

DEPARTMENT OF TRANSPORTATION (R-17-0701)

Title 17, Chapter 5, Article 3, Professional Driver Services

Amend: R17-5-301; R17-5-302; R17-5-303; R17-5-305; R17-5-306;
R17-5-307; R17-5-308; R17-5-309; R17-5-311; R17-5-313;
R17-5-315; R17-5-318; R17-5-323



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

MEETING DATE: July 6, 2017

AGENDA ITEM: D-2

TO: Members of the Governor's Regulatory Review Council

FROM: Shama Thathi, Staff Attorney

DATE: June 20, 2017

SUBJECT: DEPARTMENT OF TRANSPORTATION (R-17-0701)
Title 17, Chapter 5, Article 3, Professional Driver Services

Amend: R17-5-301; R17-5-302; R17-5-303; R17-5-305; R17-5-306;
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R17-5-315; R17-5-318; R17-5-323

General Comments

Purpose of the Agency and Summary of What the Rulemaking Does

This rulemaking, from the Arizona Department of Transportation (Department), seeks to amend 13 rules in A.A.C. Title 17, Chapter 5, Article 3. The rules relate to professional driver services. Specifically, the article establishes licensing, eligibility, and application requirements for professional driver training schools (PDTs) and traffic survival schools (TSS), as well as qualifications and requirements for PDTs and TSS instructors.

The Department is engaging in this rulemaking to implement Laws 2016, Chapter 371, which eliminated the requirement for PDTs instructors to be licensed, by repealing A.R.S. § 32-2372. The legislature also required the Department to adopt rules establishing requirements and minimum standards for commercial motor vehicle instructors. PDTs educate and train individuals to operate commercial motor vehicles and prepare applicants for an examination that they must pass to obtain a commercial driver license or instructional permit. TSSs offer educational sessions that are designed to improve the safety and habits of individual drivers. In this rulemaking, the Department is reducing regulatory burden, as it has determined that some of the requirements are unnecessary.

The rules were made by exempt rulemaking on September 1, 2015.

Proposed Action

The following is a non-exhaustive summary of the Department's actions:

- Section 301: Definitions are being amended, added, and removed to reflect the changes being made to the article.
- Section 302: The requirements that school licensees and instructors be at least 21 years old and have a high school diploma or equivalent, are being removed to reduce regulatory burden.
- Section 303: The rule is being amended to remove language related to PDTS instructor licenses, temporary PDTS instructor verbiage, and the PDTS instructor license application process. In addition to clarifying changes, the proposed rule establishes PDTS instructor requirements and specifies that the statutory agent needs to be listed in the Articles of Incorporation during the PDTS school application.
- Section 305: The requirements that an applicant for a TSS qualified instructor be at least 21 years old and have a high school diploma or equivalent, are being removed.
- Section 306: Clarifying changes are being made.
- Section 307: The rule is being amended to make clarifying changes, as well as update a citation.
- Section 308: PDTS instructor and temporary PDTS instructor licenses verbiage is being removed from the rule.
- Section 309: The rule is being amended to require full names and driver license numbers of instructors on a renewal license application.
- Sections 311, 313, 315, and 318: Clarifying changes are being made.
- Section 318: Language regarding qualification of a TSS instructor and an instructor's right to request a hearing with the Department's Executive Hearing Office is being added.

Exemption or Request and Approval for Exception from the Moratorium

The Department received an exception from the Governor's Office on August 3, 2016.

Substantive or Procedural Concerns

None.

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

Yes. As for general authority, A.R.S. § 28-366 allows the Department to adopt rules pursuant to Title 41, Chapter 6 as the Department deems 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. In addition, A.R.S. § 28-3411 requires the Department to adopt rules for the administration and enforcement of TSSs, while A.R.S. § 32-2352 authorizes the Department to adopt rules related to administration and enforcement of PDTSSs. The Department also cites applicable specific statutory authority for the rules.

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 Department indicates that it received four written and verbal comments from the National Traffic Safety Institute on the proposed rules. Summary of the comments, as well as the Department's responses, can be found on pages 4-6 of the Notice of Final Rulemaking.¹ Council staff believes that the Department adequately responded to and addressed stakeholder's concerns.

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

No. The final rules do not constitute a substantial change from the proposed rules. In addition to the minor technical changes made at the request of the Council staff, the Department made the following two changes based on the comments received from the stakeholder:

- Section 302: In subsection (B)(5), the Department removed "driver license number" to remain consistent with the requirements of the Arizona Corporation Commission, which allows a statutory agent to be a business entity and as such will not have a driver license.
- Section 306: To lessen regulatory burden, the Department removed the requirement that applicants for a school license attend Department-approved training and pass one or more requirement examinations. Due to the removal of this requirement, the Department made conforming changes to subsections (A)(1), (B), and (C).

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 Department 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 Department indicates that there is no corresponding federal law for the TSSs rules, and the rules relating to PDTs are not more stringent than the federal motor carrier regulations.

¹ In addition, the written comments and a transcript from the oral proceeding are attached to the NFR.

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 Department notes that the rules do require licenses of PDTs and TSSs, and the licenses constitute general permits, as the activities and practices licensed or qualified are substantially similar in nature for all to perform that specified activity or function.

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.

Conclusion

The Department requests the usual 60-day delayed effective date for the rules. This analyst recommends approval of the rules.



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

MEETING DATE: July 6, 2017

AGENDA ITEM: D-2

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : June 20, 2017

SUBJECT: DEPARTMENT OF TRANSPORTATION (R-17-0701)
Title 17, Chapter 5, Article 3, Professional Driver Services

Amend: R17-5-301; R17-5-302; R17-5-303; R17-5-305; R17-5-306;
R17-5-307; R17-5-308; R17-5-309; R17-5-311; R17-5-313;
R17-5-315; R17-5-318; R17-5-323

I have reviewed the economic, small business, and consumer impact statement (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.

GRRC Economist comments:

The Department is proposing to amend the rules in Article 3, which establish procedures, fees, and licensing requirements for Professional Driver Training Schools (PDTs) and Traffic Survival Schools (TSSs). This rulemaking aligns the Department's rules with a new state statute that eliminates licensing requirements for the instructors of PDTs and TSSs. Individual schools are still licensed by the Department, but the rules regarding the instructors of these schools have been relaxed. Key stakeholders are the Department, PDTs, TSSs, and their instructors. The Department licenses approximately 12 PDTs and 96 PDTs instructors.

1. Costs and Benefits for:

a. The implementing agency:

The Department anticipates that it will lose minimal revenue from no longer receiving annual licensing fees from PDTs instructors; however, the Department will also generate minimal savings from ceasing the costs associated with the administration of PDTs instructor licensing. The Department notes that this rulemaking will reduce the revenue received by the Department of Public Safety for fingerprinting services that were a required aspect of the PDTs instructor license.

b. Political subdivisions:

Political subdivisions are not directly impacted by this rulemaking.

c. Businesses:

PDTSS, PDTS instructors, and TSSs will see a reduction in their regulatory burden due to the elimination of licensing requirements for individual instructors. Instructors will no longer be required to submit minimal licensing fees. The larger benefit is the time savings that these businesses will receive from eliminating the administrative requirements associated with licensing.

d. Small businesses:

Any small businesses will be impacted in the same manner as enumerated above.

e. Consumers directly affected by the rulemaking:

This rulemaking does not directly impact consumers. There are still consumer protections in place that ensure quality provision of educational driving services through quality standards enforced through the licensing of PDTSSs.

2. Do the probable benefits outweigh the probable costs?

This rulemaking eliminates licensing restrictions on individual PDTS instructors. It maintains quality through regulating the PDTSSs. This rulemaking imposes minimal costs and generates moderate benefits. The benefits outweigh the costs.

3. Analysis of methods to reduce the small business impact:

This rulemaking reduces costs on any PDTSSs that are small businesses by eliminating reporting requirements for licensed PDTS instructors.

4. The probable effect on state revenues:

The Department concludes that the proposed rules will reduce the fees received by the Department and DPS. This rulemaking will directly reduce state revenues by less than \$10,000 annually.

5. Analysis of any less intrusive or less costly alternative methods:

The Department states that there are no less costly alternatives for achieving the purpose of these rules. This rulemaking aligns the Department's rules with statute, and it reduces regulatory burden for businesses.

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 competitiveness 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.**

No empirical or quantitative data were submitted for use in the EIS.

8. **Conclusion:**

The submitted EIS 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 proposed rule amendments be approved.

May 9, 2017

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

Re: Administrative Rule R17-5-301 through R17-5-303, R17-5-305 through R17-5-309, R17-5-311, R17-5-313, R17-5-315, R17-5-318, and R17-5-323 – Professional Driver Services

Dear Ms. Ong Colyer:

The Arizona Department of Transportation submits the accompanying final rule package for consideration by the Governor's Regulatory Review Council. The following information is provided to comply with R1-6-201(A)(1):

- a. The rulemaking record closed on February 8, 2017, and written public comments were received on these rules;
- b. The rulemaking activity does not relate to a five-year review report;
- c. The rulemaking does not establish a new fee;
- d. The rulemaking does not increase an existing fee;
- e. An immediate effective date is not requested for these rules under A.R.S. § 41-1032;
- f. The preamble discloses that the Department did not review any studies relevant to the rules and did not rely on any studies in its evaluation of or justification for the rules;
- g. No new full-time employees are necessary to implement and enforce the rules;
- h. Documents included in this final rule package are as follows:
 1. Signed cover letter;
 2. Notice of Final Rulemaking;
 3. Economic, Small Business and Consumer Impact Statement;
 4. Written comments on the rules received by the agency;
 5. Written transcript of the oral proceeding; and
 6. Request for, and approval of, the Department's exception from the rulemaking moratorium.

Sincerely,



John S. Halikowski
ADOT Director

Enclosures

NOTICE OF FINAL RULEMAKING
TITLE 17. TRANSPORTATION
CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS

PREAMBLE

- | <u>1. Article, Part, or Section Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| R17-5-301 | Amend |
| R17-5-302 | Amend |
| R17-5-303 | Amend |
| R17-5-305 | Amend |
| R17-5-306 | Amend |
| R17-5-307 | Amend |
| R17-5-308 | Amend |
| R17-5-309 | Amend |
| R17-5-311 | Amend |
| R17-5-313 | Amend |
| R17-5-315 | Amend |
| R17-5-318 | Amend |
| R17-5-323 | 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. § 28-366, 28-3411, 32-2352, and 32-2372.01
Implementing statute: A.R.S. §§ 28-3413 through 28-3416, 32-2371, 32-2371.01, 32-2373, 32-2374, 32-2391, 41-1009, and 41-1064
- 3. The effective date of the rule:**
- As specified under A.R.S. § 41-1032(A), the rules will be effective 60 days after the Notice of Final Rulemaking 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. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 22 A.A.R. 2569, September 16, 2016

Notice of Proposed Rulemaking: 23 A.A.R. 7, January 6, 2017

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

Name: Candace Olson, Rules Analyst
Address: Government Relations and Policy Development Office
Department of Transportation
206 S. 17th Ave., Mail Drop 140A
Phoenix, AZ 85007
Telephone: (602) 712-4534
E-mail: COlson2@azdot.gov
Web site: <http://www.azdot.gov/about/GovernmentRelations>

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

The Department engages in this rulemaking to implement Laws 2016, Chapter 371, which eliminated the requirement for professional driver training school (PDTS) instructors to be licensed, by repealing A.R.S. § 32-2372, effective January 1, 2017. In addition, pursuant to A.R.S. § 32-2372.01, the Department is required to adopt rules to establish requirements and minimum standards for commercial motor vehicle instructors on or before December 31, 2016, to which, the Department needed more time in order to properly determine the implementation of this legislation, review the existing rules, and ensure the rules have been properly vetted by the PDTS industry. The Department was able to file the Notice of Proposed Rulemaking with the Office of the Secretary of State on December 16, 2016. The Department does not currently enforce the PDTS instructor rules since the repeal of A.R.S. § 32-2372 became effective. The statutory requirements for PDTSs and agents to be licensed by the Department remain in law at A.R.S. §§ 32-2371 and 32-2371.01, respectively. PDTSs educate and train persons, either practically or theoretically, or both, to operate or drive commercial motor vehicles and prepare applicants for an examination given for a commercial driver license or instruction permit. Amendments made in this rulemaking include removing PDTS instructor license verbiage, temporary PDTS instructor license verbiage, and the PDTS instructor license application process; establishing PDTS instructor requirements; specifying that the statutory agent needs to be listed as in the Articles of Incorporation during the PDTS school application; and making minor streamlining and technical changes. In addition, in an effort to reduce regulatory burdens the Department is removing the requirements that school licensees (PDTS and traffic survival school (TSS)) and instructors must be at least 21 years of age and have a high school diploma or equivalent. The Department is also removing the requirement that applicants for a school license to attend Department-approved training and pass one or more required examinations administered by the Department or private entity. The Department has determined that these requirements are unnecessary and other factors are in place to help determine the

eligibility of the applicants.

