw inferences or a general conclusion.

B. Except as specified in subsection (C), only a certified laboratory shall perform health screening laboratory services.

C. This Section does not apply when:

1. A test is performed by an individual, a family member or guardian of the individual, or another individual under A.R.S. § 32-1471:
    a. Using an in vitro diagnostic device, and
    b. On materials derived from the individual's body;
2. An individual's caregiver assists the individual to perform a test:
    a. Using an in vitro diagnostic device, and
    b. On materials derived from the individual's body;
3. A laboratory analysis is performed solely for forensic or research purposes;
4. A laboratory analysis is performed on urine to test for drugs of abuse solely for employment purposes; or
5. A laboratory analysis is performed under the jurisdiction of the U.S. Department of Veteran's Affairs or a component of the U.S. Department of Defense

Historical Note

Adopted effective December 2, 1993 (Supp. 93-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4694, effective February 3, 2007 (Supp. 06-4).

ATTACHMENT B

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 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.
(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. <u>Powers and duties of director; compensation of personnel</u>
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 the state.
6. Exercise general supervision over all matters relating to sanitation and health throughout the state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of the 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 the 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 the state, the director may inspect any person or property in transportation through the 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 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.
D. 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.
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 assure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.
E. The compensation of all personnel shall be as determined pursuant to section 38-611.
F. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.
G. Notwithstanding subsection H, 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.
H. 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, 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 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 assure 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 and drink that is:
(a) Served at a noncommercial social event that takes place at a workplace, such as a potluck.
(b) Prepared at a cooking school that is conducted in an owner-occupied home.
(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.
(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.
(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on site for immediate consumption.
(f) Offered at locations that sell only commercially prepackaged food and drink that is not potentially hazardous and that is displayed in an area of less than ten lineal feet.
5. Prescribe reasonably necessary measures to assure 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 assure 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 assure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.
8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules.
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.
I. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.
J. 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.
K. 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.
L. 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.
M. Until the department adopts exemptions by rule as required by subsection H, paragraph 4, subdivision (b) of this section, a kitchen in a private home that is used as a cooking school and that prepares and offers food to students is exempt from the rules prescribed in subsection H of this section if all of the following are true:
1. Only one cooking school meal per day is prepared and served.
2. The meal is served to not more than fifteen cooking school students.
3. The students are informed by a statement contained in a published advertisement, mailed brochure and placard posted at the cooking school's registration that the food is prepared in a kitchen that is not regulated and inspected by the department or by a local health authority.

36-405.01. <u>Health screening services; violation; classification</u>
A. Health screening services shall be conducted in the following manner:
1. Health screening services shall be conducted under the direction of or, when required by good medical practice, under the supervision of a physician.
2. Any diagnosis of collected health-related data shall be performed by a physician.
3. Any examination of secretions, body fluids or excretions of the human body shall be performed pursuant to title 36, chapter 4.1.

4. Individuals may obtain health screening services on their own initiative.
5. Data given health-screened individuals shall be properly informative and not misleading.
6. Activities engaged in or materials used to educate, promote or otherwise solicit individuals to use health screening services shall not:
(a) Be misleading.
(b) Include the name of any physician, physician's office or clinic.
(c) Use or contain any language that directly or indirectly lauds the professional competence, skill or reputation of any physician.
7. A patient who is in need of medical care shall be informed that he should see a physician without referral to any particular physician.
B. The director may adopt such other regulations necessary or appropriate to carry out the purposes of this section.
C. Physicians affiliated with health screening services shall continue to be bound by the laws and ethics governing their practice. However, affiliation with health screening services conducted in conformity with this chapter shall not constitute a violation of such laws or ethics.
D. Health-screened individuals, with respect to their disclosures to and records with health screening services, shall have the same protections regarding privileged communication and the same rights to the possession and confidentiality of their records as are accorded by law to patients of physicians.
E. Health screening services shall be exempt from the provisions of articles 2 through 5 of this chapter.
F. Any person who conducts health screening services in violation of this section or in violation of any rule or regulation adopted by the director is guilty of a class 2 misdemeanor. In addition, the director may exercise the same powers with respect to health screening services as are provided in section 36-427, subsection B with respect to licensed health care institutions.

E-1

ARIZONA STATE BOARD FOR PRIVATE POSTSECONDARY EDUCATION (R-16-0401)

Title 4, Chapter 39, Article 1, Definitions, Licensure, Reporting; Article 2, Fees; Article 3, Operation of Private Non-Accredited Institutions; Article 4, Operation of all Licensed Institutions; Article 5, Investigations and Hearing Procedures; Article 6, Student Tuition Recovery Fund

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: April 5, 2016 **AGENDA ITEM: E-1**

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

FROM: Chris Kleminich, Staff Attorney

DATE: March 18, 2016

SUBJECT: **ARIZONA STATE BOARD FOR PRIVATE POSTSECONDARY EDUCATION (R-16-0401)**
Title 4, Chapter 39, Article 1, Definitions, Licensure, Reporting; Article 2, Fees; Article 3, Operation of Private Non-Accredited Institutions; Article 4, Operation of all Licensed Institutions; Article 5, Investigations and Hearing Procedures; Article 6, Student Tuition Recovery Fund

Amend: R4-39-101; R4-39-102; R4-39-103; R4-39-104; R4-39-105; R4-39-106; R4-39-107; R4-39-108; R4-39-109; R4-39-110; R4-39-111; R4-39-201; R4-39-301; R4-39-302; R4-39-303; R4-39-304; R4-39-305; R4-39-306; R4-39-307; R4-39-308; R4-39-401; R4-39-402; R4-39-403; R4-39-404; R4-39-406; R4-39-501; R4-39-502; R4-39-503; R4-39-601; R4-39-602; R4-39-603

New Section: R4-39-407; R4-39-408; R4-39-504

Repeal: R4-39-405

General Comments

Purpose of the Agency and Summary of What the Rulemaking Does

The purpose of the Arizona State Board for Private Postsecondary Education (Board) is "to license and regulate private postsecondary education programs to promote the public welfare." Laws 2006, Ch. 7, § 3.

This rulemaking amends 31 rules, repeals one rule, and creates three new rules in A.A.C. Title 4, Chapter 39, Articles 1-6.

Article Contents, Including the Subject Matter of Each Rule Affected

Article 1 contains eleven rules, all of which are amended by this rulemaking, that relate to definitions, licensure, and reporting, addressing definitions; licensure and licensure procedures; requirements for a regular license to operate a private accredited vocational institution or a private accredited degree-granting institution in Arizona; requirements for a conditional license to operate a new private non-accredited vocational institution in Arizona; requirements for a regular license to continue to operate a private non-accredited vocational institution in Arizona; requirements for a conditional license to operate a new private non-accredited degree-granting institution in Arizona; requirements for a provisional license to continue to operate a private non-accredited degree-granting institution in Arizona; surety bond, cash deposit, or equivalent security requirements, insurance requirements, financial statement requirements; supplemental license applications; change of ownership or control; and honorary degrees.

Article 2 contains one rule, amended by this rulemaking, related to fees.

Article 3 contains eight rules, all of which are amended by this rulemaking, that relate to the operation of private non-accredited institutions, addressing catalogs; facilities and equipment; staff; advertising; recruitment; admission requirements; placement; and tuition, pricing, and refund policies.

Article 4 contains six rules, all of which are impacted by this rulemaking, that relate to the operation of all licensed institutions, addressing student records; preservation of records; student compliant procedures; tuition refund policies; student loans and financial aid; and closure of an institution of cessation of a program. The Board proposes the addition of two new rules which would address the use of terms and the transfer of credit.

Article 5 contains three rules, all of which are amended by this rulemaking, that relate to investigations and hearing procedures, addressing investigations; hearings; and rehearing or review of a Board decision. The Board proposes the addition of one new rule which would address cost assessments.

Article 6 contains three rules, all of which are amended by this rulemaking, that relate to the Student Tuition Recovery Fund (Fund), addressing the submission of assessments; claims; and student records.

Year that Each Rule was Last Amended or Newly Made

- August 6, 2005: Sections 101, 103-108, 110, 301-303, 305, 308, 402, 404-406
- April 2, 2002: Sections 501-503
- September 12, 2001: Sections 601-603
- March 7, 2000: Sections 401, 403
- November 3, 1999: Sections 304, 306, 307
- November 6, 1998: Sections 109, 111, 201
- November 14, 1997: Section 102

Proposed Action

In addition to technical and stylistic changes that are being made to all of the rules, the following is a non-exhaustive summary of the actions being taken by the Board in this rulemaking:

- Section 101: Definitions are being amended, added, and deleted.
- Section 102: Provisions related to the issuance of licenses are being streamlined in order to increase clarity. Licensing time frames are being modified, including a 30-day reduction in the overall time frame for license renewal applications.
- Section 103: With the additions of subsections (B)(4) and (B)(5), requirements for a regular license to operate an accredited institution are being tightened. In subsection (E), additional requirements are being added for inclusion in a license renewal application packet. In subsection (F), notification requirements are being strengthened. Clarifying changes are also being made.
- Section 104: With the additions of subsections (B)(4) and (B)(5), requirements for a conditional license to operate a non-accredited vocational institution are being tightened. In subsection (D), a number of new requirements are being added for inclusion in an application packet. For example, subsection (D)(7) requires the disclosure of a business plan, and subsection (D)(12) requires the inclusion of a particular statement if an applicant requires arbitration as part of the student grievance procedure. Clarifying changes are also being made.
- Section 105: With the additions of subsections (A)(4) and (A)(5), requirements for a regular license to operate a non-accredited vocational institution are being tightened. Subsection (C)(3) requires an applicant to provide information regarding the annual enrollment and retention and placement rates for each program offered by the licensee. Clarifying changes are also being made.
- Section 106: This rule, that addresses requirements for a conditional license to operate a private non-accredited degree-granting institution, is being amended to improve clarity.
- Section 107: With the additions of subsections (A)(4), (A)(5), and (A)(6), requirements for a provisional license to operate a non-accredited degree-granting institution are being tightened. Clarifying changes are also being made.
- Section 108: In subsections (B) and (C), provisions are being added to clarify the manner in which the Board determines the amount of surety bond, cash deposit, or letter of credit to require. Subsection (E) modifies the insurance requirements for applicants or licensees. Subsection (F) alters the requirements for required financial statements. Subsection (H)(2) is being added to clarify the grounds under which the Board may require the submission of additional financial documentation from an applicant or licensee. Subsection (I) is being added to allow for the appointment of a Finance Committee that consists of at least three Board members. Clarifying changes are also being made.
- Section 109: This rule, that addresses supplemental license applications, is being amended to improve clarity.
- Section 110: Much of this rule, related to the change of ownership or control of an institution, is being rewritten.
- Section 111: This rule, that addresses honorary degrees, is being amended to improve clarity.

- Section 201: This rule, that addresses fees, is being amended to improve clarity.
- Section 301: The minimum criteria for information to be included in an institution's catalog are being modified.
- Section 302: This rule, that addresses facilities and equipment, is being amended to improve clarity.
- Section 303: Subsection (B), which requires a non-accredited program to employ a qualified on-site director, is being added. Subsection (C) is being amended to clarify the responsibilities of an on-site director. Clarifying changes are also being made.
- Section 304: Restrictions on advertising for non-accredited programs are being strengthened.
- Section 305: This rule, that addresses recruitment for non-accredited programs, is being amended to improve clarity.
- Section 306: This rule, that addresses admission requirements for non-accredited programs, is being amended to improve clarity.
- Section 307: This rule, that addresses placement services in non-accredited programs, is being amended to improve clarity.
- Section 308: Subsection (G)(3), which requires a non-accredited program's refund policy to be described using identical language in both the catalog and the student enrollment agreement, is being added. Clarifying changes are also being made.
- Section 401: Requirements for the maintenance of student records are being expanded and clarified.
- Section 402: Requirements for the preservation of student records are being expanded and clarified.
- Section 403: Much of this rule, related to complaint procedures, is being rewritten. Subsection (C), which indicates that the Board shall not accept anonymous complaints, and subsection (D), which states that the Board shall not accept complaints related to grade disputes, employment practices, or compliance with the Americans with Disabilities Act, are being added. Subsections (F) and (G) are being added to distinguish between student and non-student complaints.
- Section 404: This rule, that addresses tuition refund policies, is being amended to improve clarity.
- Section 405: This rule, related to student loans and financial aid, is being repealed.
- Section 406: Much of this rule, related to the cessation of the operation and/or the offering of a program, is being rewritten. Subsections (A) and (B), delineating requirements for "teach-out plans," are being added. Clarifying changes are also being made.
- Section 407: A new section is being added to provide clarity as to when certain descriptive terms may or may not be used to describe an institution or program.
- Section 408: A new section, related to the transfer of credit, is being added.
- Section 501: This rule, that addresses Board investigations, is being amended to improve clarity.
- Section 502: This rule, that addresses hearings, is being amended to improve clarity.
- Section 503: This rule, that addresses rehearing or review of Board decisions, is being amended to improve clarity.

- Section 504: This rule is being added to clarify that the Board is authorized, under A.R.S. § 32-3052(M), to assess a person, that is determined to have violated any provision of A.R.S. Title 32, Chapter 30 and this Chapter, the Board's reasonable costs and expenses, including attorney fees, incurred in conducting an investigation, informal interview, committee or Board meeting, or administrative hearing.
- Section 601: This rule, that addresses submission of assessments for the Fund, is being amended to improve clarity.
- Section 602: This rule, that addresses the investigation of claims against the Fund, is being amended to improve clarity.
- Section 603: This rule, that addresses student record requests, is being amended to improve clarity.

Summary of Reasons for the Proposed Action

In a five-year-review report approved on September 13, 2011, the Board proposed action on all of its rules to update language and to ensure consistency with Board and industry practice. This rulemaking completes that proposed course of action.

Exemption or Request and Approval for Exception from the Moratorium

The Board received an exception from Governor Ducey's office on February 6, 2015. That exception was granted with the understanding that the Board would consult with the Governor's education policy advisor, Ms. Dawn Wallace, on an ongoing basis throughout the rulemaking process. The Board indicates that it has regularly sent e-mail updates to Ms. Wallace related to this rulemaking.

Substantive or Procedural Concerns

During staff's initial review of these rules, this analyst focused on proposed amendments that potentially impose a measurable burden on the regulated community. To dig deeper into the issue of whether the rules impose the least burden and costs on the public, staff posed a number of questions to the Board. A summary of the most pertinent questions, and the Board's responses, are outlined below:

- Question: R4-39-104(D)(7): What is the justification for requiring applicants to submit a specific business plan? Does the Board have the authority to make a determination as to whether a business will be successful?
    - Response: The requirement applies to non-accredited institutions, which pose the greatest risk to the state and potential students. The Board is required to ensure that an applicant is financially responsible and has management capability. See A.R.S. § 32-3021(B)(3). The Board believes that an entity intent on opening and operating an educational institution will have prepared a business plan. It will have assessed the market for its programs and services and will have estimated potential students and revenue. The Board believes that asking to see the business plan is consistent with its statutory authority, as failure to have developed a plan reflects on managerial capability.

- Question: R4-39-104(D)(12)(e) and R4-39-401(B)(1)(i): What is the justification for requiring this particular language, related to arbitration, to be included in an institution's student grievance procedure, when the Board is not a party to a dispute between an institution and a student?
    - Response: The Board protects students from unscrupulous players. This simply provides students with necessary information regarding a procedure that many institutions keep hidden until they spring it on students who file a grievance. It is not difficult to provide this notice and the consequence for a student in a grievance who has this information is much greater.

      A.R.S. § 32-3021(B)(9) requires an applicant to provide a grievance procedure for students. A.R.S. § 32-3021(B)(2) requires an applicant to make pertinent info available to prospective students. The Board determined this requirement is consistent with both these provisions. The key part of this provision is that a student needs to know that even if there is an arbitration procedure, remedies through the board (like a bond claim) remain available.

      Additionally, the legislature determined that providing information regarding appeals procedures was so important, it created an entire article and an agency to deal with the appeals. Almost all agencies provide information regarding appeal procedures in rules. It is difficult to make an appeal if you do not know the procedure. The Board believes that this is a very important provision.

- Question: R4-39-108(B): Does the Board's consideration of three factors being added go beyond what it is allowed to consider under A.R.S. 32-3023(C)?
    - Response: The factors assess the applicant's financial position, which is to be considered under that statute.

- Question: R4-39-108(C): What was the Board's methodology for arriving at the particular amounts of surety bond, cash deposit, or letter of credit that are required of an applicant or licensee?
    - Response: The purpose of these provisions is to minimize the state's potential liability. An accredited institution gets federal funds. The greater the gross tuition revenue (GTR), the greater the federal funding, meaning that there is less potential liability for the state. Non-accredited institutions are riskier, as they do not get federal funds, so the amount of the bond needs to be greater in order to cover the greater state liability.

- Question: R4-39-111: As an overall question related to the burden imposed by the rules, why does the Board regulate the issuance of honorary degrees? To use the language in the Board's authorizing statute, how is the rule "necessary or proper"?
    - Response: A.R.S. § 32-3001 includes an honorary degree in the definition of "degree". The Board regulates degree-granting institutions. The rule tells a licensee that issuing an honorary degree requires a supplemental license, which clarifies that just because the degree is "honorary", it is not exempted from the

licensing requirement. Also, the rule tells a licensee that an honorary degree issued must be identified on its face as honorary, which protects the public.

- Question: R4-39-303(A): What is the justification for the increased burden of having a director on-site?
    - Response: This provision relates to non-accredited institutions and programs, which put the state more at risk. The Board has determined that greater supervision was needed.

- Question: R4-39-404(F): What is the potential burden associated with reducing the number of "clock hours" from 100 to 50, within the criteria for non-accredited programs to be exempt from certain requirements related to tuition refund policies?
    - Response: The Board has concern about programs being scheduled for 99 hours to avoid having to pay refunds. The Board wanted to require refunds for as many students as possible, as it believes that a student should get what is paid for. The change could mean that more students are entitled to have some tuition monies refunded.

These questions and responses are provided to assist the Council in making an informed vote on the rules. Staff believes that the Board's responses are reasonable. Ultimately, it is up to the Council, and not staff, to determine whether each of the rules impose the least burden and costs on the regulated public.

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

Yes. The Board cites to both general and specific statutory authority. Under A.R.S. § 32-3003(A)(3), the Board shall "[a]dopt rules which are necessary or proper for the administration of this chapter [Private Postsecondary Education]." Under A.R.S. § 32-3073(A)(6), the Board shall "[a]dopt rules necessary to administer this article [Student Tuition Recovery Fund]."

In light of the above discussion on potential burdens, A.R.S. § 41-1038 is particularly relevant. Under this statute, an agency may not adopt any new rule that would increase existing regulatory restraints or burdens on the freedom to engage in an otherwise lawful business or occupation. The Board has indicated to staff that its amendments are necessary to implement its authorizing statutes, thereby falling within the exception provided by A.R.S. § 41-1038(A)(2). In the absence of precedent that requires a more narrow interpretation of this exception, staff believes that such a reading of the statute is reasonable.

2. Are the rules written in a manner that is clear, concise, and understandable to the general public?

Yes. The rules are clear, concise, and understandable.

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

Yes. The Board indicates that it received no written comments regarding the rulemaking.

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

No. Non-substantive changes were made between the proposed and final rules at the request of Council staff. Staff does not believe that the changes, when considered as a whole, constitute substantial substantive changes.

5. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rules?

No. The Board indicates that it did not review or rely upon any study for the rulemaking.

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

No. The Board indicates that while many federal laws apply to the operation of private postsecondary educational institutions, no federal laws directly apply to the Board.

7. Do the rules require a permit or license and if so, does the agency use a general permit or is any exception applicable under A.R.S. § 41-1037?

Yes. The Board states that the licenses described in Section 102 are general permits consistent with A.R.S. § 41-1037, as they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

8. 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.

9. Conclusion

The Board requests the usual 60-day delayed effective date for the rules. This analyst recommends approval of the rules if the Council accepts the Board's justifications related to the burdens and costs imposed by the rules.

GOVERNOR'S REGULATORY REVIEW COUNCIL
M E M O R A N D U M

MEETING DATE: April 5, 2016 **AGENDA ITEM: E-1**

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

FROM: GRRC Economist

DATE: March 18, 2016

SUBJECT: **ARIZONA STATE BOARD FOR PRIVATE POSTSECONDARY EDUCATION (R-16-0401)**
Title 4, Chapter 39, Article 1, Definitions, Licensure, Reporting; Article 2, Fees; Article 3, Operation of Private Non-Accredited Institutions; Article 4, Operation of all Licensed Institutions; Article 5, Investigations and Hearing Procedures; Article 6, Student Tuition Recovery Fund

Amend: R4-39-101; R4-39-102; R4-39-103; R4-39-104; R4-39-105; R4-39-106; R4-39-107; R4-39-108; R4-39-109; R4-39-110; R4-39-111; R4-39-201; R4-39-301; R4-39-302; R4-39-303; R4-39-304; R4-39-305; R4-39-306; R4-39-307; R4-39-308; R4-39-401; R4-39-402; R4-39-403; R4-39-404; R4-39-406; R4-39-501; R4-39-502; R4-39-503; R4-39-601; R4-39-602; R4-39-603

New Section: R4-39-407; R4-39-408; R4-39-504

Repeal: R4-39-405

I reviewed the economic, small business, and consumer impact statement (hereafter referred to as EIS) and make the following comments. These comments are made to assist the Council in its review and may be used as the Council determines.

<u>GRRC Economist comments:</u>

The amendments are intended to conform to revisions recommended in Board's previous 5YRR in September 2011. The changes included in the proposed rulemaking cover a myriad of issues. For example, the amendments:

1) Clarify the differences among a regular, conditional, and provisional license;
2) Reduce the overall timeframe for the Board to act on an application for license renewal;
3) Add reasons for denying or not renewing a license;
4) Clarify the consequences of allowing a license to expire;
5) Reduce the amount of liability insurance for small institutions;
6) Reduce the requirements for a year-end financial statement for small institutions;
7) Strengthen the requirements regarding preservation of student records; and
8) Clarify that the Board will accept complaints from non-students.

The Board currently licenses 260 private postsecondary educational institutions, of which 138 are vocational and 122 are degree-granting institutions (though some licensed institutions offer both vocational and degree-granting programs). Last year there were 275,901 students enrolled in private postsecondary educational institutions in Arizona (85% were enrolled in degree-granting institutions). In addition, the Board indicates that "many more enrolled to participate in online educational programs." Last fiscal year the Board collected $543,667 in licensing fees (of which 10% is deposited into the state's general fund) and $3,943,709,453 in total gross tuition revenue was collected by private postsecondary institutions.

During the last fiscal year, the Board reports that they reviewed and acted on 671 license applications, however, the breakdown of action items omits 17 actions as the detail total 654 rather than 671. See Table 1 below. The Board also reports that none of the license applications were denied.

Table 1

license renewal	241
supplemental program license	362
supplemental location license	19
supplemental change of ownership	26
supplemental change of name	6
Total	**654**

The Board also reports that 25 licensed institutions closed during the previous year, which included Anthem and Everest Colleges. The Student Tuition Recovery Fund (STRF), to which all licensed institutions contribute, is designed to reimburse students who are harmed when a licensed institution closes. The Board currently has $445,327 in the STRF. Last fiscal year 40 claims totaling $91,530 were paid from the STRF and an additional 62 claims were denied.

The Board has certified that the Joint Legislative Budget Committee has not been notified because the number of new full-time employees necessary to implement and enforce the rule is zero. Notice of new FTEs is required by A.R.S. § 41-1055(B)(3)(a).

1. **Costs and Benefits for:**

a. The implementing agency:

The amendments will result only in minimal implementation costs though will benefit the Board by adding clarity and consistency to the governing rules.

b. Political subdivisions:

The amendments do not impact political subdivisions.

c. Businesses:

Private postsecondary educational institutions are businesses directly affected by the rulemaking. There are additional requirements for businesses included in the amendments, particularly for institutions seeking a conditional license. For example, applicants for a conditional license will be required to submit a business plan for Board review and input. While this may be seen as an additional burden, the Board believes that the regulatory requirements are necessary for conditionally licensed institutions, which are either very new and/or have not met the standards required by accrediting agencies. These institutions pose a greater risk to the State and prospective students; therefore, warrant additional oversight.

Private postsecondary institutions will also be required to submit an annual report addressing the institutions annual enrollment, retention and placement rates for each program offered by the licensee. The Board indicates that the collection of this information is critical to the determination of quality programs and provides information to support educational decisions of prospective students. The benefit of this information to consumers (prospective students) is viewed as outweighing the cost of the data collection burden.

In addition to the costs of licensure and annual renewal, licensees are required to maintain a bond, contribute to the student tuition recovery fund, have professional liability insurance, and prepare an annual financial statement. They are also required to maintain student records in perpetuity.

d. Small businesses:

Many private postsecondary educational institutions are small businesses; therefore, are subject to this rulemaking. The Board estimates that 40% of all private postsecondary licensees are small businesses

e. Consumers directly affected by the rulemaking:

No private persons or consumers are directly affected by this rulemaking. Students are private postsecondary educational institutions are indirectly affected by the provisions designed to protect them.

2. Do the probable benefits outweigh the probable costs?

Based on the information provided, the Board indicates that the benefits to amending the rules in Chapter 39 outweigh the probable costs.

3. Analysis of methods to reduce the small business impact:

In addition to the costs of licensure and annual renewal, licensees are required to maintain a bond, contribute to the student tuition recovery fund, have professional liability insurance, and prepare an annual financial statement. They are also required to maintain student records in perpetuity.

4. The probable effect on state revenues:

The Board anticipates the proposed rule amendments will have no impact on state revenues.

5. Analysis of any less intrusive or less costly alternative methods:

The Board did not consider other alternatives because the proposed rule amendments represent the most cost effective and efficient method of complying the recommendations from the prior 5YRR and fulfilling the Board's statutory responsibility to protect the public by regulating private postsecondary educational institutions

6. Whether an analysis was submitted to the agency regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states:

No analysis was submitted that compares the rule's impact of the competiveness of businesses in this state to the impact on businesses in other states.

7. A description of any data on which a rule is based with an explanation of how the data was obtained and why the data is acceptable data, and the methods used by the agency to evaluate the costs and benefits in the EIS.

The Board did not address any outside data or studies that were used in the development of the proposed rule amendment. However, the Board did indicate that Arizona's surety bond levels are relatively low compared to other states.

8. Conclusion:

The submitted economic, small business and consumer impact statement is generally accurate, and contains the information required for compliance with A.R.S. §§ 41-1035, 41-1052(D)(1-3), and 41-1055. This analyst recommends that the rules be approved.

Arizona State Board for Private Postsecondary Education

February 16, 2016

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

RECEIVED
FEB 16 2016
GRRC

Re: A.A.C. Title 4. Professions and Occupations
Chapter 39. Board for Private Postsecondary Education

Dear Ms. Ong:

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

A. Close of record date: The rulemaking record was closed on January 29, 2016, 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).
B. Relation of the rulemaking to a five-year-review report: The rulemaking relates to a five-year-review report approved by the Council on September 13, 2011.
C. New fee: The rulemaking does not establish a new fee.
D. Fee increase: The rulemaking does not increase an existing fee.
E. Immediate effective date: An immediate effective date is not requested.
F. Certification regarding studies: I certify that the preamble accurately discloses that the Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.
F. 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.
G. List of documents enclosed:
   1. Cover letter signed by the Executive Director;
   2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
   3. Economic, Small Business, and Consumer Impact Statement

Sincerely,

Teri Stanfill
Executive Director

1400 WEST
WASHINGTON
ROOM 260
PHOENIX,
ARIZONA
85007
Phone:
602-542-5709
Fax:
602-542-1253
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NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 39. BOARD FOR PRIVATE POSTSECONDARY EDUCATION

PREAMBLE

1. Articles, Parts, and Sections Affected	**Rulemaking Action**
R4-39-101	Amend
R4-39-102	Amend
R4-39-103	Amend
R4-39-104	Amend
R4-39-105	Amend
R4-39-106	Amend
R4-39-107	Amend
R4-39-108	Amend
R4-39-109	Amend
R4-39-201	Amend
R4-39-301	Amend
R4-39-302	Amend
R4-39-303	Amend
R4-39-304	Amend
R4-39-305	Amend
R4-39-306	Amend
R4-39-307	Amend
R4-39-308	Amend
R4-39-401	Amend
R4-39-402	Amend
R4-39-403	Amend
R4-39-404	Amend
R4-39-405	Repeal
R4-39-406	Amend
R4-39-407	New Section
R4-39-408	New Section

Article 5	Amend
R4-39-501	Amend
R4-39-502	Amend
R4-39-503	Amend
R4-39-504	New Section
R4-39-601	Amend
R4-39-602	Amend
R4-39-603	Amend

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

Authorizing statute: A.R.S. §§ 32-3003(A)(3) and 32-3073(A)(6)

Implementing statute: A.R.S. §§ 32-3003(A)(5), (7), and (8), 32-3021, 32-3022, 32-3023, 32-3025, 32-3027, 32-3052, 32-3073

3. The effective date for the rules:

As specified under A.R.S. § 41-1032(A), the rule will be effective 60 days after the rule package is filed with the Office of the Secretary of State.

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

Not applicable

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

Not applicable

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

Notice of Rulemaking Docket Opening: 21 A.A.R. 2983, November 27, 2015

Notice of Proposed Rulemaking: 21 A.A.R. 3117, December 11, 2015

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

Name: Teri Stanfill, Executive Director

Address: 1400 W. Washington Street, Room 260
Phoenix, AZ 85007

Telephone:(602) 542-5709

Fax: (602) 542-1253

E-mail: teri.stanfill@azppse.az.gov

Web site: www.ppse.az.gov

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

In a five-year-review report approved by Council on September 13, 2011, the Board indicated it planned to amend all of its rules to ensure they are consistent with statute and agency and industry practice. The language of the rules also needed to be updated. The rulemaking completes the planned course of action.

An exemption from Executive Order 2015-01 was provided for this rulemaking by Ted Vogt, Chief of Operations in the Governor's office, in an e-mail dated February 6, 2015.

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

The Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

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

Not applicable

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

The Board believes the rulemaking has minimal effect on applicants, licensees, and students. The primary goal of the rulemaking is to make the rules more clear and understandable and consistent with Board practice. To this end, the Board clarifies that it is a private postsecondary educational institution that is licensed to operate. A licensed institution is authorized to offer programs. The rulemaking also clarifies the differences among a regular, conditional, and provisional license.

The following changes are the source of the minimal economic impact of the rulemaking:

- The overall time frame for the Board to act on an application for license renewal is reduced;
- A provision is added that the Board will close an application file if the application remains administratively incomplete after the applicant responds to a second notice of deficiency;
- Several grounds for denying or not renewing a license are added;
- Some additional actions require that a licensee provide notice to the Board;
- Consequences of allowing a license to expire are clarified;
- Amount of liability insurance is reduced for small institutions;
- Requirements for a year-end financial statement are reduced for small institutions;

- Requirements regarding preservation of student records when an institution ceases to operate are strengthened;
- Clarified that the Board will accept complaints from non-students;
- Section regarding transfer of credit is added; and
- As authorized by A.R.S. § 32-3052(M), a section regarding assessing costs the Board incurs in the process of determining that a person violated statute or rule is added.

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

Only minor, non-substantive changes were made between the proposed and final rules.

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

No written comments were received regarding the rulemaking. No one attended the oral proceeding on January 28, 2016.

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

There are no other matters prescribed by statute regarding this rulemaking. However, in the exemption from Executive Order 2015-01 provided for this rulemaking by Ted Vogt, Chief of Operations in the Governor's office, in an e-mail dated February 6, 2015, the Board was instructed to consult with the Governor's office, through Dawn Wallace, on an ongoing basis throughout the rulemaking process. The Board did as instructed by regularly sending e-mail updates to Ms. Wallace.

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 licenses described in R4-39-102 are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

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

The rules are not more stringent than federal law. There are numerous federal laws that apply to the operation of colleges and universities including private postsecondary educational institutions. In particular, a private postsecondary educational institution is required under 34 CFR §§ 600.4(a)(3), 600.5(a)(4), and 600.6(a)(3) to be "legally authorized to provide an educational program beyond

secondary education in the State in which the institution is physically located." 34 CFR § 600.9 provides the requirements for state authorization. The Board is part of that requirement. The entities licensed by the Board must comply with all the federal laws. However, although the Board is necessary to provide state authorization for private postsecondary educational institutions, there is no federal law directly applicable to the Board.