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

The Department did not review or rely on any study relevant to the rules.

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:

Pursuant to Laws 2016, Chapter 371, this rulemaking amends the rules relating to the licensure and administration of PDTS instructors by removing the licensing requirements and instead adopting instructor requirements and standards. The rule amendments are necessary in order for the Department to continue to be in compliance with state law and to ease the burden on the schools and instructors and their clients. The establishment of qualifications and requirements of instructors will continue the Department's ability to ensure some measure of consumer protection for individuals utilizing PDTS services.

Last year, the Department licensed and provided administrative oversight for 12 PDTSs and 96 PDTS instructors. PDTS instruction is being offered at 13 licensed locations (12 principal places of business and 1 branch location).

The Department estimates that the PDTSs and PDTS instructors may incur minimal administrative costs in relation to these rules. Legislation and this rulemaking will benefit the schools and instructors in decreased costs and time savings from no longer having to go through the instructor license application process. The schools and instructors will no longer need to pay the licensing fee (\$10) to the Department and the fingerprint clearance card fee (\$67) to the Arizona Department of Public Safety (DPS).

The Department will realize minimal annual savings which include no longer having to print applicable forms, purchasing applicable office and operational supplies, and paying postage fees and archival fees for the administration of the PDTS instructors. The removal of the licensing of the PDTS instructors will cost a minimal loss of revenue to the Department (\$960 in possible annual license fees) and a moderate loss to DPS (\$6,432 in possible fingerprint clearance card fees).

While most of the changes in this rulemaking benefit PDTSs and their instructors, some of the streamlining, technical changes, and removal of the age, education, and examination requirements will benefit the licensed TSSs and reduce their regulatory burden. The TSSs should not incur any costs from this rulemaking. In addition, the Department does not anticipate this rulemaking providing much of a cost savings to the TSSs.

The removal of the age, education and, when applicable, the examination requirements may provide for a slightly bigger pool of eligible owners and instructors.

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

In R17-5-301, revised the definition of “character and reputation” by adding “of application date” after “12 months” in the last requirement to clarify the timeframe and ensure the language is consistent.

In R17-5-302(B)(5), removed “driver license number” to clarify and ensure the language is accurate and consistent with the requirements of the Arizona Corporation Commission, which allows a statutory agent to be a business entity and as such will not have a driver license.

In R17-5-306(A), removed the requirement that applicants for a school license to attend Department-approved training and pass one or more required examinations administered by the Department or private entity by eliminating the language, “a school or instructor license or for” in an effort to lessen the burden of this requirement from the school license applicants. In addition, due to the removal of this requirement, the Department made the following conforming changes:

R17-5-306(A)(1) is removed and (A)(2) is removed as an unnecessary statement.

R17-5-306(B), removed the new language, “school license applicant or”.

R17-5-307(C), besides the removal of “or professional driver training instructor” expanded the removal to “issue a license to the school or professional driver training instructor applicant or”.

In addition, minor grammatical and technical corrections were made as needed.

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

Company/Individual	Comment	Department’s Response
National Traffic Safety Institute/Alex Smith	R17-5-301, “Applicant” and “Principal” The Department received the following written comment: As business grows, personnel increases and duties shift between individuals. We would ask that consideration for larger operations be considered and that more than one person working as a principal be acknowledge as agents who may be assigned duties under the principal for certain functions within the rule’ this related directly with	The Department does not believe the definitions for “applicant” or “principal” exclude large operations or constrain the schools to one principal. Under R17-5-310, the Department requires a new application for principal changes since all principals are required to undergo a fingerprint clearance check and submit all the same

	<p>R17-5-306(A) wherein an applicant must attend the training required by the Department. For TSS, this means instructor training for a person or persons that will never step into a classroom. This requirement is unnecessary in this instance.</p> <p>The Department also received a verbal comment that reiterated that organizations have multiple managers or agents and that some activities are delegated to certain managers or agents and not require all principles or the school or the stakeholders to complete the training in R17-5-306(A).</p>	<p>requirements of the original principal(s). It also ensures the current owners and business structure is on file with the Department and the contracted private entity. The Department also allows for the use of a business manager, as defined in R17-5-301, to be used in some situations. As for R17-5-306(A), see the Department's response below.</p>
<p>National Traffic Safety Institute/Alex Smith</p>	<p>R17-5-302(B)(5)</p> <p>The Department received the following written comment:</p> <p>Not all statutory agents are individuals; some are firms or businesses within the State of Arizona. As such, businesses may not apply for Arizona Driver Licenses. Requiring a driver license in this section should be struck. Instead, we suggest requiring the statutory agent's information match that on the Arizona Secretary of State website and the corporate annual report.</p> <p>The Department also received a verbal comment that essentially reiterated his written comment.</p>	<p>The Department agrees with the removal of requiring the driver license number but prefers the statutory agent information (name and Arizona address) still match what is contained in the Articles of Incorporation that the applicants submit with their applications as required under R17-5-302(B)(4)(a)(i).</p>
<p>National Traffic Safety Institute/Alex Smith</p>	<p>R17-5-306(A)</p> <p>The Department received the following written comment:</p> <p>Not all applicants are people. I an enterprise wishes to apply for licensure for TSS, an authorized representative should be allowed to attend the training required by the Department. We suggest the following change: "An applicant for a school license, an authorized representative, or instructor for traffic survival school qualification under this</p>	<p>The Department reconsidered this requirement and determined that while there is a need to ensure that the schools and TSS instructors are qualified and knowledgeable, which can be determined by the training and examination, that need is a more vital requirement for the TSS instructors and is more of a secondary need for the school</p>

	<p>...”</p> <p>The Department also received a verbal comment that reiterated the above and mentioned that this language has been an issue for his school and that it didn’t make sense because it was instructor training and not all stakeholders need to teach the class. Language should be changed to make room for the authorized individuals in charge of that particular activity and not all people, officers, or managers of the organization.</p>	<p>owners, their business managers, or other representatives. The Department, in an effort to lessen the burden of this regulation, has removed the applicants for a school license from this requirement and restructured it towards the TSS instructors only.</p>
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12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

There are no other matters prescribed by statute applicable to the Department or to any specific rule or class of rules.

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:

These rules do contain regulations concerning the licenses of PDTs and TSSs. These licenses do fall under the definition of general permits since the activities and practices licensed or qualified are substantially similar in nature for all to perform that specified activity or function.

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:

These rules are not more stringent than any applicable federal law because federal law is not applicable to TSSs and the rules concerning PDTs are in keeping with the federal motor carrier regulations.

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

No analysis was submitted to the Department.

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

This rulemaking incorporates no materials by reference.

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

Not applicable

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION
CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS

ARTICLE 3. PROFESSIONAL DRIVER SERVICES

Section

- R17-5-301. Definitions
- R17-5-302. Professional Driver Training School and Traffic Survival School Licensing; Eligibility and Application Requirements
- R17-5-303. Professional Driver Training School Instructor ~~Licensing; Eligibility and Application Requirements;~~
~~Temporary Professional Driver Training Instructor License~~ Qualifications and Requirements
- R17-5-305. Traffic Survival School Qualified Instructor Status; Eligibility and Application Requirements
- R17-5-306. Required Training and Examination of School and Instructor Applicants
- R17-5-307. Approval or Denial of Application; Hearing; Appeal
- R17-5-308. License Issuance; Effective Date; Expiration; Display
- R17-5-309. Renewal of License
- R17-5-311. Professional Conduct; Conflicts of Interest; Advertising
- R17-5-313. Method of Instruction; Curriculum
- R17-5-315. Record Retention
- R17-5-318. Instructor Responsibilities
- R17-5-323. Non-compliance; Notice of Corrective Action; Cancellation, Suspension, or Revocation of a Professional Driver Training School ~~or Instructor License~~ or Traffic Survival School License or Qualification of a Traffic Survival School Instructor; Hearing and Appeal

ARTICLE 3. PROFESSIONAL DRIVER SERVICES

R17-5-301. Definitions

In addition to the definitions under A.R.S. §§ 28-101 and 32-2351, the following definitions apply to this Article, unless otherwise specified:

“Activity” means a function or service that is provided by a licensed professional driver training school pursuant to A.R.S. Title 32, Chapter 23 or licensed traffic survival school pursuant to A.R.S. Title 28, Chapter 8, Article 7.1 and that is performed by a ~~licensed~~ professional driver training school instructor or traffic survival school qualified instructor as defined in this Article.

“Applicant” means an individual or school, including principals, requesting in the manner set forth in this Article the issuance or renewal of a license or to become a qualified instructor under A.R.S. Title 28, Chapter 8, Article 7.1 or Title 32, Chapter 23 and this Article.

“Application date” means the date the Department or private entity receives a signed application from an applicant.

“Audit” means a review of the operations, facilities, equipment, and records of a licensee under this Article, which is performed by the Department or private entity under A.R.S. § 28-3411 or 32-2352 to assess and ensure compliance with all applicable federal and state laws and rules.

“Branch” means a licensed professional driver training school’s or licensed traffic survival school’s business location that is an additional established place of business, but not the school’s principal place of business.

“Business day” means a day other than a Saturday, Sunday, or legal state holiday.

“Business manager” means an owner or employee of a licensed school who has primary and sufficient oversight, supervision, and responsibility for all operations necessary to ensure full compliance with all applicable federal or state laws, rules, and school guidelines.

“Certificate of completion” means an electronic or paper document that is approved by the Department or private entity and that is issued by a traffic survival school or high school qualified instructor to a student who has demonstrated successful completion of a training or educational session or both conducted under this Article.

“Character and reputation” means a person:

Has not been convicted of a class 1 or 2 felony by a court of competent jurisdiction.

Has not within five years of application date been convicted of any other felony or misdemeanor offense having a reasonable relationship to the functions of the activity or the employment or category for which the qualification is sought, and

Has not within 12 months of application date had an application or an examination required for license or qualification under this Chapter denied or revoked due to fraud or misrepresentation.

“Commercial driver license motor vehicle record” has the same meaning as a CDLIS motor vehicle record as defined in 49 CFR 384.105.

“Department-approved inventory” means educational media and related items or other resources provided and approved by the Department or private entity that are deemed necessary or useful for traffic survival school

instruction, which includes curriculum, computer disks or drives, classroom training materials, instructor workbooks, instructor training manuals, or other materials, whether stored in paper or electronic formats.

“Established place of business” means a licensed professional driver training school’s or licensed traffic survival school’s business location that is:

Approved by the Department,

Located in Arizona,

Not used as a residence, and

Where the licensed school performs licensed activities.