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

No analysis was submitted

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

None

14. 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:

None of the rules in this rulemaking was previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 39. BOARD FOR PRIVATE POSTSECONDARY EDUCATION

ARTICLE 1. DEFINITIONS, LICENSURE, REPORTING

Section

R4-39-101. Definitions

R4-39-102. ~~Licensure and Licensure Procedures~~ Licenses Issued and Licensing Time Frames

R4-39-103. Requirements for a Regular License to Operate a Private Accredited Vocational ~~Institution~~ or ~~a Private Accredited~~ Degree-granting Institution in Arizona

R4-39-104. Requirements for a Conditional License to Operate a ~~New~~ Private Non-accredited Vocational Institution in Arizona

R4-39-105. Requirements for a Regular License to Continue to Operate a Private Non-accredited Vocational Institution in Arizona

R4-39-106. Requirements for a Conditional License to Operate a ~~New~~ Private Non-accredited Degree-granting Institution in Arizona

R4-39-107. Requirements for a Provisional License to Continue to Operate a Private Non-accredited Degree-granting Institution in Arizona

R4-39-108. Surety Bond, Cash Deposit, or ~~Equivalent Security Requirements~~ Letter of Credit; Insurance ~~Requirements~~; Financial Statement Requirements; and Finance Committee

R4-39-109. Supplemental License Applications

R4-39-110. Change of Ownership or Control

R4-39-111. Honorary Degrees

ARTICLE 2. FEES

Section

R4-39-201. Fees

ARTICLE 3. OPERATION OF PRIVATE NON-ACCREDITED INSTITUTIONS

Section

R4-39-301. Catalog

R4-39-302. Facilities and Equipment

R4-39-303. Staff

R4-39-304. Advertising
R4-39-305. Recruitment
R4-39-306. Admission Requirements
R4-39-307. Placement
R4-39-308. Tuition, Pricing, Refund Policies

ARTICLE 4. OPERATION OF ALL LICENSED INSTITUTIONS

Section

R4-39-401. Student Records
R4-39-402. Preservation of Records
R4-39-403. ~~Student~~ Complaint Procedures
R4-39-404. Tuition Refund Policy
R4-39-405. ~~Student Loans and Financial Aid~~ Repealed
R4-39-406. ~~Closure of an Institution or Cessation of~~ Closing a Licensee; Ceasing to Offer a Program; Teach-out Plan
R4-39-407. Use of Terms
R4-39-408. Transfer of Credit

ARTICLE 5. INVESTIGATIONS; ~~AND~~ HEARING PROCEDURES; AND ASSESSING COSTS

Section

R4-39-501. Investigations
R4-39-502. Hearings
R4-39-503. Rehearing or Review of Board's Decision
R4-39-504. Assessing Costs

ARTICLE 6. STUDENT TUITION RECOVERY FUND

Section

R4-39-601. Submission of Assessments
R4-39-602. Claims
R4-39-603. Student Records

ARTICLE 1. DEFINITIONS, LICENSURE, REPORTING

R4-39-101. Definitions

In addition to the definitions in A.R.S. §§ 32-3001 and 32-3071, the following definitions apply in this Chapter unless the context otherwise requires:

1. "Accreditation" has the same meaning as "accredited" in A.R.S. § 32-3001.
2. "Applicant" means a private postsecondary education institution on whose behalf an application is submitted to the Board for a license to operate the institution and offer vocational programs or grant degrees.

~~2. "Board" means the Arizona State Board for Private Postsecondary Education.~~

3. "Conditional license" means a non-renewable one-year license issued by the Board to a ~~new~~ private non-accredited vocational ~~institution~~ or ~~a new private non-accredited~~ degree-granting institution.
4. "Day" means a calendar day unless specified otherwise.
5. "DE" means the United States Department of Education.
6. "GTR" means gross tuition revenue.
7. "Licensee" means a private postsecondary education institution that is licensed by the Board and offers vocational programs or grants degrees.
8. "Management capability" as used in A.R.S. § 32-3051(10), means continuous coordination of all federal, state, and accreditation requirements, as applicable, in a manner that provides an educationally enriching environment that benefits students.
9. "Misrepresent" means to give a false or misleading representation with the intent to deceive or be unfair.

~~4."New," as used in this Section and in R4-39-104 and R4-39-106 means a:~~

~~a. Private non-accredited vocational institution that has not previously been issued a license by the Board to operate as a private non-accredited vocational institution in this state, or~~

~~b. Private non-accredited degree-granting institution that has not previously been issued a license by the Board to operate as a private non-accredited degree-granting institution in this state.~~

~~5. "Person" has the meaning in A.R.S. § 1-215.~~

10. "Operate" has the meaning specified in A.R.S. § 32-3001 and includes the concept of "physical presence" as defined by the National Council for State Authorization Reciprocity Agreements (See http://nc-sara.org).

~~6.~~11. "Provisional license" means a renewable one-year license issued by the Board to a private non-accredited degree-granting institution.

~~7.~~12. "Regular license" means a renewable one-year license issued by the Board to a:

a. ~~private~~ Private accredited vocational institution, ~~a private~~

b. Private accredited degree-granting institution, or ~~a private~~

c. Private non-accredited vocational institution.

~~8.~~13. "Signature" means:

a. A handwritten or stamped representation of an individual's name or a symbol intended to represent an individual's name, or

b. An "electronic signature" as defined in A.R.S. § 44-7002.

~~9.~~14. "Signing" means the act of providing a signature.

~~10.~~15. "Staff" means an individual employed by or representing a private vocational institution or private degree-granting institution.

~~11.~~ 16. "Student fees" means charges incurred by a student or a funding source on behalf of the student for registration, admission, tuition financing, ~~or~~ loans , or charges for books, laboratory fees, or other education-related costs ~~incurred by a student or other funding source on behalf of the student~~.

17. "Teach-out" means the process by which a private postsecondary education institution fulfills its educational and contractual obligations to currently enrolled students before voluntarily closing a program the institution offers or before closing the institution.

18. "Tuition" means a fee paid for instruction at a college or university or a private school.

R4-39-102. ~~Licensure and Licensure Procedures~~ Licenses Issued and Licensing Time Frames

A. ~~The Board may issue a conditional, regular, or supplemental license to a private institution to operate vocational programs.~~ A license from the Board issued to a private degree-granting institution authorizes the institution to operate and grant degrees.

B. ~~The Board may issue a conditional, provisional, regular, or supplemental license to a private institution to operate degree programs or grant degrees.~~ A license from the Board issued to a private vocational institution authorizes the institution to operate and offer a vocational program.

C. If a private degree-granting or private vocational institution is accredited, the Board shall issue a regular license to the institution if the institution meets the standards in R4-39-103.

D. If a private degree-granting or private vocational institution is non-accredited, the Board shall issue a conditional license to the institution if the institution meets the standards in R4-39-104 or R4-39-106, as applicable. The institution may operate under a conditional license for only one year.

1. At the end of one year, the conditional license of a non-accredited, private, vocational institution becomes, upon approval by the Board, a regular license if the institution meets the standards in R4-39-105.

2. At the end of one year, the conditional license of a non-accredited, private, degree-granting institution becomes, upon approval by the Board, a provisional license if the institution meets the standards in R4-39-107.

E. A non-accredited, private, degree-granting institution may continue to operate with a provisional license if the institution continues to meet the standards in R4-39-107.

~~C.~~F. ~~Licenses~~ All licenses issued by the Board are effective for ~~a 12-month period~~ 12 months from the date of issuance. To continue to operate a private vocational institution or private degree-granting institution, a licensee shall annually renew the license under R4-39-105 or R4-39-107, as applicable.

~~**D.** The Board shall issue the following licenses to private, vocational institutions:~~

~~1. An original license of an accredited, private, vocational institution is a regular license to operate vocational programs.~~

~~2. A license renewal of an accredited, private, vocational institution is a regular license to continue to operate vocational programs.~~

~~3. An original license of a new, non-accredited, private, vocational institution is a one-year conditional license to operate vocational programs.~~

~~4. A license renewal of a non-accredited, private, vocational institution is a regular license to continue to operate vocational programs.~~

~~**E.** The Board shall issue the following licenses to private, degree-granting institutions:~~

~~1. An original license of an accredited, private, degree-granting institution is a regular license to operate degree programs or grant degrees.~~

~~2. A license renewal of an accredited, private, degree-granting institution is a regular license to continue to operate degree programs or grant degrees.~~

~~3. An original license of a new, non-accredited, private, degree-granting institution that complies with the provisions of R4-39-106 is a conditional license to operate degree programs or grant degrees.~~

~~4. A license renewal of a non-accredited, private, degree-granting institution that complies with the provisions of R4-39-107 is a provisional license to continue to operate degree programs or grant degrees.~~

~~F.~~G. For the purpose of A.R.S. § 41-1073, the Board establishes the following licensing ~~time-frames~~ time frames:

1. For ~~an original~~ a conditional or ~~original~~ regular license application to operate a vocational ~~programs~~ institution or ~~an original~~ a regular license application to operate ~~degree programs or grant~~ ~~degrees~~ a degree-granting institution:
   a. Administrative completeness review ~~time-frame~~ time frame: ~~90~~ 135 days;
   b. Substantive review ~~time-frame~~ time frame: ~~90~~ 45 days;
   c. Overall ~~time-frame~~ time frame: 180 days.
2. For a conditional or provisional license application to operate ~~degree programs or grant degrees~~ a degree-granting institution:
   a. Administrative completeness review ~~time-frame~~ time frame: ~~90~~ 150 days;
   b. Substantive review ~~time-frame~~ time frame: ~~150~~ 90 days;

c. Overall ~~time-frame~~ time frame: 240 days.

3. For a ~~regular~~ license renewal application to continue to operate a vocational ~~programs, degree programs,~~ or ~~grant degrees~~ degree-granting institution or for a supplemental license application:

a. Administrative completeness review ~~time-frame~~ time frame: ~~45~~ 60 days;

b. Substantive review ~~time-frame~~ time frame: ~~90~~ 45 days;

c. Overall ~~time-frame~~ time frame: ~~135~~ 105 days.

~~G.~~**H.** Within ~~90 days of receiving an original conditional or original regular license application to operate vocational programs or an original regular, original conditional, or provisional license application to operate degree programs or grant degrees, or within 45 days of receiving a regular license renewal application to continue to operate vocational programs, degree programs, or grant degrees or a supplemental license application~~ the time specified in subsection (G), the Board shall finish an administrative completeness review.

1. If the application is complete, the Board shall notify the applicant that the application is complete and that the administrative completeness review is finished. The substantive review will begin on the date the notice is served.

2. If the application is incomplete, the Board shall ~~notify~~ send the applicant ~~that the application is incomplete and specify~~ a notice that specifies what information is missing and ~~what~~ other deficiencies ~~are~~ found in the application. The administrative completeness review ~~time-frame~~ time frame is suspended from the date the notice is served until the applicant provides the Board with ~~a revised application containing all~~ the missing information and ~~correcting~~ corrects all deficiencies.

a. An applicant with an incomplete application shall submit ~~a revised application~~ the missing information and correct the deficiencies within 60 days ~~of receipt of~~ after receiving the notice.

b. If the applicant cannot ~~submit a revised application within~~ comply with the 60-day ~~days of receipt of notice~~ deadline in subsection (H)(2)(a), the applicant may request an extension of no more than 30 days by submitting a written request to the Board~~, documenting~~ that documents the reasons the applicant is unable to meet the 60-day deadline~~, to the Board~~ and is postmarked or delivered ~~with 60 days of receipt of notice~~ before the deadline specified in subsection (H)(2)(a).

c. The Board shall grant the request for an extension of the 60-day deadline if the Board determines that the extension ~~of the 60-day deadline~~ will enable the applicant to submit ~~a revised application containing~~ all missing information and ~~correcting~~ correct all deficiencies. The Board shall grant only one extension of the 60-day deadline specified in subsection (H)(2)(a).

d. If the applicant responds to the notice provided under subsection (H)(2) by providing some of the missing information and correcting some of deficiencies but the Board determines the application is still incomplete, the Board shall send the applicant a second notice that specifies what information is missing and other deficiencies found in the application and provide the applicant with 60 days in

which to complete the application. The Board shall not grant an extension of the 60-day deadline provided with a second deficiency notice.

e. If the applicant fails to submit all missing information or correct all deficiencies within the 60-day deadline provided under subsection (H)(2)(d), the Board shall close the application. An applicant whose application is closed and later wishes to be licensed shall submit a new application and pay the fee required under R4-39-201.

~~d.~~f. ~~Upon receipt and review of the revised application, and within the administrative completeness review time-frame~~ When the Board receives the missing information and the deficiencies are corrected, the Board shall notify the applicant that the administrative completeness review is finished. The substantive review will begin on the date the notice is served.

~~e. If the revised application containing all missing information and correcting all deficiencies is not submitted within the 60-day deadline or the time permitted by an extension, the Board shall close the application. An applicant whose application is closed and who later wishes to seek licensure, shall apply anew.~~

~~**H.**~~**I.** Within ~~90 days from the date on which the administrative completeness review of an original conditional or original regular license application to operate vocational programs, an original regular license application to operate degree programs or grant degrees, a regular license renewal application to continue to operate vocational programs, degree programs, or grant degrees or a supplemental license application is finished or within 150 days from the date on which the administrative completeness review of an original conditional or provisional license application to operate degree programs or grant degrees is finished~~ the time specified in subsection (G), the Board shall complete a substantive review of the application, which may include ~~an~~ onsite verification~~, and render a decision~~.

~~1. If the Board finds that the applicant meets all requirements defined in statute and rule, the Board shall grant the license.~~

~~2. If the Board finds that the applicant fails to meet all requirements defined in statute and rule, the Board shall deny the license.~~

~~3.~~1. If the Board finds deficiencies during the substantive review of the application, the Board shall issue a comprehensive written request~~, specifying the~~ for additional ~~documentation to be submitted~~ information and the deadline for ~~submission~~ submitting the additional information. The ~~time-frame~~ time frame for substantive review of an application is suspended from the date the comprehensive written request for additional ~~documentation~~ information is served until the ~~date that all documentation~~ information is received.

2. When the applicant and Board agree in writing, the Board may make supplemental requests for information.

~~4.~~3. When the applicant and ~~the~~ Board ~~mutually~~ agree in writing, the Board shall grant extensions of the substantive review ~~time frame~~ time frame ~~totaling no more than 30 days~~ consistent with A.R.S. § 41-1075(B).

~~5.~~4. If the ~~requested documentation is not submitted~~ applicant fails to submit the additional information by the deadline ~~date~~, the Board shall close the application. An applicant whose application ~~has been~~ is closed and who later wishes to ~~seek licensure~~ be licensed, shall ~~apply anew~~ submit a new application.

J. At the end of the substantive review, the Board shall decide whether to grant a license to the applicant.

1. If the Board finds that the applicant meets all requirements defined in statute and rule, the Board shall grant a license.
2. If the Board finds that the applicant fails to meet all requirements defined in statute and rule, the Board shall deny a license.
3. If the Board denies a license, the Board shall send the applicant a notice of denial that specifies why a license was denied and describes the applicant's right to request a hearing regarding the denial.

R4-39-103. Requirements for a Regular License to Operate a Private Accredited Vocational ~~Institution~~ or ~~a Private Accredited~~ Degree-granting Institution in Arizona

A. A person shall not operate a private accredited vocational ~~institution~~ or ~~a private accredited~~ degree-granting institution without a regular license granted by the Board.

B. ~~The~~ Except as specified in subsection (B)(6), the Board shall not grant ~~a regular license~~ or ~~renewal of~~ renew a regular license ~~to an applicant~~ if:

1. Within 10 years before ~~the date of~~ filing ~~an~~ the application packet required in subsection (D) or since the start date of the current licensure period, an individual with at least 20 percent ~~or more~~ ownership in the applicant ~~institution~~ or an officer or employee who controls, manages, or represents the applicant in this state has been convicted in this state or any ~~other state or~~ jurisdiction of ~~a felony or~~ any crime, regardless of whether the crime is a misdemeanor or felony, that a reasonable person would consider relevant ~~related~~ to the legal and ethical operation of an educational institution~~, unless the conviction has been absolutely discharged, expunged, or vacated~~;
2. Within 10 years before ~~the date of~~ filing ~~an~~ the application packet required in subsection (D) or since the start date of the current licensure period, a person with at least 20 percent ~~or more~~ ownership in the applicant ~~institution~~ or an officer or employee who controls, manages, or represents the applicant in this state has had a license to operate a ~~vocational program,~~ vocational ~~institution, degree program,~~ or degree-granting institution revoked in this state or ~~in~~ any ~~other state or~~ jurisdiction; ~~or~~
3. The applicant provides false or misleading information on or with ~~an~~ the application packet required by this Section~~.~~;

4. The applicant was previously licensed by the Board and ceased operation without complying with R4-39-402 and R4-39-406; or
5. The applicant ceased to operate or offer a program and as a result:
   a. The Board was obligated to make a payment from the Student Tuition Recovery Fund established under A.R.S. § 32-3072, or
   b. The DE or a private entity forgave loans, in whole or in part, to affected students; and
6. If the conviction described in subsection (B)(1) was discharged, expunged, set aside, or vacated, the Board shall consider this fact when exercising its discretionary power under this Section.

C. The Board shall grant or renew a regular license ~~or renewal of a regular license to an applicant~~ only if:

1. The applicant provides the information required in subsection (D); and
2. The information provided under subsection (D) demonstrates:
   a. For a regular license to operate a private accredited vocational institution, compliance with A.R.S. § 32-3021(B)~~(1) through (9)~~;
   b. For a regular license to operate a private accredited degree-granting institution, compliance with A.R.S. § 32-3022(B);
   c. The ability to provide educational services as represented to the public;
   d. Institutional accreditation or accreditation of each program to be ~~operated~~ offered; and
   e. Compliance with all accreditation standards established by each accrediting agency that accredits the applicant's programs or the institution through which the programs are operated.

D. An applicant for ~~a~~ an initial regular license shall submit to the Board an application packet ~~including~~ that includes:

1. The filing fee required under R4-39-201;
2. The information and documentation required in R4-39-104(D)(2), if required, and (D)(3) through ~~(D)(6), (D)(8) through (D)(15), and~~ (D)(17);
3. The name of each accrediting agency that accredits the applicant or the applicant's programs ~~or the institution through which the programs are operated~~;
4. For each accrediting agency named in subsection (D)(3), documentation from the accrediting agency that confirms the current accreditation status of the applicant or the applicant's programs ~~or the institution~~;
5. Attestation by the individual signing the application that the applicant complies and will continue to comply with all accreditation standards established by each accrediting agency named in subsection (D)(3);
6. ~~The name of each federal student financial aid program in which the applicant is eligible to participate~~ A copy of the applicant's most recent DE program participation agreement and financial aid audit, if applicable;

7. For each federal student financial aid program named in the agreement in subsection (D)(6), documentation from the ~~United States Department of Education~~ DE demonstrating participation in the federal student financial aid program and showing the applicant's ~~student~~ default rate for the last three years, if applicable;
8. Attestation by the individual signing the application that the applicant complies and will continue to comply with all ~~United States Department of Education~~ DE requirements governing federal student financial aid programs named in the agreement in subsection (D)(6);
9. A copy of the applicant's current catalog and enrollment agreement that meets the accreditation standards established by each accrediting agency named in subsection (D)(3); and
10. A surety bond, cash deposit, or equivalent security if required under A.R.S. § 32-3023 and R4-39-108.

E. No later than 60 ~~calendar~~ days before ~~the expiration date of~~ a licensee's ~~current~~ regular license expires, ~~an applicant~~ the licensee ~~for annual renewal of a regular license~~ shall submit to the Board ~~an~~ a license renewal application packet ~~including~~ that includes:

1. The filing fee required under R4-39-201; and
2. The information and documentation required in:
   a. R4-39-104(D)(2) if required under A.R.S. § 32-3023 and R4-39-108; ~~,~~
   b. R4-39-104(D)(3), (D)(4), (D)(5), (D)(8)(a) and (c), ~~(D)(9), (D)(10),~~ (D)(12), ~~(D)(14), (D)(15),~~ and (D)(17); and
   ~~b.~~c. Subsections (D)(3) through (D)(10)~~.~~;
3. A list of all individuals or persons referenced in R4-39-104(D)(14) and (D)(15);
4. A report on the annual enrollment and retention and placement rates for each program offered by the licensee, if the report is required by DE or the accrediting agency that accredits the program or licensee;
5. For each program offered, an indication whether the program is offered by residential or online delivery or both; and
6. A list of all programs that are in teach-out and:
   a. The names of all students in each program,
   b. The anticipated completion date of each student, and
   c. Contact information for each student.

F. A licensee shall:

1. Notify the Board in writing within 24 hours if the licensee:
   a. Receives a ~~new~~ grant of accreditation issued by an accrediting agency other than an accrediting agency named under subsection (D)(3); ~~or~~
   b. Becomes eligible to participate in a federal student financial aid program other than a federal student financial aid program named in the agreement under subsection (D)(6)~~.~~;

~~2.~~ c. ~~Notify the Board in writing within 24 hours if the licensee ceases~~ Ceases to be accredited or has a program that ceases to be accredited by an accrediting agency named under subsection (D)(3);

~~3.~~ d. ~~Notify the Board in writing within 24 hours if the licensee ceases~~ Ceases to be eligible to participate in a federal student financial aid program named in the agreement under subsection (D)(6); ~~and~~

e. Decides to cease operations; or

f. Knows or should know that the license is under investigation by any state or federal agency or an accrediting agency; and

~~4.~~2. Notify the Board in writing within ~~14 calendar~~ five business days of:

a. A change in any grant of accreditation issued by an accrediting agency named under subsection (D)(3) or (F)(1)(a) including but not limited to the following adverse actions:

i. Suspending accreditation,

ii. Withdrawing or cancelling accreditation,

iii. Placing accredited institution on probation,

iv. Requiring accredited institution to show cause, or

v. Requiring a specific corrective action, or

b. A change in eligibility to participate in a federal student financial aid program named in the agreement under subsection (D)(6) or (F)(1)(b).

G. The Board may conduct an inspection, ~~pursuant to~~ under A.R.S. § 41-1009, of an applicant's or ~~a~~ licensee's place of business to determine compliance with the requirements of A.R.S. Title 32, Chapter 30 and this Article.

H. ~~In addition to the grounds for disciplinary action~~ As provided in A.R.S. §~~§~~ 32-3051, the Board ~~shall~~ may discipline a licensee that:

1. Violates ~~the requirements~~ a requirement in subsection (F); or
2. Intentionally or negligently misrepresents any material information in documents or information presented to the Board.

R4-39-104. Requirements for a Conditional License to Operate a ~~New~~ Private Non-accredited Vocational Institution in Arizona

A. A person shall not operate a ~~new~~ private non-accredited vocational institution without a conditional license granted by the Board.

B. ~~The~~ Except as specified in subsection (B)(6), the Board shall not grant a conditional license ~~to an applicant~~ if:

1. Within 10 years before ~~the date of~~ filing ~~an~~ the application packet required in subsection (D), an individual with at least 20 percent ~~or more~~ ownership in the applicant ~~institution~~ or an officer or employee who controls, manages, or represents the applicant in this state has been convicted in this state or any ~~other state or~~ jurisdiction of ~~a felony or~~ any crime, regardless of whether the crime is a misdemeanor or

felony, that a reasonable person would consider relevant ~~related~~ to the legal and ethical operation of an educational institution~~, unless the conviction has been absolutely discharged, expunged, or vacated~~;

2. Within 10 years before ~~the date of~~ filing ~~an~~ the application packet required in subsection (D), a person with at least 20 percent ~~or more~~ ownership in the applicant i~~nstitution~~ or an officer or employee who controls, manages, or represents the applicant in this state has had a license to operate a ~~vocational program,~~ vocational ~~institution,~~ ~~degree program,~~ or degree-granting institution revoked in this state or ~~in~~ any ~~other state or~~ jurisdiction; ~~or~~
3. The applicant provides false or misleading information on or with ~~an~~ the application required by this Section~~.~~;
4. The applicant was previously licensed by the Board and ceased operations without complying with R4-39-402 and R4-39-406; or
5. The applicant ceased to operate or offer a program and as a result:
   a. The Board was obligated to make a payment from the Student Tuition Recovery Fund established under A.R.S. § 32-3072, or
   b. The DE or a private entity forgave loans, in whole or in part, to affected students; and
6. If the conviction described in subsection (B)(1) was discharged, expunged, set aside, or vacated, the Board shall consider this fact when exercising its discretionary power under this Section.

C. The Board shall grant a conditional license to an applicant if:

1. The applicant provides the information and documentation required in subsection (D); and
2. The information provided under subsection (D) demonstrates:
   a. Compliance with A.R.S. § 32-3021(B)(1) through ~~(9)~~ (11); and
   b. The ability to provide educational services as represented to the public.

D. An applicant for a conditional license shall submit to the Board an application packet ~~including~~ that includes:

1. The filing fee required under R4-39-201;
2. A letter of credit, surety bond, cash deposit, or equivalent security, as required under A.R.S. § 32-3023, of $15,000 or another amount determined by the Board under R4-39-108;

~~2.~~3. An application form provided by the Board containing:

   a. The applicant's name, street address, mailing address, telephone number, fax number, e-mail address, and web site address, if applicable;
   b. If the applicant has a headquarters in another state or jurisdiction, the headquarters' street address, mailing address, telephone number, fax number, and e-mail address;
   c. Responses to questions regarding the distribution of ownership, business type, and legal structure;
   d. As applicable, identification of:
      i. All members of the board of directors or board of trustees,
      ii. All persons with at least 20 percent ~~or more~~ ownership in the ~~institution~~ applicant, and

iii. All individuals responsible for controlling, managing, or representing the ~~institution~~ applicant in this state;

e. Responses to questions regarding whether a person identified in subsection ~~(D)(2)(d)~~ (D)(3)(d) has ever applied for or been issued a license to operate a vocational ~~program, vocational institution, degree program,~~ or degree-granting institution in this state or ~~in~~ any ~~other state or~~ jurisdiction;

f. Responses to questions regarding the finances, federal or state tax liabilities, management capabilities, and criminal history of the persons identified under subsection ~~(D)(2)(d)(ii)~~ (D)(3)(d)(ii);

g. Responses to questions regarding programs~~,~~ and student recruitment, ~~student~~ enrollment, ~~student~~ retention, ~~student~~ placement, and ~~student~~ financing;

h. Name of the director required under R4-39-303(B) and evidence that the director is qualified;

~~h.~~i. Staffing information including:

i. ~~Faculty member~~ Required minimum qualifications of faculty for each program to be ~~operated~~ offered;

~~ii. Total number of current administrative personnel and faculty members;~~

~~iii.~~ii. ~~If applicable, projected~~ The number of administrative personnel and faculty members projected at the end of the first licensure period; and

~~iv.~~iii. The names of all current administrative personnel and faculty members;

~~i.~~j. Attestation by the individual signing the application that the applicant will comply with all applicable requirements in A.R.S. Title 32, Chapter 30, and this Chapter;

~~j.~~k. Attestation by the individual signing the application that all information required as part of the application packet has been submitted and is true and accurate; and

~~k.~~l. The notarized signature of an owner of the applicant or an owner's legal representative and date of signature;

4. Financial statements or financial documentation required under R4-39-108;

5. Evidence of the insurance required under R4-39-108;

~~3.~~6. If applicable, a copy of the applicant's articles of incorporation, partnership or joint venture documents, or limited liability documents;

7. A business plan that includes:

a. Executive summary with highlights, objectives, and mission;

b. Applicant summary;

c. Programs offered and services provided;

d. Marketing plan and implementation; and

e. Financial plan that includes three-year projections and financial resources available to demonstrate financial stability;

~~4.~~8. For each program to be ~~operated~~ offered, a form provided by the Board describing:

a. Program content, length, and delivery system information;

b. Program prerequisites and completion requirements;

c. ~~Tuition and student~~ Student fees as defined at R4-39-101;

d. Any required textbooks or program learning materials;

e. Any equipment or technology or competency requirements ~~or competencies~~;

f. As applicable:

i. Library resources;

ii. Clinical training, practica, externships, internships, or special features;

iii. Graduate employment opportunities; and

iv. ~~Requirements~~ Licensing requirements for a graduate of the program to practice ~~the skill or occupation for which the program prepares the graduate~~; and

g. Attach to the form, a copy of the certificate or diploma to be awarded when the program is completed.

~~5.~~9. A copy of the applicant's student enrollment agreement meeting the requirements in R4-39-401;

~~6. A copy of each type of certificate or diploma to be awarded;~~

~~7.~~10. A copy of the applicant's catalog meeting the requirements in R4-39-301;

~~8.~~11. A copy of each brochure, promotional document, uniform resource locator, or advertisement intended for students or potential students;

~~9.~~12. A copy of the applicant's ~~published~~ student grievance procedure that:

a. ~~Requires that a student grievance be submitted in writing;~~ Is published in the applicant's catalog required under subsection (D)(10);

b. Provides the steps and ~~time lines~~ time frames involved in the grievance procedure;

c. References the student's right under A.R.S. § 32-3052 to file a complaint with the Board; ~~and~~

d. Lists the Board's address, ~~and~~ telephone number, and web site; and

e. If the applicant requires arbitration as part of the student grievance procedure, includes the following statement: Arbitration of a student grievance is required. Arbitration will take place at a location reasonably convenient for both parties giving due consideration to the student's ability to travel and other pertinent circumstances. Both parties will attempt to have proceedings take place within a reasonable time and without undue delay. The arbitration proceedings will follow the spirit if not the letter of the consumer due process protocol of the American Arbitration Association. The protocol includes but is not limited to a fundamentally fair process; an independent and impartial, competent, and qualified arbitrator; independent administration of the arbitration; reasonable cost; right to representation; and possibility of mediation. Arbitration does not preclude other avenues of recourse, including but not limited to possible relief in small claims court, unless and until the arbitration result is made binding. Arbitration of a student grievance does not preclude the student from seeking a remedy from the Arizona Board of Private Postsecondary Education.

~~10.~~13. An institutional organizational chart including staff names and position titles;

~~11.~~14. For each individual identified under subsection ~~(D)(2)(d)~~ (D)(3)(d), a form provided by the Board describing the individual's professional and educational background;

~~12.~~15. For each faculty member named under subsection ~~(D)(2)(h)(iv)~~ (D)(3)(h)(iv), a form provided by the Board describing the individual's professional and educational background;

~~13.~~16. For each location within the state from which the applicant will operate:

a. A form provided by the Board describing the facility;

b. Line drawings, floor plans, or photographs showing each story of the facility, the room layout, room usage, and each door, window, and exit; and

c. Documentation from the local jurisdiction of compliance with all applicable fire codes, ~~local~~ building codes, and zoning ordinances; and

~~14. Documentation of insurance required under R4-39-108;~~

~~15. Financial statements or financial documentation required under R4-39-108;~~

~~16. A surety bond, cash deposit, or equivalent security as required under A.R.S. § 32-3023 and R4-39-108; and~~

17. Other information ~~determined by~~ the Board or ~~the~~ applicant ~~to be~~ believes is relevant ~~to the determination~~ and will assist the Board to determine whether ~~of~~ the ~~applicant's~~ applicant is in compliance with all licensing requirements under A.R.S. Title 32, Chapter 30 and this Article.

E. Before granting a conditional license, the Board shall conduct an inspection, ~~pursuant to~~ under A.R.S. § 41-1009, of an applicant's place of business to determine compliance with subsection (C).

F. ~~While conditionally licensed~~ If the Board grants a conditional license to an applicant, ~~a~~ the conditional licensee:

1. Shall not describe or refer to itself using the terms "licensed," "approved," or "accredited;" and
2. May describe or refer to itself using the terms "conditionally licensed" or "conditional license."

G. After granting a conditional license, the Board may conduct an inspection, ~~pursuant to~~ under A.R.S. § 41-1009, of a licensee's place of business to determine continuing compliance with the requirements of A.R.S. Title 32, Chapter 30 and this Article.

H. ~~In addition to the grounds for disciplinary action in~~ Under the authority provided at A.R.S. §~~§~~ 32-3051, the Board may discipline a licensee that intentionally or negligently misrepresents any material information in documents or testimony presented to the Board.

R4-39-105. Requirements for a Regular License to Continue to Operate a Private Non-accredited Vocational Institution in Arizona

A. ~~The~~ Except as specified in subsection (A)(6), the Board shall not grant ~~a regular license or renewal of~~ or renew a regular license to an applicant, if:

1. Since the start date of the current licensure period, an individual with at least 20 percent ~~or more~~ ownership in the applicant ~~institution~~ or an officer or employee who controls, manages, or represents the applicant in this state has been convicted in this state or any ~~other state or~~ jurisdiction of ~~a felony or~~ any crime, regardless of whether the crime is a misdemeanor or felony, that a reasonable person would consider relevant ~~related~~ to the legal and ethical operation of an educational institution~~, unless the conviction has been absolutely discharged, expunged, or vacated~~;
2. Since the start date of the current licensure period, a person with at least 20 percent ~~or more~~ ownership in the applicant ~~institution~~ or an officer or employee who controls, manages, or represents the applicant in this state has had a license to operate a vocational ~~program, vocational institution, degree program,~~ or degree-granting institution revoked in this state or any ~~other state or~~ jurisdiction; ~~or~~
3. The applicant provides false or misleading information on or with an application required by this Section~~.~~;
4. The applicant was previously licensed by the Board and ceased operations without complying with R4-39-402 and R4-39-406; or
5. The applicant ceased to operate or offer a program and as a result:
   a. The Board was obligated to make a payment from the Student Tuition Recovery Fund established under A.R.S. § 32-3072, or
   b. The DE or a private entity forgave loans, in whole or in part, to affected students; and
6. If the conviction described in subsection (A)(1) was discharged, expunged, set aside, or vacated, the Board shall consider this fact when exercising its discretionary power under this Section.

B. The Board shall grant or renew a regular license ~~or renewal of a regular license~~ to ~~an applicant~~ a licensee if the licensee submits an application and:

1. The ~~applicant provides~~ application includes the information required in subsection (C) ~~or (D)~~; and
2. The information provided demonstrates:
   a. Compliance with A.R.S. § 32-3021(B)(1) through ~~(9)~~ (11); and
   b. The ability to provide educational services as represented to the public.

C. No later than 60 ~~calendar~~ days before ~~the~~ expiration ~~date~~ of a licensee's conditional or regular license, ~~an applicant for a regular license~~ the licensee shall submit to the Board an application packet ~~including~~ that includes:

1. The filing fee required under R4-39-201; ~~and~~
2. The information and documentation required in R4-39-104(D)(2)~~, (D)(4),~~ through (D)(5), ~~(D)(7)~~ (D)(8)(a) and (c), (D)(9), (D)(10), (D)(12), ~~and~~ (D)(14), (D)(15) and ~~through~~ (D)(17)~~.~~; and
3. Information regarding the annual enrollment and retention and placement rates for each program offered by the licensee;

~~**D.** No later than 60 calendar days before the expiration date of the applicant's regular license, an applicant for renewal of a regular license shall submit to the Board an application packet including:~~

~~1. The filing fee required under R4-39-201; and~~

~~2. The information and documentation required in R4-39-104(D)(2), (D)(4), (D)(5), (D)(7), (D)(9), (D)(10), and (D)(14) through (D)(17).~~

D. A licensee that fails to comply with subsection (C) and allows the licensee's conditional or regular license to expire shall:

1. Comply with subsection (C) within 30 days after the license expires, and
2. Pay the late renewal fee prescribed under A.R.S. § 32-3027(A)(7); or
3. Immediately cease operating in this state.

E. The Board may conduct an inspection, ~~pursuant to~~ under A.R.S. § 41-1009, of ~~an applicant's or~~ a licensee's place of business to determine compliance with the requirements ~~of~~ in A.R.S. Title 32, Chapter 30 and this Article.

F. ~~In addition to the grounds for disciplinary action~~ As provided in A.R.S. § 32-3051, the Board may discipline a licensee that:

1 ~~intentionally~~ Intentionally or negligently misrepresents any material information in documents or testimony presented to the Board, or

2. Fails to comply fully with subsection (C) or (D) but continues to operate in this state.

R4-39-106. Requirements for a Conditional License to Operate a ~~New~~ Private Non-accredited Degree-granting Institution in Arizona

A. A person shall not operate a ~~new~~ private non-accredited degree-granting institution without a conditional license granted by the Board.

B. ~~The~~ Except as specified in subsection (B)(4), the Board shall not grant a conditional license to an applicant, if:

1. Within 10 years before ~~the date of~~ filing ~~an~~ the application packet required in subsection (D), an individual with at least 20 percent ~~or more~~ ownership in the applicant ~~institution~~ or an officer or employee who controls, manages, or represents the applicant in this state has been convicted in this state or any ~~other state or~~ jurisdiction of ~~a felony or~~ any crime, regardless of whether the crime is a misdemeanor or felony, that a reasonable person would consider relevant ~~related~~ to the legal and ethical operation of an educational institution~~, unless the conviction has been absolutely discharged, expunged, or vacated~~;
2. Within 10 years before ~~the date of~~ filing ~~an~~ the application packet required in subsection (D), a person with at least 20 percent ~~or more~~ ownership in the applicant ~~institution~~ or an officer or employee who controls, manages, or represents the applicant in this state has had a license to operate a vocational ~~program, vocational institution, degree program,~~ or degree-granting institution revoked in this state or any ~~other state or~~ jurisdiction; or
3. The applicant provides false or misleading information on or with an application required by this Section~~.~~; and

4. If the conviction described in subsection (B)(1) was discharged, expunged, set aside, or vacated, the Board shall consider this fact when exercising its discretionary power under this Section.

C. The Board shall grant a conditional license to an applicant if the applicant submits an application and:

1. The ~~applicant provides~~ application includes the information required in subsection (D); and
2. The information provided demonstrates:
   a. Compliance with A.R.S. §§ 32-3021(B)(1) through (11) and 32-3022(C); and
   b. The ability to provide educational services as represented to the public.

D. An applicant for a conditional license shall submit to the Board an application packet ~~including~~ that includes:

1. The filing fee required under R4-39-201;
2. The information and documentation required in R4-39-104(D)(2) through (D)(17);
3. The name of each accrediting agency to which the applicant will apply for accreditation of the applicant's programs or the institution through which the programs are ~~operated~~ offered;
4. For each accrediting agency named under subsection (D)(3), attestation by the individual signing the application that the applicant has read and understands documentation published or provided by the accrediting agency that explains the accrediting agency's accreditation process, including eligibility requirements, application procedures, self-evaluation processes and requirements, accreditation criteria or standards, and accrediting team visits; and
5. A chronological timeline identifying the applicant's projected progress in gaining accreditation from each accrediting agency named under subsection (D)(3)~~; and~~
6. ~~On a form provided by the Board, responses to questions regarding the applicant's ability to gain accreditation from each accrediting agency named under subsection (D)(3)~~.

E. ~~A~~ If the Board grants a conditional license to an applicant, the conditional licensee shall:

1. Notify the Board in writing within 24 hours if the licensee:
   a. Is determined by an accrediting agency named under subsection (D)(3) to be ineligible to apply for accreditation with the accrediting agency;
   b. Is precluded from initiating or continuing in the accreditation process by an accrediting agency named under subsection (D)(3); ~~or~~
   c. Is denied accreditation by an accrediting agency named under subsection (D)(3); or
   d. Knows or should know that an investigation of the licensee is being or was conducted by a state or federal agency or an accrediting agency;
2. Within five ~~calendar~~ days of:
   a. ~~receipt~~ Receipt, submit to the Board a copy of any document from an accrediting agency named under subsection (D)(3) that pertains to the licensee's progress in gaining accreditation from the accrediting agency; and

~~3.~~ b. ~~Within five calendar days of mailing~~ Mailing or sending, submit to the Board a copy of any document mailed or sent by the licensee to an accrediting agency named under subsection (D)(3) that pertains to the licensee's progress in gaining accreditation from the accrediting agency~~.~~; and

3. Within 10 days after determining that the licensee failed to meet the timeline submitted under subsection (D)(5), submit written notice of the failure to the Board.

F. Before granting a conditional license, the Board shall conduct an inspection, ~~pursuant to~~ under A.R.S. § 41-1009, of an applicant's place of business to determine compliance with subsection (C).

G. ~~While conditionally licensed~~ If the Board grants a conditional license to an applicant, while licensed, ~~a~~ the conditional licensee:

1. Shall not describe or refer to itself using the terms "licensed," "approved," or "accredited;" and
2. May describe or refer to itself using the terms "conditionally licensed" or "conditional license."

H. The Board may conduct an inspection~~, pursuant to~~ under A.R.S. § 41-1009~~,~~ of a licensee's place of business to determine compliance with the requirements of this Article.

I. ~~In addition to the grounds for disciplinary action~~ As provided in A.R.S. § 32-3051, the Board may discipline a licensee that:

1. Violates ~~the requirements~~ a requirement in subsection (E), or
2. Intentionally or negligently misrepresents any material information in documents or testimony presented to the Board.

R4-39-107. Requirements for a Provisional License to Continue to Operate a Private Non-accredited Degree-granting Institution in Arizona

A. ~~The~~ Except as specified in subsection (A)(7), the Board shall not grant or renew a provisional license ~~or renewal of a provisional license~~ to an applicant if:

1. Since the start date of the current licensure period, an individual with at least 20 percent ~~or more~~ ownership in the applicant ~~institution~~ or an officer or employee who controls, manages, or represents the applicant in this state has been convicted in this state or any ~~other state or~~ jurisdiction of a ~~felony or~~ any crime regardless of whether the crime is a misdemeanor or felony, that a reasonable person would consider relevant ~~related~~ to the legal and ethical operation of an educational institution~~, unless the conviction has been absolutely discharged, expunged, or vacated~~;
2. Since the start date of the current licensure period, a person with at least 20 percent ~~or more~~ ownership in the applicant ~~institution~~ or an officer or employee who controls, manages, or represents the applicant in this state has had a license to operate a vocational ~~program, vocational institution, degree program,~~ or degree-granting institution revoked in this state or any ~~other state or~~ jurisdiction; ~~or~~
3. The applicant provides false or misleading information on or with an application required by this Section~~.~~;

4. The applicant fails to apply for accreditation as required under R4-39-106(D)(3) or fails to make progress consistent with the chronological timeline specified under R4-39-106(D)(5) for three consecutive renewal periods;
5. The applicant was previously licensed by the Board and ceased to operate without complying with R4-39-402 and R4-39-406; or
6. The applicant ceased to operate or offer a program and as a result:
   a. The Board was obligated to make a payment from the Student Tuition Recovery Fund established under A.R.S. § 32-3072, or
   b. The DE or a private entity forgave loans, in whole or in part, to affected students; and
7. If the conviction described in subsection (A)(1) was discharged, expunged, set aside, or vacated, the Board shall consider this fact when exercising its discretionary power under this Section.

B. The Board shall grant or renew a provisional license ~~or renewal of a provisional license~~ to an applicant if the applicant submits an application and:

1. The ~~applicant provides~~ application includes the information required in subsection (C) ~~or (D)~~; and
2. The information provided demonstrates:
   a. Compliance with A.R.S. §§ 32-3021(B)(1) through (11) and 32-3022(C);
   b. The ability to provide educational services as represented to the public; and
   c. Progress in gaining accreditation from each accrediting agency named under R4-39-106(D)(3).

C. No later than 60 ~~calendar~~ days before ~~the~~ expiration ~~date~~ of a licensee's conditional or provisional license, an applicant for ~~a~~ an initial or renewed provisional license shall submit to the Board an application packet ~~including~~ that includes:

1. The filing fee required under R4-39-201;
2. The information and documentation required in R4-39-104(D)(2)~~, (D)(4),~~ through (D)(5), (D)(8)(a) and (c), (D)(9), ~~through~~ (D)(10), (D)(12), ~~and~~ (D)(14), (D)(15), and ~~through~~ (D)(17);
3. ~~A chronological timeline identifying the applicant's continued progress in gaining accreditation from each accrediting agency named under R4-39-106(D)(3);~~ A report on the annual enrollment and retention and placement rates for each program offered;
4. ~~On a form provided by the Board, responses to questions regarding the applicant's continued progress in gaining accreditation from each accrediting agency named under R4-39-106(D)(3); and~~ Documents that demonstrate the applicant met the chronological timeline submitted under R4-39-106(D)(5); and
5. Copies of application documents and all correspondence with all accrediting agencies ~~submitted to an accrediting agency~~ named under R4-39-106(D)(3), if applicable.

~~**D.** No later than 60 calendar days before the expiration date of a licensee's provisional license, an applicant for renewal of a provisional license shall submit to the Board an application packet including:~~

~~1. The filing fee required under R4-39-201;~~

~~2. The information and documentation required in R4-39-104(D)(2), (D)(4), (D)(5) through (D)(10), and (D)(14) through (D)(17);~~

~~3. A chronological timeline identifying the applicant's continued progress in gaining accreditation from each accrediting agency named under R4-39-106(D)(3);~~

~~4. On a form provided by the Board, responses to questions regarding the applicant's continued progress in gaining accreditation from each accrediting agency named under R4-39-106(D)(3);~~

~~5. Copies of application documents submitted to an accrediting agency named under R4-39-106(D)(3), if applicable; and~~

~~6. Documentation from each accrediting agency named under R4-39-106(D)(3) that demonstrates that the applicant is actively seeking accreditation.~~

D. A licensee that fails to comply with subsection (C) and allows the licensee's conditional or provisional license to expire shall:

1. Comply with subsection (C) within 30 days after the license expires, and
2. Pay the late renewal fee prescribed under A.R.S. § 32-3027(A)(7); or
3. Immediately cease operating in this state.

E. A licensee shall:

1. Notify the Board in writing ~~within 24 hours~~ by the next business day if the licensee:
   a. Is determined by an accrediting agency named under R4-39-106(D)(3) to be ineligible to apply for accreditation with the accrediting agency;
   b. Is precluded from initiating or continuing in the accreditation process by an accrediting agency named under R4-39-106(D)(3); ~~or~~
   c. Is denied accreditation by an accrediting agency named under R4-39-106(D)(3);
   d. Knows or should know that the licensee is or was under investigation by a state or federal agency or an accrediting agency; or
   e. Decides to cease operations;
2. Within five ~~calendar~~ days of:
   a. ~~receipt~~ Receipt, submit to the Board a copy of any document from an accrediting agency named under ~~subsection (D)(3)~~ R4-39-106(D)(3) that pertains to the licensee's progress in gaining accreditation from the accrediting agency; and
   ~~3.~~ b. ~~Within five calendar days of mailing~~ Mailing or sending, submit to the Board a copy of any document mailed or sent by the licensee to an accrediting agency named under ~~subsection (D)(3)~~ R4-39-106(D)(3) that pertains to the licensee's progress in gaining accreditation from the accrediting agency~~.~~; and
3. Within 10 days after determining that the licensee failed to meet the timeline submitted under subsection R4-39-106(D)(5), submit written notice of the failure to the Board.

F. The Board may conduct an inspection, ~~pursuant to~~ under A.R.S. § 41-1009, of ~~an applicant's or~~ a licensee's place of business to determine compliance with the requirements of this Article.

G. ~~In addition to the grounds for disciplinary action~~ As provided in A.R.S. § 32-3051, the Board may discipline a licensee that:

1. Violates ~~the requirements~~ a requirement in subsection (E), ~~or~~
2. Intentionally or negligently misrepresents any material information in documents or testimony presented to the Board, or
3. Fails to comply fully with subsection (C) or (D) but continues to operate in this state.

R4-39-108. Surety Bond, Cash Deposit, or ~~Equivalent Security Requirements~~ Letter of Credit; Insurance ~~Requirements~~; Financial Statement Requirements; and Finance Committee

A. ~~A person applying for a license and a person licensed~~ An applicant or licensee under R4-39-104, R4-39-105, R4-39-106, or R4-39-107~~, or R4-39-110(E)~~ shall have a surety bond, cash deposit, or ~~equivalent security~~ letter of credit as required ~~pursuant to~~ under A.R.S. § 32-3023(A). The Board shall determine the dollar amount of the surety bond, cash deposit, or ~~equivalent security pursuant to~~ letter of credit under A.R.S. § 32-3023(C).

B. The Board may require ~~that a person applying for a license or a person licensed~~ an applicant or licensee under R4-39-103 or R4-39-110(D) or (E) have a surety bond, cash deposit, or ~~equivalent security~~ letter of credit as ~~required pursuant to~~ allowed under A.R.S. § 32-3023(B). The Board shall determine whether a surety bond, cash deposit, or ~~equivalent security~~ letter of credit is required of an applicant or licensee under R4-39-103 or R4-39-110(D) or (E) and if so, the ~~dollar~~ amount of the surety bond, cash deposit, or ~~equivalent security pursuant to A.R.S. § 32-3023(C)~~ letter of credit. In determining whether and the amount of surety bond, cash deposit, or letter of credit to require, the Board shall consider the following factors:

1. Whether the institution has sources of funding other than tuition and the percentage of the institution's funding contributed by the other sources;
2. The amount of time programs offered by the institution require for completion; and
3. The criteria regarding financial responsibility specified under subsection (I)(4).

C. The Board shall use the following guidelines to determine the amount of surety bond, cash deposit, or letter of credit to require of an applicant or licensee:

1. The minimum amount required for applicants and licensees is $15,000;
2. Additional amounts required of an accredited institution:
   a. If the annual GTR is less than $400,000, 15 percent of annual GTR; and
   b. If the annual GTR is $400,000 or more, 10 percent of annual GTR; and
3. Additional amounts required of a non-accredited institution:
   a. If the annual GTR is less than $400,000, 20 percent of annual GTR; and

b. If the annual GTR is $400,000 or more, 15 percent of annual GTR.

D. An applicant or licensee that meets the requirement under subsection (A) or (B) with a surety bond shall purchase the surety bond from a surety company that has a rating of A or higher from a national rating service.

~~**C.**~~**E.** ~~A person applying for a license or a person licensed under this Article~~ An applicant or licensee shall:

1. Have and maintain with an insurance company authorized to transact business in this state coverage that ~~complies with R4-39-302(4)~~ is adequate to protect the applicant or licensee's assets in the event of damage or a finding of liability ~~and~~:

   a. For an applicant or licensee with annual GTR of $1,000,000 or more:

      i. A minimum single occurrence ~~malpractice or professional liability coverage~~ of $1,000,000 for educators' errors and omissions or malpractice liability insurance; and

   ~~b.~~ ii. A minimum single occurrence of $1,000,000 for general liability coverage ~~of $1,000,000~~ for ~~the~~ operation of the institution; ~~or~~

   b. For an applicant or licensee with annual GTR more than $500,000 but less than $1,000,000:

      i. A minimum single occurrence of not less than the previous year's GTR plus 10 percent for educators' errors and omissions or malpractice liability insurance; and

      ii. A minimum single occurrence not less than the previous year's GTR plus 10 percent of general liability coverage for the operation of institution;

   c. For an applicant or licensee with annual GTR equal to or less than $500,000:

      i. A minimum single occurrence of not less than $500,000 for educators' errors and omissions or malpractice liability insurance; and

      ii. A minimum single occurrence not less $500,000 of general liability coverage for the operation of institution; or

2. Be self-insured for the amounts in subsection (C)(1).

~~**D.**~~**F.** ~~A person applying for a license or renewal of a license shall submit with the license or renewal application~~ An applicant or licensee shall submit to the Board a fiscal year-end financial statement that complies with the following requirements:

~~1. Financial statements that are prepared and signed by an independent, certified public accountant currently licensed by the Arizona State Board of Accountancy or by the accountancy board in the state of the applicant's or licensee's headquarters;~~

~~2.~~1. ~~Financial statements that are~~ If the applicant or licensee has annual GTR greater than $350,000:

   a. Is prepared and compiled, reviewed, or audited by a certified public accountant in accordance with generally accepted accounting ~~principals~~ principles; and

   b. Includes a statement of cash flows and disclosures; or

2. If the applicant or licensee has annual GTR equal to or less than $350,000:

a. Is compiled, reviewed, or audited in accordance with generally accepted accounting principles; and

b. Includes supporting documentation requested by the Board; and

~~3.~~3. ~~Additional~~ Includes additional financial information if required by the Board under ~~subsection (E) or (F)~~ subsections (G) and (H).

~~**E.**~~**G.** The Board shall require ~~that a person applying for a license or renewal under this Article~~ an applicant or licensee to submit additional financial documentation if:

1. The fiscal year-end financial ~~statements are~~ statement is for a reporting period that ended more than six months before the date of license application; or
2. The applicant has not previously operated in this state or any other ~~state or~~ jurisdiction.

~~**F.**~~**H.** The Board may require ~~that a person applying for a license or renewal under this Article~~ an applicant or licensee to submit additional financial documentation if:

1. The Board has concerns based ~~upon~~ on the applicant's or licensee's responses to questions ~~on a license application~~ regarding the ~~applicant's~~ distribution of ownership, business type, and legal structure~~.~~; or
2. The financial documentation submitted shows:
   a. Current ratio of assets to liabilities less than 1:1,
   b. Current negative net worth,
   c. Net losses during each of the last two years,
   d. Subject to additional DE reporting requirements or has a composite score of less than 1.5,
   e. Current cash reserves are insufficient to make required refunds,
   f. Current financial obligations are not being met,
   g. Applicant or licensee has a history of revocation or negative action in this or another state,
   h. Current negative cash flow, or
   i. Financial responsibility standards for accreditation are not being met.

I. The Board shall appoint a Finance Committee that consists of at least three member of the Board:

1. The Finance Committee shall comply with the open meeting requirements at A.R.S. Title 38, Chapter 3, Article 3.1.
2. The Finance Committee shall assess the financial responsibility of an applicant or licensee.
3. If the Finance Committee determines that the information submitted under this Section is not sufficient to demonstrate that an applicant or licensee has financial responsibility, the Finance Committee shall work with the applicant or licensee to improve the demonstration.
4. After reviewing the information submitted under this Section, the Finance Committee shall determine that the applicant or licensee:
   a. Has demonstrated financial responsibility and grant a license;
   b. Has not demonstrated financial responsibility but grant a license contingent on the licensee doing one or more of the following:

i. Submitting quarterly reports,

ii. Submitting a financial improvement plan,

iii. Submitting two-year financial projections, and

iv. Posting a surety bond, cash deposit, or letter of credit that exceeds the amount determined under subsection (C);

c. Has not demonstrated financial responsibility and postpone action to allow the applicant or licensee to provide additional information; or

d. Has not demonstrated financial responsibility and refer the matter to the whole Board for Board action.

R4-39-109. Supplemental License Applications

A. A ~~private vocational or degree-granting institution~~ licensee shall submit to the Board an application for a supplemental license ~~for approval of any additional vocational program, degree program, change of location or change of name of the institution~~ at least 45 days before doing any of the following:

1. ~~Operating an unlicensed,~~ Offering a new~~,~~ or additional vocational or degree-granting program; ~~or~~
2. Operating from ~~an unlicensed,~~ a new or additional location; or
3. Changing the name of the licensed institution.

B. The Board shall grant a supplemental license to a private vocational or degree-granting institution if the ~~institution demonstrates~~ Board determines that ~~a~~ the supplemental license application submitted under subsection (A) ~~is in compliance~~ complies with A.R.S. §§ 32-3021 through 32-3051 and this Chapter.

R4-39-110. Change of Ownership or Control

A. In this Section, "change of ownership or control" ~~means~~ is indicated by the following:

1. For a privately held corporation whose control is vested in those who control the voting stock of the corporation~~,~~ :
   a. At least 50 percent ~~or more~~ of the voting stock changes from one owner to another within a five-year period; or
   b. At least 50 percent of the assets of the corporation are sold regardless of whether the sale is called an asset or securities purchase, a stock or share exchange, or something else;
2. For a publicly traded corporation whose control is vested in the voting members of the board of directors:
   a. ~~Fifty~~ At least 50 percent ~~or more~~ of the voting members of the board of directors change within a 12-month period, or
   b. ~~The chief executive officer of the corporation changes~~ At least 50 percent of the assets of the publicly traded corporation are sold regardless of whether the sale is called an asset or securities purchase, a stock or share exchange, or something else;

3. For a non-profit corporation whose control is vested in the voting members of the board of ~~directors~~ trustees:
   a. ~~Fifty~~ At least 50 percent ~~or more~~ of the voting members of the board of ~~directors~~ trustees change within a 12-month period, or
   b. The chief executive officer of the non-profit corporation changes;
4. For a limited partnership whose control is vested in a corporate general partner, ~~if under subsections (A)(1), or (A)(2), or (A)(3),~~ the corporate general partner:
   a. ~~has~~ Has a change of ownership or control as determined under subsections (A)(1) through (A)(3); or
   b. At least 50 percent of the assets of the corporate general partner are sold regardless of whether the sale is called an asset or securities purchase, a stock or share exchange, or something else;
5. For a limited liability company whose control is vested in members who control a majority of the interest in the company~~, if~~ :
   a. At least 50 percent ~~or more~~ interest changes within a 12- month period; or
   b. At least 50 percent of the assets of the limited liability company are sold regardless of whether the sale is called an asset or securities purchase, a stock or share exchange, or something else;
6. For a sole proprietor or a limited partnership that is not described in subsection (A)(4), if at least 50 percent ~~or more~~ interest changes within a five-year period~~.~~ ; and
7. For any business entity described in subsections (A)(1) through (A)(6), when the entity changes from one business form to another including when a non-profit entity becomes a for-profit entity or when a privately held corporation becomes a publicly traded corporation.

B. If assets are sold under subsection (A)(1), (A)(2), (A)(4), or (A)(5), regardless of whether the sale is called an asset or securities purchase, a stock or share exchange, or something else, the sale must transfer liabilities for students enrolled at the time of closing.

C. For the purposes of this Section, assets and liabilities are determined according to generally accepted accounting principles.

~~**B.**~~**D.** ~~In determining whether a~~ A change of ownership or control ~~has occurred, the Board shall deem that a~~ does not occur under subsection (A) if ~~change of ownership or control has not occurred if the~~ an interest is transferred by operation of law or inheritance to a parent, grandparent, spouse, or child.

~~**C.**~~**E.** A licensee shall, within seven days, notify the Board in writing and explain the following:

1. ~~No later than seven calendar days after change of ownership or control, notify the Board in writing of~~ ~~the~~ A change of ownership or control as described under subsection (A); ~~and~~ or
2. ~~No later than seven calendar days after any~~ A change of interest or ~~change~~ of the voting members of the board of directors of more than 20 percent but less than 50 percent~~, notify the Board in writing of the change~~.

~~D.~~**F.** No later than 60 ~~calendar~~ days after ~~a change of ownership or control~~ the date on the notice provided under subsection (E), a licensed private accredited institution shall submit to the Board a license application packet ~~including~~ that includes:

1. The filing fee required under R4-39-201(E);
2. Either:
   a. Information and documentation specified in R4-39-103~~(D)(5), (D)(8), (D)(9) and~~ (D)(3) through (D)(10), as applicable, ~~and~~ R4-39-104(D)(2), if required, and (D)(3)~~, (D)(5), (D)(7)~~ through ~~(D)(11)~~ (D)(6), (D)(8)(a) and (c) through (D)(12), (D)(14), and ~~(D)(15)~~ (D)(17); or
   b. If required by an accrediting agency that accredits the licensee's programs or the institution through which the programs are ~~operated~~ offered, a copy of change of ownership documents submitted by the licensee to the accrediting agency;
3. Attestation that the applicant will assume financial responsibility, as required under R4-39-404(C), for ~~the payment of~~ all student tuition refunds for which the institution has an obligation; and
4. Other information determined by the Board to be relevant to ~~the determination of~~ determining the applicant's compliance with licensing requirements under A.R.S. Title 32, Chapter 30 and this Article.

~~E.~~**G.** No later than 60 ~~calendar~~ days after ~~a change of ownership or control~~ the date on the notice provided under subsection (E), a licensed private non-accredited institution shall submit to the Board a license application packet~~, including~~ that includes:

1. The filing fee required under R4-39-201(E);
2. For a private non-accredited vocational institution, information and documentation specified in R4-39-104~~(D)(2),~~ (D)(3)~~, (D)(5), (D)(7)~~ through ~~(D)(11)~~ (D)(6), (D)(8)(a) and (c), (D)(12)~~, and~~ through(D)(14) ~~through (D)(16)~~ and (D)(17);
3. For a private non-accredited degree-granting institution, information~~,~~ and documentation~~, and fees~~ specified in ~~R4-39-107(C)(4) and~~ R4-39-103(D)(3) through (D)(10), as applicable, R4-39-104(D)(2)~~, (D)(3), (D)(5), (D)(7)~~ through ~~(D)(11)~~ (D)(6), (D)(8)(a) and (c), (D)(12)~~, and~~ through (D)(14) ~~through (D)(16)~~ and (D)(17);
4. Attestation that the applicant will assume financial responsibility, as required under R4-39-404(C), for all student tuition refunds for which the institution has a financial obligation; and
5. Other information determined by the Board to be relevant to ~~the determination of~~ determining the applicant's compliance with licensing requirements under this Article.

~~F.~~**H.** ~~The~~ Except as specified in subsection (H)(6), the Board shall not grant a license ~~for~~ as a result of a change of ownership or control to an applicant if:

1. Within 10 years before ~~the date of~~ filing ~~an~~ the application packet required in ~~subsections~~ subsection ~~(D)~~ (G) or ~~(E)~~ (H) or since the start date of the current licensure period, an individual with at least 20 percent ~~or more~~ ownership in the applicant ~~institution~~ or an officer or employee who controls, manages, or

represents the applicant in this state has been convicted in this state or any ~~other state or~~ jurisdiction of ~~a felony or~~ any crime, regardless of whether the crime is a misdemeanor or felony, that a reasonable person would consider relevant ~~related~~ to the legal and ethical operation of an educational institution~~, unless the conviction has been absolutely discharged, expunged, or vacated~~;

2. Within 10 years before ~~the date of~~ filing ~~an~~ the application packet required in ~~subsections~~ subsection ~~(D)~~ (G) or ~~(E)~~ (H) or since the start date of the current licensure period, a person with at least 20 percent ~~or more~~ ownership in the applicant ~~institution~~ or an officer or employee who controls, manages, or represents the applicant in this state has had a license to operate a ~~vocational program,~~ vocational ~~institution, degree program, or~~ degree-granting institution revoked in ~~Arizona~~ this state or ~~in~~ any ~~state or~~ jurisdiction; ~~or~~
3. The applicant provides false or misleading information on or with ~~an~~ the application required by this Section~~.~~;
4. The applicant was previously licensed by the Board and ceased operation without complying with R4-39-402 and R4-39-406; or
5. The applicant ceased to operate or offer a program and as a result:
   a. The Board was obligated to make a payment from the Student Tuition Recovery Fund established under A.R.S. § 32-3072, or
   b. The DE or a private entity forgave loans, in whole or in part, to affected students; and
6. If the conviction described in subsection (H)(1) was discharged, expunged, set aside, or vacated, the Board shall consider this fact when exercising its discretionary power under this Section.

~~G.~~**I.** The Board shall grant a license ~~for~~ as a result of a change of ownership or control ~~to an applicant~~, if the applicant:

1. Demonstrates compliance with A.R.S. §§ 32-3021 through 32-3027, as applicable; and
2. Meets the application requirements in subsection ~~(D)~~ (F) or ~~(E)~~ (G).

~~H.~~**J.** The Board may conduct an inspection, ~~pursuant to~~ under A.R.S. § 41-1009, of an applicant's or ~~a~~ licensee's place of business to determine compliance with the requirements of A.R.S. Title 32, Chapter 30 and this Article.

R4-39-111. Honorary Degrees

A. Only a currently licensed, accredited private degree-granting ~~institutions~~ institution may apply to award an honorary ~~degrees~~ degree. ~~A~~ Before offering to grant or granting an honorary degree, a currently licensed, accredited private degree-granting institution shall submit an application for a supplemental license for an honorary degree to the Board for the Board's verification, review, and administrative action ~~before offering to grant or granting an honorary degree~~.

B. The Board shall approve the application for a supplemental license ~~application~~ for an honorary degree if the honorary degree is consistent with the institution's currently ~~licensed~~ offered degree-granting programs.

C. ~~An~~ An accredited private degree-granting institution whose application for a supplemental license for an honorary degree is approved shall ensure that the honorary degree ~~identify~~ identifies in its title or name ~~that it is an honorary degree~~ and ~~shall bear~~ bears on its face ~~the denotation~~ that it is an honorary degree.

ARTICLE 2. FEES

R4-39-201. Fees

A. The filing fee for ~~an original~~ a license to operate a private vocational or degree-granting ~~programs~~ institution is $800.