~~“Good moral character” means a person:~~

~~Has not been convicted of a class 1 or 2 felony by a court of competent jurisdiction;~~

~~Has not within five years of application date been convicted of any other felony or misdemeanor offense having a reasonable relationship to the functions of the activity or the employment or category for which the qualification is sought;~~

~~Has not within five years of application committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, gross negligence or incompetence if the act has a reasonable relationship to the person’s proposed area of license or qualification;~~

~~Has not within 12 months engaged in fraud or misrepresentation in connection with an application or an examination required for license or qualification under this Chapter;~~

“Good standing” means an applicant:

Has not had a similar business license, qualification, or approval suspended, revoked, canceled, or denied within the previous three years of the application date;

Does not have any pending corrective action, as defined under R17-5-323, relating to a Department-issued business license, qualification, or approval;

Has not had a fingerprint clearance card required for licensure under this Article suspended, revoked, or canceled;

Does not owe delinquent fees, taxes, or unpaid balances to the Department or private entity;

Has not had any substantiated derogatory information relevant to the requested license reported to the Department about the applicant from any state agency ~~or from any consumer protection agency~~ contacted by the Department; or

Has not been dismissed, or resigned in lieu of dismissal, from a position for cause following allegations of misconduct having a reasonable relationship to the person’s proposed area of licensure or qualification, if the applicant is a former Department employee or a former principal or employee of a licensed professional driver training school or licensed traffic survival school.

“Immediate family member” has the same meaning as prescribed in A.R.S. § 28-2401.

“Inactivation” or “inactive” means a temporary or permanent status, assigned by the Department to a school ~~or professional driver training school instructor~~ previously licensed under this Article, which prohibits the school

~~or instructor~~ from further engaging in the previously licensed activity after the occurrence of any of the following actions:

- Cancellation of license, as defined in R17-5-323;
- Suspension of license, as defined in R17-5-323;
- Revocation of license, as defined in R17-5-323;
- Non-renewal of license; or
- Relinquishment of license.

“Licensee” means a school ~~or instructor~~ licensed by the Department or private entity under A.R.S. § 28-3413, ~~or 32-2371, or 32-2372~~, and this Article, to perform a licensed activity.

“Principal” means any of the following:

If a sole proprietorship, the sole proprietor;

If a partnership, limited partnership, limited liability partnership, limited liability company or corporation, the:

- Partner;
- Manager;
- Member;
- Officer;
- Director;
- Agent; or

If a limited liability company or corporation, each stockholder owning 20 percent or more of the limited liability company or corporation; or

If a political subdivision or government agency, the political subdivision or agency head.

“Principal place of business” means a licensed professional driver training school’s or licensed traffic survival school’s administrative headquarters, which shall not be used as a residence.

“Private entity” means an entity that contracts with the Department under A.R.S. § 28-3411 or 32-2352.

“Professional driver training school instructor license” means an ~~annual license issued by the Department or private entity under A.R.S. § 32-2372, and renewable under A.R.S. § 32-2374, which authorizes a person to individual meeting the qualifications under R17-5-303 who can present specific training and educational curriculum to professional driver training school students as provided under this Article.~~

“Satisfactory driver record” means an applicant has not had within the past 39 months:

A conviction for driving under the influence, reckless or aggressive driving, racing on a highway, or leaving the scene of an accident;

A driver license previously canceled, suspended, revoked, or disqualified for any reason except for failing to meet or maintain the commercial driver license physical qualifications under 49 CFR 391.41 and A.A.C. R17-4-508; and

More than three previous assignments to attend traffic survival school and no pending assignment.

~~“Temporary professional driver training school instructor license” means the preliminary license issued to an instructor applicant by the Director or private entity under A.R.S. § 32-2372, which authorizes the applicant to perform school activities under this Article.~~

“Traffic survival school qualified instructor” means an individual deemed qualified by the Department or private entity under this Article to conduct instruction of an education session on behalf of a licensed traffic survival school.

R17-5-302. Professional Driver Training School and Traffic Survival School Licensing; Eligibility and Application Requirements

- A.** An applicant for a professional driver training school or traffic survival school license, issued by the Department or private entity under A.R.S. § 28-3411 or 32-2371 and this Section, shall ~~be at least 21 years of age and~~ meet all applicable licensing requirements under state law and this Article when applying for an original or renewal license.
- B.** An applicant for a professional driver training school or traffic survival school license shall complete and submit to the Department or private entity an application packet that contains all of the following:
1. An application, completed on a form approved by the Department;
 2. Certification that each classroom used for the instruction of students is maintained in compliance with all applicable fire codes and local zoning ordinances;
 3. Certification that each classroom used for the instruction of students meets the accessibility requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), as amended;
 4. A copy of the following documents relating to the applicant’s business if the applicant is a:
 - a. Corporation:
 - i. A copy of the articles of incorporation, including any amendments filed with the Arizona Corporation Commission; and
 - ii. Any other official documents, including copies of board meeting minutes and annual reports that reflect the most recent change to the corporate name, structure, or officers;
 - b. Limited liability company:
 - i. A copy of the articles of organization, including any amendments filed with the Arizona Corporation Commission; or
 - ii. A copy of the application for registration as a foreign limited liability company filed with the Arizona Corporation Commission and a copy of the certificate of registration issued by the Arizona Corporation Commission to a foreign limited liability company;
 - c. Limited partnership or a limited liability partnership:
 - i. A copy of a valid certificate of existence issued by the Arizona Office of the Secretary of State;
 - ii. A copy, stamped “filed” by the Arizona Office of the Secretary of State, of a certificate of limited partnership, certificate of foreign limited partnership, limited liability partnership form, foreign

- limited liability partnership form, or statement of qualification for conversion of limited partnership or limited liability partnership; or
 - iii. A copy of a valid trade name certificate issued by the Arizona Office of the Secretary of State; or
 - d. Sole proprietor:
 - i. A copy of a valid certificate of existence issued by the Arizona Office of the Secretary of State, or
 - ii. A copy of a valid trade name certificate issued by the Arizona Office of the Secretary of State;
 - 5. ~~A copy of a high school diploma or equivalent for each applicant~~ The name and Arizona address of the school's statutory agent, as designated in the articles of incorporation, if the applicant is a corporation;
 - 6. Documentation prescribed under A.R.S. § 41-1080 indicating that each applicant's presence in the United States is authorized under federal law if the applicant is an individual, a sole proprietor, or part of a general partnership;
 - 7. Payment of the license fees prescribed under A.R.S. § 28-3415 or 32-2374 for each activity requested; and
 - 8. A form, approved by the Department, completed for each branch license, if applicable, and accompanied by payment of any applicable branch license fees prescribed under A.R.S. § 28-3415 or 32-2374.
- C. An applicant shall not use the following in any part of its school name, which ~~are~~ is subject to approval by the Department or private entity:
- 1. The terms "Arizona Department of Transportation," "Department of Transportation," "Motor Vehicle Division," "Motor Vehicle Department," "Division of Motor Vehicles," or "Department of Motor Vehicles;" or
 - 2. The acronyms "ADOT," "DOT," "MVD," or "DMV."
- D. Professional driver training school applicants must provide the following additional documents with the school's application packet:
- 1. A copy of the school's complete curriculum, including a sample of all written examinations and answer keys, unless the curriculum is provided by the Department or private entity;
 - 2. Verification of liability insurance coverage reflecting at least the minimum amount prescribed under A.R.S. § 32-2393 for each motor vehicle used to provide instruction; and
 - 3. Diagrams detailing a minimum of three separate ~~road skills test~~ behind-the-wheel final evaluation routes with a written narrative indicating all required maneuvers, if the applicant will be providing behind-the-wheel driver training.

R17-5-303. Professional Driver Training School Instructor ~~Licensing; Eligibility and Application Requirements; Temporary Professional Driver Training Instructor License~~ Qualifications and Requirements

- A. ~~An applicant for a~~ A professional driver training school instructor ~~license~~ shall:
- 1. ~~Apply through~~ Work for a professional driver training school licensed by the Department or private entity under A.R.S. § 32-2371 and R17-5-302,

2. ~~Be at least 21 years of age~~ Possess a valid Arizona commercial driver license with applicable endorsements representative of the vehicle to be used in training,
 3. ~~Be of good moral character~~ Meet the character and reputation requirements as defined in R17-5-301, and
 4. Meet all applicable ~~licensing~~ instructor requirements under state law and this Article.
- B. Each professional driver training school licensed under A.R.S. § 32-2371 and this Article shall maintain a file for each professional driver training school instructor ~~applicant shall complete an application packet~~ that contains the following:
1. ~~An application, completed on a form approved by the Department;~~
 2. ~~A copy of a high school diploma or equivalent;~~
 3. ~~1.~~ A copy of a valid Arizona commercial driver license with applicable endorsements representative of the vehicle to be used in training; ~~and~~
 4. ~~Documentation prescribed under A.R.S. § 41-1080 indicating that the applicant's presence in the United States is authorized under federal law;~~
 5. ~~2.~~ A annual commercial driver license motor vehicle record, dated within 30 days of the application date, which indicates ~~that within the previous 39 months~~ the applicant instructor has maintained a satisfactory driver record as defined in R17-5-301; ~~;~~
 6. ~~Payment of license fees prescribed under A.R.S. § 32-2374 for each activity requested;~~
 7. ~~Statements of positive endorsement or recommendation from at least three character references indicating each reference's:~~
 - a. ~~Name,~~
 - b. ~~Address,~~
 - c. ~~Contact phone number and email address,~~
 - d. ~~Relationship to the instructor applicant, and~~
 - e. ~~Number of years associated with the instructor applicant;~~
 8. ~~An affidavit, as provided under A.R.S. § 32-2372, from the business manager of the professional driver training school certifying that the instructor applicant:~~
 - a. ~~Has the necessary skills and abilities to give instruction on driver training at a professional level, and~~
 - b. ~~Has completed at least 100 hours of combined classroom and vehicle training representative of the class of vehicle appropriate to the activity; and~~
 9. ~~A copy of the fingerprint clearance card as required of the applicant under A.R.S. § 32-2372 and R17-5-304.~~
- C. A business manager of a professional driver training school licensed under A.R.S. § 32-2371 and this Article shall submit to the Department or private entity ~~the application packet for each instructor applicant~~ a list of all of its professional driver training school instructors, including full name and commercial driver license number, at the time of hiring the instructors, within 10 calendar days of making any changes to the instructors as required under R17-5-310, and when renewing the school license as required under R17-5-309.

- ~~D. Temporary Professional Driver Training Instructor License. The Department or private entity shall issue a temporary professional driver training instructor license to an instructor applicant after receiving a fully completed application packet with all of the required content and information, as provided under subsection (B).~~
- ~~E. The Department or private entity may issue an annual professional driver training school instructor license to an instructor applicant, if:

 - ~~1. The applicant successfully completes the training session and examination required under R17-5-306 prior to expiration of the temporary instructor license issued under subsection (D), and~~
 - ~~2. The applicant is otherwise qualified under this Article and state law to receive an annual professional driver training school instructor license.~~~~
- ~~F. The professional driver training school shall withdraw an application for a professional driver training school instructor license or the Department or private entity shall deny issuance of a license for an instructor applicant who fails to successfully complete the requirements under subsection (E) prior to expiration of the temporary professional driver training instructor license.~~

R17-5-305. Traffic Survival School Qualified Instructor Status; Eligibility and Application Requirements

- A. An applicant for traffic survival school qualified instructor status shall:
 1. Apply through a traffic survival school licensed by the Department or private entity under A.R.S. § 28-3413 and this Article,
 2. ~~Be at least 21 years of age~~ Possess a valid Arizona driver license,
 3. Meet all applicable requirements under this Article, and
 4. ~~Be of good moral character~~ Meet the good standing and character and reputation requirements as defined in R17-5-301.
- B. Each traffic survival school qualified instructor applicant shall complete an application packet that contains the following:
 1. An application, completed on a form approved by the Department;
 - ~~2. A copy of a high school diploma or equivalent;~~
 - ~~3.2.~~ A copy of a valid Arizona driver license;
 - ~~4.3.~~ Documentation prescribed under A.R.S. § 41-1080 indicating that the applicant's presence in the United States is authorized under federal law;
 - ~~5.4.~~ A motor vehicle record, dated within 30 days of the application date, which indicates that ~~within the previous 39 months~~ the applicant maintained a satisfactory driver record as defined ~~under~~ in R17-5-301;
 - ~~6.5.~~ An affidavit from the business manager of the traffic survival school certifying that the qualified instructor applicant has the necessary skills and abilities to give instruction at a professional level; and
 - ~~7.6.~~ Payment of authorized fees as required by the private entity for application and administration of the instructor qualification process and for required instructor continuing education, which shall be negotiated by the Department and the private entity and shall be set forth in their contract.

- C. An applicant for instructor qualification shall have successfully completed a traffic survival school educational workshop or similar curriculum approved by the Department or private entity before being permitted to instruct any traffic survival school course.
- D. An applicant for instructor qualification shall have successfully completed an examination given for qualification of instructors by the Department or private entity as required under R17-5-306 before being permitted to instruct any traffic survival school course.
- E. A business manager of a traffic survival school licensed under A.R.S. § 28-3413 and this Article shall submit to the Department or private entity the complete application packet for each qualified instructor applicant.

R17-5-306. Required Training and Examination of School and Instructor Applicants

- A. An applicant for ~~a school or instructor license or for~~ traffic survival school instructor qualification under this Article shall attend Department-approved training and shall pass one or more required examinations administered by the Department or private entity, ~~before:~~
 - 1. ~~Issuance of an applicable school or instructor license, or~~
 - 2. ~~Approval approval of the an applicant's status as a traffic survival school qualified instructor.~~
- B. The Department or private entity shall limit a ~~professional driver training~~ traffic survival school qualified instructor applicant to three opportunities within 90 days, based on scheduling, to successfully complete and achieve a passing score or grade on each examination required under this Section.

R17-5-307. Approval or Denial of Application; Hearing; Appeal

- A. An application will not be approved by the Department or private entity unless it is properly and fully completed with all required supporting documents and applicable fees as identified in this Article.
- B. The Department or private entity shall provide written notification to the professional driver training school or traffic survival school of the approval or denial of a license or traffic survival school instructor qualification. A notice denying the applicant a license or qualification under this Article shall specify the basis for denial and indicate that the applicant may request a hearing on the denial with the Department's Executive Hearing Office within 30 calendar days of the date on the notice unless the application is withdrawn by the applicant.
- C. The Department or private entity may ~~issue a license to the school or professional driver training instructor applicant or~~ deem a traffic survival school instructor applicant qualified when a completed application is received and the applicant has successfully completed all required training and examinations.
- D. Unless the application is withdrawn by the applicant, the Department or private entity may deny an application in which the applicant has:
 - 1. Failed to have or to document a satisfactory driver record as ~~defined in R17-5-301~~ required under R17-5-305, as applicable;
 - 2. Failed to meet the good standing ~~requirement~~ or character and reputation requirements of the Department as defined in R17-5-301;
 - 3. Failed to meet the fingerprint clearance card requirement under R17-5-304, as applicable;

4. Made a material misrepresentation or misstatement on the application;
 5. Violated a federal or state law or rule reasonably related in a business context to the authority applied for;
or
 6. Failed to complete all applicable application requirements under this Article.
- E.** If timely requested by an applicant under subsection (B), the Department shall schedule and conduct a hearing as prescribed under A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5 for denial of a license.
- F.** An applicant whose application was previously denied by the Department or private entity for making a material misrepresentation or misstatement on the application is not eligible to reapply for 12 months from the date of previous denial.

R17-5-308. License Issuance; Effective Date; Expiration; Display

- A.** The Department or private entity may issue the following licenses upon determining an applicant meets all eligibility and application requirements provided under A.R.S. Title 28, Chapter 8, Article 7.1 or Title 32, Chapter 23 and this Article:
1. Professional driver training school,
 - ~~2. Professional driver training school instructor,~~
 - ~~3. Professional driver training school temporary instructor,~~
 - ~~4.2.~~ Traffic survival school, and
 - ~~5.3.~~ Established place of business (branch).
- B.** The Department or private entity shall license only a school that employs or contracts at least one professional driver training school instructor currently licensed who meets the qualifications under this Article or at least one currently qualified traffic survival school instructor, as applicable.
- C.** A license issued under this Article is:
1. Effective on the date of issuance;
 2. Effective until its expiration on the last day of each calendar year, except:
 - ~~a. A temporary instructor license issued under R17-5-303 shall expire 90 calendar days from the date of issuance or shall expire immediately if the applicant fails to meet a licensing requirement under this Article,~~
 - ~~b.a.~~ A license subject to an active duty military extension shall expire as provided under A.R.S. § 32-4301, and
 - ~~e.b.~~ A license subject to an individual's limited length of authorized stay shall expire immediately if the individual's presence in the United States is no longer authorized under federal law; and
 3. Nontransferable under any circumstances.
- D.** A licensed school shall prominently and publicly display all licenses currently in effect at the school's principal ~~places~~ place of business.
- ~~**E.** A professional driver training school instructor shall prominently display copies of all appropriate licenses during instruction.~~

~~F.E.~~A school shall surrender to the Department or private entity within three business days after the date of any license inactivation, as defined ~~under~~ in R17-5-301, all:

1. Licenses;
2. Records pertaining to the school's operations and the training of students; and
3. Department-approved inventory, as applicable and as defined in this Article.

R17-5-309. Renewal of License

~~A.~~ A completed renewal ~~packet, consisting of the following,~~ shall be submitted to the Department or private entity a minimum of 30 calendar days prior to license expiration. ~~Notwithstanding,~~ notwithstanding A.A.C. R17-1-102, failure to submit a renewal ~~packet~~ prior to December 1st shall result in the applicant being subject to all original licensing requirements.;

1. A renewal application, completed on a form approved by the Department, including:
 - a. An updated list of all principals, instructors, contracted personnel, and employees of the school who are responsible for Arizona school operations, including full name and driver license number; and
 - b. The signature of all current principals on the completed application; and
2. Payment of applicable license fees prescribed under A.R.S. § 28-3415 or 32-2374, for each activity and branch.

~~B.~~ A school license renewal application packet shall include:

1. ~~A renewal application, completed on a form approved by the Department, including:~~
 - a. ~~A list of all principals, contracted personnel, and employees of the school who are responsible for Arizona school operations if there have been any changes since the last renewal or original application; and~~
 - b. ~~The signature of all principals on the completed application; and~~
2. ~~Payment of applicable license fees prescribed under A.R.S. § 28-3415 or 32-2374, for each activity, branch, and professional driver training school instructor.~~

~~C.B.~~ Notwithstanding A.R.S. § 28-3415 or 32-2374, an annual license issued by the Department or private entity under this Article during the month of December shall not expire until the last day of the subsequent calendar year.

R17-5-311. Professional Conduct; Conflicts of Interest; Advertising

- ~~A.~~ A professional driver training school or traffic survival school representative or instructor shall not:
1. Accompany a student into any Department office or office of an authorized third party driver license or driver license training provider; or
 2. Solicit an individual for any purpose on any premises rented, leased, operated, or owned by the Department or by an authorized third party driver license or driver license training provider.
- ~~B.~~ A licensee or traffic survival school qualified instructor shall maintain good standing with the Department at all times while licensed or qualified by the Department or private entity under this Article.

- C. A licensee shall not delegate or subcontract any licensed activity authorized by the Department or private entity under this Article.
- D. The Department may take corrective action as provided under R17-5-321 and R17-5-323 if the Department or private entity determines or has reason to believe that a licensee or ~~traffic survival school-qualified~~ instructor has demonstrated unethical conduct in the performance of official duties, including:
 - 1. Verbally abusing, intimidating, or sexually harassing a student or potential student; or
 - 2. Making a false statement that is material to the activities regulated in this Article to any personnel of the Department or private entity.
- E. A school shall use for all licensed activities and related advertising purposes only its official business name or its doing-business-as name as indicated on the license issued under this Article.
- F. A licensee shall not represent or imply that it is the state of Arizona, the Department, the Motor Vehicle Division, or any government agency in any printed or electronic advertising or promotional material, except to the extent expressly authorized by the Department.
- G. Licensee advertising shall not in any way:
 - 1. Contain false, deceptive, or misleading information;
 - 2. Imply that the licensee can issue or guarantee issuance of a driver license or endorsement;
 - 3. Imply that the licensee can influence the Department or an authorized third party provider in the issuance of a driver license or endorsement;
 - 4. Imply that the licensee can provide any activity the licensee is not licensed by the Department or private entity to perform;
 - 5. Imply that preferential or advantageous treatment by the Department can be obtained; or
 - 6. Use or contain a term prohibited under R17-5-302(C).
- H. A school licensed by the Department or private entity under this Article may state in its advertising that it is “licensed” or “qualified” by the Department, but shall not indicate that the school is approved, sanctioned, or in any other way endorsed or recommended by the Department.
- I. All printed or electronic advertising or promotional material used, issued, or published by a licensee must be pre-approved by the Department or private entity.
- J. An instructor, in any official capacity as an instructor or for compensation, shall not provide any classroom instruction or skills training for an immediate family member or a principal or employee of any school that employs the instructor.
- K. A full-time employee of the state of Arizona shall not receive any direct pecuniary payments from any fees paid by those who attend a licensed school.

R17-5-313. Method of Instruction; Curriculum

- A. A ~~licensed or qualified~~ An instructor shall teach only curriculum approved by the Department or private entity to a student attending a class.

- ~~B. A licensed or qualified~~ An instructor shall not conduct personal business during a time designated for instruction.
- C. An instructor shall not solicit students during training classes for businesses other than those licensed by the Department or private entity.
- D. A school or instructor shall ensure that a student has both fully attended and successfully completed a course before issuing a certificate of completion to the student.
- E. A licensed traffic survival school must use all equipment required by the Department or private entity to present the curriculum to the students, including at a minimum, a computer, a PowerPoint compatible projector, a DVD player, and a display monitor visible to all students.
- F. Professional driver training school approved curriculum. The Department shall approve, and may modify, in writing, a uniform curriculum that the professional driver training school shall teach as applicable for each activity the licensee is authorized to perform. The curriculum shall be a standard course of instruction used by a professional driver training school for the training and education of students.
- G. Traffic survival school approved curriculum. The Department shall approve, and may modify, in writing a uniform curriculum that the traffic survival school shall teach. The curriculum shall be selected and approved on the basis of effectiveness in improving the safety and habits of drivers.

R17-5-315. Record Retention

- A. A licensed traffic survival school shall electronically transmit proof of course completion ~~to the Department~~ immediately following each student's satisfactory completion of a traffic survival school course in a manner and with the basic computer equipment prescribed by the Department or private entity. At a minimum, the computer equipment must be able to temporarily store, and electronically transmit over the internet, the certificates of completion required by the Department or private entity.
- B. All records pertaining to a licensed school's operations and training of students shall be:
 1. Stored and securely maintained at the licensee's principal place of business,
 2. Available for inspection by the Department or private entity during business hours, and
 3. Retained by the school for three years from the date of course completion.
- C. A licensed school shall establish and maintain separate records for each authorized activity.
- D. A licensed school shall maintain, for three years, attendance records for each class conducted.