B. The annual filing fee for a license renewal to continue to operate a private vocational or degree-granting ~~programs~~ institution is the following amount based ~~upon~~ on the institution's annual ~~gross tuition revenues~~ GTR:

1. Less than $50,000 annual ~~gross tuition revenue~~ GTR, $600~~.~~;
2. $50,000/$249,999 annual ~~gross tuition revenue~~ GTR, $750~~.~~;
3. $250,000/499,999 annual ~~gross tuition revenue~~ GTR, $1,000~~.~~;
4. $500,000/$999,999 annual ~~gross tuition revenue~~ GTR, $1,300~~.~~;
5. $1,000,000/$2,499,999 annual ~~gross tuition revenue~~ GTR, $1,650~~.~~;
6. $2,500,000/$6,999,999 annual ~~gross tuition revenue~~ GTR, $2,000~~.~~; or
7. $7,000,000 or more annual ~~gross tuition revenue~~ GTR, $2,300.

C. The filing fee for each application for a supplemental license to ~~operate~~ offer a new or additional private vocational or ~~degree granting programs~~ degree-granting program is $500.

D. The filing fee for each application for a supplemental license to ~~operate~~ offer a private vocational or degree-granting ~~programs~~ program from a new ~~location~~ or ~~an~~ additional location is $500.

E. The filing fee for an application for a supplemental license to continue to operate a private vocational or degree-granting ~~programs upon~~ institution following a change of ownership or control is $500.

F. The fee for an onsite verification~~,~~ or inspection~~, or investigation~~ is the actual cost incurred or $500, whichever is less.

ARTICLE 3. OPERATION OF PRIVATE NON-ACCREDITED INSTITUTIONS

R4-39-301. Catalog

A. A ~~person operating a licensed private~~ licensee offering a non-accredited ~~institution~~ program shall ensure that the ~~institution~~ licensee has a catalog that includes the following information:

1. The ~~institution's~~ licensee's:
   a. ~~name,~~ Name;
   b. ~~street address,~~ Street, mailing ~~address, telephone number, fax number~~, e-mail ~~address~~, and web site ~~address~~ addresses, if applicable; and
   c. Telephone and fax numbers;
2. If the ~~institution~~ licensee has a headquarters in another state or jurisdiction, the headquarters':
   a. ~~street address,~~ Street, mailing ~~address, telephone number, fax number~~, e-mail ~~address~~, and web site ~~address~~ addresses, if applicable; and
   b. Telephone and fax numbers;
3. The effective date of the catalog;
4. The names and titles of:
   a. All members of any board of directors or board of trustees,
   b. All individuals responsible for managing the ~~institution~~ licensee in this state, and
   c. All ~~persons with 20 percent or more ownership in the institution~~ members of executive management who live outside this state;
5. A list of all programs ~~operated~~ offered by the ~~institution~~ licensee;
6. For each program to be ~~operated~~ offered:
   a. A topical outline, including a statement of purpose, objectives, subjects, units, skills, and jobs to be learned in the program, and the number of clock, credit, or semester hours to be spent by the student in each phase of the program;
   b. Any program prerequisites and completion requirements;
   c. Tuition and student fees;
   ~~d. Any required textbooks or program learning materials;~~
   ~~e.~~d. Any required equipment or technology ~~requirements or competencies~~;
   e. Any required competencies;
   ~~f. Any library resources;~~
   ~~g.~~f. Any clinical training, practica, externships, internships, or special features of the program;
   ~~h.~~g. Any graduate employment opportunities; and
   ~~i.~~h. ~~Any~~ Licensure requirements for a graduate to practice, if any;
7. Any allowable student tuition reductions, ~~tuition~~ discounts, ~~tuition~~ and scholarships~~,~~ and educational loans that comply with R4-39-308;
8. Any available student payment schedules and financing options that comply with R4-39-308;
9. Student eligibility requirements for tuition reductions, ~~tuition~~ discounts, ~~tuition~~ and scholarships, educational loans, payment schedules, and financing options, if applicable;
10. ~~Institutional refund~~ Refund policies that comply with R4-39-308 and R4-39-404;

11. Any student services provided by the ~~institution~~ licensee;
12. A description of: ~~each educational~~
    a. Educational delivery ~~system available~~ systems used in the program, including classroom-based instruction, directed study, distance education, and online computer-based learning~~.~~ ; and
    b. Available library resources;
13. For ~~institutions~~ licensees operating on an academic calendar, identification of:
    a. Start and end dates for each semester, quarter, term, or session offered; and
    b. Vacation periods and holidays; ~~and~~ or
    c. Explanation of the enrollment period;
14. Policies and regulations governing:
    a. Admission requirements or program ~~registration~~ enrollment;
    b. Program or course cancellation;
    c. Grading procedures ~~or progress tracking~~;
    d. Change in student status~~;~~ , including:
        i. Leave of absence;
        ii. Readmission; and
        iii. Probation, suspension, or expulsion;
    e. ~~Student readmission~~ Standards for satisfactory academic progress;
    f. ~~Student probation, suspension, or expulsion~~ Graduation requirements;
    g. Grade reports and transcripts; and
    h. As applicable:
        i. Student attendance; and
        ii. Credit for previous education, training, work, or life experience~~.~~ ; and
15. Student grievance procedure that meets the requirements at R4-39-104(D)(12).

B. A ~~person operating a licensed private~~ licensee offering a non-accredited ~~institution~~ program shall make ~~a~~ the catalog required under subsection (A) available to students and prospective students in a written or electronic format.

C. Within 10 ~~calendar~~ days from the date a ~~person operating a licensed private~~ licensee offering a non-accredited ~~institution~~ program revises ~~a~~ the catalog required under subsection (A) or publishes a new catalog, the ~~licensed private non-accredited institution~~ licensee shall submit to the Board a written or electronic copy of the revised or new catalog.

R4-39-302. Facilities and Equipment

A. A ~~person operating a licensed private~~ licensee offering a non-accredited ~~institution~~ program shall ensure that the:

1. Building, classrooms, equipment, furniture, grounds, instructional devices, and other physical facilities of the ~~institution~~ licensee are appropriate to achieve the educational objectives of the institution;
2. Physical facility and equipment ~~meet~~ comply with all:
   a. ~~safety~~ Safety requirements and health standards of the city, county, state, and any other authority in which the facility is located; and
   b. Local and state planning, building, zoning, and fire codes; and

~~3. Physical facility and equipment comply with local and state laws for planning, building, zoning, and fire codes;~~

~~4.~~3. Insurance required under R4-39-108 is adequate to protect the assets of the ~~institution~~ licensee in the event of damage or a finding of liability~~; and~~ .

B. ~~5.Board is notified of a change of location as required in R4-39-109~~ A licensee offering a non-accredited program shall comply with R4-39-109 before offering the non-accredited program from an unlicensed, new, or additional location.

R4-39-303. Staff

A. A ~~person operating a licensed private~~ licensee offering a non-accredited ~~institution~~ program shall ensure that:

1. The ~~institution~~ licensee has ~~a local~~ ~~administrator~~ an on-site director who is qualified under subsection (B) and designated to carry out the duties under subsection ~~(B)~~ (C);
2. Each staff member communicates information regarding the ~~institution~~ licensee, ~~the institution's~~ programs, and ~~the institution's~~ educational services that is true and ~~is~~ as represented in the ~~institution's~~ licensee's catalog, required under R4-39-301, and ~~in any~~ brochures, promotional materials, or advertisements provided to or intended for students or potential students;
3. The ~~institution~~ licensee has sufficient staff to provide instruction and educational services as represented in the ~~institution's~~ licensee's catalog, required under R4-39-301, and ~~in any~~ brochures, promotional materials, or advertisements provided to or intended for students or potential students; and
4. Instruction and services are provided to a student as represented in the ~~institution's~~ licensee's catalog, required under R4-39-301, and ~~any~~ brochures, promotional materials, or advertisements provided to the student.

B. A licensee offering a non-accredited program shall employ an on-site director who is qualified as follows:

1. Is of good moral character; and
2. Has academic, administrative and supervisory experience the Board determines is consistent with the ability to operate and deliver a non-accredited program.

~~**B.**~~**C.** ~~An administrator~~ The on-site director designated under subsection (A)(1) shall:

1. Supervise the day-to-day operation of the ~~institution~~ licensee;

2. For each program to be ~~operated~~ offered by the ~~institution~~ licensee, ~~develop and~~ implement a curriculum capable of preparing a student enrolled in the program:
   a. To achieve the program's occupational objective,
   b. ~~for~~ To complete requirements for the program degree~~, the program~~ or other credential, ~~the program's occupational objective, or~~ and
   c. To obtain a specific entry-level job covered in the program; ~~and~~
3. Ensure that all faculty members meet the requirements in subsection ~~(C) or~~ (D) or (E)~~.~~ ; and
4. Develop and implement a plan, with specific goals, benchmarks, and time frames, for faculty improvement.

~~C.~~**D.** A ~~person operating a licensed private~~ licensee offering a non-accredited ~~institution~~ vocational program shall ensure that a faculty member ~~for a private non-accredited vocational institution~~ has ~~at least~~:

1. ~~Two~~ At least two years of practical work experience in the subject the faculty member is teaching unless the faculty member is teaching in an emerging discipline in which case the Board shall consider an alternative standard to determine qualification of the faculty member; ~~and~~
2. Postsecondary education in the subject the faculty member is teaching from an accredited institution or an institution licensed to operate as a postsecondary educational institution by the state in which the faculty member received the postsecondary education~~.~~;
3. Taken teacher-training courses appropriate to the level of qualification required by the program offered; and
4. Maintained professional competence by participating in continuing education.

~~D.~~**E.** A ~~person operating a licensed private~~ licensee offering a non-accredited ~~institution~~ degree-granting program shall ensure that a faculty member ~~for a private non-accredited degree-granting institution~~ has ~~at least~~:

1. ~~Two~~ At least two years of practical work experience in the subject the faculty member is teaching; ~~and~~
2. A degree from an accredited institution equal to or exceeding the degree awarded to a graduate of the program in which the faculty member is teaching~~.~~ ;
3. Taken teacher-training courses appropriate to the level of qualification required by the program offered; and
4. Maintained professional competence by participating in continuing education.

~~E.~~**F.** A ~~person operating a licensed private~~ licensee offering a non-accredited ~~institution~~ program shall ensure that:

1. Within ~~10~~ 30 ~~calendar~~ days ~~from the date the institution's~~ ~~administrator~~ after the director designated under subsection (A) resigns, is terminated, or is otherwise unable to fulfill all responsibilities established under subsection ~~(B)~~ (C), the Board is notified in writing; and

2. Within ~~10~~ 30 ~~calendar~~ days ~~from the date~~ after the ~~institution~~ licensee ~~employs~~ designates a new ~~administrator~~ director, a completed form, ~~provided by~~ which is available from the Board, describing the ~~individual's~~ new director's professional and educational background is submitted to the Board~~; and~~ .

~~3. Within 10 calendar days from the date the institution employs a new faculty member, a completed form provided by the Board describing the individual's professional and educational background is submitted to the Board.~~

R4-39-304. Advertising

A. ~~Advertising~~ A licensee offering a non-accredited program shall ensure that all advertising is ~~be~~ truthful and ~~shall~~ does not include a false or misleading ~~statements~~ statement about the institution, personnel, ~~the~~ faculty, courses, diploma or certificate awarded, services, or occupational opportunities for a graduate.

B. The Board may institute disciplinary proceedings against a ~~non-accredited private vocational or degree-granting institution or an institutional~~ licensee offering a non-accredited program or the licensee's representative for false or misleading advertising.

C. A ~~non-accredited private vocational or degree-granting institution~~ licensee offering a non-accredited program shall not solicit students in:

1. ~~the~~ The "help wanted" section of a newspaper, magazine, or other ~~similar~~ publication, regardless of whether the publication is printed or online; or
2. Employment or unemployment lines in which individuals stand while seeking work or benefits.

D. A ~~non-accredited private vocational or degree-granting institution~~ licensee offering a non-accredited program shall not use any form of the ~~words~~ word "guarantee" or "free" in solicitations or advertising in:

1. ~~any~~ A brochure, catalog, bulletin, leaflet, or other publication of the ~~institution,~~ licensee; or ~~nor in a~~
2. A newspaper, magazine, or ~~any other media~~ similar publication, regardless of whether the publication is printed or online.

E. ~~All~~ A licensee offering a non-accredited program shall ensure that all printed advertising ~~shall include~~ includes the name, phone number, and address of the ~~institution~~ licensee.

F. The Board ~~may require a non-accredited private vocational or degree-granting institution to submit all advertising for approval prior to publication~~ shall review the catalog, brochure, promotional document, uniform resource locator, student enrollment agreement, and other materials submitted under R4-39-104 to ensure the materials comply with the requirements of this Section.

R4-39-305. Recruitment

A. A ~~person operating a licensed private non-accredited institution~~ licensee offering a non-accredited program shall ensure that all information contained in the ~~institution's~~ licensee's catalog, required under R4-39-301,

and in ~~any~~ brochures, promotional materials, and advertisements provided to or intended for students or potential students is true.

B. During student recruitment or before a student signs an enrollment agreement, a ~~licensed private non-accredited institution~~ licensee offering a non-accredited program:

1. May ~~allow~~ provide a student tuition reduction, ~~tuition~~ discount, ~~tuition~~ or scholarship, or educational loan only as authorized under R4-39-308; and
2. Shall not guarantee employment to a prospective student.

C. A ~~person operating a licensed private non-accredited institution~~ licensee offering a non-accredited program shall ensure that a staff member responsible for student recruitment or student admission:

1. Uses only those titles that accurately reflect the staff member's actual duties and responsibilities;
2. Is not designated as a counselor or advisor; and
3. Does not make final decisions regarding tuition, student fees, tuition reduction, ~~tuition~~ discounts, ~~tuition~~ or scholarships, educational loans, payment schedules, financing options, or ~~refund policies~~ refunds.

R4-39-306. Admission Requirements

A. ~~The institution~~ A licensee offering a non-accredited program shall establish, publish, and administer admission requirements.

B. If an entrance exam is required for admission, ~~the non-accredited private vocational or degree-granting institution~~ a licensee offering a non-accredited program shall:

1. Set a minimum passing score for admission that is consistent with the standard established by the exam developer~~;~~,
2. Admit only ~~a student~~ an individual who ~~has obtained~~ obtains the minimum passing score on the entrance exam~~;~~ , ~~and~~
3. Maintain a copy of the completed entrance exam in the student's permanent record~~.~~ , and
4. Not allow an individual who fails the entrance exam to take the exam again within 30 days.

C. If an entrance exam is not required for admission, ~~the non-accredited private vocational or degree-granting institution~~ a licensee offering a non-accredited program shall admit only ~~a student~~ an individual who demonstrates the ability to satisfactorily complete the prescribed training through:

1. Initial interview~~;~~ ,
2. Letter of recommendation~~;~~ ,
3. High ~~School Diploma~~ school diploma, ~~or a General Educational Development test~~ certificate of high school equivalency, or completion of a secondary education in a home school setting that complies with all state law;
4. Official educational transcripts; or
5. Other requirements established by the ~~institution~~ licensee.

R4-39-307. Placement

If ~~the non-accredited private vocational or degree-granting institution~~ a licensee offering a non-accredited program offers placement services to a student, the ~~following requirements~~ licensee shall ~~apply~~:

1. ~~The institution shall maintain~~ Maintain evidence of a student referral for job placement ~~and shall include~~ that includes the following information:
   a. The name of the student referred~~.~~ ,
   b. The name of the prospective employer~~.~~ ,
   c. Result of referral~~.~~ , and
   d. Final placement or other disposition~~.~~ ;
2. ~~The non-accredited private vocational or degree-granting institution shall prepare~~ Prepare a student for placement by instructing the student in:
   a. ~~Instructing the student in resume~~ Resume preparation and interviewing procedures~~;~~ ,
   b. ~~Instructing the student in the appropriate~~ Appropriate dress and personal grooming~~;~~ , and
   c. ~~Instructing the student in conduct~~ Conduct on the job~~.~~ ;
3. ~~A~~ Ensure that a student or graduate understands that a list of potential employers given to ~~a~~ the student or graduate by the ~~institution shall not be considered~~ licensee is not a referral or offer of placement~~.~~ ; and
4. ~~Each~~ Ensure that each student application ~~shall contain a disclaimer~~ ~~by the institution~~ clearly indicates that job placement is not guaranteed to a graduate or student.

R4-39-308. Tuition, Pricing, and Refund Policies

A. A ~~person operating a licensed private non-accredited institution~~ licensee offering a non-accredited program may charge students enrolled in the same program different tuition and student fees, only:

1. ~~Following a published~~ After publishing notice of a program price change to be effective ~~on a specified date~~ for all students enrolling in the program or starting classes on or after ~~the~~ a specified date;
2. For students who have chosen to modify programs or services so that a tuition reduction is warranted;
3. For students requiring additional services or otherwise incurring additional charges; ~~or~~
4. For students who are eligible for tuition reductions associated with payment schedules, financing options, or educational loans;

~~4.~~5. For students meeting tuition discount eligibility requirements in subsection (B); ~~and~~ or

~~5.~~6. For students receiving tuition scholarships under subsection (C).

B. A ~~person operating a licensed private non-accredited institution~~ licensee offering a non-accredited program that offers a tuition ~~discounts~~ discount shall:

1. Publish in the ~~institution's~~ licensee's catalog, required under R4-39-301, allowable tuition discounts and student eligibility requirements for ~~allowable~~ each tuition ~~discounts~~ discount, including tuition discounts for students:
   a. Enrolling as part of a group,
   b. Who are similarly situated, or
   c. Enrolling under the same program ~~schedule~~ or course schedule; and
2. Make tuition discounts available to all students who meet eligibility requirements.

C. A ~~person operating a licensed private non-accredited institution~~ licensee offering a non-accredited program that offers a full or partial tuition ~~scholarships~~ scholarship shall:

1. Publish in the ~~institution's~~ institution's catalog, required under R4-39-301, available tuition scholarships and student eligibility requirements for ~~available~~ each tuition ~~scholarships~~ scholarship, including terms, conditions, application procedures, deadline dates, basis for selection, range of award amounts, and aggregate award amounts; and
2. Objectively evaluate all applicants for tuition scholarships, and award tuition scholarships only to students who meet eligibility requirements.

D. A ~~person operating a licensed private non-accredited institution~~ licensee offering a non-accredited program that offers a full or partial educational ~~loans~~ loan shall:

1. Publish in the ~~institution's~~ licensee's catalog, required under R4-39-301, available full or partial educational loans and student eligibility requirements for ~~available~~ each full or partial educational ~~loans~~ loan, including terms, conditions, application procedures, deadline dates, range of loan amounts, aggregate loan amounts, interest rates, and loan repayment requirements;
2. Make the full or partial educational loans available to all students who meet eligibility requirements; and
3. Offer and administer the full or partial educational loans as required under R4-39-406.

E. A ~~person operating a licensed private non-accredited institution~~ licensee offering a non-accredited program that offers payment schedules or financing options shall:

1. Publish in the ~~institution's~~ licensee's catalog, required under R4-39-301, payment schedules and financing options and student eligibility requirements for each payment ~~schedules~~ schedule and financing ~~options~~ option, including terms and conditions, application procedures, interest rates, and monthly payments; and
2. Make the payment schedules and financing options available to all students who meet eligibility requirements.

F. A ~~person operating a licensed private non-accredited institution~~ licensee offering a non-accredited program:

1. Shall not require a prospective student to make a non-refundable payment until the prospective student signs an enrollment agreement and is accepted for enrollment, and
2. Shall ensure that a prospective student understands the prospective student's rights under R4-39-404.

G. A ~~person operating a licensed private non-accredited institution~~ licensee offering a non-accredited program shall have a refund policy that:

1. ~~Is applicable~~ Applies to all students, ~~and~~
2. Meets the requirements in R4-39-404~~.~~, and
3. Is described using identical language in both the catalog that is required under R4-39-301 and the student enrollment agreement that is required under R4-39-104 and meets the standards at R4-39-401.

H. A ~~person operating a licensed private non-accredited institution~~ licensee offering a non-accredited program shall ensure that all student tuition, student fees, tuition reductions, ~~tuition~~ discounts, ~~tuition~~ and scholarships, educational loans, payment schedules, financing options, and refund policies applicable to a student are:

1. Fully disclosed in writing on a student's enrollment agreement or applicable financial documents;
2. Consistent with information in the ~~institution's~~ licensee's catalog, required under R4-39-301, and ~~in~~ any brochures, promotional materials, or advertisements provided to or intended for students or potential students; and
3. Authorized ~~pursuant to~~ under this Section.

I. A ~~person operating a licensed private non-accredited institution~~ licensee offering a non-accredited program shall:

1. Charge a student tuition and student fees as identified in writing on a student's enrollment agreement or applicable financial documents;
2. Collect tuition and student fees from a student according to a payment schedule or financing option identified in writing on a student's enrollment agreement or applicable financial documents; and
3. Refund tuition and student fees charged to a student according to the refund policy identified in writing on a student's enrollment agreement or applicable financial documents.

ARTICLE 4. OPERATION OF ALL LICENSED INSTITUTIONS

R4-39-401. Student Records

A. For students enrolled after the effective date of this Section, a licensee shall maintain records required under this Section in electronic form. The licensee shall ensure that the electronic records are not in a proprietary format and are easily searchable by student.

~~**A.**~~**B.** ~~An institution~~ A licensee shall maintain a complete, ~~and~~ accurate, and permanent ~~records~~ record for each student ever enrolled. ~~currently enrolled, including~~ The licensee shall ensure that the student record includes the following:

1. An enrollment agreement containing, but not limited to, the following information:
   a. Name and address of student;
   b. ~~Commencement date of~~ Date the program begins;

~~c. Title of the course or courses within the program;~~

~~d.~~c. Total clock ~~and~~ or credit hours of the program;

~~e.~~d. Payment schedule and total cost to the student;

~~f.~~e. Refund policy of the ~~institution~~ licensee;

~~g.~~f. A statement indicating that the individual signing the agreement has read and understands all aspects of the agreement;

~~h.~~g. The notice required under ~~holder in due course rule as defined in A.R.S. § 47-3302~~ 16 CFR 433;

~~i.~~h. A ~~disclaimer~~ clear statement by the ~~institution~~ licensee that ~~"job placement" is~~ the licensee does not ~~guaranteed to graduates upon completion of this training or upon graduation~~ guarantee:

i. Job placement to graduates when the program is complete; or

ii. Credits or coursework will transfer to another school, college, or university;

~~j.~~i. ~~Student grievance procedures, if not printed in a catalog, bulletin, or other document provided each prospective student; and~~ If the licensee requires arbitration as part of the student grievance procedure, the following statement: Arbitration of a student grievance is required. Arbitration will take place at a location reasonably convenient for both parties giving due consideration to the student's ability to travel and other pertinent circumstances. Both parties will attempt to have proceedings take place within a reasonable time and without undue delay. The arbitration proceedings will follow the spirit if not the letter of the consumer due process protocol of the American Arbitration Association. The protocol includes but is not limited to a fundamentally fair process; an independent and impartial, competent, and qualified arbitrator; independent administration of the arbitration; reasonable cost; right to representation; and possibility of mediation. Arbitration does not preclude other avenues of recourse, including but not limited to possible relief in small claims courts, unless and until the arbitration result is made binding. Arbitration of a student grievance does not preclude the student from seeking a remedy from the Arizona Board of Private Postsecondary Education;

~~k.~~j. A ~~cancellation~~ notice ~~in accordance with Federal Trade Commission (FTC) regulations.~~ of the right to cancel the enrollment agreement within three days by complying with R4-39-404(A); and

~~l.~~k. Signature of the student and an official of the ~~institution~~ licensee;

2. Copy of the entrance exam, if applicable;
3. A transcript;
4. Grades received, where applicable;
5. Student attendance information;
6. Counseling records; and
7. ~~Financial aid records for a length of time as required by the U.S. Department of Education; and~~

~~8.~~ ~~All~~ A record of all obligations incurred and all funds paid by or on behalf of the student to the ~~institution~~ licensee.

C. A licensee shall maintain financial aid records for each student for the length of time required by the DE.

~~B.~~D. ~~An institution~~ A licensee shall make student records available and readily accessible for use and review by an authorized ~~officials~~ official of the ~~institution and~~ licensee or authorized ~~representatives~~ representative of the Board.

~~C.~~E. ~~An institution~~ A licensee that gives credit toward a course based ~~upon prior~~ on job experience, training, or life experience shall record that credit in the ~~institution's records relating to the~~ ~~student and in the~~ student's official transcript, which is part of the student record required under subsection (B). ~~and list~~ The licensee shall ensure the student's official transcript shows the portion of the course for which the student is given credit based on job experience, training, or life experience. ~~The institution shall attach a copy of the transcript reflecting courses for which the student is given credit for prior job experience, training, or life experience to the institution's official transcript and shall retain the transcript as part of the student's permanent records.~~

~~D.~~F. In addition to the information required under subsections ~~(A),~~ (B), and ~~(C), an institution~~ (E), a licensee shall include the following information, as applicable, in the record of a student who graduates:

~~1. Class rank upon graduating, where applicable.~~

~~2.~~1. Job placement provided, ~~where applicable.~~ and

~~3.~~2. Place of employment and beginning salary after graduation~~, where applicable~~.

G. A licensee shall ensure that records required under this Section:

1. Whether in paper or electronic form, are maintained securely and protected against damage or loss from fire, water, theft, tampering, or other harm;
2. Are maintained in perpetuity or submitted to the Board under R4-39-402; and
3. Are made available and readily accessible for use and review by an authorized representative of the Board.

R4-39-402. Preservation of Records

A. No more than 15 ~~calendar~~ days after a licensee ceases operation, the licensee shall submit to the Board a legible ~~copies~~ copy of all student records required in R4-39-401. The licensee shall submit the student records in electronic form if the records exist in electronic form. The licensee shall ensure that records in electronic form are in a non-proprietary format.

B. After a licensee submits records to the Board as required under subsection (A), the Board shall retain for each student the enrollment agreement, transcript, account ledger card, and a copy of the diploma or degree conferred. The Board shall retain these records according to the retention schedule approved by the Arizona State Library, Archives, and Public Records.

R4-39-403. ~~Student~~ Complaint Procedures

A. If a student has a complaint against a ~~licensed institution or program~~ licensee and exhausts all available grievance procedures, including all appeals, established by the ~~institution~~ licensee, the student may file a written complaint with the Board. ~~A~~ The student shall ensure that the complaint ~~must be~~ is filed within ~~three years of~~ two years after the latest of the following. The date on which the student:

1. ~~student's last date of attendance~~ Last attended the licensee;
2. Completed the licensee's grievance procedure, including all appeals; or
3. Is able to demonstrate that the licensee failed to follow the licensee's grievance procedure.

B. ~~The Board's staff shall investigate the complaint. Upon completion of Board staff's investigation, the complaint shall be referred to the Complaint Committee for a review and recommendation to the Board.~~ A student who files a complaint under subsection (A) shall:

1. Use a form that is available from the Board,
2. Sign the form and attest that all information provided is true and correct, and
3. Attach to the form documentation that supports the allegations on which the complaint is based.

C. The Board shall not accept an anonymous complaint. An individual, whether a student or non-student, who files a complaint may request to remain anonymous to the licensee if the individual believes the complaint may result in adverse action towards the individual. The Board cannot, however, guarantee that disclosure of the individual's identity will not occur in the process of honoring the licensee's due process rights.

D. The Board shall not accept a complaint regarding a grade dispute or the licensee's employment practices or compliance with the Americans with Disabilities Act.

~~**C.**~~**E.** After ~~a review of the student complaint,~~ the ~~Complaint Committee shall:~~ complaint committee authorized under A.R.S. § 32-3052(D) reviews the complaint and the results of the staff investigation of the complaint, the complaint committee shall take one of the actions defined under A.R.S. § 32-3052(E).

~~1. Determine that the student complaint needs further investigation. Based upon the outcome of the investigation, the complaint may be re-heard by the Complaint Committee or referred to the Board;~~

~~2. Determine that the student complaint does not demonstrate that a violation of statute or rule occurred and recommend to the Board that the complaint be dismissed; or~~

~~3. Determine that the complaint demonstrates that a violation of statute or rule occurred and send a report of its findings and recommendation to the Board.~~

~~**D.** Upon receipt of the Complaint Committee's findings and recommendation, the Board shall affirm, reverse, adopt, modify, supplement, amend, or reject the report, in whole or in part, and determine there are reasonable grounds that the complaint demonstrates a violation of Board statutes and rules.~~

~~**E.** If the Board determines there are reasonable grounds to believe that the complaint demonstrates a violation of Board statute or rules, the Board shall set the matter for hearing under A.R.S. § 41-1092 et seq.~~

F. If a non-student has a complaint against a licensee, the non-student may file a written complaint with the Board. The non-student complainant shall ensure that the complaint is filed within one year from the date on which the event prompting the complaint occurred.

G. Subsections (B) through (E) apply to non-student complaints.

R4-39-404. Tuition Refund Policy

A. A licensee shall allow a student or prospective student to cancel an enrollment agreement with the licensee if the student or prospective student submits a written notice of cancellation to the licensee within three days, excluding Saturday, Sunday, and state and federal holidays, of signing the enrollment agreement.

B. No later than 30 calendar days after a licensee receives a written notice of cancellation described in subsection (A), the licensee shall provide to the student or ~~to~~ the person ~~who~~ that paid the student's tuition and student fees a refund of 100 percent of all student fees and tuition paid ~~for the student~~.

C. A ~~person operating a licensed private accredited institution~~ licensee offering an accredited program shall develop and implement policies and procedures for cancellations and tuition refunds that:

1. Are published in the ~~institution~~ catalog that meets the accreditation standards established by each accrediting agency named in R4-39-103(D)(3) and the enrollment agreement required under R4-39-401;
2. Are applicable to all students; and
3. Comply with:
   a. Accreditation standards established by each accrediting agency named under R4-39-103(D)(3) or (F)(1)(a); and
   b. ~~United States Department of Education~~ DE requirements governing each federal student financial aid program ~~named~~ in the agreement under R4-39-103(D)(6) or (F)(1)(b).

D. A ~~person operating a licensed private non-accredited institution~~ licensee offering a non-accredited program shall develop and implement policies and procedures for cancellations and tuition refunds that:

1. Are published in the ~~institution~~ catalog required under R4-39-301 ~~or~~ and enrollment agreement required under R4-39-401;
2. Are applicable to all students;
3. ~~Establish~~ Are based on an established time ~~periods~~ period for each program that:
   a. ~~Have~~ Has a prescribed student tuition obligation and tuition refund calculation; and
   b. ~~Do~~ Does not exceed the full length of the program or one calendar year, whichever is less;
4. Allow ~~an institution~~ the licensee to retain an administrative fee or registration fee not to exceed $200.00 if the fee is published in the ~~institution~~ catalog required under R4-39-301 ~~or contained in the~~ and enrollment agreement required under R4-39-401;
5. Provide ~~for~~ the following refunds for a student who withdraws from or is terminated by ~~an institution~~ the licensee:

a. Before beginning classes in a time period, a refund of 100 percent of the tuition charges for the time period;

b. If 10 percent or less of the time period used under subsection (D)(3) has expired, a refund of at least 90 percent of the tuition charges for the time period;

c. If more than 10 percent but less than or equal to 20 percent of the time period used under subsection (D)(3) has expired, a refund of at least 80 percent of the tuition charges for the time period;

d. If more than 20 percent but less than or equal to 30 percent of the time period used under subsection (D)(3) has expired, a refund of at least 70 percent of the tuition charges for the time period;

e. If more than 30 percent but less than or equal to 40 percent of the time period used under subsection (D)(3) has expired, a refund of at least 60 percent of the tuition charges for the time period;

f. If more than 40 percent but less than or equal to 50 percent of the time period used under subsection (D)(3) has expired, a refund of at least 50 percent of the tuition charges for the time period; and

g. If more than 50 percent of the time period used under subsection (D)(3) has expired, no refund or a refund in an amount determined by the ~~institution~~ licensee.

E. When calculating ~~refunds~~ a refund under subsection (D)(5), ~~an institution~~ a licensee offering a non-accredited program shall:

1. Use the last date of attendance as the date of withdrawal or termination to determine the percentage of time in the program that expired;
2. Determine that a student has withdrawn from an institution if the student has not attended any class for 30 consecutive scheduled class days; and
3. ~~Base~~ Using the date established under subsection (E)(1), base the percentage of the time ~~period~~ expired on either ~~the time~~ clock hours elapsed ~~in the~~ ~~time~~ for a program measured in clock hours ~~period~~ or ~~on~~ the number of ~~semester, quarter, trimester, or clock hours~~ ~~completed in the time period~~ days elapsed since the start of the period established under subsection (D)(3).