R17-5-318. Instructor Responsibilities

~~While licensed or qualified by the Department or private entity under A.R.S. § 32-2372 and this Article to give instruction, an~~ A professional driver training school instructor or traffic survival school qualified instructor shall:

1. Attend all ongoing training and continuing education as required by the Department or private entity;
2. Provide written notice to the licensed professional driver training school or traffic survival school within twenty-four hours if the instructor's driver license is suspended, revoked, cancelled, or disqualified;

3. Conduct training and courses only at training sites ~~and on driver road training routes~~ approved by the Department or private entity;
4. Conduct the final evaluation on behind-the-wheel final evaluation routes approved by the Department or private entity;
- 4.5. Follow and complete the curriculum approved by the Department or private entity for each course conducted; and
- 5-6. Conduct at least two courses in a calendar year.

R17-5-323. Non-compliance; Notice of Corrective Action; Cancellation, Suspension, or Revocation of a Professional Driver Training School ~~or Instructor~~ License or Traffic Survival School License or Qualification of a Traffic Survival School Instructor; Hearing and Appeal

A. The following definitions apply to this Section:

1. “Cancellation” means a Department action that withdraws a license or qualification of a traffic survival school instructor issued under A.R.S. Title 28, Chapter 8, Article 7.1 or Title 32, Chapter 23 and this Article.
2. “Revocation” means a Department action that terminates, for an indefinite period of time, a licensee’s or traffic survival school qualified instructor’s privilege to operate a school or conduct instruction under this Article.
3. “Suspension” means a Department action that prohibits, for a stated period of time, a licensee or traffic survival school qualified instructor from operating as a school or instructor under this Article.

B. The Department or private entity may initiate corrective action on a licensee or a traffic survival school qualified instructor as provided under A.R.S. Title 28, Chapter 8, Article 7.1, Title 32, Chapter 23, Article 3, or Title 41, Chapter 6, Article 6, and this Article, if satisfactory evidence shows that a licensee or ~~traffic survival school qualified~~ instructor, individually or collectively:

1. Violated a federal or state law or rule reasonably relating in a business context to a duty prescribed under this Article;
2. Failed to maintain a status of good standing or character and reputation as defined ~~under~~ in R17-5-301; or
3. Provided false, deceptive, or misleading information to the Department or private entity in either an application or in response to an audit or inspection conducted pursuant to R17-5-321.

C. ~~Corrective~~ A corrective action initiated under subsection ~~(A)(B)~~, depending on the severity or number of violations, may ~~result in an action by the Department to impose~~ include the Department imposing a term of probation; ~~issue~~ issuing a cease and desist order under A.R.S. § 28-3417 or 32-2394; or ~~request~~ requesting a hearing to cancel, suspend, or revoke an existing license under A.R.S. § 28-3416 or 32-2391.

D. A notice of corrective action issued by the Department requesting a hearing to cancel, suspend, or revoke an existing school license shall include:

1. The grounds for the Department’s action ~~and its request for a hearing before the Department’s Executive Hearing Office~~; and

2. A brief written statement ~~of the hearing and appeal rights for the~~ explaining that it will request that a hearing be held before the Department's Executive Hearing Office on the proposed cancellation, suspension, or revocation of a professional driver training school ~~or instructor~~ license or a traffic survival school license, as provided under A.R.S. § 28-3416 or 32-2391.
- E. A notice of corrective action issued by the Department to cancel, suspend, or revoke an existing qualification of a traffic survival school instructor shall include:
1. The grounds for the Department's action; and
 2. A brief written statement of the hearing and appeal rights, including that the instructor may request a hearing with the Department's Executive Hearing Office within 30 calendar days of the date on the notice for the cancellation, suspension, or revocation of the qualification of a traffic survival school instructor, as provided in A.R.S. §§ 41-1001(12) and 41-1064.
- F. The Department shall provide notice and conduct hearings as prescribed under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5, as applicable.



February 8th, 2017

Candace Olson
Rules Analyst
Government Relations and Policy Development Office
Department of Transportation
206 S 17th Ave, Mail Drop 140A
Phoenix, AZ 85007

RE: Proposed Rulemaking

Dear Ms. Olson,

We have received notice of the proposed rulemaking to R17-5-301 through 323. Please hear our comments at the oral proceeding and please note the following comments submitted in writing:

1. R17-5-301. Definitions. “Applicant” and “Principal” - As business grows, personnel increases and duties shift between individuals. We would ask that consideration for larger operations be considered and that more than one person working as a principal be acknowledge as agents who may be assigned duties under the principal for certain functions within the rule’ this related directly with R17-5-306(A) wherein an applicant must attend the training required by the Department. For TSS, this means instructor training for a person or persons that will never step into a classroom. This requirement is unnecessary in this instance.
2. R17-5-302(A)(5) – Not all statutory agents are individuals; some are firms or businesses within the State of Arizona. As such, businesses may not apply for Arizona Driver Licenses. Requiring a driver license in this section should be struck. Instead, we suggest requiring the statutory agent’s information match that on the Arizona Secretary of State website and the corporate annual report.
3. R17-5-306(A) – Not all applicants are people. I an enterprise wishes to apply for licensure for Traffic Survival School, an authorized representative should be allowed to attend the training required by the Department. We suggest the following change:
 - “An applicant for a school license, an authorized representative, or instructor for traffic survival school qualification under this



Thank you again for hearing us today. If there are any questions or concerns, please contact our office at 520-547-2500 or email me at asmith@ntsi.com.

Thank you,

A handwritten signature in black ink that reads "Alex Smith". The signature is fluid and cursive, with the first letters of "Alex" and "Smith" being capitalized and prominent.

Alex Smith
Vice President of Operations, NTSI

ORAL PROCEEDING TRANSCRIPT
TITLE 17. TRANSPORTATION
CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS

**R17-5-301, R17-5-302, R17-5-303, R17-5-305, R17-5-306, R17-5-307, R17-5-308, R17-5-309, R17-5-311, R17-5-313,
R17-5-315, R17-5-318, and R17-5-323**

Oral Proceeding Held February 8, 2017

Candace Olson (Rules Analyst):

Good morning. Welcome to the Oral Proceeding for the Arizona Department of Transportation's proposed rule amendments that are necessary in order to incorporate the legislative changes of Laws 2016, Chapter 371, which eliminated the requirement for professional driver training school instructors to be licensed.

My name is Candace Olson, Rules Analyst for the Arizona Department of Transportation, and I will be facilitating this oral proceeding. For today's oral proceeding, I would like to request that you direct your comments to the rule changes.

Today is February 8, 2017, and the time is 10:01. We are in the ADOT Auditorium, Room 107, located at 206 S. 17th Ave., Phoenix, Arizona.

The Department is conducting this oral proceeding to solicit comments relating to the Department's proposed rule amendments that are necessary in order to incorporate the legislative changes of Laws 2016, Chapter 371, which removed the licensing requirement of professional driver training school instructors by repealing A.R.S. § 32-2372 and also requires the Department to adopt rules to establish requirements and minimum standards for commercial motor vehicle instructors. The Department engages in this rulemaking to correct the inconsistency created between current rules and statutes by incorporating the new and applicable legislation. Amendments made in this rulemaking include removing professional driver training school instructor license verbiage, temporary professional driver training school instructor license verbiage, and the professional driver training school instructor license application process; also establishing professional driver training school instructor requirements; specifying that the statutory agent needs to be listed as in the Articles of Incorporation during the school application; and making minor clarifying, streamlining, and technical changes.

In addition, the Department is removing the requirement that professional driver training school and traffic survival school licensees and instructors must be at least 21 years of age and have a high school diploma or equivalent.

The Director has designated me to preside during this Oral Proceeding. It is my responsibility to act as presiding officer for the purposes of securing oral and written public comments, and compiling the record to be considered in the development of the rules.

Oral statements will be recorded and the Department will consider all written and oral comments in drafting the final rules.

I am joined today by a panel of Department staff who may respond to your questions and concerns. At this time the panel members will introduce themselves.

Mark Vessella (Panelist): Mark Vessella, Senior Customer Service Manager for DOSS Program at ADOT.

Nick Grabowski (Panelist): Nick Grabowski, Commercial Driver License Examination Program Supervisor.

Candace Olson:

Okay, now.

Everyone who wishes to speak must clear complete, sorry, a speaker slip that we are able to so that we are able to identify the source of comments when the oral proceeding record is reviewed. Does anyone need a speaker slip? No, okay. I will call up each speaker from the slips that have been filled out. If you have not submitted a speaker slip and decide to speak as we proceed today, simply complete a speaker slip and provide it to me or one of our staff which is over here, Stacy and Jane.

Each of you will have the opportunity to provide comments regarding the proposed rule changes. We will limit each person to 5 minutes. If you would like to further elaborate or clarify your comments, the Department will accept written comments on this proposed rulemaking today until 5 p.m. These comments may be e-mailed to me at COlson2@azdot.gov.

Before presenting your comments, please state your name and your company or school for the record. If you would like to submit your written comments, please present them to me after you speak.

Okay, so let's, you know, the first one we have is Alex Smith.

Alex Smith (Commenter):

Good morning, my name is Alex Smith. I am with the National Traffic Safety Institute, NTSI, and my comments are relating to the traffic survival schools um specifically and how the rules affect them. Um, regarding R17-5-301, the definitions, I would like to point out that the definition of an applicant and the definition of a principal ah should take into account that some organizations have multiple managers or agents as a part of the process and thus ah ADOT should consider that some activities are delegated to certain managers or agents within the organization and not require all

principles or the school, the entity itself, or the stakeholders of that entity to have to complete the training um that is mentioned in R17-5-306(A).

Ah, I'm also making a comment regarding R17-5-302(A)(5), um specifically, that not all statutory agents are individuals, some are firms specifically, so asking for an Arizona driver license from an entity ah doesn't make sense to me. I would suggest striking that language um or just, ah again, I am in full support of having a statutory agent being the same as listed on the incorporated documents or on the Secretary of State's website, but again, not all statutory agents are people.

Um, R17-5-306(A), uh not all applicants are people, again, um and ah since my organization, specifically, we have delegated services throughout our organization so ah the people who teach the classes, our instructors, and then I have a manager who then manages those instructors, and then I am, indeed, the principle of the school as it stands now, however, ah the language specifically in this section um has been an issue for our school during renewals when ah we were required originally or asked to have all our stakeholders, um any owners, or officers of the company to complete the training required through the Department. It just didn't make sense because it was the instructor training and not all not all stakeholders need to actually teach the class. Um, what I would suggest in this particular section is to change that language to an applicant for a school license or an authorized representative or instructor for traffic survival school qualification under this and so on, so that you make room for um the authorized individuals in charge of that particular activity and not all people, officers, or managers of the organization. Um, that's the end of my comment.

Candace Olson: Ah, okay, then.

Alex Smith: Thank you very much.

Candace Olson: Okay, we will take it in consideration then.

Alex Smith: Thank you very much.

Candace Olson: Look at it over and will email you back to let you know what our response is.

Alex Smith: Sounds great.

Candace Olson:

Thank you.

Is anyone else need to speak up on the other changes in the rules? No, okay then.

Okay, once again, comments on these rules are encouraged, and any written comments that I receive by 5 p.m. today, will be considered in drafting final rules. So, if you know something comes to you still later you can still contact me.

If you have not signed in the sign-in sheet, please do so before you leave.

I now conclude this oral proceeding. The time is 10:08. Thank you all for attending. I mean the next, just informally, the next step is we are going to finalize this and then it will be going to GRRC, ah the Governor's Regulatory Review Council, so there will be also, they have their own um meetings so you can attend those too where they then ask, not always, ask questions but um you have other additional comments you know they ah vote on the final rules and whether they approve them or not, so that, that will be the next final step for the rules before they are finalized.