F. A licensee offering a non-accredited program is exempt from the requirement in subsection (D)(5), ~~if the~~ regarding refunding tuition and fees, for a program that:

1. Is less than ~~100~~ 50 clock hours~~,~~
2. Has a total cost of less than $1000, and
3. Is provided by a private non-accredited vocational institution or a private non-accredited degree-granting institution.

R4-39-405. ~~Student Loans and Financial Aid~~ Repealed

~~**A.** In this Section, an "academic year" means at least 30 weeks of instruction.~~

~~**B.** A licensed private institution that receives, on behalf of a student, student loan or financial aid funds provided by a federal, state, or local government or from a federal student financial assistance program governed by~~

~~Title IV of the Higher Education Act of 1965, 20 USC 1070 et seq. as amended, shall collect and disburse the monies in the manner prescribed by the applicable federal, state, or local regulations.~~

~~**C.** A licensed private non-accredited institution that receives, on behalf of a student, student loan or financial aid funds provided by a private entity including but not limited to a bank, financing company, credit card company, or other lending source shall ensure that the monies are collected and disbursed in the following manner:~~

~~1. Amounts equal to or less than $5,000 may be disbursed as a single disbursement, regardless of program length.~~

~~2. Amounts greater than $5,000 shall:~~

~~a. Be disbursed in two or more equal disbursements; and~~

~~b. Have the second disbursement occur after the midpoint of the academic year for clock hour institutions or after the beginning of the second semester, quarter, trimester, or other term for term-based institutions.~~

R4-39-406. ~~Closure of an Institution or Cessation of~~ Ceasing to Operate or to Offer a Program; Teach-out Plan

A. At least 60 days before a licensee ceases to operate or to offer a program in which a student is enrolled, the licensee shall determine whether there is another institution able and willing to offer a teach-out program to students enrolled with the licensee. If another institution is able and willing to offer a teach-out program, the licensee and teach-out institution shall enter a contract with the following terms:

1. The teach-out institution shall offer each student affected by the licensee ceasing to operate or to offer a program, an opportunity to resume and complete the program in which the student is enrolled, or a substantially similar program, within a reasonable time and same geographic area as the licensee;
2. The teach-out institution shall provide each affected student with timely notice of the availability of the teach-out program including information about differences between the teach-out program and the program in which the student is enrolled with the licensee;
3. The teach-out institution shall advertise the availability of the teach-out program;
4. The teach-out institution shall provide equitable treatment to the students in the teach-out program;
5. The teach-out institution shall not alter the mission or operations of the teach-out institution for currently enrolled students; and
6. The teach-out institution shall affirm the institution has the capacity to provide teach-out students with all instruction and services the teach-out students contracted for but did not receive from the licensee.

B. At least 60 days before a licensee ceases to operate or to offer a program in which a student is enrolled, the licensee shall submit for review by the Board a teach-out plan that includes the following:

1. A list of all students who will be affected by the licensee ceasing to operate or to offer a program,

2. For each student identified under subsection (B)(1):
   a. Name of program in which the student is participating, and
   b. Estimated graduation date; and
3. Whether the teach out will occur at the licensee, a teach-out institution with which the licensee has a contract under subsection (A), or a combination of the licensee and teach-out institution. If the teach out will occur, in whole or in part, at a teach-out institution:
   a. Whether the teach-out institution will use faculty of the licensee to complete the teach out;
   b. Whether the degree, diploma, or certificate awarded on completion of the teach-out program will be awarded by the licensee or the teach-out institution;
   c. Whether students who are enrolled but not attending the licensee or those on a leave of absence from the licensee are entitled to participate in the teach-out program; and
   d. A copy of the contracts, if any, entered under subsection (A).

~~**A.**~~**C.** At least ~~60 calendar~~ 30 days before a ~~licensed institution~~ licensee ~~closes,~~ ceases to operate or to offer a program in which a student is enrolled, or makes ~~an alternative~~ a teach-out program available to a student enrolled in a program that the ~~institution~~ licensee will cease to ~~operate~~ offer, the ~~licensed institution~~ licensee shall provide written notice of ~~the closure, cessation of~~ ceasing to operate or to offer the program, or availability of the ~~alternative~~ teach-out program to:

1. Each enrolled student affected by the licensee's decision to cease to operate or to offer a ~~in the~~ program ~~that the institution will cease to operate~~, and
2. The Board.

~~**B.**~~**D.** Except as provided in subsections ~~(C)~~ (E) and ~~(D)~~ (F), no later than 30 ~~calendar~~ days after a ~~licensed institution~~ licensee ~~closes or~~ ceases to operate or to offer a program in which a student is enrolled, the ~~licensed institution~~ licensee shall provide a refund of 100 percent of ~~all~~ student fees and tuition paid by ~~a~~ the student or other funding source on behalf of the student.

~~**C.**~~**E** The refund requirement in subsection ~~(B)~~(D) does not apply if a student enrolled in a ~~licensed institution~~ licensee that ~~closes~~ ceases to operate or in a program that the ~~licensed institution~~ licensee ceases to ~~operate~~ offer ~~chooses in writing to waive the refund because the student has received training or academic credit that is transferable to another institution~~ transfers to another institution and receives training or academic credit comparable to the training or academic credit that the student would have received if the licensee had not ceased to operate or to offer the program.

~~**D.**~~**F.** The refund requirement in subsection ~~(B)~~(D) does not apply if a ~~licensed institution~~ licensee that ceases to ~~operate~~ offer a program in which a student is enrolled provides the student an alternative program that is equivalent to the program no longer ~~operated~~ offered, as determined by the Board, in:

1. Program content;
2. Program length and schedule;

3. Tuition, student fees, payment schedules, and financing options;
4. Accreditation status, if applicable;
5. Award of credentials;
6. Instruction and equipment;
7. Placement assistance and student services, if applicable; and
8. Facilities.

~~E.~~**G.** This Section applies to a ~~licensed institution~~ licensee regardless of whether the licensee is at fault in the closure of the licensee or ~~the~~ cessation of a program ~~is the fault of the licensed institution~~.

R4-39-407. Use of Terms

A. Except as provided in subsection (B), only an accredited, degree-granting licensee may use the term "university" or any other name or title in literature, catalogs, pamphlets, or other materials made available to the public that implies or would lead a reasonable person to believe the licensee is an institution of higher education or grants educational credentials, academic credit, or professional degrees.

B. A licensee may use the term "university" in its name if the licensee:

1. Offers at least one program leading to a post-baccalaureate or higher degree and is regionally or nationally accredited by a DE-recognized accrediting agency;
2. Was licensed in this state and used the term "university" in its name before the effective date of this Section; and
3. Is chartered or licensed in another state using the term "university" in its name.

C. A licensee may use terms such as "certified," "master," and "professional" in a program title, advertising, and student materials if a student is designated as "certified," "master," or "professional" only:

1. After the student completes the program and passes an examination that requires a showing of proficiency or ability;
2. If the designation is:
   a. Conferred by a nationally recognized industry-related organization;
   b. Conferred by an industry-related board or commission that is statutorily created; or
   c. A commonly accepted industry practice; and
3. If the diploma to be issued from a program is submitted to the Board for review before the program is offered.

D. A licensee shall not use the term "master's" in the title of a vocational program.

R4-39-408. Transfer of Credit

A. A licensee may accept credit that a student earned for a course completed at another postsecondary education institution if the licensee determines that the course is comparable in scope and content to a course offered by the licensee.

B. A licensee that intends to allow a student to transfer credit from another postsecondary education institution to the licensee shall establish a transfer policy that:

1. Is based on appropriate criteria such as:
   a. Comparability in scope and content,
   b. Applicability to the program into which transfer is requested,
   c. Competencies achieved in the course for which credit is to be transferred and whether the competencies align with the program into which transfer is requested,
   d. Preparedness of the student at the time of transfer,
   e. Age of the credit to be transferred, and
   f. Grade earned in the course to be transferred;
2. Is not based solely on whether the postsecondary education institution or program from which credit is to be transferred is accredited and if accredited, the accrediting agency;
3. Requires that at least 25 percent of the credit required to complete a non-degree or undergraduate program be obtained from the licensee;
4. Requires that more than 50 percent of the credit required to complete a graduate degree program be obtained from the licensee;
5. Is applied in a systematic and consistent manner; and
6. Is published in the catalog required under R4-39-103(D)(9) or R4-39-301, as applicable.

C. A licensee that has a transfer policy as described under subsection (B) shall place in a student's record a copy of the transcript from the postsecondary education institution from which a transfer of credit is sought.

ARTICLE 5. INVESTIGATIONS; ~~AND~~ HEARING PROCEDURES; and ASSESSING COSTS

R4-39-501. Investigations

A. The Board shall investigate any sworn complaint against a person or entity alleging violation of A.R.S. § 32-3001 et seq. or this Chapter. For purposes of this Section, "investigated party" means an entity or person ~~who~~ that is the subject of a Board investigation.

B. Board staff may request production of records or information from an investigated party or complainant, ~~or~~ and request an interview with an employee or agent of the investigated party. The investigated party may file written objections with the Board ~~to~~ regarding the Board's request for production of records or information or an interview within 15 days ~~of~~ after receipt of the request. Unless the investigated party timely files an

objection to the Board's request, the investigated party shall ~~not fail to~~ produce the requested documents or information ~~or attempt to~~ and make ~~available for an interview~~ an employee or agent of the investigated party available for interview by the Board. Board staff shall attempt to ~~informally~~ resolve ~~objections~~ informally an objection to ~~requests~~ a request for documents, information, or an interview. If no resolution is reached, the Board shall hear and decide the matter ~~shall be heard and decided by the Board~~.

C. The Board shall not disclose documents and materials relating to an investigated matter except to the investigated party, until the matter is closed, settled by stipulation, or set for hearing under Title 41, Chapter 6, Article 10.

D. ~~Upon completion of the~~ When an investigation is complete, the matter shall be referred to the Board's Complaint Committee for consideration.

E. After consideration of the matter investigated, the Complaint Committee may take ~~the following actions:~~

~~1. Instruct Board staff to conduct further investigation. After further investigation, the matter may be re-heard by the Complaint Committee or referred to the Board;~~

~~2. Determine that the investigation does not demonstrate a violation of A.R.S. § 32-3001 et seq. or this Chapter and recommend to the Board that the investigation be closed; or~~

~~3. Determine that the investigation demonstrates there are reasonable grounds to indicate a violation of A.R.S. § 32-3001 et seq. or this Chapter and send a report of its findings and recommendation to the Board~~ any of the actions specified in A.R.S. § 32-3052(E).

F. If the ~~Board determines that the investigation demonstrates that there are reasonable grounds to indicate a violation of A.R.S. § 32-3001 et seq. or this Chapter, the Board shall serve notice of the Board's determination and set the matter for hearing~~ Complaint Committee refers the matter to the Board, the Board shall assess the information provided and take any of the actions authorized under A.R.S. § 32-3052((F) through (J).

R4-39-502. Hearings

A. ~~All~~ The Board shall ensure that all hearings ~~shall be~~ are conducted before the Board or an administrative law judge under A.R.S. Title 41, Chapter 6, Article 10.

1. Parties may stipulate to any facts that are not in dispute. A stipulation may be made in writing or orally by reading the stipulation into the record of the hearing. A stipulation is binding ~~upon~~ on the parties unless the Board grants a party permission to withdraw from the stipulation. The Board may, on its own motion, set aside a stipulation and proceed to ascertain the facts.
2. The Board may, on its own motion or at the request of a party, call a conference of the parties ~~at the opening of a hearing or~~ at any ~~subsequent~~ time to clarify ~~the~~ procedures for the hearing or ~~the~~ legal or factual issues involved.

3. By order of the Board, proceedings involving a common question of law or fact may be consolidated for hearing of any or all of the matters at issue.

B. If, after proper notice, a licensee fails to appear at any proceeding before the Board, the Board may render a decision based ~~upon~~ on the evidence and information available to the Board.

C. The decision of the Board is a final administrative decision under A.R.S. § 41-1092.08(F).

R4-39-503. Rehearing or Review of Board's Decision

A. The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.

B. Except as provided in subsection (J), a party is required to file a motion for rehearing or review of a Board decision to exhaust the party's administrative remedies.

~~**A.**~~**C.** Any party aggrieved by a final administrative decision of the Board may file with the Board no later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds for the rehearing or review as provided in subsection ~~(C)~~ (E). ~~A rehearing shall be conducted before the Board or the administrative law judge under A.R.S. § 41-1092.09.~~

~~**B.**~~D. A motion for rehearing or review may be amended at any time before ~~it is ruled on by~~ the Board rules on the motion. A response may be filed by any other party within 15 days after ~~filing of~~ a motion or amended motion is filed. The Board may require ~~the filing of~~ that written briefs be filed on the issues raised in the motion and may provide for oral argument.

~~**C.**~~**E.** The Board shall grant a rehearing or review of a decision for any of the following reasons that materially affect the moving party's rights:

1. Irregularity in the administrative proceedings ~~of the Board or the administrative law judge~~ or any order or abuse of discretion that ~~deprives~~ deprived the moving party of a fair hearing;
2. Misconduct of the Board, the 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. An excessive or insufficient penalty;
6. Error in the admission or rejection of evidence or other error of law occurring at the administrative hearing;
7. The Board's decision is the result of passion or prejudice; or

~~7.~~8. The findings of fact or decision ~~is~~ are not justified by the evidence or is contrary to law.

F. The Board may affirm or modify a decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (E). The Board shall specify the particular grounds for any order modifying a decision or granting a rehearing.

~~D.~~**G.** ~~After~~ No later than 10 days after the date of a decision and after giving the parties or their counsel notice and an opportunity to be heard ~~on the matter~~, the Board may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. A rehearing or review shall cover only those matters specified in the Board's order.

~~E. No later than 10 days after a decision is rendered, the Board may on its own initiative order a rehearing or review of its decision for any reason listed in subsection (C). An order granting such a rehearing or review shall specify the grounds on which it is granted~~

~~F.~~**H.** When a motion for rehearing or review is based ~~upon~~ on affidavits, the affidavits shall be filed and served with the motion. An opposing party may, within 15 days after service, file and serve opposing affidavits. ~~The Board may extend the period for serving opposing affidavits for not more than 20 days for good cause shown or by written stipulation of the parties.~~

I. If a rehearing is granted, the Board shall hold the rehearing within 60 days after the date on the order granting the rehearing.

J. If the Board makes a specific finding that a particular decision needs to be effective immediately to preserve the public peace, health, or safety and that a review or rehearing of the decision is impracticable, unnecessary, or contrary to the public interest, the Board shall issue the decision as a final decision without an opportunity for rehearing or review.

R4-39-504. Assessing Costs

As authorized under A.R.S. § 32-3052(M), the Board may assess a person that is determined to have violated any provision of A.R.S. Title 32, Chapter 30 and this Chapter the Board's reasonable costs and expenses, including attorney fees, incurred in conducting an investigation, informal interview, committee or Board meetings, or administrative hearing.

ARTICLE 6. STUDENT TUITION RECOVERY FUND

R4-39-601. Submission of Assessments

A. Before ~~July 30~~ September 30 of each year, the Board shall ~~notify in writing an institution~~ provide written notice to each licensee specified in A.R.S. § 32-3072(B) ~~if~~ from which an assessment, as defined in A.R.S. § 32-3071(1), is due. The Board shall send the notice ~~shall be sent~~ by certified mail and ~~shall contain~~ ensure that the notice specifies the amount of the assessment, ~~the~~ date ~~the payment of~~ the assessment is due, and ~~the~~ penalty for ~~failure~~ failing to pay the assessment timely. As authorized by A.R.S. § 32-3072(B), the Board shall determine ~~assessed fees~~ the amount of the assessment as follows:

1. The assessment for ~~an institution licensed under A.R.S. Title 32, Chapter 30~~ a licensee seeking renewal of a regular or provisional license shall be based on the number of newly enrolled students for the 12-month period identified on the license renewal application required under R4-39-108 or R4-39-107(D).
2. The assessment for a new ~~institution licensed under A.R.S. Title 32, Chapter 30~~ licensee shall be based on the number of newly enrolled students during the fiscal year ending June 30.
3. ~~The assessment for a cosmetology school as defined in A.R.S. § 32-3071(3) or a professional driver training school as defined in A.R.S. § 32-3071(10) shall be based on the number of newly enrolled students during the fiscal year ending June 30.~~

B. ~~On~~ Using data available on June 30 ~~of each year~~, the Board shall determine annually the amount of funds in the Student Tuition Recovery Fund ("Fund"). If the Fund balance exceeds $500,000, the Board shall require an assessment only from a ~~new institution that is licensed or an institution that is provisionally licensed~~ licensee that was newly or provisionally licensed during the fiscal year that ended on June 30 ~~shall be assessed a fee for that fiscal year~~.

C. If ~~an institution~~ a licensee disputes the amount of ~~the~~ an assessment ~~for an institution~~, the Board shall place the matter on the agenda for a public meeting. The ~~Board may require that the institution whose~~ licensee disputing an assessment ~~is disputed~~ shall be prepared to:

1. Submit ~~additional~~ information or documents ~~to clarify incomplete or ambiguous information or documents~~ showing why the assessment is believed to be incorrect; and
2. Have a representative present to address the Board ~~at the public meeting~~.

R4-39-602. Claims

A. The Board shall investigate a claim against the Fund and find:

1. The claim is valid if:
   a. Student educational records confirm that the claim is filed by a person injured as defined in A.R.S. § 32-3071~~(7)~~ (6); and
   b. The claim is filed within one year after the ~~closed institution ceases operation~~ licensee ceased operations;
2. The claim is invalid because:
   a. ~~As specified in A.R.S. § 32-3075(B)~~ It is filed more than one year after the licensee ceased operations;
   b. ~~Because a student participates~~ The claimant is participating in a ~~"teach-out."~~ teach-out ~~As used in this subsection, "teach-out" means a student from a closed institution voluntarily transfers to another institution where the student receives all the instruction for which the student originally paid, but did not receive from the closed institution~~; or

c. ~~Because a student from a closed institution~~ The claimant voluntarily ~~transfers~~ transferred to another institution and ~~receives~~ received different training for the same or ~~an additional~~ greater cost ~~from what the student~~ than was paid ~~at the closed institution~~ to the licensee that ceased operations.

B. If the Board finds a claim ~~to be~~ is valid, the Board shall determine the amount and the party to be paid as follows:

1. The claim payment shall include only the actual amount of tuition and student fees paid in cash or with a student loan. The Board shall not make a claim payment for a grant, scholarship, or debt owed to another state, local, or federal governmental agency.
2. A claim payment shall be made first to ~~the student loan~~ a student-loan holder for the amount owed on the loan, and then to the student or ~~the parent~~ other person for the amount already paid on the student loan or cash payments.

C. The Board shall pay a valid claim within 120 days ~~of the date of~~ after the public meeting at which the claim is considered.

D. A claimant who is not satisfied with the Board's decision on a claim may file a motion for hearing as allowed under A.R.S. Title 41, Chapter 6, Article 10.

R4-39-603. Student Record Requests

A. The Board shall maintain the student records of a ~~closed institution licensed under A.R.S. Title 32, Chapter 30 for a period of 25 years~~ licensee that ceases operations as specified in R4-39-402(B). For purposes of this Section, "student records" has the ~~same~~ meaning ~~as~~ in R4-39-401.

B. The Board shall provide the student records of a student who attended a ~~closed institution licensed under A.R.S. Title 32, Chapter 30~~ licensee that ceased operations, if the following are submitted:

1. Name and social security number of the student;
2. Name of the ~~closed institution~~ licensee that ceased operations;
3. Student name used while attending the ~~closed institution~~ licensee that ceased operations;
4. Identification of the student record requested;
5. Name and address of the party to whom the student record is to be mailed;
6. ~~Student signature~~ Signature of the student whose record is requested or ~~copy of~~ a ~~signed~~ student record release form signed by the student whose record is requested and authorizing a third party to obtain the student record, if applicable; and
7. $10 for processing ~~fee~~ the request and 25 cents per page for copying ~~charge~~.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT[1]

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 39. BOARD FOR PRIVATE POSTSECONDARY EDUCATION

1. Identification of the rulemaking:

   In this rulemaking, which is done in response to a five-year-review report approved by Council on September 13, 2011, the Board amends all of its rules to ensure they are consistent with statute and agency and industry practice and to update the language of the rules. In the rulemaking, the Board clarifies that it is a private postsecondary educational institution that is licensed to operate. A licensed institution is authorized to offer programs. The rulemaking also clarifies the differences among a regular, conditional, and provisional license.

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

      Until the rulemaking is in effect, the Board's rules will continue to be inconsistent with statutory and Board and industry practice. They will also not be updated in ways identified in the five-year-review report approved by Council on September 13, 2011.

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

      It is not good government and is a source of potential confusion for the public for an agency to have rules that are inconsistent with statute and practice. Also, the legislature expects an agency to make timely the changes identified as needed in a five-year-review report.

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

      When the rulemaking goes into effect, the rules will be consistent with statute and Board and industry practice. Also, the needed changes identified in the 2011 five-year-review report will be made.

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

   The Board believes the following changes will produce minimal economic impact for licensees, applicants, and students:

   - The overall time frame for the Board to act on an application for license renewal is reduced;
   - A provision is added that the Board will close an application file if the application remains administratively incomplete after the applicant responds to a second notice of deficiency;

[1] If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used

- Several grounds for denying or not renewing a license are added;
- Some additional actions require that a licensee provide notice to the Board;
- Consequences of allowing a license to expire are clarified;
- Amount of liability insurance is reduced for small institutions;
- Requirements for a year-end financial statement are reduced for small institutions;
- Requirements regarding preservation of student records when an institution ceases to operate are strengthened;
- Clarified that the Board will accept complaints from non-students;
- Section regarding transfer of credit is added; and
- Section regarding assessing costs the Board incurs in the process of determining that a person violated statute or rule is added.

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: Teri Stanfill, Executive Director
   Address: 1400 W. Washington Street, Room 260
   Phoenix, AZ 85007
   Telephone:(602) 542-5709
   Fax: (602) 542-1253
   E-mail: teri.stanfill@azppse.az.gov
   Web site: www.ppse.az.gov

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

   Private postsecondary educational institutions licensed by the Board and those that make application for licensure will be directly affected by, bear the costs of, and directly benefit from this rulemaking. Students who attend licensed private postsecondary educational institutions will be indirectly affected by the rulemaking. The Board is also affected by, bears the costs of and will directly benefit from the rulemaking.

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in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

The Board currently licenses 260 private postsecondary educational institutions: 138 are vocational and 122 are degree-granting institutions. Some licensed institutions offer both vocational and degree-granting programs. Private postsecondary education is a major industry in Arizona. Last year there were 275,901 students enrolled in Arizona (85 percent were enrolled in degree-granting institutions) and many more enrolled to participate in online educational programs. The total gross tuition revenue was $3,943,709,453.

During the last year, the Board reviewed and acted on 671 license applications: 241 applications for license renewal; 362 for supplemental program license; 19 for supplemental location license; 26 for supplemental change of ownership; and 6 for supplemental change of name.

Twenty-five licensed institutions closed during the year including Anthem and Everest Colleges. The Student Tuition Recovery Fund, to which all licensed institutions contribute, is designed to make whole students who are harmed when a licensed institution closes. The Board currently has $445,327 in the STRF. During the last year, 40 claims totaling $91,530 were paid from the STRF. An additional 62 claims were denied. The Board assumes responsibility for student records when a licensed institution closes. Last year the Board processed 2,959 requests for a student record. The Board charges $10 for each request. The Board pays the Department of Library, Archives, and Public Records $17,800 annually to store the student records.

In addition to the cost of making application for licensure, Arizona statute requires a licensed institution to incur the cost of maintaining the required bond, contributing to the STRF, having professional liability insurance, and having an annual financial statement prepared and submitted to the Board. These requirements are to protect those who pay to attend the institutions and are a cost of doing business that is passed to consumers of private postsecondary education.

During the last year, 13 complaints were submitted regarding licensees: seven were dismissed, two letters of concern were issued, and 4 are still pending. The Board took adverse action against 56 licensees. An adverse action generally results from information received in the license renewal process or from the agency that accredits an institution. The adverse actions, which generally are administered by consent, frequently involve an increased bond amount or more frequent submission of financial reports.

During the last year the Board collected $543,667 in licensing fees. Ten percent of this is contributed to the state's general fund. The Board also collected $1,900 in fines for operating without a license. All fines are contributed to the state's general fund. The Board, which was appropriated $395,700, has 3.8 FTEs. The Board complies with its licensing time frames.

5. Cost-benefit analysis:

   a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

      The Board is the only agency directly affected by this rulemaking. It incurred the cost of making the rules and will incur the cost of implementing them. The Board will benefit from having rules that are consistent with statute and Board and industry standards and clear, concise, and understandable. The Board will not require a new FTE to implement the rules.

   b. Costs and benefits to political subdivisions directly affected by the rulemaking:

      No political subdivisions are directly affected by the rulemaking.

   c. Costs and benefits to businesses directly affected by the rulemaking:

      Private postsecondary educational institutions are businesses directly affected by the rulemaking. Their costs and benefits are discussed in item 4.

6. Impact on private and public employment:

   There is no direct impact on private or public employment.

7. Impact on small businesses[2]:

   a. Identification of the small business subject to the rulemaking:

      Many private postsecondary educational institutions are small businesses subject to this rulemaking. The Board estimates that 40 percent of licensees are small businesses.

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

      In addition to the costs of licensure and annual renewal, licensees are required to maintain a bond, contribute to the student tuition recovery fund, have professional liability insurance, and prepare an annual financial statement. They are also required to maintain student records in perpetuity.

   c. Description of methods that may be used to reduce the impact on small businesses:

      The Board reduced the economic impact on small private postsecondary educational institutions by reducing the amount of professional liability insurance required (See R4-39-108(E)) and the requirements for the annual financial report (See R4-39-108(F)). The amount contributed to the student tuition recovery form is based on student enrollment, which is associated with size of the business (See R4-39-601). Having student records maintained in electronic form is also less expensive than maintaining them in paper form.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

   No private persons or consumers are directly affected by this rulemaking. Students are private postsecondary educational institutions are indirectly affected by the provisions designed to protect them.

9. Probable effects on state revenues:

   There is no probable effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

    The Board believes there is no less intrusive or less costly alternative method that will enable it to fulfill its statutory responsibility to protect the public by regulating private postsecondary educational institutions.

[2] Small business has the meaning specified in A.R.S. § 41-1001(21).

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 39. BOARD FOR PRIVATE POSTSECONDARY EDUCATION

(Authority: A.R.S. § 32-3001 et seq.)

Former Article 1 consisting of Sections R4-39-101 through R4-39-111, former Article 2 consisting of Section R4-39-201, former Article 3 consisting of Sections R4-39-301 through R4-39-310, former Article 4 consisting of Sections R4-39-401 through R4-39-403, and former Article 5 consisting of Sections R4-39-501 and R4-39-502 adopted as an emergency effective January 2, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days. Emergency expired.

ARTICLE 1. DEFINITIONS, LICENSURE, REPORTING

Section
R4-39-101. Definitions
R4-39-102. Licensure and Licensure Procedures
R4-39-103. Requirements for a Regular License to Operate a Private Accredited Vocational Institution or a Private Accredited Degree-granting Institution in Arizona
R4-39-104. Requirements for a Conditional License to Operate a New Private Non-accredited Vocational Institution in Arizona
R4-39-105. Requirements for a Regular License to Continue to Operate a Private Non-accredited Vocational Institution in Arizona
R4-39-106. Requirements for a Conditional License to Operate a New Private Non-accredited Degree-granting Institution in Arizona
R4-39-107. Requirements for a Provisional License to Continue to Operate a Private Non-accredited Degree-granting Institution in Arizona
R4-39-108. Surety Bond, Cash Deposit, or Equivalent Security Requirements; Insurance Requirements; Financial Statement Requirements
R4-39-109. Supplemental License Applications
R4-39-110. Change of Ownership or Control
R4-39-111. Honorary Degrees
R4-39-112. Repealed

ARTICLE 2. FEES

Section
R4-39-201. Fees

ARTICLE 3. OPERATION OF PRIVATE NON-ACCREDITED INSTITUTIONS

Section
R4-39-301. Catalog
R4-39-302. Facilities and Equipment
R4-39-303. Staff
R4-39-304. Advertising
R4-39-305. Recruitment
R4-39-306. Admission Requirements
R4-39-307. Placement
R4-39-308. Tuition, Pricing, Refund Policies
R4-39-309. Renumbered
R4-39-310. Repealed

ARTICLE 4. OPERATION OF ALL LICENSED INSTITUTIONS

Section
R4-39-401. Student Records
R4-39-402. Preservation of Records
R4-39-403. Student Complaint Procedures
R4-39-404. Tuition Refund Policy
R4-39-405. Student Loans and Financial Aid
R4-39-406. Closure of an Institution or Cessation of a Program

ARTICLE 5. INVESTIGATIONS AND HEARING PROCEDURES

Section
R4-39-501. Investigations
R4-39-502. Hearings
R4-39-503. Rehearing or Review of Board's Decision

ARTICLE 6. STUDENT TUITION RECOVERY FUND

Section
R4-39-601. Submission of Assessments
R4-39-602. Claims
R4-39-603. Student Records

ARTICLE 1. DEFINITIONS, LICENSURE, REPORTING

R4-39-101. Definitions

In addition to the definitions in A.R.S. § 32-3001, the following definitions apply in this Chapter unless the context otherwise requires:

1. "Accreditation" has the same meaning as "accredited" in A.R.S. § 32-3001.
2. "Board" means the Arizona State Board for Private Postsecondary Education.
3. "Conditional license" means a non-renewable one-year license issued by the Board to a new private non-accredited vocational institution or a new private non-accredited degree-granting institution.
4. "New," as used in this Section and in R4-39-104 and R4-39-106 means a:
   a. Private non-accredited vocational institution that has not previously been issued a license by the Board to operate as a private non-accredited vocational institution in this state, or
   b. Private non-accredited degree-granting institution that has not previously been issued a license by the Board to operate as a private non-accredited degree-granting institution in this state.
5. "Person" has the meaning in A.R.S. § 1-215.
6. "Provisional license" means a renewable one-year license issued by the Board to a private non-accredited degree-granting institution.
7. "Regular license" means a renewable one-year license issued by the Board to a private accredited vocational institution, a private accredited degree-granting institution, or a private non-accredited vocational institution.
8. "Signature" means:
   a. A handwritten or stamped representation of an individual's name or a symbol intended to represent an individual's name, or
   b. An "electronic signature" as defined in A.R.S. § 44-7002.
9. "Signing" means the act of providing a signature.
10. "Staff" means an individual employed by or representing a private vocational institution or private degree-granting institution.
11. "Student fees" means charges for registration, admission, tuition financing, or loans incurred by a student or other funding source on behalf of the student.

Historical Note
Adopted effective June 27, 1985 (Supp. 85-3). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2).

R4-39-102. Licensure and Licensure Procedures

A. The Board may issue a conditional, regular, or supplemental license to a private institution to operate vocational programs.

B. The Board may issue a conditional, provisional, regular, or supplemental license to a private institution to operate degree programs or grant degrees.

C. Licenses are effective for a 12-month period from the date of issuance.

D. The Board shall issue the following licenses to private, vocational institutions:
1. An original license of an accredited, private, vocational institution is a regular license to operate vocational programs.
2. A license renewal of an accredited, private, vocational institution is a regular license to continue to operate vocational programs.
3. An original license of a new, non-accredited, private, vocational institution is a one-year conditional license to operate vocational programs.
4. A license renewal of a non-accredited, private, vocational institution is a regular license to continue to operate vocational programs.

E. The Board shall issue the following licenses to private, degree-granting institutions:
1. An original license of an accredited, private, degree-granting institution is a regular license to operate degree programs or grant degrees.
2. A license renewal of an accredited, private, degree-granting institution is a regular license to continue to operate degree programs or grant degrees.
3. An original license of a new, non-accredited, private, degree-granting institution that complies with the provisions of R4-39-106 is a conditional license to operate degree programs or grant degrees.
4. A license renewal of a non-accredited, private, degree-granting institution that complies with the provisions of R4-39-107 is a provisional license to continue to operate degree programs or grant degrees.

F. For the purpose of A.R.S. § 41-1073, the Board establishes the following licensing time-frames:
1. For an original conditional or original regular license application to operate vocational programs or an original regular license application to operate degree programs or grant degrees:
   a. Administrative completeness review time-frame: 90 days;
   b. Substantive review time-frame: 90 days;
   c. Overall time-frame: 180 days.
2. For a conditional or provisional license application to operate degree programs or grant degrees:
   a. Administrative completeness review time-frame: 90 days;
   b. Substantive review time-frame: 150 days;
   c. Overall time-frame: 240 days.
3. For a regular license renewal application to continue to operate vocational programs, degree programs, or grant degrees or a supplemental license application:
   a. Administrative completeness review time-frame: 45 days;
   b. Substantive review time-frame: 90 days;
   c. Overall time-frame: 135 days.

G. Within 90 days of receiving an original conditional or original regular license application to operate vocational programs or an original regular, original conditional, or provisional license application to operate degree programs or grant degrees, or within 45 days of receiving a regular license renewal application to continue to operate vocational programs, degree programs, or grant degrees or a supplemental license application, the Board shall finish an administrative completeness review.
1. If the application is complete, the Board shall notify the applicant that the application is complete and that the administrative completeness review is finished. The substantive review will begin on the date the notice is served.
2. If the application is incomplete, the Board shall notify the applicant that the application is incomplete and specify what information is missing and what deficiencies are found in the application. The administrative completeness review time-frame is suspended from the date the notice is served until the applicant provides the Board with a revised application containing all missing information and correcting all deficiencies.
   a. An applicant with an incomplete application shall submit a revised application within 60 days of receipt of notice.
   b. If the applicant cannot submit a revised application within 60 days of receipt of notice, the applicant may request an extension of no more than 30 days by submitting a written request, documenting the reasons the applicant is unable to meet the 60-day deadline, to the Board postmarked or delivered with 60 days of receipt of notice.
   c. The Board shall grant the request for an extension of the 60-day deadline if the Board determines that the extension of the 60-day deadline will enable the applicant to submit a revised application containing all missing information and correcting all deficiencies.
   d. Upon receipt and review of the revised application, and within the administrative completeness review time-frame, the Board shall notify the applicant that the administrative completeness review is finished. The substantive review will begin on the date the notice is served.
   e. If the revised application containing all missing information and correcting all deficiencies is not submitted within the 60-day deadline or the time permitted by an extension, the Board shall close the application. An applicant whose application is closed and who later wishes to seek licensure, shall apply anew.

H. Within 90 days from the date on which the administrative completeness review of an original conditional or original regular license application to operate vocational programs, an original regular license application to operate degree programs or grant degrees, a regular license renewal application to continue to operate vocational programs, degree programs, or grant degrees or a supplemental license application is finished or within 150 days from the date on which the administrative completeness review of an original conditional or provisional license application to operate degree programs or grant degrees is finished, the Board shall complete a substantive review of the application, which may include an onsite verification, and render a decision.
1. If the Board finds that the applicant meets all requirements defined in statute and rule, the Board shall grant the license.

2. If the Board finds that the applicant fails to meet all requirements defined in statute and rule, the Board shall deny the license.
3. If the Board finds deficiencies during the substantive review of the application, the Board shall issue a written request, specifying the additional documentation to be submitted and deadline for submission. The time-frame for substantive review of an application is suspended from the date the written request for additional documentation is served until the date that all documentation is received.
4. When the applicant and the Board mutually agree in writing, the Board shall grant extensions of the substantive review time-frame totalling no more than 30 days.
5. If the requested documentation is not submitted by the deadline date, the Board shall close the application. An applicant whose application has been closed and who later wishes to seek licensure, shall apply anew.

Historical Note

Adopted effective June 27, 1985 (Supp. 85-3). Amended effective November 14, 1997 (Supp. 97-4).

R4-39-103. Requirements for a Regular License to Operate a Private Accredited Vocational Institution or a Private Accredited Degree-granting Institution in Arizona

A. A person shall not operate a private accredited vocational institution or a private accredited degree-granting institution without a regular license granted by the Board.

B. The Board shall not grant a regular license or renewal of a regular license to an applicant if:
1. Within 10 years before the date of filing an application packet required in subsection (D) or since the start date of the current licensure period, an individual with 20 percent or more ownership in the applicant institution has been convicted in this state or any other state or jurisdiction of a felony or any crime related to the operation of an educational institution, unless the conviction has been absolutely discharged, expunged, or vacated;
2. Within 10 years before the date of filing an application packet required in subsection (D) or since the start date of the current licensure period, a person with 20 percent or more ownership in the applicant institution has had a license to operate a vocational program, vocational institution, degree program, or degree-granting institution revoked in this state or in any other state or jurisdiction; or
3. The applicant provides false or misleading information on or with an application required by this Section.

C. The Board shall grant a regular license or renewal of a regular license to an applicant if:
1. The applicant provides the information required in subsection (D); and
2. The information provided under subsection (D) demonstrates:
   a. For a regular license to operate a private accredited vocational institution, compliance with A.R.S. § 32-3021(B)(1) through (9);
   b. For a regular license to operate a private accredited degree-granting institution, compliance with A.R.S. § 32-3022(B);
   c. The ability to provide educational services as represented to the public;
   d. Institutional accreditation or accreditation of each program to be operated; and
   e. Compliance with all accreditation standards established by each accrediting agency that accredits the applicant's programs or the institution through which the programs are operated.

D. An applicant for a regular license shall submit to the Board an application packet including:
1. The filing fee required under R4-39-201;
2. The information and documentation required in R4-39-104(D)(2) through (D)(6), (D)(8) through (D)(15), and (D)(17);
3. The name of each accrediting agency that accredits the applicant's programs or the institution through which the programs are operated;
4. For each accrediting agency named in subsection (D)(3), documentation from the accrediting agency that confirms the current accreditation status of the programs or the institution;
5. Attestation by the individual signing the application that the applicant complies and will continue to comply with all accreditation standards established by each accrediting agency named in subsection (D)(3);
6. The name of each federal student financial aid program in which the applicant is eligible to participate;
7. For each federal student financial aid program named in subsection (D)(6), documentation from the United States Department of Education demonstrating participation in the federal student financial aid program and showing the applicant's student default rate;
8. Attestation by the individual signing the application that the applicant complies and will continue to comply with all United States Department of Education requirements governing federal student financial aid programs named in subsection (D)(6);
9. A copy of the applicant's current catalog that meets the accreditation standards established by each accrediting agency named in subsection (D)(3); and
10. A surety bond, cash deposit, or equivalent security if required under A.R.S. § 32-3023 and R4-39-108.

E. No later than 60 calendar days before the expiration date of a licensee's current regular license, an applicant for annual renewal of a regular license shall submit to the Board an application packet including:
1. The filing fee required under R4-39-201; and
2. The information and documentation required in:
   a. R4-39-104(D)(2), (D)(4), (D)(5), (D)(9), (D)(10), (D)(14), (D)(15), and (D)(17); and
   b. Subsections (D)(3) through (D)(10).

F. A licensee shall:
1. Notify the Board in writing within 24 hours if the licensee:
   a. Receives a new grant of accreditation issued by an accrediting agency other than an accrediting agency named under subsection (D)(3); or
   b. Becomes eligible to participate in a federal student financial aid program other than a federal student financial aid program named under subsection (D)(6).
2. Notify the Board in writing within 24 hours if the licensee ceases to be accredited by an accrediting agency named under subsection (D)(3);
3. Notify the Board in writing within 24 hours if the licensee ceases to be eligible to participate in a federal student financial aid program named under subsection (D)(6); and
4. Notify the Board in writing within 14 calendar days of:
   a. A change in any grant of accreditation issued by an accrediting agency named under subsection (D)(3) or (F)(1)(a), or

b. A change in eligibility to participate in a federal student financial aid program named under subsection (D)(6) or (F)(1)(b).

G. The Board may conduct an inspection, pursuant to A.R.S. § 41-1009, of an applicant's or a licensee's place of business to determine compliance with the requirements of this Article.

H. In addition to the grounds for disciplinary action in A.R.S. §§ 32-3051, the Board shall discipline a licensee that:
1. Violates the requirements in subsection (F);
2. Intentionally or negligently misrepresents any material information in documents or information presented to the Board.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended effective October 10, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2).

R4-39-104. Requirements for a Conditional License to Operate a New Private Non-accredited Vocational Institution in Arizona

A. A person shall not operate a new private non-accredited vocational institution without a conditional license granted by the Board.

B. The Board shall not grant a conditional license to an applicant if:
1. Within 10 years before the date of filing an application packet required in subsection (D), an individual with 20 percent or more ownership in the applicant institution has been convicted in this state or any other state or jurisdiction of a felony or any crime related to the operation of an educational institution, unless the conviction has been absolutely discharged, expunged, or vacated;
2. Within 10 years before the date of filing an application packet required in subsection (D), a person with 20 percent or more ownership in the applicant institution has had a license to operate a vocational program, vocational institution, degree program, or degree-granting institution revoked in this state or in any other state or jurisdiction; or
3. The applicant provides false or misleading information on or with an application required by this Section.

C. The Board shall grant a conditional license to an applicant if:
1. The applicant provides the information required in subsection (D); and
2. The information provided under subsection (D) demonstrates:
   a. Compliance with A.R.S. § 32-3021(B)(1) through (9); and
   b. The ability to provide educational services as represented to the public.

D. An applicant for a conditional license shall submit to the Board an application packet including:
1. The filing fee required under R4-39-201;
2. An application form provided by the Board containing:
   a. The applicant's name, street address, mailing address, telephone number, fax number, e-mail address, and web site address, if applicable;
   b. If the applicant has a headquarters in another state or jurisdiction, the headquarters' street address, mailing address, telephone number, fax number, and e-mail address;
   c. Responses to questions regarding the distribution of ownership, business type, and legal structure;
   d. As applicable, identification of:
      i. All members of the board of directors or board of trustees,
      ii. All persons with 20 percent or more ownership in the institution, and
      iii. All individuals responsible for managing the institution in this state;
   e. Responses to questions regarding whether a person identified in subsection (D)(2)(d) has ever applied for or been issued a license to operate a vocational program, vocational institution, degree program, or degree-granting institution in this state or in any other state or jurisdiction;
   f. Responses to questions regarding the finances, federal or state tax liabilities, management capabilities, and criminal history of the persons identified under subsection (D)(2)(d)(ii);
   g. Responses to questions regarding programs, student recruitment, student enrollment, student retention, student placement, and student financing;
   h. Staffing information including:
      i. Faculty member qualifications for each program to be operated;
      ii. Total number of current administrative personnel and faculty members;
      iii. If applicable, projected number of administrative personnel and faculty members at the end of the first licensure period;
      iv. The names of all current administrative personnel and faculty members;
   i. Attestation by the individual signing the application that the applicant will comply with all applicable requirements in A.R.S. Title 32, Chapter 30, and this Chapter;
   j. Attestation by the individual signing the application that all information required as part of the application packet has been submitted and is true and accurate; and
   k. The signature of an owner or an owner's legal representative and date of signature;
3. If applicable, a copy of the applicant's articles of incorporation, partnership or joint venture documents, or limited liability documents;
4. For each program to be operated, a form provided by the Board describing:
   a. Program content, length, and delivery system information;
   b. Program prerequisites and completion requirements;
   c. Tuition and student fees;
   d. Any required textbooks or program learning materials;
   e. Any equipment or technology requirements or competencies;
   f. As applicable:
      i. Library resources;
      ii. Clinical training, practica, externships, internships, or special features;
      iii. Graduate employment opportunities; and
      iv. Requirements for a graduate to practice the skill or occupation for which the program prepares the graduate;
5. A copy of the applicant's student enrollment agreement meeting the requirements in R4-39-401;
6. A copy of each type of certificate or diploma to be awarded;
7. A copy of the applicant's catalog meeting the requirements in R4-39-301;

8. A copy of each brochure, promotional document, or advertisement intended for students or potential students;
9. A copy of the applicant's published student grievance procedure that:
   a. Requires that a student grievance be submitted in writing;
   b. Provides the steps and time lines involved in the grievance procedure;
   c. References the student's right under A.R.S. § 32-3052 to file a complaint with the Board; and
   d. Lists the Board's address and telephone number.
10. An institutional organizational chart including staff names and position titles;
11. For each individual identified under subsection (D)(2)(d), a form provided by the Board describing the individual's professional and educational background;
12. For each faculty member named under subsection (D)(2)(h)(iv), a form provided by the Board describing the individual's professional and educational background;
13. For each location within the state from which the applicant will operate:
   a. A form provided by the Board describing the facility;
   b. Line drawings, floor plans, or photographs showing each story of the facility, the room layout, room usage, and each door, window, and exit; and
   c. Documentation from the local jurisdiction of compliance with all applicable fire codes, local building codes, and zoning ordinances;
14. Documentation of insurance required under R4-39-108;
15. Financial statements or financial documentation required under R4-39-108;
16. A surety bond, cash deposit, or equivalent security as required under A.R.S. § 32-3023 and R4-39-108; and
17. Other information determined by the Board or the applicant to be relevant to the determination of the applicant's compliance with licensing requirements under this Article.

E. Before granting a conditional license, the Board shall conduct an inspection, pursuant to A.R.S. § 41-1009, of an applicant's place of business to determine compliance with subsection (C).

F. While conditionally licensed, a licensee:
1. Shall not describe or refer to itself using the terms "licensed," "approved," or "accredited;" and
2. May describe or refer to itself using the terms "conditionally licensed" or "conditional license."

G. After granting a conditional license, the Board may conduct an inspection, pursuant to A.R.S. § 41-1009, of a licensee's place of business to determine continuing compliance with the requirements of this Article.

H. In addition to the grounds for disciplinary action in A.R.S. §§ 32-3051, the Board may discipline a licensee that intentionally or negligently misrepresents any material information in documents or testimony presented to the Board.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended effective October 10, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2).

R4-39-105. Requirements for a Regular License to Continue to Operate a Private Non-accredited Vocational Institution in Arizona

A. The Board shall not grant a regular license or renewal of a regular license to an applicant, if:
1. Since the start date of the current licensure period, an individual with 20 percent or more ownership in the applicant institution has been convicted in this state or any other state or jurisdiction of a felony or any crime related to the operation of an educational institution, unless the conviction has been absolutely discharged, expunged, or vacated;
2. Since the start date of the current licensure period, a person with 20 percent or more ownership in the applicant institution has had a license to operate a vocational program, vocational institution, degree program, or degree-granting institution revoked in this state or any other state or jurisdiction; or
3. The applicant provides false or misleading information on or with an application required by this Section.

B. The Board shall grant a regular license or renewal of a regular license to an applicant if:
1. The applicant provides the information required in subsection (C) or (D); and
2. The information provided demonstrates:
   a. Compliance with A.R.S. § 32-3021(B)(1) through (9); and
   b. The ability to provide educational services as represented to the public.

C. No later than 60 calendar days before the expiration date of a licensee's conditional license, an applicant for a regular license shall submit to the Board an application packet including:
1. The filing fee required under R4-39-201; and
2. The information and documentation required in R4-39-104(D)(2), (D)(4), (D)(5), (D)(7), (D)(9), (D)(10), and (D)(14) through (D)(17).

D. No later than 60 calendar days before the expiration date of the applicant's regular license, an applicant for renewal of a regular license shall submit to the Board an application packet including:
1. The filing fee required under R4-39-201; and
2. The information and documentation required in R4-39-104(D)(2), (D)(4), (D)(5), (D)(7), (D)(9), (D)(10), and (D)(14) through (D)(17).

E. The Board may conduct an inspection, pursuant to A.R.S. § 41-1009, of an applicant's or a licensee's place of business to determine compliance with the requirements of this Article.

F. In addition to the grounds for disciplinary action in A.R.S. § 32-3051, the Board may discipline a licensee that intentionally or negligently misrepresents any material information in documents or testimony presented to the Board.

Historical Note

Adopted effective June 27, 1985 (Supp. 85-3). Amended effective October 10, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2).

R4-39-106. Requirements for a Conditional License to Operate a New Private Non-accredited Degree-granting Institution in Arizona

A. A person shall not operate a new private non-accredited degree-granting institution without a conditional license granted by the Board.

B. The Board shall not grant a conditional license to an applicant, if:
1. Within 10 years before the date of filing an application packet required in subsection (D), an individual with 20 percent or more ownership in the applicant institution has been convicted in this state or any other state or jurisdiction of a felony or any crime related to the operation of an

educational institution, unless the conviction has been absolutely discharged, expunged, or vacated;
2. Within 10 years before the date of filing an application packet required in subsection (D), a person with 20 percent or more ownership in the applicant institution has had a license to operate a vocational program, vocational institution, degree program, or degree-granting institution revoked in this state or any other state or jurisdiction; or
3. The applicant provides false or misleading information on or with an application required by this Section.

C. The Board shall grant a conditional license to an applicant if:
1. The applicant provides the information required in subsection (D); and
2. The information provided demonstrates:
   a. Compliance with A.R.S. § 32-3022(C); and
   b. The ability to provide educational services as represented to the public.

D. An applicant for a conditional license shall submit to the Board an application packet including:
1. The filing fee required under R4-39-201;
2. The information and documentation required in R4-39-104(D)(2) through (D)(17);
3. The name of each accrediting agency to which the applicant will apply for accreditation of the applicant's programs or the institution through which the programs are operated;
4. For each accrediting agency named under subsection (D)(3), attestation by the individual signing the application that the applicant has read and understands documentation published or provided by the accrediting agency that explains the accrediting agency's accreditation process, including eligibility requirements, application procedures, self-evaluation processes and requirements, accreditation criteria or standards, and accrediting team visits;
5. A chronological timeline identifying the applicant's projected progress in gaining accreditation from each accrediting agency named under subsection (D)(3); and
6. On a form provided by the Board, responses to questions regarding the applicant's ability to gain accreditation from each accrediting agency named under subsection (D)(3).

E. A licensee shall:
1. Notify the Board in writing within 24 hours if the licensee:
   a. Is determined by an accrediting agency named under subsection (D)(3) to be ineligible to apply for accreditation with the accrediting agency;
   b. Is precluded from initiating or continuing in the accreditation process by an accrediting agency named under subsection (D)(3); or
   c. Is denied accreditation by an accrediting agency named under subsection (D)(3);
2. Within five calendar days of receipt, submit to the Board a copy of any document from an accrediting agency named under subsection (D)(3) that pertains to the licensee's progress in gaining accreditation from the accrediting agency; and
3. Within five calendar days of mailing or sending, submit to the Board a copy of any document mailed or sent by the licensee to an accrediting agency named under subsection (D)(3) that pertains to the licensee's progress in gaining accreditation from the accrediting agency.

F. Before granting a conditional license, the Board shall conduct an inspection, pursuant to A.R.S. § 41-1009, of an applicant's place of business to determine compliance with subsection (C).

G. While conditionally licensed, a licensee:
1. Shall not describe or refer to itself using the terms "licensed," "approved," or "accredited;" and
2. May describe or refer to itself using the terms "conditionally licensed" or "conditional license."

H. The Board may conduct an inspection, pursuant to A.R.S. § 41-1009, of a licensee's place of business to determine compliance with the requirements of this Article.

I. In addition to the grounds for disciplinary action in A.R.S. § 32-3051, the Board may discipline a licensee that:
1. Violates the requirements in subsection (E), or
2. Intentionally or negligently misrepresents any material information in documents or testimony presented to the Board.

Historical Note

Adopted effective June 27, 1985 (Supp. 85-3). Amended effective October 10, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2).

R4-39-107. Requirements for a Provisional License to Continue to Operate a Private Non-accredited Degree-granting Institution in Arizona

A. The Board shall not grant a provisional license or renewal of a provisional license to an applicant if:
1. Since the start date of the current licensure period, an individual with 20 percent or more ownership in the applicant institution has been convicted in this state or any other state or jurisdiction of a felony or any crime related to the operation of an educational institution, unless the conviction has been absolutely discharged, expunged, or vacated;
2. Since the start date of the current licensure period, a person with 20 percent or more ownership in the applicant institution has had a license to operate a vocational program, vocational institution, degree program, or degree-granting institution revoked in this state or any other state or jurisdiction; or
3. The applicant provides false or misleading information on or with an application required by this Section.

B. The Board shall grant a provisional license or renewal of a provisional license to an applicant if:
1. The applicant provides the information required in subsection (C) or (D); and
2. The information provided demonstrates:
   a. Compliance with A.R.S. § 32-3022(C);
   b. The ability to provide educational services as represented to the public; and
   c. Progress in gaining accreditation from each accrediting agency named under R4-39-106(D)(3).

C. No later than 60 calendar days before the expiration date of a licensee's conditional license, an applicant for a provisional license shall submit to the Board an application packet including:
1. The filing fee required under R4-39-201;
2. The information and documentation required in R4-39-104(D)(2), (D)(4), (D)(5) through (D)(10), and (D)(14) through (D)(17);
3. A chronological timeline identifying the applicant's continued progress in gaining accreditation from each accrediting agency named under R4-39-106(D)(3);
4. On a form provided by the Board, responses to questions regarding the applicant's continued progress in gaining

accreditation from each accrediting agency named under R4-39-106(D)(3); and
5. Copies of application documents submitted to an accrediting agency named under R4-39-106(D)(3), if applicable.

D. No later than 60 calendar days before the expiration date of a licensee's provisional license, an applicant for renewal of a provisional license shall submit to the Board an application packet including:
1. The filing fee required under R4-39-201;
2. The information and documentation required in R4-39-104(D)(2), (D)(4), (D)(5) through (D)(10), and (D)(14) through (D)(17);
3. A chronological timeline identifying the applicant's continued progress in gaining accreditation from each accrediting agency named under R4-39-106(D)(3);
4. On a form provided by the Board, responses to questions regarding the applicant's continued progress in gaining accreditation from each accrediting agency named under R4-39-106(D)(3);
5. Copies of application documents submitted to an accrediting agency named under R4-39-106(D)(3), if applicable; and
6. Documentation from each accrediting agency named under R4-39-106(D)(3) that demonstrates that the applicant is actively seeking accreditation.

E. A licensee shall:
1. Notify the Board in writing within 24 hours if the licensee:
   a. Is determined by an accrediting agency named under R4-39-106(D)(3) to be ineligible to apply for accreditation with the accrediting agency;
   b. Is precluded from initiating or continuing in the accreditation process by an accrediting agency named under R4-39-106(D)(3); or
   c. Is denied accreditation by an accrediting agency named under R4-39-106(D)(3);
2. Within five calendar days of receipt, submit to the Board a copy of any document from an accrediting agency named under R4-39-106(D)(3) that pertains to the licensee's progress in gaining accreditation from the accrediting agency; and
3. Within five calendar days of mailing or sending, submit to the Board a copy of any document mailed or sent to an accrediting agency named under R4-39-106(D)(3) that pertains to the licensee's progress in gaining accreditation from the accrediting agency.

F. The Board may conduct an inspection, pursuant to A.R.S. § 41-1009, of an applicant's or a licensee's place of business to determine compliance with the requirements of this Article.

G. In addition to the grounds for disciplinary action in A.R.S. § 32-3051, the Board may discipline a licensee that:
1. Violates the requirements in subsection (E), or
2. Intentionally or negligently misrepresents any material information in documents or testimony presented to the Board.

Historical Note
Adopted effective June 27, 1985 (Supp. 85-3). Amended effective February 23, 1993 (Supp. 93-1). Amended effective October 10, 1997 (Supp. 97-4). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2).

R4-39-108. Surety Bond, Cash Deposit, or Equivalent Security Requirements; Insurance Requirements; Financial Statement Requirements

A. A person applying for a license and a person licensed under R4-39-104, R4-39-105, R4-39-106, R4-39-107, or R4-39-110(E) shall have a surety bond, cash deposit, or equivalent security as required pursuant to A.R.S. § 32-3023. The Board shall determine the dollar amount of the surety bond, cash deposit, or equivalent security pursuant to A.R.S. § 32-3023(C).

B. The Board may require that a person applying for a license or a person licensed under R4-39-103 or R4-39-110(D) have a surety bond, cash deposit, or equivalent security as required pursuant to A.R.S. § 32-3023. The Board shall determine whether a surety bond, cash deposit, or equivalent security is required and if so, the dollar amount of the surety bond, cash deposit, or equivalent security pursuant to A.R.S. § 32-3023(C).

C. A person applying for a license or a person licensed under this Article shall:
1. Have and maintain with an insurance company authorized to transact business in this state coverage that complies with R4-39-302(4) and:
   a. A minimum single occurrence malpractice or professional liability coverage of $1,000,000; and
   b. A minimum single occurrence general liability coverage of $1,000,000 for the operation of the institution; or
2. Be self-insured for the amounts in subsection (C)(1).

D. A person applying for a license or renewal of a license shall submit with the license or renewal application:
1. Financial statements that are prepared and signed by an independent, certified public accountant currently licensed by the Arizona State Board of Accountancy or by the accountancy board in the state of the applicant's or licensee's headquarters;
2. Financial statements that are prepared and compiled, reviewed, or audited in accordance with generally accepted accounting principals; and
3. Additional financial information if required by the Board under subsection (E) or (F).

E. The Board shall require that a person applying for a license or renewal under this Article submit additional financial documentation if:
1. The financial statements are for a reporting period that ended more than six months before the date of license application; or
2. The applicant has not previously operated in this state or any other state or jurisdiction.

F. The Board may require that a person applying for a license or renewal under this Article submit additional financial documentation based upon the applicant's responses to questions on a license application regarding the applicant's distribution of ownership, business type, and legal structure.

Historical Note
Adopted effective May 21, 1985 (Supp. 85-3). Amended effective November 6, 1998 (Supp. 98-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2).

R4-39-109. Supplemental License Applications

A. A private vocational or degree-granting institution shall submit to the Board an application for a supplemental license for approval of any additional vocational program, degree program, change of location or change of name of the institution at least 45 days before:

1. Operating an unlicensed, new, or additional vocational or degree-granting program; or
2. Operating from an unlicensed, new or additional location; or
3. Changing the name of the licensed institution.

B. The Board shall grant a supplemental license to a private vocational or degree-granting institution if the institution demonstrates that a supplemental license application submitted under subsection (A) is in compliance with A.R.S. §§ 32-3021 through 32-3051.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Section R4-39-109 repealed; new Section R4-39-109 renumbered from R4-39-110 and amended effective November 6, 1998 (Supp. 98-4).

R4-39-110. Change of Ownership or Control

A. In this Section, "change of ownership or control" means:
1. For a privately held corporation whose control is vested in those who control the voting stock of the corporation, 50 percent or more of the voting stock changes within a five-year period;
2. For a publicly traded corporation whose control is vested in the voting members of the board of directors:
   a. Fifty percent or more of the voting members of the board of directors change within a 12-month period, or
   b. The chief executive officer of the corporation changes;
3. For a non-profit corporation whose control is vested in the voting members of the board of directors:
   a. Fifty percent or more of the voting members of the board of directors change within a 12-month period, or
   b. The chief executive officer of the corporation changes;
4. For a limited partnership whose control is vested in a corporate general partner, if under subsections (A)(1), (A)(2), or (A)(3), the corporate general partner has a change of ownership or control;
5. For a limited liability company whose control is vested in members who control a majority of the interest in the company, if 50 percent or more interest changes within a 12- month period; or
6. For a sole proprietor, if 50 percent or more interest changes within a five-year period.

B. In determining whether a change of ownership or control has occurred, the Board shall deem that a change of ownership or control has not occurred if the interest is transferred by operation of law or inheritance to a parent, grandparent, spouse, or child.

C. A licensee shall:
1. No later than seven calendar days after change of ownership or control, notify the Board in writing of the change of ownership or control; and
2. No later than seven calendar days after any change of interest or change of the voting members of the board of directors of more than 20 percent but less than 50 percent, notify the Board in writing of the change.

D. No later than 60 calendar days after a change of ownership or control, a licensed private accredited institution shall submit to the Board a license application packet including:
1. The filing fee required under R4-39-201(E);
2. Either:
   a. Information and documentation specified in R4-39-103(D)(5), (D)(8), (D)(9) and (D)(10) and R4-39-104(D)(2), (D)(3), (D)(5), (D)(7) through (D)(11), (D)(14) and (D)(15); or
   b. If required by an accrediting agency that accredits the licensee's programs or the institution through which the programs are operated, a copy of change of ownership documents submitted by the licensee to the accrediting agency;
3. Attestation that the applicant will assume financial responsibility for the payment of all student tuition refunds for which the institution has an obligation; and
4. Other information determined by the Board to be relevant to the determination of the applicant's compliance with licensing requirements under this Article.

E. No later than 60 calendar days after a change of ownership or control, a licensed private non-accredited institution shall submit to the Board a license application packet, including:
1. The filing fee required under R4-39-201(E);
2. For a private non-accredited vocational institution, information and documentation specified in R4-39-104(D)(2), (D)(3), (D)(5), (D)(7) through (D)(11), and (D)(14) through (D)(16);
3. For a private non-accredited degree-granting institution, information, documentation, and fees specified in R4-39-107(C)(4) and R4-39-104(D)(2), (D)(3), (D)(5), (D)(7) through (D)(11), and (D)(14) through (D)(16);
4. Attestation that the applicant will assume financial responsibility for all student refunds for which the institution has a financial obligation; and
5. Other information determined by the Board to be relevant to the determination of the applicant's compliance with licensing requirements under this Article.

F. The Board shall not grant a license for a change of ownership or control to an applicant if:
1. Within 10 years before the date of filing an application packet required in subsections (D) or (E) or since the start date of the current licensure period, an individual with 20 percent or more ownership in the applicant institution has been convicted in this state or any other state or jurisdiction of a felony or any crime related to the operation of an educational institution, unless the conviction has been absolutely discharged, expunged, or vacated;
2. Within 10 years before the date of filing an application packet required in subsections (D) or (E) or since the start date of the current licensure period, a person with 20 percent or more ownership in the applicant institution has had a license to operate a vocational program, vocational institution, degree program, or degree-granting institution revoked in Arizona or in any state or jurisdiction; or
3. The applicant provides false or misleading information on or with an application required by this Section.

G. The Board shall grant a license for a change of ownership or control to an applicant, if the applicant:
1. Demonstrates compliance with A.R.S. §§ 32-3021 through 32-3027, as applicable; and
2. Meets the application requirements in subsection (D) or (E).

H. The Board may conduct an inspection, pursuant to A.R.S. § 41-1009, of an applicant's or a licensee's place of business to determine compliance with the requirements of this Article.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended effective February 23, 1993 (Supp. 93-1). R4-39-110 renumbered to R4-39-109; new Section R4-39-110 renumbered from R4-39-111 and amended (Supp. 98-4). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2).

R4-39-111. Honorary Degrees

A. Only currently licensed, accredited private degree-granting institutions may apply to award honorary degrees. A currently licensed, accredited private degree-granting institution shall submit an application for a supplemental license for an honorary degree to the Board for verification, review, and administrative action before offering to grant or granting an honorary degree.

B. The Board shall approve the application for a supplemental license application for an honorary degree if the honorary degree is consistent with the institution's currently licensed degree-granting programs.

C. An honorary degree shall identify in its title or name that it is an honorary degree and shall bear on its face the denotation that it is an honorary degree.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). R4-39-111 renumbered to R4-39-110; new Section R4-39-111 renumbered from R4-39-112 and amended effective November 6, 1998 (Supp. 98-4).

R4-39-112. Repealed

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Repealed effective November 6, 1998 (Supp. 98-4).

ARTICLE 2. FEES

R4-39-201. Fees

A. The filing fee for an original license to operate private vocational or degree-granting programs is $800.

B. The annual filing fee for a license renewal to continue to operate private vocational or degree-granting programs is the following amount based upon annual gross tuition revenues:

1. Less than $50,000 annual gross tuition revenue, $600.
2. $50,000/$249,999 annual gross tuition revenue, $750.
3. $250,000/499,999 annual gross tuition revenue, $1,000.
4. $500,000/$999,999 annual gross tuition revenue, $1,300.
5. $1,000,000/$2,499,999 annual gross tuition revenue, $1,650.
6. $2,500,000/$6,999,999 annual gross tuition revenue, $2,000.
7. $7,000,000 or more annual gross tuition revenue, $2,300.

C. The filing fee for each application for a supplemental license to operate new or additional private vocational or degree granting programs is $500.

D. The filing fee for each application for a supplemental license to operate private vocational or degree-granting programs from a new location or an additional location is $500.