Thank you.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION

COMMERCIAL PROGRAMS

R17-5-301, R17-5-302, R17-5-303, R17-5-305, R17-5-306, R17-5-307, R17-5-308, R17-5-309, R17-5-311, R17-5-313, R17-5-315, R17-5-318, and R17-5-323

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking:

Laws 2016, Chapter 371, eliminated the requirement for professional driver training school (PDTS) instructors to be licensed, by repealing A.R.S. § 32-2372, effective January 1, 2017, and also newly requires the Department to adopt rules to establish requirements and minimum standards for commercial motor vehicle instructors. The statutory requirements for PDTSs and agents to be licensed by the Department remain in law at A.R.S. §§ 32-2371 and 32-2371.01, respectively. Amendments made in this rulemaking include removing PDTS instructor license verbiage, temporary PDTS instructor license verbiage, and the PDTS instructor license application process; establishing PDTS instructor requirements; specifying that the statutory agent needs to be listed as in the Articles of Incorporation during the PDTS school application; and making minor streamlining and technical changes. In addition, the Department is removing the requirement that school licensees and instructors must be at least 21 years of age and have a high school diploma or equivalent.

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

PDTSs educate and train persons, either practically or theoretically, or both, to operate or drive commercial motor vehicles and prepare applicants for an examination given for a commercial driver license or instruction permit. Under the current rules, the Department determines which schools are qualified to be licensed as a PDTS and which individuals are qualified to be licensed as PDTS instructors. These rules are now in non-compliance with state statute. This rulemaking ensures that all PDTSs and PDTS instructors are held to the same regulatory standards, compliance with state laws and consistency in application of statutory changes, reduction of the regulatory burden of instructors being licensed and a streamlining and clarification of regulatory processes which will allow for a better public understanding and the continued preservation of public safety.

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:

If these rule amendments are not adopted, the Department would not be in compliance with state law, which could expose the agency to potential litigation and confusion by PDTSs, their instructors, and the general public. Additionally, failure to adopt rules could be seen as a state agency ignoring the will of the Legislature, which could cause unnecessary problems.

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

The proposed rules would reduce regulatory burdens and ensure statutory compliance in the following ways:

1. Eliminate the requirement that PDTS instructors obtain a license, including the requirements of obtaining a temporary instructor's license, proof of training, character references, and a valid fingerprint clearance card from the Arizona Department of Public Safety (DPS).
2. Reduce the cost of being a PDTS instructor by as much as \$77 through the elimination of the license fee and the fingerprint clearance card.
3. Eliminate inconsistencies between statute and rule, which would make it difficult for the regulated community to ensure proper compliance with the law.

These rules would ensure proper clarity in the application of these statutory changes and better public understanding of the rules, which when combined with the streamlined regulatory process may encourage individuals to enter the PDTS industry, leading to job creation.

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

This rulemaking amends the rules relating to the licensure and administration of PDTS instructors by removing the licensing requirements and instead adopting instructor requirements and standards. The rule amendments are necessary in order for the Department to continue to be in compliance with state law and to ease the burden on the schools and instructors and their clients. The establishment of qualifications and requirements of instructors will continue the Department's ability to ensure some measure of consumer protection for individuals utilizing PDTS services.

Last year, the Department licensed and provided administrative oversight for 12 PDTSs and 96 PDTS instructors. PDTS instruction is being offered at 13 licensed locations (12 principal places of business and 1 branch location).

The Department estimates that the PDTSs and PDTS instructors may incur minimal administrative costs in relation to these rules. Legislation and this rulemaking will benefit the schools and instructors in decreased costs and time savings from no longer having to go through the instructor license application process. The schools and instructors will no longer need to pay the licensing fee (\$10) to the Department and the fingerprint clearance card fee (\$67) to DPS.

The Department will realize minimal annual savings that include no longer having to print applicable forms, purchasing applicable office and operational supplies, and paying postage fees and archival fees for the administration of the PDTS instructors. The removal of the licensing of the PDTS instructors will cost a minimal loss of revenue to the Department (\$960 in possible annual license fees) and a moderate loss to DPS (\$6,432 in possible fingerprint clearance card fees).

While most of the changes in this rulemaking benefit PDTs and their instructors, some of the streamlining, technical changes, and removal of the age, education, and examination requirements will benefit the licensed traffic survival schools (TSSs) and reduce their regulatory burden. The TSSs should not incur any costs from this rulemaking. In addition, the Department does not anticipate this rulemaking providing much of a cost savings to the TSSs.

The removal of the age, education and, when applicable, the examination requirements may provide for a slightly bigger pool of eligible owners and instructors.

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

Name: Candace Olson
 Address: Government Relations and Policy Development Office
 Department of Transportation
 206 S. 17th Ave., Mail Drop 140A
 Phoenix, AZ 85007
 Telephone: (602) 712-4534
 E-mail: COlson2@azdot.gov

B. Economic, small business and consumer impact statement:

1. Identification of the proposed rulemaking:

See paragraph (A)(1) above.

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

Persons to bear costs	Persons directly benefiting
Arizona Department of Transportation	Arizona Department of Transportation
PDTs and PDTs instructors	PDTs and PDTs instructors
TSSs and TSS qualified instructors	TSSs and TSS qualified instructors
	School enrollees
	General motoring public

3. Analysis of costs and benefits occurring in this state:

Cost-revenue scale. Annual costs or revenues are defined as follows:

Minimal less than \$1,500
 Moderate \$1,500 to \$99,999
 Substantial \$100,000 or more

a. Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:

The Department will realize minimal annual savings from this rulemaking which include no longer having to print applicable forms, purchasing applicable office and operational supplies, and paying postage fees and archival fees for the administration of the PDTS instructors. The removal of the licensing of the PDTS instructors will cost a minimal loss of revenue to the Department (\$960 in possible annual license fees) and a moderate loss to DPS (\$6,432 in possible fingerprint clearance card fees).

ADOT is not required to notify the Joint Legislative Budget Committee (JLBC) under A.R.S. § 41-1055(B)(3)(a), since no new full time employees are necessary to enforce and implement these rules.

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

Not applicable

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

There are no new fees associated with this rulemaking. The PDTSSs or PDTS instructors will have a minimal to moderate savings due to no longer paying the annual \$10 instructor license fee or the \$67 fingerprint clearance card fee. There may be a minimal cost to the PTDSs to accommodate the administration and paperwork they must maintain on file for their instructors, which could be an extension of what they currently keep on file. The cost for an Arizona uncertified commercial driver license motor vehicle record is \$3, but it is not necessarily a new cost since 49 U.S.C. 31304 requires employers to ascertain the driving record of each CDL holder it employs.

Licensed PDTSSs could also see time savings due to the instructors no longer going through the license application process.

Licensed TSSs will also benefit in a reduction of their regulatory burden from some of the streamlining, technical changes, and removal of the age, education, and examination requirements. This rulemaking should not incur any new costs for the TSSs. In addition, the Department does not anticipate this rulemaking providing much of a cost savings to the TSSs.

Both the licensed PDTSSs and TSSs may benefit from an increase in the number of eligible owners and instructors due to the removal and reduction of some of the requirements in this rulemaking.

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

ADOT anticipates a minimal impact on private and public employment as a result of this rulemaking. With the removal of the age and high school or equivalent education, employers may benefit from being able to hire from a slightly larger pool of instructors.

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

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

Some of the licensed PDTs and TSSs may be small businesses as defined under A.R.S. § 41-1001(20).

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

General administrative costs for small businesses are the same as discussed under paragraph (B)(3)(c) above. Overall, ADOT anticipates a minimal impact to qualified persons and business entities as a result of this rulemaking.

c. Description of the methods that ADOT may use to reduce the impact on small businesses:

The costs associated with this rulemaking are uniform regardless of business size. ADOT is removing a couple of requirements (age and education/training) that may benefit in money and time savings. The licensing and fingerprint fees the schools pay to be licensed entities are mandated by state statute.

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

Individuals who enroll in PDTs or are assigned to attend a TSS may benefit from having a slightly greater number of available instructors. The rules support the public interest and the interests of concerned parties by ensuring that while some regulations are being removed other standards and qualifications are in place to provide individuals with competent schools and instructors. In turn, with qualified schools and instructors providing the proper education to individuals they assist in maintaining the public safety on the roads with qualified drivers.

6. Statement of the probable effect on state revenues:

With the removal of the licensing of the PDTs instructors, the Department will no longer receive the \$10 licensing fee, which will result in the loss of \$960 (last year there were 96 licensed PDTs instructors). In addition, DPS will not be receiving the \$67 fingerprint clearance card fee from the PDTs instructors, which will result in the loss of \$6,432. The Department will also realize minimal annual savings which include no longer having to print applicable forms, purchasing applicable office and operational supplies, and paying postage fees and archival fees for the administration of the instructors. The Department will also have an efficiency savings for employee hours saved for manual processes that have been eliminated.

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

In rulemaking, the Department routinely adopts the least costly and most practicable and effective option for any process or procedure required of the regulated public or industry. Many of the requirements of the

schools and instructors are consistent with state and federal law and consistent with the Department's requirements of other licensed and authorized companies and individuals. In addition, the Department has a contracted public entity, the Arizona Chapter National Safety Council, to administer the TSSs.

- C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement:**

None

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- 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).
- ARTICLE 3. PROFESSIONAL DRIVER SERVICES**
- R17-5-301. Definitions**
- In addition to the definitions under A.R.S. §§ 28-101 and 32-2351, the following definitions apply to this Article, unless otherwise specified:
- "Activity" means a function or service that is provided by a licensed professional driver training school pursuant to A.R.S. Title 32, Chapter 23 or licensed traffic survival school pursuant to A.R.S. Title 28, Chapter 8, Article 7.1 and that is performed by a licensed instructor or qualified instructor as defined in this Article.
- "Applicant" means an individual or school, including principals, requesting in the manner set forth in this Article the issuance or renewal of a license or to become a qualified instructor under A.R.S. Title 28, Chapter 8, Article 7.1 or Title 32, Chapter 23 and this Article.
- "Application date" means the date the Department or private entity receives a signed application from an applicant.
- "Audit" means a review of the operations, facilities, equipment, and records of a licensee under this Article, which is performed by the Department or private entity under A.R.S. § 28-3411 or 32-2352 to assess and ensure compliance with all applicable federal and state laws and rules.
- "Branch" means a licensed professional driver training school's or licensed traffic survival school's business location that is an additional established place of business, but not the school's principal place of business.
- "Business day" means a day other than a Saturday, Sunday, or legal state holiday.
- "Business manager" means an owner or employee of a licensed school who has primary and sufficient oversight, supervision, and responsibility for all operations necessary to ensure full compliance with all applicable federal or state laws, rules, and school guidelines.
- "Certificate of completion" means an electronic or paper document that is approved by the Department or private entity and

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that is issued by a traffic survival school or high school qualified instructor to a student who has demonstrated successful completion of a training or educational session or both conducted under this Article.

“Department-approved inventory” means educational media and related items or other resources provided and approved by the Department or private entity that are deemed necessary or useful for traffic survival school instruction, which includes curriculum, computer disks or drives, classroom training materials, instructor workbooks, instructor training manuals, or other materials, whether stored in paper or electronic formats.

“Established place of business” means a licensed professional driver training school’s or licensed traffic survival school’s business location that is:

- Approved by the Department,
- Located in Arizona,
- Not used as a residence, and
- Where the licensed school performs licensed activities.

“Good moral character” means a person:

Has not been convicted of a class 1 or 2 felony by a court of competent jurisdiction;

Has not within five years of application date been convicted of any other felony or misdemeanor offense having a reasonable relationship to the functions of the activity or the employment or category for which the qualification is sought;

Has not within five years of application committed any act involving dishonesty, fraud, misrepresentation, breach of fiduciary duty, gross negligence or incompetence if the act has a reasonable relationship to the person’s proposed area of license or qualification;

Has not within 12 months engaged in fraud or misrepresentation in connection with an application or an examination required for license or qualification under this Chapter;

“Good standing” means an applicant:

Has not had a similar business license, qualification, or approval suspended, revoked, canceled, or denied within the previous three years of the application date;

Does not have any pending corrective action, as defined under R17-5-323, relating to a Department-issued business license, qualification, or approval;

Has not had a fingerprint clearance card required for licensure under this Article suspended, revoked, or canceled;

Does not owe delinquent fees, taxes, or unpaid balances to the Department or private entity;

Has not had any substantiated derogatory information relevant to the requested license reported to the Department about the applicant from any state agency or from any consumer protection agency contacted by the Department; or

Has not been dismissed, or resigned in lieu of dismissal, from a position for cause following allegations of misconduct having a reasonable relationship to the person’s proposed area of licensure or qualification, if the applicant is a former Department employee or a former principal or employee of a licensed professional driver training school or licensed traffic survival school.

“Immediate family member” has the same meaning as prescribed in A.R.S. § 28-2401.

“Inactivation” or “inactive” means a temporary or permanent status, assigned by the Department to a school or professional driver training school instructor previously licensed under this Article, which prohibits the school or instructor from further engaging in the previously licensed activity after the occurrence of any of the following actions:

- Cancellation of license, as defined in R17-5-323;
- Suspension of license, as defined in R17-5-323;
- Revocation of license, as defined in R17-5-323;
- Non-renewal of license; or
- Relinquishment of license.

“Licensee” means a school or instructor licensed by the Department or private entity under A.R.S. § 28-3413, 32-2371, or 32-2372, and this Article, to perform a licensed activity.

“Principal” means any of the following:

- If a sole proprietorship, the sole proprietor;
- If a partnership, limited partnership, limited liability partnership, limited liability company or corporation, the:
 - Partner;
 - Manager;
 - Member;
 - Officer;
 - Director;
 - Agent; or

If a limited liability company or corporation, each stockholder owning 20 percent or more of the limited liability company or corporation; or

If a political subdivision or government agency, the political subdivision or agency head.

“Principal place of business” means a licensed professional driver training school’s or licensed traffic survival school’s administrative headquarters, which shall not be used as a residence.

“Private entity” means an entity that contracts with the Department under A.R.S. § 28-3411 or 32-2352.

“Professional driver training school instructor license” means an annual license issued by the Department or private entity under A.R.S. § 32-2372, and renewable under A.R.S. § 32-2374, which authorizes a person to present specific training and educational curriculum to students as provided under this Article.

“Satisfactory driver record” means an applicant has not had within the past 39 months:

- A conviction for driving under the influence, reckless or aggressive driving, racing on a highway, or leaving the scene of an accident;
- A driver license previously canceled, suspended, revoked, or disqualified; and
- More than three previous assignments to attend traffic survival school and no pending assignment.

“Temporary professional driver training school instructor license” means the preliminary license issued to an instructor applicant by the Director or private entity under A.R.S. § 32-2372, which authorizes the applicant to perform school activities under this Article.

“Traffic survival school qualified instructor” means an individual deemed qualified by the Department or private entity

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under this Article to conduct instruction of an education session on behalf of a licensed traffic survival school.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-302. Professional Driver Training School and Traffic Survival School Licensing; Eligibility and Application Requirements

- A.** An applicant for a professional driver training school or traffic survival school license, issued by the Department or private entity under A.R.S. § 28-3411 or 32-2371 and this Section, shall be at least 21 years of age and meet all applicable licensing requirements under state law and this Article when applying for an original or renewal license.
- B.** An applicant for a professional driver training school or traffic survival school license shall complete and submit to the Department or private entity an application packet that contains all of the following:
1. An application, completed on a form approved by the Department;
 2. Certification that each classroom used for the instruction of students is maintained in compliance with all applicable fire codes and local zoning ordinances;
 3. Certification that each classroom used for the instruction of students meets the accessibility requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), as amended;
 4. A copy of the following documents relating to the applicant's business if the applicant is a:
 - a. Corporation:
 - i. A copy of the articles of incorporation, including any amendments filed with the Arizona Corporation Commission; and
 - ii. Any other official documents, including copies of board meeting minutes and annual reports that reflect the most recent change to the corporate name, structure, or officers;
 - b. Limited liability company:
 - i. A copy of the articles of organization, including any amendments filed with the Arizona Corporation Commission; or
 - ii. A copy of the application for registration as a foreign limited liability company filed with the Arizona Corporation Commission and a copy of the certificate of registration issued by the Arizona Corporation Commission to a foreign limited liability company;
 - c. Limited partnership or a limited liability partnership:
 - i. A copy of a valid certificate of existence issued by the Arizona Office of the Secretary of State;
 - ii. A copy, stamped "filed" by the Arizona Office of the Secretary of State, of a certificate of limited partnership, certificate of foreign limited partnership, limited liability partnership form, foreign limited liability partnership form, or statement of qualification for conversion of limited partnership or limited liability partnership; or
 - iii. A copy of a valid trade name certificate issued by the Arizona Office of the Secretary of State; or
 - d. Sole proprietor:

- i. A copy of a valid certificate of existence issued by the Arizona Office of the Secretary of State, or
 - ii. A copy of a valid trade name certificate issued by the Arizona Office of the Secretary of State;
5. A copy of a high school diploma or equivalent for each applicant;
 6. Documentation prescribed under A.R.S. § 41-1080 indicating that each applicant's presence in the United States is authorized under federal law if the applicant is an individual, a sole proprietor, or part of a general partnership;
 7. Payment of the license fees prescribed under A.R.S. § 28-3415 or 32-2374 for each activity requested; and
 8. A form, approved by the Department, completed for each branch license, if applicable, and accompanied by payment of any applicable branch license fees prescribed under A.R.S. § 28-3415 or 32-2374.
- C.** An applicant shall not use the following in any part of its school name, which are subject to approval by the Department or private entity:
1. The terms "Arizona Department of Transportation," "Department of Transportation," "Motor Vehicle Division," "Motor Vehicle Department," "Division of Motor Vehicles," or "Department of Motor Vehicles;" or
 2. The acronyms "ADOT," "DOT," "MVD," or "DMV."
- D.** Professional driver training school applicants must provide the following additional documents with the school's application packet:
1. A copy of the school's complete curriculum, including a sample of all written examinations and answer keys, unless the curriculum is provided by the Department or private entity;
 2. Verification of liability insurance coverage reflecting at least the minimum amount prescribed under A.R.S. § 32-2393 for each motor vehicle used to provide instruction; and
 3. Diagrams detailing a minimum of three separate road skills test routes with narrative indicating all required maneuvers, if the applicant will be providing behind-the-wheel driver training.

Historical Note

New Section recodified from R17-4-512 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section amended by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-303. Professional Driver Training School Instructor Licensing; Eligibility and Application Requirements; Temporary Professional Driver Training Instructor License

- A.** An applicant for a professional driver training school instructor license shall:
1. Apply through a professional driver training school licensed by the Department or private entity under A.R.S. § 32-2371 and R17-5-302,
 2. Be at least 21 years of age,
 3. Be of good moral character, and
 4. Meet all applicable licensing requirements under state law and this Article.
- B.** Each professional driver training instructor applicant shall complete an application packet that contains the following:
1. An application, completed on a form approved by the Department;
 2. A copy of a high school diploma or equivalent;
 3. A copy of a valid Arizona driver license with endorsements representative of the vehicle to be used in training;

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4. Documentation prescribed under A.R.S. § 41-1080 indicating that the applicant's presence in the United States is authorized under federal law;
 5. A motor vehicle record, dated within 30 days of the application date, which indicates that within the previous 39 months the applicant maintained a satisfactory driver record as defined in R17-5-301;
 6. Payment of license fees prescribed under A.R.S. § 32-2374 for each activity requested;
 7. Statements of positive endorsement or recommendation from at least three character references indicating each reference's:
 - a. Name,
 - b. Address,
 - c. Contact phone number and email address,
 - d. Relationship to the instructor applicant, and
 - e. Number of years associated with the instructor applicant;
 8. An affidavit, as provided under A.R.S. § 32-2372, from the business manager of the professional driver training school certifying that the instructor applicant:
 - a. Has the necessary skills and abilities to give instruction on driver training at a professional level, and
 - b. Has completed at least 100 hours of combined classroom and vehicle training representative of the class of vehicle appropriate to the activity; and
 9. A copy of the fingerprint clearance card as required of the applicant under A.R.S. § 32-2372 and R17-5-304.
- C.** A business manager of a professional driver training school licensed under A.R.S. § 32-2371 and this Article shall submit to the Department or private entity the application packet for each instructor applicant.
- D.** Temporary Professional Driver Training Instructor License. The Department or private entity shall issue a temporary professional driver training instructor license to an instructor applicant after receiving a fully completed application packet with all of the required content and information, as provided under subsection (B).
- E.** The Department or private entity may issue an annual professional driver training school instructor license to an instructor applicant, if:
1. The applicant successfully completes the training session and examination required under R17-5-306 prior to expiration of the temporary instructor license issued under subsection (D), and
 2. The applicant is otherwise qualified under this Article and state law to receive an annual professional driver training school instructor license.
- F.** The professional driver training school shall withdraw an application for a professional driver training school instructor license or the Department or private entity shall deny issuance of a license for an instructor applicant who fails to successfully complete the requirements under subsection (E) prior to expiration of the temporary professional driver training instructor license.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-304. Fingerprint Background Check; Fingerprint Clearance Card

- A.** An applicant for a license issued under A.R.S. Title 28, Chapter 8, Article 7.1 or Title 32, Chapter 23, Article 2 and this Article, as applicable, shall:

1. Successfully complete a fingerprint background check conducted by the Arizona Department of Public Safety under A.R.S. § 41-1758.01, and
 2. Submit to the Department or private entity a copy of the fingerprint clearance card issued to the applicant under A.R.S. § 41-1758.03 as part of the application packet.
- B.** An applicant is responsible for all costs associated with obtaining the fingerprint clearance card.
- C.** A licensee, as applicable, shall maintain a valid fingerprint clearance card while licensed under this Article, and shall provide written notice to the Department or private entity within 10 calendar days if the fingerprint clearance card is cancelled, suspended, or revoked.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-305. Traffic Survival School Qualified Instructor Status; Eligibility and Application Requirements

- A.** An applicant for traffic survival school qualified instructor status shall:
1. Apply through a traffic survival school licensed by the Department or private entity under A.R.S. § 28-3413 and this Article,
 2. Be at least 21 years of age,
 3. Meet all applicable requirements under this Article, and
 4. Be of good moral character.
- B.** Each traffic survival school qualified instructor applicant shall complete an application packet that contains the following:
1. An application, completed on a form approved by the Department;
 2. A copy of a high school diploma or equivalent;
 3. A copy of a valid Arizona driver license;
 4. Documentation prescribed under A.R.S. § 41-1080 indicating that the applicant's presence in the United States is authorized under federal law;
 5. A motor vehicle record, dated within 30 days of the application date, which indicates that within the previous 39 months the applicant maintained a satisfactory driver record as defined under R17-5-301;
 6. An affidavit from the business manager of the traffic survival school certifying that the qualified instructor applicant has the necessary skills and abilities to give instruction at a professional level; and
 7. Payment of authorized fees as required by the private entity for application and administration of the instructor qualification process and for required instructor continuing education, which shall be negotiated by the Department and the private entity and shall be set forth in their contract.
- C.** An applicant for instructor qualification shall have successfully completed a traffic survival school educational workshop or similar curriculum approved by the Department or private entity before being permitted to instruct any traffic survival school course.
- D.** An applicant for instructor qualification shall have successfully completed an examination given for qualification of instructors by the Department or private entity as required under R17-5-306 before being permitted to instruct any traffic survival school course.
- E.** A business manager of a traffic survival school licensed under A.R.S. § 28-3413 and this Article shall submit to the Department or private entity the complete application packet for each qualified instructor applicant.