E. The filing fee for an application for a supplemental license to continue to operate private vocational or degree-granting programs upon a change of ownership is $500.

F. The fee for an onsite verification, inspection, or investigation is the actual cost incurred or $500, whichever is less.

Historical Note

Adopted effective June 27, 1985 (Supp. 85-3). Section R4-39-201 repealed, new Section R4-39-201 adopted effective May 19, 1988 (Supp. 88-2). Emergency amendments adopted effective January 12, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-1). Emergency amendments adopted again effective April 12, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-2). Emergency amendments adopted again effective July 12, 1993 (Supp. 93-3). Amendments permanently adopted with changes effective October 12, 1993 (Supp. 93-4). Amended effective November 6, 1998 (Supp. 98-4).

ARTICLE 3. OPERATION OF PRIVATE NON-ACCREDITED INSTITUTIONS

R4-39-301. Catalog

A. A person operating a licensed private non-accredited institution shall ensure that the institution has a catalog that includes the following information:

1. The institution's name, street address, mailing address, telephone number, fax number, e-mail address, and web site address if applicable;
2. If the institution has a headquarters in another state or jurisdiction, the headquarters' street address, mailing address, telephone number, fax number, e-mail address, and web site address;
3. The effective date of the catalog;
4. The names and titles of:
   a. All members of any board of directors or board of trustees,
   b. All individuals responsible for managing the institution in this state, and
   c. All persons with 20 percent or more ownership in the institution;
5. A list of all programs operated by the institution;
6. For each program to be operated:
   a. A topical outline, including a statement of purpose, objectives, subjects, units, skills, and jobs to be learned in the program, and the number of clock, credit, or semester hours to be spent by the student in each phase of the program;
   b. Any program prerequisites and completion requirements;
   c. Tuition and student fees;
   d. Any required textbooks or program learning materials;
   e. Any equipment or technology requirements or competencies;
   f. Any library resources;
   g. Any clinical training, practica, externships, internships, or special features;
   h. Any graduate employment opportunities; and
   i. Any requirements for a graduate to practice;
7. Any allowable student tuition reductions, tuition discounts, tuition scholarships, and educational loans that comply with R4-39-308;
8. Any available student payment schedules and financing options that comply with R4-39-308;
9. Student eligibility requirements for tuition reductions, tuition discounts, tuition scholarships, educational loans, payment schedules, and financing options, if applicable;
10. Institutional refund policies that comply with R4-39-308 and R4-39-404;
11. Any student services provided by the institution;
12. A description of each educational delivery system available, including classroom-based instruction, directed study, distance education, and online computer-based learning.
13. For institutions operating on an academic calendar, identification of:
    a. Start and end dates for each semester, quarter, term, or session offered; and
    b. Vacation periods and holidays; and
14. Policies and regulations governing:
    a. Admission requirements or program registration;
    b. Program or course cancellation;
    c. Grading procedures or progress tracking;

d. Change in student status;
e. Student readmission;
f. Student probation, suspension, or expulsion;
g. Grade reports and transcripts; and
h. As applicable:
i. Student attendance; and
ii. Credit for previous education, training, work, or life experience.

B. A person operating a licensed private non-accredited institution shall make a catalog available to students and prospective students in a written or electronic format.

C. Within 10 calendar days from the date a licensed private non-accredited institution revises a catalog or publishes a new catalog, the licensed private non-accredited institution shall submit to the Board a written or electronic copy of the revised or new catalog.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2).

R4-39-302. Facilities and Equipment

A person operating a licensed private non-accredited institution shall ensure that the:

1. Building, classrooms, equipment, furniture, grounds, instructional devices, and other physical facilities of the institution are appropriate to achieve the educational objectives of the institution;
2. Physical facility and equipment meet all safety requirements and health standards of the city, county, state, and any other authority in which the facility is located;
3. Physical facility and equipment comply with local and state laws for planning, building, zoning, and fire codes;
4. Insurance required under R4-39-108 is adequate to protect the assets of the institution in the event of damage or a finding of liability; and
5. Board is notified of a change of location as required in R4-39-109.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended by final rulemaking at 5 A.A.R. 4451, effective November 3, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2).

R4-39-303. Staff

A. A person operating a licensed private non-accredited institution shall ensure that:

1. The institution has a local administrator designated to carry out the duties under subsection (B);
2. Each staff member communicates information regarding the institution, the institution's programs, and the institution's educational services that is true and is as represented in the institution's catalog, required under R4-39-301, and in any brochures, promotional materials, or advertisements provided to or intended for students or potential students;
3. The institution has sufficient staff to provide instruction and educational services as represented in the institution's catalog, required under R4-39-301, and in any brochures, promotional materials, or advertisements provided to or intended for students or potential students; and
4. Instruction and services are provided to a student as represented in the institution's catalog, required under R4-39-301, and any brochures, promotional materials, or advertisements provided to the student.

B. An administrator designated under subsection (A)(1) shall:

1. Supervise the day-to-day operation of the institution;
2. For each program to be operated by the institution, develop and implement a curriculum capable of preparing a student enrolled in the program for the program degree, the program credential, the program's occupational objective, or a specific entry-level job covered in the program; and
3. Ensure that all faculty members meet the requirements in subsection (C) or (D).

C. A person operating a licensed private non-accredited institution shall ensure that a faculty member for a private non-accredited vocational institution has at least:

1. Two years of practical work experience in the subject the faculty member is teaching; and
2. Postsecondary education in the subject the faculty member is teaching from an accredited institution or an institution licensed to operate as a postsecondary educational institution by the state in which the faculty member received the postsecondary education.

D. A person operating a licensed private non-accredited institution shall ensure that a faculty member for a private non-accredited degree-granting institution has at least:

1. Two years of practical work experience in the subject the faculty member is teaching; and
2. A degree from an accredited institution equal to or exceeding the degree awarded to a graduate of the program in which the faculty member is teaching.

E. A person operating a licensed private non-accredited institution shall ensure that:

1. Within 10 calendar days from the date the institution's administrator resigns, is terminated, or is otherwise unable to fulfill all responsibilities established under subsection (B), the Board is notified in writing;
2. Within 10 calendar days from the date the institution employs a new administrator, a completed form provided by the Board describing the individual's professional and educational background is submitted to the Board; and
3. Within 10 calendar days from the date the institution employs a new faculty member, a completed form provided by the Board describing the individual's professional and educational background is submitted to the Board.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended by final rulemaking at 5 A.A.R. 4451, effective November 3, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2).

R4-39-304. Advertising

A. Advertising shall be truthful and shall not include false or misleading statements about the institution, personnel, the faculty, courses, services, or occupational opportunities for a graduate.

B. The Board may institute disciplinary proceedings against a non-accredited private vocational or degree-granting institution or an institutional representative for false or misleading advertising.

C. A non-accredited private vocational or degree-granting institution shall not solicit students in the "help wanted" section of a newspaper, magazine, or other similar publication.

D. A non-accredited private vocational or degree-granting institution shall not use the words "guarantee" or "free" in solicitations or advertising in any brochure, catalog, bulletin, leaflet, or other publication of the institution, nor in a newspaper, magazine, or any other media.

E. All printed advertising shall include the name, phone number, and address of the institution.

F. The Board may require a non-accredited private vocational or degree-granting institution to submit all advertising for approval prior to publication.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Former Section R4-39-304 repealed; new Section R4-39-304 renumbered from R4-39-305 and amended by final rulemaking at 5 A.A.R. 4451, effective November 3, 1999 (Supp. 99-4).

R4-39-305. Recruitment

A. A person operating a licensed private non-accredited institution shall ensure that all information contained in the institution's catalog, required under R4-39-301, and in any brochures, promotional materials, and advertisements provided to or intended for students or potential students is true.

B. During student recruitment or before a student signs an enrollment agreement, a licensed private non-accredited institution:
1. May allow a student tuition reduction, tuition discount, tuition scholarship, or educational loan only as authorized under R4-39-308; and
2. Shall not guarantee employment to a prospective student.

C. A person operating a licensed private non-accredited institution shall ensure that a staff member responsible for student recruitment or student admission:
1. Uses only those titles that accurately reflect the staff member's actual duties and responsibilities;
2. Is not designated as a counselor or advisor; and
3. Does not make final decisions regarding tuition, student fees, tuition reduction, tuition discounts, tuition scholarships, educational loans, payment schedules, financing options, or refund policies.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended effective February 23, 1993 (Supp. 93-1). Former Section R4-39-305 renumbered to R4-39-304; new Section R4-39-305 renumbered from R4-39-306 and amended by final rulemaking at 5 A.A.R. 4451, effective November 3, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2).

R4-39-306. Admission Requirements

A. The institution shall publish and administer admission requirements.

B. If an entrance exam is required, the non-accredited private vocational or degree-granting institution shall:
1. Set a minimum passing score for admission;
2. Admit only a student who has obtained the minimum passing score on the entrance exam; and
3. Maintain a copy of the completed entrance exam in the student's permanent record.

C. If an entrance exam is not required, the non-accredited private vocational or degree-granting institution shall admit only a student who demonstrates the ability to satisfactorily complete the prescribed training through:
1. Initial interview;
2. Letter of recommendation;
3. High School Diploma or a General Educational Development test;
4. Official educational transcripts; or
5. Other requirements established by the institution.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Former Section R4-39-306 renumbered to R4-39-305; new Section R4-39-306 renumbered from R4-39-307 and amended by final rulemaking at 5 A.A.R. 4451, effective November 3, 1999 (Supp. 99-4).

R4-39-307. Placement

If the non-accredited private vocational or degree-granting institution offers placement services to a student, the following requirements shall apply:
1. The institution shall maintain evidence of a student referral for job placement and shall include the following:
   a. The name of the student referred.
   b. The name of the prospective employer.
   c. Result of referral.
   d. Final placement or other disposition.
2. The non-accredited private vocational or degree-granting institution shall prepare a student for placement by:
   a. Instructing the student in resume preparation and interviewing procedures;
   b. Instructing the student in the appropriate dress and personal grooming;
   c. Instructing the student in conduct on the job.
3. A list of potential employers given to a student or graduate by the institution shall not be considered a referral or offer of placement.
4. Each student application shall contain a disclaimer by the institution that job placement is not guaranteed to a graduate or student.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended effective February 23, 1993 (Supp. 93-1). Former Section R4-39-307 renumbered to R4-39-306; new Section R4-39-307 renumbered from R4-39-308 and amended by final rulemaking at 5 A.A.R. 4451, effective November 3, 1999 (Supp. 99-4).

R4-39-308. Tuition, Pricing, and Refund Policies

A. A person operating a licensed private non-accredited institution may charge students enrolled in the same program different tuition and student fees, only:
1. Following a published notice of a program price change to be effective on a specified date for all students enrolling in the program on or after the specified date;
2. For students who have chosen to modify programs or services so that a tuition reduction is warranted;
3. For students incurring additional charges or who are eligible for tuition reductions associated with payment schedules, financing options, or educational loans;
4. For students meeting tuition discount eligibility requirements in subsection (B); and
5. For students receiving tuition scholarships under subsection (C).

B. A person operating a licensed private non-accredited institution that offers tuition discounts shall:
1. Publish in the institution's catalog allowable tuition discounts and student eligibility requirements for allowable tuition discounts, including tuition discounts for students:
   a. Enrolling as part of a group,
   b. Who are similarly situated, or
   c. Enrolling under the same program schedule or course schedule; and
2. Make tuition discounts available to all students who meet eligibility requirements.

C. A person operating a licensed private non-accredited institution that offers full or partial tuition scholarships shall:
1. Publish in the institution's catalog available tuition scholarships and student eligibility requirements for available

tuition scholarships, including terms, conditions, application procedures, deadline dates, basis for selection, range of award amounts, and aggregate award amounts; and
2. Objectively evaluate all applicants for tuition scholarships, and award tuition scholarships only to students who meet eligibility requirements.

D. A person operating a licensed private non-accredited institution that offers full or partial educational loans shall:
1. Publish in the institution's catalog available full or partial educational loans and student eligibility requirements for available full or partial educational loans, including terms, conditions, application procedures, deadline dates, range of loan amounts, aggregate loan amounts, interest rates, and loan repayment requirements;
2. Make the full or partial educational loans available to all students who meet eligibility requirements; and
3. Offer and administer the full or partial educational loans as required under R4-39-406.

E. A person operating a licensed private non-accredited institution that offers payment schedules or financing options shall:
1. Publish in the institution's catalog payment schedules and financing options and student eligibility requirements for payment schedules and financing options, including terms and conditions, application procedures, interest rates, and monthly payments; and
2. Make the payment schedules and financing options available to all students who meet eligibility requirements.

F. A person operating a licensed private non-accredited institution:
1. Shall not require a prospective student to make a non-refundable payment until the prospective student signs an enrollment agreement and is accepted for enrollment, and
2. Shall ensure that a prospective student understands the prospective student's rights under R4-39-404.

G. A person operating a licensed private non-accredited institution shall have a refund policy that:
1. Is applicable to all students, and
2. Meets the requirements in R4-39-404.

H. A person operating a licensed private non-accredited institution shall ensure that all student tuition, student fees, tuition reductions, tuition discounts, tuition scholarships, educational loans, payment schedules, financing options, and refund policies applicable to a student are:
1. Fully disclosed in writing on a student's enrollment agreement or applicable financial documents;
2. Consistent with information in the institution's catalog, required under R4-39-301, and in any brochures, promotional materials, or advertisements provided to or intended for students or potential students; and
3. Authorized pursuant to this Section.

I. A person operating a licensed private non-accredited institution shall:
1. Charge a student tuition and student fees as identified in writing on a student's enrollment agreement or applicable financial documents;
2. Collect tuition and student fees from a student according to a payment schedule or financing option identified in writing on a student's enrollment agreement or applicable financial documents; and
3. Refund tuition and student fees charged to a student according to the refund policy identified in writing on a student's enrollment agreement or applicable financial documents.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended effective February 23, 1993 (Supp. 93-1). Former Section R4-39-308 renumbered to R4-39-307; new Section R4-39-308 renumbered from R4-39-309 and amended by final rulemaking at 5 A.A.R. 4451, effective November 3, 1999 (Supp. 99-4). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2).

R4-39-309. Renumbered

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended effective February 23, 1993 (Supp. 93-1). Section renumbered to R4-39-308 by final rulemaking at 5 A.A.R. 4451, effective November 3, 1999 (Supp. 99-4).

R4-39-310. Repealed

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Section repealed by final rulemaking at 5 A.A.R. 4451, effective November 3, 1999 (Supp. 99-4).

ARTICLE 4. OPERATION OF ALL LICENSED INSTITUTIONS

R4-39-401. Student Records

A. An institution shall maintain complete and accurate records for each student currently enrolled, including:
1. An enrollment agreement containing, but not limited to the following information:
   a. Name and address of student;
   b. Commencement date of program;
   c. Title of the course or courses within the program;
   d. Total clock and credit hours of the program;
   e. Payment schedule and total cost to the student;
   f. Refund policy of the institution;
   g. A statement indicating that the individual signing the agreement has read and understands all aspects of the agreement;
   h. The holder in due course rule as defined in A.R.S. § 47-3302;
   i. A disclaimer by the institution that "job placement" is not guaranteed to graduates upon completion of this training or upon graduation;
   j. Student grievance procedures, if not printed in a catalog, bulletin, or other document provided each prospective student; and
   k. A cancellation notice in accordance with Federal Trade Commission (FTC) regulations.
   l. Signature of the student and an official of the institution;
2. Copy of the entrance exam, if applicable;
3. A transcript;
4. Grades received, where applicable;
5. Student attendance information;
6. Counseling records;
7. Financial aid records for a length of time as required by the U.S. Department of Education; and
8. All obligations incurred and all funds paid by the student to the institution.

B. An institution shall make student records available and readily accessible for use and review by authorized officials of the institution and authorized representatives of the Board.

C. An institution that gives credit toward a course based upon prior job experience, training, or life experience shall record that credit in the institution's records relating to the student and in the student's official transcript and list the portion of the course for which the student is given credit. The institution shall attach a copy of the transcript reflecting courses for which the student is given credit for prior job experience,

training, or life experience to the institution's official transcript and shall retain the transcript as part of the student's permanent records.

D. In addition to subsections (A), (B), and (C), an institution shall include the following in the record of a student who graduates:
1. Class rank upon graduating, where applicable.
2. Job placement provided, where applicable.
3. Place of employment and beginning salary after graduation, where applicable.

Historical Note
Adopted effective May 21, 1985 (Supp. 85-3). Amended by final rulemaking at 6 A.A.R. 1129, effective March 7, 2000 (Supp. 00-1).

R4-39-402. Preservation of Records
No more than 15 calendar days after a licensee ceases operation, the licensee shall submit to the Board legible copies of all student records required in R4-39-401.

Historical Note
Adopted effective May 21, 1985 (Supp. 85-3). Amended effective February 23, 1993 (Supp. 93-1). Amended by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2).

R4-39-403. Student Complaint Procedures

A. If a student has a complaint against a licensed institution or program and exhausts all available grievance procedures established by the institution, the student may file a written complaint with the Board. A complaint must be filed within three years of the student's last date of attendance.

B. The Board's staff shall investigate the complaint. Upon completion of Board staff's investigation, the complaint shall be referred to the Complaint Committee for a review and recommendation to the Board.

C. After a review of the student complaint, the Complaint Committee shall:
1. Determine that the student complaint needs further investigation. Based upon the outcome of the investigation, the complaint may be re-heard by the Complaint Committee or referred to the Board;
2. Determine that the student complaint does not demonstrate that a violation of statute or rule occurred and recommend to the Board that the complaint be dismissed; or
3. Determine that the complaint demonstrates that a violation of statute or rule occurred and send a report of its findings and recommendation to the Board.

D. Upon receipt of the Complaint Committee's findings and recommendation, the Board shall affirm, reverse, adopt, modify, supplement, amend, or reject the report, in whole or in part, and determine there are reasonable grounds that the complaint demonstrates a violation of Board statutes and rules.

E. If the Board determines there are reasonable grounds to believe that the complaint demonstrates a violation of Board statute or rules, the Board shall set the matter for hearing under A.R.S. § 41-1092 et seq.

Historical Note
Adopted effective May 21, 1985 (Supp. 85-3). Amended by final rulemaking at 6 A.A.R. 1129, effective March 7, 2000 (Supp. 00-1).

R4-39-404. Tuition Refund Policy

A. A licensee shall allow a student or prospective student to cancel an enrollment agreement with the licensee if the student or prospective student submits a written notice of cancellation to the licensee within three days, excluding Saturday, Sunday, and state and federal holidays, of signing the enrollment agreement.

B. No later than 30 calendar days after a licensee receives a written notice of cancellation described in subsection (A), the licensee shall provide to the student or to the person who paid the student's tuition and fees a refund of 100 percent of all student fees and tuition paid for the student.

C. A person operating a licensed private accredited institution shall develop and implement policies and procedures for cancellations and tuition refunds that:
1. Are published in the institution catalog or enrollment agreement;
2. Are applicable to all students; and
3. Comply with:
   a. Accreditation standards established by each accrediting agency named under R4-39-103(D)(3) or (F)(1)(a); and
   b. United States Department of Education requirements governing each federal student financial aid program named under R4-39-103(D)(6) or (F)(1)(b).

D. A person operating a licensed private non-accredited institution shall develop and implement policies and procedures for cancellations and tuition refunds that:
1. Are published in the institution catalog or enrollment agreement;
2. Are applicable to all students;
3. Establish time periods for each program that:
   a. Have a prescribed student tuition obligation and tuition refund calculation; and
   b. Do not exceed the full length of the program or one calendar year, whichever is less;
4. Allow an institution to retain an administrative fee or registration fee not to exceed $200.00 if the fee is published in the institution catalog or contained in the enrollment agreement;
5. Provide for the following refunds for a student who withdraws from or is terminated by an institution:
   a. Before beginning classes in a time period, a refund of 100 percent of the tuition charges for the time period;
   b. If 10 percent or less of the time period has expired, a refund of at least 90 percent of the tuition charges for the time period;
   c. If more than 10 percent but less than or equal to 20 percent of the time period has expired, a refund of at least 80 percent of the tuition charges for the time period;
   d. If more than 20 percent but less than or equal to 30 percent of the time period has expired, a refund of at least 70 percent of the tuition charges for the time period;
   e. If more than 30 percent but less than or equal to 40 percent of the time period has expired, a refund of at least 60 percent of the tuition charges for the time period;
   f. If more than 40 percent but less than or equal to 50 percent of the time period has expired, a refund of at least 50 percent of the tuition charges for the time period; and
   g. If more than 50 percent of the time period has expired, no refund or a refund in an amount determined by the institution.

E. When calculating refunds under subsection (D)(5), an institution shall:
1. Use the last date of attendance as the date of withdrawal or termination;

2. Determine that a student has withdrawn from an institution if the student has not attended any class for 30 consecutive scheduled class days; and
3. Base the percentage of the time period expired on the time elapsed in the time period or on the number of semester, quarter, trimester, or clock hours completed in the time period.

F. A program is exempt from subsection (D)(5) if the program:
1. Is less than 100 clock hours,
2. Has a total cost of less than $1000, and
3. Is provided by a private non-accredited vocational institution or a private non-accredited degree-granting institution.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2).

R4-39-405. Student Loans and Financial Aid

A. In this Section, an "academic year" means at least 30 weeks of instruction.

B. A licensed private institution that receives, on behalf of a student, student loan or financial aid funds provided by a federal, state, or local government or from a federal student financial assistance program governed by Title IV of the Higher Education Act of 1965, 20 USC 1070 et seq. as amended, shall collect and disburse the monies in the manner prescribed by the applicable federal, state, or local regulations.

C. A licensed private non-accredited institution that receives, on behalf of a student, student loan or financial aid funds provided by a private entity including but not limited to a bank, financing company, credit card company, or other lending source shall ensure that the monies are collected and disbursed in the following manner:
1. Amounts equal to or less than $5,000 may be disbursed as a single disbursement, regardless of program length.
2. Amounts greater than $5,000 shall:
   a. Be disbursed in two or more equal disbursements; and
   b. Have the second disbursement occur after the midpoint of the academic year for clock hour institutions or after the beginning of the second semester, quarter, trimester, or other term for term-based institutions.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2).

R4-39-406. Closure of an Institution or Cessation of a Program

A. At least 60 calendar days before a licensed institution closes, ceases to operate a program in which a student is enrolled, or makes an alternative program available to a student enrolled in a program that the institution will cease to operate, the licensed institution shall provide written notice of the closure, cessation of the program, or alternative program to:
1. Each enrolled student in the program that the institution will cease to operate, and
2. The Board.

B. Except as provided in subsections (C) and (D), no later than 30 calendar days after a licensed institution closes or ceases to operate a program in which a student is enrolled, the licensed institution shall provide a refund of 100 percent of all student fees and tuition paid by a student or other funding source on behalf of the student.

C. The refund requirement in subsection (B) does not apply if a student enrolled in a licensed institution that closes or in a program that the licensed institution ceases to operate chooses in writing to waive the refund because the student has received training or academic credit that is transferable to another institution.

D. The refund requirement in subsection (B) does not apply if a licensed institution that ceases to operate a program in which a student is enrolled provides the student an alternative program that is equivalent to the program no longer operated, as determined by the Board, in:
1. Program content;
2. Program length and schedule;
3. Tuition, student fees, payment schedules, and financing options;
4. Accreditation status, if applicable;
5. Award of credentials;
6. Instruction and equipment;
7. Placement assistance and student services, if applicable; and
8. Facilities.

E. This Section applies to a licensed institution regardless of whether the closure or the cessation of a program is the fault of the licensed institution.

Historical Note
New Section made by final rulemaking at 11 A.A.R. 2262, effective August 6, 2005 (Supp. 05-2).

ARTICLE 5. INVESTIGATIONS AND HEARING PROCEDURES

R4-39-501. Investigations

A. The Board shall investigate any sworn complaint against a person or entity alleging violation of A.R.S. § 32-3001 et seq. or this Chapter. For purposes of this Section, "investigated party" means an entity or person who is the subject of a Board investigation.

B. Board staff may request production of records or information from an investigated party or complainant, or request an interview with an employee or agent of the investigated party. The investigated party may file written objections with the Board to the Board's request within 15 days of receipt of the request. Unless the investigated party timely files an objection to the Board's request, the investigated party shall not fail to produce documents or information or attempt to make available for an interview an employee or agent of the investigated party. Board staff shall attempt to informally resolve objections to requests for documents, information, or an interview. If no resolution is reached, the matter shall be heard and decided by the Board.

C. The Board shall not disclose documents and materials relating to an investigated matter except to the investigated party, until the matter is closed, settled by stipulation, or set for hearing under Title 41, Chapter 6, Article 10.

D. Upon completion of the investigation, the matter shall be referred to the Board's Complaint Committee for consideration.

E. After consideration of the matter investigated, the Complaint Committee may take the following actions:
1. Instruct Board staff to conduct further investigation. After further investigation, the matter may be re-heard by the Complaint Committee or referred to the Board;
2. Determine that the investigation does not demonstrate a violation of A.R.S. § 32-3001 et seq. or this Chapter and recommend to the Board that the investigation be closed; or
3. Determine that the investigation demonstrates there are reasonable grounds to indicate a violation of A.R.S. § 32-

3001 et seq. or this Chapter and send a report of its findings and recommendation to the Board.

F. If the Board determines that the investigation demonstrates that there are reasonable grounds to indicate a violation of A.R.S. § 32-3001 et seq. or this Chapter, the Board shall serve notice of the Board's determination and set the matter for hearing.

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended effective February 23, 1993 (Supp. 93-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 1947, effective April 2, 2002 (Supp. 02-2).

R4-39-502. Hearings

A. All hearings shall be conducted before the Board or an administrative law judge under A.R.S. Title 41, Chapter 6, Article 10.

1. Parties may stipulate to any facts that are not in dispute. A stipulation may be made in writing or orally by reading the stipulation into the record of the hearing. A stipulation is binding upon the parties unless the Board grants a party permission to withdraw from the stipulation. The Board may, on its own motion, set aside a stipulation and proceed to ascertain the facts.
2. The Board may, on its own motion or at the request of a party, call a conference of the parties at the opening of a hearing or at any subsequent time to clarify the procedures for the hearing or the legal or factual issues involved.
3. By order of the Board, proceedings involving a common question of law or fact may be consolidated for hearing of any or all of the matters at issue.

B. If, after proper notice, a licensee fails to appear at any proceeding before the Board, the Board may render a decision based upon the evidence and information available to the Board.

C. The decision of the Board is a final administrative decision under A.R.S. § 41-1092.08(F).

Historical Note

Adopted effective May 21, 1985 (Supp. 85-3). Amended effective February 23, 1993 (Supp. 93-1). Section repealed; new Section made by final rulemaking at 8 A.A.R. 1947, effective April 2, 2002 (Supp. 02-2).

R4-39-503. Rehearing or Review of Board's Decision

A. Any party aggrieved by a final administrative decision of the Board may file with the Board no later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds as provided in subsection (C). A rehearing shall be conducted before the Board or the administrative law judge under A.R.S. § 41-1092.09.

B. A motion for rehearing or review may be amended at any time before it is ruled on by the Board. A response may be filed by any other party within 15 days after filing of a motion or amended motion. The Board may require the filing of written briefs on the issues raised in the motion and may provide for oral argument.

C. The Board shall grant a rehearing or review of a decision for any of the following reasons that materially affect the moving party's rights:

1. Irregularity in the administrative proceedings of the Board or the administrative law judge or any order or abuse of discretion that deprives the moving party of a fair hearing;
2. Misconduct of the Board, the 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. An excessive or insufficient penalty;
6. Error in the admission or rejection of evidence or other error of law occurring at the administrative hearing; or
7. The decision is not justified by the evidence or is contrary to law.

D. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. A rehearing or review shall cover only those matters specified in the Board's order.

E. No later than 10 days after a decision is rendered, the Board may on its own initiative order a rehearing or review of its decision for any reason listed in subsection (C). An order granting such a rehearing or review shall specify the grounds on which it is granted.

F. When a motion for rehearing or review is based upon affidavits, the affidavits shall be filed and served with the motion. An opposing party may, within 15 days after service, file and serve opposing affidavits. The Board may extend the period for serving opposing affidavits for not more than 20 days for good cause shown or by written stipulation of the parties.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1947, effective April 2, 2002 (Supp. 02-2).

ARTICLE 6. STUDENT TUITION RECOVERY FUND

R4-39-601. Submission of Assessments

A. Before July 30 of each year, the Board shall notify in writing an institution specified in A.R.S. § 32-3072(B) if an assessment as defined in A.R.S. § 32-3071(1) is due. The notice shall be sent by certified mail and shall contain the amount of the assessment, the date the payment of the assessment is due, and the penalty for failure to pay the assessment. As authorized by A.R.S. § 32-3072(B), the Board shall determine assessed fees as follows:

1. The assessment for an institution licensed under A.R.S. Title 32, Chapter 30 seeking renewal of a regular or provisional license shall be based on the number of newly enrolled students for the 12-month period identified on the license renewal application required under R4-39-108 or R4-39-107(D).
2. The assessment for a new institution licensed under A.R.S. Title 32, Chapter 30 shall be based on the number of newly enrolled students during the fiscal year ending June 30.
3. The assessment for a cosmetology school as defined in A.R.S. § 32-3071(3) or a professional driver training school as defined in A.R.S. § 32-3071(10) shall be based on the number of newly enrolled students during the fiscal year ending June 30.

B. On June 30 of each year, the Board shall determine the amount of funds in the Student Tuition Recovery Fund ("Fund"). If the Fund balance exceeds $500,000, only a new institution that is licensed or an institution that is provisionally licensed during the fiscal year that ended on June 30 shall be assessed a fee for that fiscal year.

C. If an institution disputes the amount of the assessment for an institution, the Board shall place the matter on the agenda for a public meeting. The Board may require that the institution whose assessment is disputed:

1. Submit additional information or documents to clarify incomplete or ambiguous information or documents; and
2. Have a representative present to address the Board at the public meeting.

Historical Note

Adopted effective August 14, 1990 (Supp. 90-3).
Amended by final rulemaking at 7 A.A.R. 4256, effective September 12, 2001 (Supp. 01-3).

R4-39-602. Claims

A. The Board shall investigate a claim against the Fund and find:
1. The claim is valid if:
   a. Student educational records confirm that the claim is filed by a person injured as defined in A.R.S. § 32-3071(7); and
   b. The claim is filed within one year after the closed institution ceases operation;
2. The claim is invalid:
   a. As specified in A.R.S. § 32-3075(B);
   b. Because a student participates in a "teach-out." As used in this subsection, "teach-out" means a student from a closed institution voluntarily transfers to another institution where the student receives all the instruction for which the student originally paid, but did not receive from the closed institution; or
   c. Because a student from a closed institution voluntarily transfers to another institution and receives different training for an additional cost from what the student paid at the closed institution.

B. If the Board finds a claim to be valid, the Board shall determine the amount and the party to be paid as follows:
1. The claim payment shall include only the actual amount of tuition and fees paid in cash or with a student loan. The Board shall not make a claim payment for a grant, scholarship, or debt owed to another state, local, or federal governmental agency.
2. A claim payment shall be made first to the student loan holder for the amount owed on the loan, and then to the student or the parent for the amount already paid on the loan or cash payments.

C. The Board shall pay a valid claim within 120 days of the date of the public meeting at which the claim is considered.

D. A claimant who is not satisfied with the Board's decision on a claim may file a motion for hearing as allowed under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Adopted effective August 14, 1990 (Supp. 90-3).
Amended by final rulemaking at 7 A.A.R. 4256, effective September 12, 2001 (Supp. 01-3).

R4-39-603. Student Record Requests

A. The Board shall maintain the student records of a closed institution licensed under A.R.S. Title 32, Chapter 30 for a period of 25 years. For purposes of this Section, student records has the same meaning as in R4-39-401.

B. The Board shall provide student records of a student who attended a closed institution licensed under A.R.S. Title 32, Chapter 30, if the following are submitted:
1. Name and social security number of the student;
2. Name of the closed institution;
3. Student name used while attending the closed institution;
4. Identification of the student record requested;
5. Name and address of the party to whom the student record is to be mailed;
6. Student signature or copy of a signed student record release form authorizing a third party to obtain the student record, if applicable; and
7. $10 processing fee and 25 cents per page copying charge.

Historical Note

New Section made by final rulemaking at 7 A.A.R. 4256, effective September 12, 2001 (Supp. 01-3).

32-3001. Definitions

In this chapter, unless the context otherwise requires:

1. "Accredited" means accredited by an accrediting agency recognized by the United States department of education.
2. "Board" means the state board for private postsecondary education.
3. "Degree" means an academic degree or honorary degree or the title of any designation, mark, appellation, series of letters or words including associate, bachelor, master, doctor or fellow which signifies, purports to signify or is generally taken to signify satisfactory completion of the requirements of an educational program of study beyond the secondary school level or which is an honorary title conferred for recognition of some meritorious achievement.
4. "Grant" means award, bestow, confer, convey or sell.
5. "Operate" means to establish, keep, maintain or utilize a physical facility, location or mailing address in this state where, from which or through which students are procured for private vocational or private degree programs, private vocational or private degree programs are offered or private vocational credentials or private degrees are offered or granted and includes contracting for the performance of any of these acts.
6. "Private vocational program" means an instructional program which includes a course or group of courses as defined in section 15-101 for which a student does not earn a degree and which is designed to provide or is advertised as providing a student with sufficient skills for entry into a paid occupation, and which is not conducted solely by a public school, public community college or public university.

32-3002. State board for private postsecondary education; committees

A. A state board for private postsecondary education is established consisting of the following seven members appointed by the governor pursuant to section 38-211:

1. Two members who hold executive or managerial positions in a private educational institution offering private vocational programs in this state.
2. One member who holds an executive or managerial position in a private educational institution offering an associate degree.
3. Two members who hold executive or managerial positions in a private educational institution offering a baccalaureate or higher degree, or both.
4. Two members who are citizens of this state and have been occupied in commerce or industry in this state for at least three years.

B. Board members serve at the pleasure of the governor. Terms of office of board members are four years to begin and end on the third Monday in January unless removed by the governor. The governor shall appoint a member for the unexpired portion of a term to fill a vacancy occurring during a term of office.

C. Four board members constitute a quorum for the transaction of business. The vote of a majority of the board members transacting business constitutes authority for the board to act.

D. Members of the board are eligible to receive compensation as determined pursuant to section 38-611 or fifty dollars, whichever is more, for each day actually spent in the performance of their duties and reimbursement for all expenses necessary and properly incurred in attending meetings or hearings of the board.

E. Members, employees, committee members and agents of the board and members of citizen advisory committees are immune from personal liability with respect to acts done and actions taken in good faith without wanton disregard of their statutory duties pursuant to this chapter.
F. The chairman may establish committees from the board membership necessary to carry out the functions of the board.

32-3003. Powers and duties
A. The board shall:
1. Annually select a chairman from among its members.
2. Meet at least four times a year.
3. Adopt rules which are necessary or proper for the administration of this chapter.
4. Administer and enforce this chapter and rules adopted pursuant to this chapter.
5. Establish minimum standards for private vocational program licensure requirements.
6. Adopt an official seal for attestation of licenses or other official papers and documents.
7. Consider and pass upon applications for private vocational program licenses and licenses to grant degrees.
8. Hear and pass upon complaints or charges.
9. Compel attendance of witnesses, administer oaths and take testimony concerning all matters coming within its jurisdiction.
10. Keep a record of its proceedings.
11. Keep a register which shows the date of each application for a private vocational program license, qualifications and place of business of the applicant and disposition of the application.
12. Keep a register which shows the date of each application for a license to grant degrees, qualifications and place of business of the applicant and disposition of the application.
13. Maintain a list of institutions licensed pursuant to this chapter which is open to public inspection at all reasonable times. The board shall give a copy of the list to any person who requests it.
14. Engage in a full exchange of information with other regulatory boards, governmental agencies, accrediting agencies and the United States department of education.
15. Do other things necessary to carry out the purposes of this chapter.
B. The board may:
1. Subject to title 41, chapter 4, article 4, employ personnel it deems necessary to carry out the purposes of this chapter and designate their duties. These duties may include considering and passing on license applications, considering and passing on complaints or charges, making investigations, compelling attendance of witnesses and issuing official papers and documents.
2. Make investigations, hold hearings and make decisions to enforce this chapter.
3. Issue subpoenas to compel the attendance of witnesses and the production of documents and administer oaths, take testimony, hear proof and receive exhibits in evidence.

4. Accept and spend federal monies and private grants, gifts, contributions and devises to assist in carrying out the purposes of this chapter. These monies do not revert to the state general fund at the end of a fiscal year.
5. Enter into an intergovernmental agreement pursuant to section 15-1747 to manage private postsecondary institutions in this state subject to the terms of the reciprocity agreement.

32-3004. Board for private postsecondary education fund
A. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all fees or other revenues received by the board in the state general fund and deposit the remaining ninety per cent in the board for private postsecondary education fund.
B. Monies deposited in the board for private postsecondary education fund are subject to section 35-143.01.

32-3021. Private vocational program license; qualifications; provision of information; exemptions
A. A person shall not operate a private vocational program unless the person holds a private vocational program license issued pursuant to this chapter. Each program offered by a private vocational program licensee shall be authorized on a private vocational program license. The board shall prescribe the manner in which the programs shall be identified on the license.
B. An applicant for a private vocational program license shall meet all of the following requirements:
1. Furnish a letter of credit, surety bond or cash deposit as provided in section 32-3023.
2. Make specific information concerning educational programs, including statements of purpose, objectives, course of study, policies, fees and other pertinent information, available to prospective students and the general public.
3. Be financially responsible and have management capability.
4. Maintain a qualified faculty.
5. Maintain facilities, equipment and materials that are appropriate for the stated program. All facilities shall meet applicable state and local health and safety laws.
6. Maintain appropriate records as the board prescribes that are properly safeguarded and preserved.
7. Use only advertisements that are consistent with the information made available as provided in paragraph 2 of this subsection.
8. Provide courses of instruction that meet stated objectives.
9. Provide a grievance procedure for students.
10. Comply with all federal and state laws relating to the operation of a private postsecondary educational institution.
11. Other requirements the board deems necessary.
C. An applicant for a private vocational program license shall submit evidence of meeting the requirements prescribed in subsection B of this section to the board.

The board shall verify the evidence submitted. Verification shall include on-site verification.
D. The filing of an application grants the board the authority to obtain information from any of the following:
1. A licensing board or agency in any state, district, territory or county of the United States or any foreign country.
2. The Arizona criminal justice information system as defined in section 41-1750.
3. The federal bureau of investigation.
E. The board, on application, may issue a private vocational program license to a new educational institution as provided in this section, except that the board shall establish separate minimum standards for licensure requirements of new educational institutions. These minimum standards may include the modification of licensure requirements as provided in subsection B, paragraphs 3, 5, 6, 7 and 8 of this section to meet the circumstances of new educational institutions. The board shall monitor the new educational institution to ensure compliance with the licensure requirements. The board shall issue a private vocational program license as provided in this subsection one time only to new educational institutions.
F. This section does not apply to any of the following:
1. A school licensed pursuant to chapter 3 or 5 of this title.
2. An instructional program or course sponsored by a bona fide trade association solely for its members.
3. Privately owned academic schools engaged in the process of general education that is designed to produce a level of development equivalent to that necessary to meet the requirements for entrance into a public community college or public university in this state and that may incidentally offer technical and vocational courses as part of the curriculum.
4. Schools or private instruction conducted by any person engaged in training, tutoring or teaching individuals or groups, if the instruction is related to hobbies, avocations, academic improvement or recreation and may only incidentally lead to gainful employment and if the instruction is for a period of under forty hours and costs less than one thousand dollars.
5. Schools conducted by any person solely for training the person's own employees.
6. An instructional program or course offered solely for employees and for the purpose of improving the employees in their employment if both of the following apply:
(a) The employee is not charged a fee.
(b) The employer provides or funds the program or course pursuant to a valid written contract between the employer and a program or course provider.
7. Training conducted pursuant to 14 Code of Federal Regulations part 141.
8. A school that solely provides an instructional program for certified nursing assistants and is licensed by the nursing board pursuant to section 32-1606, subsection B, paragraph 11.
9. A professional driving training school licensed by the department of transportation pursuant to chapter 23, articles 1, 2 and 3 of this title.
10. A training program approved by the board of examiners of nursing care institution administrators and assisted living facility managers that solely provides training for managers and caregivers of assisted living facilities.

32-3022. License to grant degrees

A. A person doing business for profit or not for profit in this state, except a public community college or public university, shall not grant or offer to grant a degree to any person or operate an institution which grants or offers to grant a degree to any person unless the person doing business holds a license to grant degrees issued pursuant to this chapter. Each degree program offered by a holder of a license to grant degrees shall be authorized on the license. The board shall prescribe the manner in which the degrees, including level and subject area, shall be identified on the license.

B. An applicant for a license to grant degrees shall have each degree program it offers accredited or have institutional accreditation with an accrediting agency recognized by the United States department of education. The board shall prescribe appropriate evidence of accreditation which each applicant shall submit and the manner in which degree programs shall be identified for institutional accreditation.

C. Notwithstanding subsection B of this section, an applicant for a license to grant degrees who offers a degree program which is not accredited shall meet all of the following requirements:

1. Application or commitment to apply for accreditation with an accrediting agency recognized by the United States department of education. The board shall prescribe the manner in which the applicant shall demonstrate application or commitment to apply for accreditation and the time periods in which the various stages of accreditation shall be met.

2. Demonstration in the manner prescribed by the board, including on-site verification, that the applicant meets the requirements prescribed in section 32-3021, subsections B and C if the applicant has not met the requirements in its application for accreditation.

3. Demonstration in the manner prescribed by the board that the applicant who offers the degree provides actual instruction relating to each degree.

D. The board may, on application, issue a license to grant degrees to a new educational institution as provided in this section, except that the board shall establish separate minimum standards for licensure requirements of new educational institutions. The minimum standards may include the modification of licensure requirements as provided in section 32-3021, subsection B, paragraphs 3, 5, 6, 7 and 8 to meet the circumstances of new educational institutions. The board shall monitor the new educational institution to ensure compliance with the licensure requirements. The board shall issue a license to grant degrees as provided in this subsection one time only to new educational institutions.

E. This section does not apply to religious degrees which are used solely for religious purposes within a religious organization which has tax exempt status from the internal revenue service.

32-3023. Letters of credit, bonds or cash deposits; fund

A. Before granting a private vocational program license or license to grant degrees the board shall require of the applicant a letter of credit, a surety bond in a form acceptable to the board or a cash deposit pursuant to this section if the program or institution is not accredited. Before renewing a private vocational program license or license to grant degrees the board may require of the applicant a letter of credit,

a surety bond in a form acceptable to the board or a cash deposit pursuant to this section if the program or institution is not accredited.
B. Before granting or renewing a private vocational program license or license to grant degrees the board may require of the applicant a letter of credit, a surety bond in a form acceptable to the board or a cash deposit pursuant to this section if the program or institution is accredited.
C. The letter of credit, surety bond or deposit required by this section shall not be less than fifteen thousand dollars. The board may require a letter of credit, a bond or a deposit required by this section in an amount of more than fifteen thousand dollars and may consider the following:
1. The applicant's gross tuition revenue.
2. The length of time the applicant has been in operation and the applicant's financial position.
D. Surety bonds shall be executed by the applicant as principal with a corporation authorized to transact surety business in this state. Evidence of a surety bond shall be submitted to the board in a form prescribed by the board. Surety bonds issued by a surety company must be rated "A" or better by Moody's investor service or Standard and Poor's rating service or their successors.
E. As an alternative to a surety bond, the applicant may submit a confirmed, irrevocable letter of credit acceptable and payable to the board.
F. As an alternative to a surety bond, an applicant may establish a cash deposit in the amount of the bond with the state treasurer pursuant to rules adopted by the board. The treasurer shall deposit the monies in a special account to be known as the private postsecondary education cash bond fund. The monies shall be invested by the treasurer pursuant to laws governing such deposits. The accrued interest from investments shall be held by the treasurer for the payment of current claims. Cash deposits plus accrued interest may be withdrawn, if there are no outstanding claims against them, one year after the termination of the license in connection with which the monies are deposited. The deposit may be withdrawn one year after the filing of a surety bond as a replacement to the cash deposit.
G. The letters of credit, bonds or cash deposits required by this section shall be in favor of this state for the benefit of any person covered by this section. The letter of credit, bond or deposit is subject to claims by the board for failure to pay any amount required pursuant to this chapter or by any person who is damaged by the failure of the principal to provide educational services pursuant to its published catalogs, brochures or other publications.
H. A person claiming against the letter of credit, bond or cash deposit may maintain an action against the principal and the surety or depository. The principal's letter of credit, surety bond or deposit may be sued upon in successive actions until the full amount is exhausted. A suit shall not be commenced on the letter of credit, bond or cash deposit after the expiration of one year following the commission or omission of the act on which the suit is based, except that time for purposes of claims for fraud shall be measured pursuant to section 12-543.
I. The letter of credit, bond or deposit shall be continuous in form and shall be conditioned that the total aggregate liability of the letter of credit, surety or depository for all claims shall be limited to the face amount of the letter of credit, bond or deposit irrespective of the number of years the letter of credit, bond or deposit is in force. If a corporate surety desires to make payment without waiting

for court action, the amount of any bond filed pursuant to this chapter shall be reduced to the extent of any good faith payments made by the corporate surety. These payments shall be based on priority of written claims received by the corporate surety before court action.
J. On receipt by the board of notice of intent to cancel a bond by a corporate surety, the board shall immediately notify the principal on the bond of the effective date of cancellation and that the principal must furnish a like bond or a letter of credit or make a cash deposit before the cancellation date or within thirty days after mailing of the notice by the board or its license shall be suspended. Notice to the principal shall be by certified mail in a sealed envelope with postage prepaid addressed to the principal's latest address of record in the board's office. A license is automatically suspended on the date the bond is cancelled unless a replacement bond or a letter of credit or cash deposit in lieu of a bond is on file with the board. Operation while the license is suspended is a violation of this chapter. The license shall not be reinstated until a replacement bond, letter of credit or cash deposit is on file with the board.

32-3025. Application for license; nontransferability; display

A. Each applicant for a private vocational program license to grant degrees shall make a verified application to the board upon forms prepared and furnished by the board. Any license issued shall be restricted to vocational programs or degree programs and locations of programs specifically indicated on the application. The holder of a license shall present a supplementary application as may be directed by the board for approval of additional vocational programs or degree programs or locations.
B. Each original application for a license shall be accompanied by the prescribed fee. A supplementary application for the approval of additional vocational programs or degree programs or locations shall be accompanied by the prescribed fee. Fees shall not be refunded if a license is refused or revoked.
C. The board may grant a private vocational program license or license to grant degrees for programs with variable locations. Private vocational program licenses and licenses to grant degrees are not transferable to another location in this state except as specified on the license.
D. A private vocational program license or license to grant degrees shall be prominently displayed at a place on the premises of the educational institution which is open to the inspection of all interested persons.

32-3027. Fees

A. The board shall establish and collect the following nonrefundable fees:
1. Filing fee for an original private vocational program license or license to grant degrees, not more than eight hundred dollars.
2. Annual renewal fee for an applicant holding one or more private vocational program and degree granting licenses, based on the aggregate annual gross tuition revenues from all programs licensed in this state, but not exceeding the following amounts for an applicant with the following annual gross tuition revenue:
(a) Less than fifty thousand dollars annual gross tuition revenue, six hundred dollars.

(b) Fifty thousand to two hundred forty-nine thousand nine hundred ninety-nine dollars annual gross tuition revenue, seven hundred fifty dollars.
(c) Two hundred fifty thousand to four hundred ninety-nine thousand nine hundred ninety-nine dollars annual gross tuition revenue, one thousand dollars.
(d) Five hundred thousand to nine hundred ninety-nine thousand nine hundred ninety-nine dollars annual gross tuition revenue, one thousand three hundred dollars.
(e) One million to two million four hundred ninety-nine thousand nine hundred ninety-nine dollars annual gross tuition revenue, one thousand six hundred fifty dollars.
(f) Two million five hundred thousand to six million nine hundred ninety-nine thousand nine hundred ninety-nine dollars annual gross tuition revenue, two thousand dollars.
(g) Seven million dollars or more annual gross tuition revenue, two thousand three hundred dollars.
3. Supplemental application fee for licensure of a new or an additional vocational program or degree program, five hundred dollars.
4. Supplemental application fee for licensure of an additional location or a change of location, five hundred dollars.
5. Supplemental application fee for a change in ownership of an educational institution offering private vocational programs or granting degrees, five hundred dollars.
6. Fee for an on-site verification, inspection or investigation that equals the actual cost incurred or five hundred dollars, whichever is less.
7. Late renewal fee, one hundred dollars per day.
B. For a student record request the board may charge a ten dollar processing fee and a twenty-five cent per page copying charge.

32-3051. Grounds for disciplinary action

The board may take disciplinary action against any person licensed pursuant to this chapter for any one or a combination of the following reasons:
1. Violation of this chapter or rules adopted pursuant to this chapter.
2. Conviction of a felony or any crime related to the operation of an educational institution.
3. Engaging in fraudulent advertising.
4. Failure to reapply as prescribed by the board for a license issued under this chapter if the licensee is continuing in business.
5. Engaging in false or misleading advertising, solicitation or recruitment practices.
6. Unprofessional or dishonorable conduct by the licensee or any employee, administrator, owner, member, officer, director or agent of the licensee, whether occurring in this state or elsewhere, including:
(a) Engaging in sexual conduct with a student who is not the person's spouse at the time of the conduct. For the purposes of this subdivision, "sexual conduct" means either of the following:
(i) Engaging in or soliciting a sexual relationship, whether consensual or nonconsensual.

(ii) Making sexual advances, requesting sexual favors or engaging in any other verbal or physical contact of a sexual nature.
(b) Verbally abusing a student or employee.
(c) Threatening or intimidating by word or conduct causing physical injury to a student.
(d) Intentionally, knowingly or recklessly causing any physical injury to a student.
(e) Knowingly touching a student with the intent to injure, insult or provoke the student.
7. Failure to comply with all state and federal laws relating to the operation of a private postsecondary educational institution.
8. Failure to comply with applicable standards of accreditation as determined by the board.
9. Failure to be financially responsible as determined by the board.
10. Failure to have adequate management capability as determined by the board.
11. Failure to provide the approved program as determined by the board.
12. Failure to provide faculty who meet the minimum qualifications as determined by the board.
13. Failure to provide the facility, equipment and other resources to operate the program.
14. Failure to follow published administrative policies, procedures and fees of the educational institution.
15. Failure to offer published student services.
16. Failure to maintain records as prescribed by rule.
17. Failure to provide a safe learning environment.
18. Failure to comply with a board order, consent agreement, stipulation, subpoena or investigative request.

32-3052. Types of disciplinary action; definition

A. On its own motion the board may investigate any evidence indicating that any person may be guilty of violating this chapter or rules adopted pursuant to this chapter. Any person may report to the board any information which shows that a person licensed pursuant to this chapter constitutes a threat to the public health, safety and welfare. On a showing of a threat to the public health, safety and welfare, the board, before conducting a hearing pursuant to title 41, chapter 6, article 10, may impose probation requirements best adapted to protect the public health, safety and welfare.
B. On the filing of a sworn complaint with the board charging any person with any reasons for disciplinary action specified in section 32-3051, the board shall conduct an investigation of the complaint. The board may employ investigators to conduct the investigation. Evidence may be taken by deposition or affidavit.
C. A person who reports or provides information to the board in good faith is not subject to an action for civil damages as a result of reporting or providing the information. The name of the person who reported or provided information shall not be disclosed unless disclosure is necessary to the proceedings conducted under this section.

D. The chairman of the board shall appoint a complaint committee consisting of at least three members of the board. The complaint committee is subject to open meeting requirements pursuant to title 38, chapter 3, article 3.1.
E. After the board staff investigates a complaint, the complaint committee shall review the complaint. Based on information provided pursuant to subsection A or B of this section, the complaint committee may do any of the following:
1. Dismiss the complaint if the committee determines the complaint is without merit.
2. File a letter of concern.
3. Refer the complaint to the full board for further review and action.
F. Based on information provided pursuant to subsection A or B of this section, if the board finds that the complaint lacks sufficient seriousness to merit direct action against the licensee, the board may take any of the following actions:
1. Dismiss the complaint if the board believes the information is without merit.
2. File a letter of concern.
3. Enter into an agreement with the licensee to restrict or limit the licensee's activities.
4. Require restitution to a student.
5. Impose a civil penalty in an amount not to exceed one thousand dollars for each violation of this chapter or rules adopted pursuant to this chapter. The board may impose an additional penalty in an amount not to exceed one thousand dollars for each day the civil penalty is not paid, beginning on the day after the penalty has been imposed.
G. Based on information provided pursuant to subsection A or B of this section, if the board finds the complaint has or may have sufficient seriousness to merit direct action against the licensee, the board may request an informal interview with the licensee.
H. The board shall issue a complaint and hold a hearing pursuant to title 41, chapter 6, article 10 if either:
1. The licensee refuses to be interviewed.
2. Pursuant to an interview, the board determines that cause may exist to revoke or suspend the license.
I. Based on the result of the informal interview or hearing, if the board determines that the facts do not warrant revocation or suspension of the license, it may take any of the following actions:
1. Dismiss the complaint if the board finds the information is without merit.
2. File a letter of concern.
3. Issue a decree of censure.
4. Fix a period and terms for probation to protect the public health, safety and welfare. The probation may include a restriction on the license. If a licensee fails to comply with the terms of probation, the board may file a complaint and notice of hearing pursuant to title 41, chapter 6, article 10 and take further disciplinary action.
5. Enter into an agreement with the licensee to restrict or limit the licensee's activities.
6. Require restitution to the student.
7. Impose a civil penalty in an amount not to exceed one thousand dollars for each violation of this chapter or rules adopted pursuant to this chapter. The board may

impose an additional penalty in an amount not to exceed one thousand dollars for each day the civil penalty is not paid, beginning on the day after the penalty has been imposed.
J. If the board finds that the information provided pursuant to subsection A or B of this section warrants suspension or revocation of a license, the board shall hold a hearing pursuant to title 41, chapter 6, article 10. Notice of a complaint and hearing is fully effective by mailing a true copy of the notice of complaint and hearing addressed to the licensee's last known address of record in the board's files. Notice is complete at the time of its deposit in the mail.
K. Except as provided in section 41-1092.08, subsection H, a person may appeal a final decision made pursuant to this section to the superior court pursuant to title 12, chapter 7, article 6.
L. If the board determines after a hearing that the licensee has violated this chapter or rules adopted pursuant to this chapter, the board may take any of the following actions:
1. Suspend or revoke the license.
2. Issue an order of censure. For the purposes of this paragraph, an order of censure is an official action against the licensee and may include a requirement for restitution to a student.
3. Place the licensee on probation.
4. Impose a civil penalty in an amount not to exceed one thousand dollars for each violation of this chapter or rules adopted pursuant to this chapter. The board may impose an additional penalty in an amount not to exceed one thousand dollars for each day the civil penalty is not paid, beginning on the day after the penalty has been imposed.
M. On its determination that any person has violated this chapter or rules adopted pursuant to this chapter, the board may assess the person with the board's reasonable costs and expenses, including attorney fees, incurred in conducting the investigation, informal interviews, committee meetings, board meetings or administrative hearings. All monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the board for private postsecondary education fund established by section 32-3004.
N. All monies derived from the imposition of civil penalties pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.
O. For the purposes of this section, "letter of concern" means an advisory letter that notifies the licensee that while there is insufficient evidence to support disciplinary action, the board believes the licensee should modify or eliminate certain activities or practices and that continuation of the activities or practices may result in disciplinary action against the licensee.

32-3053. Persons doing business without a license
The board may make investigations as provided in section 32-3003, subsection B in order to determine whether a person doing business in this state is required to hold a license as prescribed in this chapter. If the board determines that a person is doing business without holding a license required by this chapter, the board may bring an action as provided in section 32-3057.

32-3054. Hearing; rehearing or review; surrender of license
A. In any case involving the refusal to issue or renew a license or disciplinary action, the applicant or licensee may request a hearing or file a motion for rehearing or review pursuant to title 41, chapter 6, article 10.
B. Upon the revocation of a license, the holder shall surrender the license to the board, and upon failure or refusal so to do, the board may seize the license.

32-3055. Judicial review
Except as provided in section 41-1092.08, subsection H, any person affected by a final administrative decision of the board may have the decision reviewed judicially pursuant to title 12, chapter 7, article 6. If the plaintiff in the review proceedings is not a resident of this state, the venue shall be in Maricopa county. Service of summons issued in such review proceedings may be had upon the secretary. The board shall not be required to certify the record of the proceedings unless the plaintiff in the review proceedings first pays to the board the reasonable costs thereof.

32-3056. Violation; classification
A person who violates any provision of this chapter is guilty of a class 3 misdemeanor.
32-3057. Cease and desist order; injunctive relief; civil penalty
A. In addition to all other remedies, if it appears to the board, either on complaint or otherwise, that any person has engaged in or is engaging in an act, practice or transaction which violates this chapter or any rule or order of the board, the board may either:
1. Serve on the person by certified mail or personal service a cease and desist order requiring the person to cease and desist immediately, on receipt of the notice, from engaging in the act, practice or transaction.
2. Apply, through the attorney general or through the county, city or town attorney of the county, city or town in which the act, practice or transaction is alleged to have been committed, to the superior court in that county for an injunction restraining the person from engaging in the act, practice or transaction, or doing anything in furtherance of the act, practice or transaction. On a proper showing, a temporary restraining order, a preliminary injunction or a permanent injunction shall be granted without a bond. Process in the action may be served on the defendant in any county in this state where the defendant transacts business or is found.
B. A person who has received a cease and desist order under subsection A, paragraph 1 of this section shall, upon request, be granted a hearing before the board within thirty days of the effective date of the order.
C. If the person fails to comply with the order, the board shall file an action, pursuant to subsection A, paragraph 2 of this section, in superior court to restrain and enjoin the person from engaging in the act, practice or transaction. The court in the action shall proceed as in other actions for injunction. If the court finds that

the person wilfully failed to obey a valid cease and desist order, the court shall impose a civil penalty of not less than two hundred fifty dollars nor more than one thousand dollars per day per violation. Any amount collected as a civil penalty shall be deposited in the state general fund.
D. Each violation of this chapter or a rule or order of the board constitutes a separate offense and the court may impose a civil penalty not to exceed one thousand dollars for each violation. The board may impose an additional penalty in an amount not to exceed one thousand dollars for each day the civil penalty is not paid, beginning on the day after the penalty has been imposed. All monies derived from the imposition of civil penalties shall be transmitted to the state treasurer for deposit in the state general fund.

32-3058. Preservation of records
A. If a person who holds a private vocational program license or license to grant degrees discontinues operation, the chief administrative officer of the educational institution shall file with the board the original or legible true copies of all educational records of the institution as specified by the board.
B. Educational records include at least all educational information required by colleges or vocational institutions in considering students for transfer or advanced study, educational records of each student and former student and financial aid records of each student and former student.
C. If it appears to the board that any educational records of an educational institution are in danger of being destroyed, secreted, mislaid or otherwise made unavailable to the board, the board may seize and take possession of the educational records on its own motion and without the order of any court.
D. The board shall retain the educational records it receives pursuant to sections 41-151.15 and 41-151.19. These records are confidential and are not subject to review by the general public. The board shall establish procedures for access to and release of such records to students and their authorized representatives.

32-3071. Definitions
In this article, unless the context otherwise requires:
1. "Assessment" means the amount a private postsecondary education institution is required to pay to the student tuition recovery fund.
2. "Ceasing operations" means a private postsecondary education institution that has stopped offering educational courses or programs to the public for any reason.
3. "Distance learning instruction" means a written correspondence or electronic medium education program for students enrolled in an institution licensed under this chapter.
4. "Fund" means the student tuition recovery fund.
5. "Newly enrolled student" means a student enrolling with a private postsecondary education institution for the first time or reenrolling after an absence from the institution for one or more years.
6. "Person injured" means a student of a private postsecondary education institution which is not exempt from this article pursuant to section 32-3072, subsection D and which charges prepaid tuition to a student who is damaged

monetarily by the institution ceasing operations before fulfilling its contractual obligations or fully providing the services which were paid for in advance. Person injured does not include a nonresident student who is eligible to claim for recovery under a student tuition recovery fund or similar fund in the student's state of residence.
7. "Prepaid tuition" means monies advanced to an educational institution before the educational institution provides its service.
8. "Private postsecondary education institution" or "institution" means an educational institution subject to licensure under this chapter.
9. "Regional accrediting agency" means an agency which is recognized by the United States department of education and which accredits degree granting institutions operating in a designated geographic region.
10. "Specialized accrediting agency" means an agency which is recognized by the United States department of education and which accredits individual programs offered by institutions and not the institutions themselves.
11. "Total course cost" means the tuition and other fees charged by the private postsecondary education institution for each course offered.

32-3072. Student tuition recovery fund
A. The student tuition recovery fund is established and shall be administered by the board. A person injured by a private postsecondary education institution ceasing operations may recover from the fund an amount not to exceed the actual damages sustained.
B. Except as provided in subsection D of this section, each private postsecondary education institution which collects prepaid tuition shall annually pay an assessment to the board for each newly enrolled student in an amount equal to the sum of two-tenths of one per cent of the total course cost for each newly enrolled student. A private postsecondary institution shall not be required to pay assessments for newly enrolled students who are not residents of this state for whom the institution has paid a student tuition recovery fund assessment or an assessment to a similar fund in the student's state of residence. A private postsecondary institution shall not be required to pay assessments for students who are not residents of this state and who are enrolled in distance learning instruction.
C. The total assessment for each newly enrolled student shall not be more than ten dollars. If on June 30 of any year the balance in the fund exceeds five hundred thousand dollars, and on notice by the board to institutions, only institutions and schools that are newly or provisionally licensed during or after that fiscal year then ended shall pay the assessment.
D. Institutions accredited by a regional or specialized accrediting agency recognized by the United States department of education are exempt from this section.

32-3073. Powers and duties of board over fund
A. The board shall:
1. Administer the student tuition recovery fund.
2. Receive claims against the fund from persons injured and provide students' educational records from closed institutions.

3. Determine the amount of monies in any fiscal year to be drawn to administer the fund.
4. Deduct reasonable costs from the fund in addition to those permitted in paragraph 2 for any of the following purposes:
(a) Seizing student records from a closed school.
(b) Processing student record requests.
(c) Reimbursing the board or a third party as the custodian of records.
5. Notify institutions in any fiscal year, pursuant to section 32-3072, that only institutions which are newly or provisionally licensed during or after that fiscal year shall pay the assessment.
6. Adopt rules necessary to administer this article.
B. If an institution subject to assessments under section 32-3072 ceases operations with assessments unpaid to the board, the board and the attorney general shall recover the assessments from the institution.

32-3074. Deposit of assessments
A. The assessments and student record request fees received by the board for deposit in the fund shall be held in trust to carry out the purposes of the fund. On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.
B. The monies deposited in the fund are continuously appropriated to the board to carry out the purposes of the fund.
C. Any monies unexpended and unencumbered in the fund at the close of a fiscal year shall not revert to the state general fund.
D. Monies held in the fund shall be available only to satisfy valid claims submitted to the board by persons who provide educational records and who are injured and are exempt from execution and from all claims by an institution's creditors or other claimants.

32-3075. Statute of limitations; recovery from fund; eligibility
A. A claim against the fund shall not be commenced later than one year after the private postsecondary education institution has ceased operations. The person injured shall submit a complaint to the board outlining the circumstances surrounding the claim. The board shall promptly investigate the complaint. If the complaint and claim are valid the board shall pay the claim in the amount it considers reasonable.
B. Any person injured by a private postsecondary education institution ceasing operation is eligible to submit a claim against the fund unless the person is not a resident of this state and is enrolled in distance learning instruction.

32-3076. Subrogation
The state has the right of subrogation to the extent of payments made from the fund including the right to collect from a letter of credit, bond or cash deposit made

pursuant to section 32-3023 or directly from the institution. The board and the attorney general shall promptly enforce all subrogation claims.

32-3077. Violation; penalties

A. The board may suspend the license of an institution which is required to pay the assessment to the student tuition recovery fund and fails to timely pay the assessment. The board shall prohibit the institution from collecting any prepaid tuition due during the period of suspension. If the suspension is not lifted within thirty days from the date of the suspension, the board shall direct that the institution refund the total course cost paid by each person injured.

B. The board or any injured person may apply to the superior court for enforcement of a violation of an order of the board entered pursuant to this section.