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Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-306. Required Training and Examination of School and Instructor Applicants

- A. An applicant for a school or instructor license or for instructor qualification under this Article shall attend Department-approved training and shall pass one or more required examinations administered by the Department or private entity before:
1. Issuance of an applicable school or instructor license, or
 2. Approval of the status as a traffic survival school qualified instructor.
- B. The Department or private entity shall limit a professional driver training school instructor applicant to three opportunities within 90 days, based on scheduling, to successfully complete and achieve a passing score or grade on each examination required under this Section.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-307. Approval or Denial of Application; Hearing; Appeal

- A. An application will not be approved by the Department or private entity unless it is properly and fully completed with all required supporting documents and applicable fees as identified in this Article.
- B. The Department or private entity shall provide written notification to the professional driver training school or traffic survival school of the approval or denial of a license or qualification. A notice denying the applicant a license or qualification under this Article shall specify the basis for denial and indicate that the applicant may request a hearing on the denial with the Department's Executive Hearing Office within 30 calendar days of the date on the notice unless the application is withdrawn by the applicant.
- C. The Department or private entity may issue a license to the school or professional driver training instructor applicant or deem a traffic survival school instructor applicant qualified when a completed application is received and the applicant has successfully completed all required training and examinations.
- D. Unless the application is withdrawn by the applicant, the Department or private entity may deny an application in which the applicant has:
1. Failed to have or to document a satisfactory driver record as defined in R17-5-301;
 2. Failed to meet the good standing requirement of the Department as defined in R17-5-301;
 3. Failed to meet the fingerprint clearance card requirement under R17-5-304, as applicable;
 4. Made a material misrepresentation or misstatement on the application;
 5. Violated a federal or state law or rule; or
 6. Failed to complete all applicable application requirements under this Article.
- E. If timely requested by an applicant under subsection (B), the Department shall schedule and conduct a hearing as prescribed under A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5 for denial of a license.
- F. An applicant whose application was previously denied by the Department or private entity for making a material misrepresentation or misstatement on the application is not eligible to reapply for 12 months from the date of previous denial.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-308. License Issuance; Effective Date; Expiration; Display

- A. The Department or private entity may issue the following licenses upon determining an applicant meets all eligibility and application requirements provided under A.R.S. Title 28, Chapter 8, Article 7.1 or Title 32, Chapter 23 and this Article:
1. Professional driver training school,
 2. Professional driver training school instructor,
 3. Professional driver training school temporary instructor,
 4. Traffic survival school, and
 5. Established place of business (branch).
- B. The Department or private entity shall license only a school that employs or contracts at least one professional driver training school instructor currently licensed under this Article or at least one currently qualified traffic survival school instructor, as applicable.
- C. A license issued under this Article is:
1. Effective on the date of issuance;
 2. Effective until its expiration on the last day of each calendar year, except:
 - a. A temporary instructor license issued under R17-5-303 shall expire 90 calendar days from the date of issuance or shall expire immediately if the applicant fails to meet a licensing requirement under this Article,
 - b. A license subject to an active duty military extension shall expire as provided under A.R.S. § 32-4301, and
 - c. A license subject to an individual's limited length of authorized stay shall expire immediately if the individual's presence in the United States is no longer authorized under federal law; and
 3. Nontransferable under any circumstances.
- D. A licensed school shall prominently and publicly display all licenses currently in effect at the school's principal places of business.
- E. A professional driver training school instructor shall prominently display copies of all appropriate licenses during instruction.
- F. A school shall surrender to the Department or private entity within three business days after the date of any license inactivation, as defined under R17-5-301, all:
1. Licenses;
 2. Records pertaining to the school's operations and the training of students; and
 3. Department-approved inventory, as applicable and as defined in this Article.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-309. Renewal of License

- A. A completed renewal packet shall be submitted to the Department or private entity a minimum of 30 calendar days prior to license expiration. Notwithstanding A.A.C. R17-1-102, failure to submit a renewal packet prior to December 1st shall result in the applicant being subject to all original licensing requirements.
- B. A school license renewal application packet shall include:
1. A renewal application, completed on a form approved by the Department, including:

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- a. A list of all principals, contracted personnel, and employees of the school who are responsible for Arizona school operations if there have been any changes since the last renewal or original application; and
 - b. The signature of all principals on the completed application; and
2. Payment of applicable license fees prescribed under A.R.S. § 28-3415 or 32-2374, for each activity, branch, and professional driver training school instructor.
- C. Notwithstanding A.R.S. § 28-3415 or 32-2374, an annual license issued by the Department or private entity under this Article during the month of December shall not expire until the last day of the subsequent calendar year.
- D. The Department may take corrective action as provided under R17-5-321 and R17-5-323 if the Department or private entity determines or has reason to believe that a licensee or traffic survival school qualified instructor has demonstrated unethical conduct in the performance of official duties, including:
1. Verbally abusing, intimidating, or sexually harassing a student or potential student; or
 2. Making a false statement that is material to the activities regulated in this Article to any personnel of the Department or private entity.
- E. A school shall use for all licensed activities and related advertising purposes only its official business name or its doing-business-as name as indicated on the license issued under this Article.
- F. A licensee shall not represent or imply that it is the state of Arizona, the Department, the Motor Vehicle Division, or any government agency in any printed or electronic advertising or promotional material, except to the extent expressly authorized by the Department.
- G. Licensee advertising shall not in any way:

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-310. Modifications of Original Application Information

- A. A licensee or traffic survival school qualified instructor, making or learning of any change in the content of its original application information, other than ownership, shall provide written notification of the change, completed on a form approved by the Department and signed by a principal or business manager, to the Department or private entity within two business days of making the change.
- B. A licensed school making a change to a principal or corporate structure shall submit to the Department or private entity a new application for licensing under this Article and all applicable fees, as a new applicant for licensure, within 10 calendar days of making the change.
- C. A licensed school submitting a new application to the Department or private entity, as provided under subsection (B), is subject to the fingerprint clearance card requirement under R17-5-304 unless a valid fingerprint clearance card is already on file with the Department.
- D. A licensed school shall provide written or electronic notification on a form, approved by the Department, to the Department or private entity within 10 calendar days of making any changes to the licensee's contact person, business manager, or instructors.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-311. Professional Conduct; Conflicts of Interest; Advertising

- A. A professional driver training school or traffic survival school representative or instructor shall not:
1. Accompany a student into any Department office or office of an authorized third party driver license or driver license training provider; or
 2. Solicit an individual for any purpose on any premises rented, leased, operated, or owned by the Department or by an authorized third party driver license or driver license training provider.
- B. A licensee or traffic survival school qualified instructor shall maintain good standing with the Department at all times while licensed or qualified under this Article.
- C. A licensee shall not delegate or subcontract any licensed activity authorized by the Department or private entity under this Article.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-312. Cancellation and Continuity of Services to Participants

- A. A principal of a school ceasing operations or cancelling courses for any reason shall ensure continuity of services to each student currently enrolled in courses as follows:
1. A principal shall notify each student currently scheduled for, or enrolled in, a course that the school will be unable to provide the services previously offered 72 hours before the scheduled course; and
 2. A principal shall refund within four business days any payment received by the school for a course not yet provided.
- B. A principal of a school ceasing operations shall provide to the Department or private entity, upon request, a written list of all

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students notified under subsection (A) with an explanation of the final resolution reached as a result of the principal's contact with the student.

- C. A principal's failure to provide continuity of services to enrolled students as provided under this Section may result in the loss of the principal's status of good standing with the Department.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-313. Method of Instruction; Curriculum

- A. A licensed or qualified instructor shall teach only curriculum approved by the Department or private entity to a student attending a class.
- B. A licensed or qualified instructor shall not conduct personal business during a time designated for instruction.
- C. An instructor shall not solicit students during training classes for businesses other than those licensed by the Department or private entity.
- D. A school or instructor shall ensure that a student has both fully attended and successfully completed a course before issuing a certificate of completion to the student.
- E. A licensed traffic survival school must use all equipment required by the Department or private entity to present the curriculum to the students, including at a minimum, a computer, a PowerPoint compatible projector, a DVD player, and a display monitor visible to all students.
- F. Professional driver training school approved curriculum. The Department shall approve, and may modify, in writing, a uniform curriculum that the professional driver training school shall teach as applicable for each activity the licensee is authorized to perform. The curriculum shall be a standard course of instruction used by a professional driver training school for the training and education of students.
- G. Traffic survival school approved curriculum. The Department shall approve, and may modify, in writing a uniform curriculum that the traffic survival school shall teach. The curriculum shall be selected and approved on the basis of effectiveness in improving the safety and habits of drivers.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-314. Certificate of Completion

- A. A qualified instructor for traffic survival school or high school driver education program shall accurately complete all required information on a certificate of completion:
1. The instructor providing the training listed on the certificate of completion shall sign the document once training is complete, or
 2. The instructor providing the final instruction or test shall sign the certificate of completion if training is provided by multiple instructors.
- B. A qualified instructor shall provide a certificate of completion to the student at the conclusion of the course. A traffic survival school qualified instructor shall print the certificate of completion from the web site of the Department's private entity or the Department's web site, as applicable.
- C. A high school qualified instructor shall not make a correction to a certificate of completion. If an error is made, the high school qualified instructor shall:
1. Void the certificate of completion,

2. Write the word "VOID" or "VOIDED" clearly on the face of each voided certificate of completion, and
3. Issue a new certificate of completion.

- D. The Department may elect not to accept a certificate of completion that contains an alteration, erasure, correction, or illegible information.
- E. A school or qualified instructor shall not withhold timely issuance of a certificate of completion due to a payment dispute between the school and the student.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-315. Record Retention

- A. A licensed traffic survival school shall electronically transmit proof of course completion to the Department immediately following each student's satisfactory completion of a traffic survival school course in a manner and with the basic computer equipment prescribed by the Department or private entity. At a minimum, the computer equipment must be able to temporarily store, and electronically transmit over the internet, the certificates of completion required by the Department or private entity.
- B. All records pertaining to a licensed school's operations and training of students shall be:
1. Stored and securely maintained at the licensee's principal place of business,
 2. Available for inspection by the Department or private entity during business hours, and
 3. Retained by the school for three years from the date of course completion.
- C. A licensed school shall establish and maintain separate records for each authorized activity.
- D. A licensed school shall maintain, for three years, attendance records for each class conducted.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-316. Traffic Survival School Department-Approved Inventory

- A. A traffic survival school licensed under this Article shall:
1. Prohibit public or other unauthorized access to all Department-approved inventory, and
 2. Submit to the Department or private entity a written report detailing the circumstances surrounding the loss or theft of any missing or stolen Department-approved inventory.
- B. A licensee shall use only Department-approved inventory.
- C. A school principal or business manager shall submit to the Department or private entity a written or electronic request for any additional Department-approved inventory the school may require.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-317. School Responsibilities

While licensed by the Department or private entity under A.R.S. § 28-3413 or 32-2371 and this Article, the school shall:

1. Comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and applicable federal regulations by providing appropriate auxiliary aids and services

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- to students with disabilities requesting reasonable accommodation;
2. Comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and applicable federal regulations. As a requirement of compliance, the school shall:
 - a. Provide public notification of its compliance with Title VI by displaying a Department-approved notice to the public;
 - b. Take reasonable steps to ensure that Limited English Proficient (non-English speaking) customers have meaningful access to the services or activities performed under this Article, which includes, providing the school's services and authorized transactions in languages other than English and providing these services at no additional cost to the customer or student;
 - c. Report promptly any customer complaints alleging discrimination or failure to meet the requirements of this Section to the Department's Civil Rights office for processing and investigation. The school shall immediately upon receipt of such complaints provide access to its facilities, books, records, accounts, and other sources of information as may be determined or requested by the Department to be pertinent, in order to ascertain compliance with Title VI; and
 - d. Inform and formally train all school officers, principals, employees, and contractors on the requirements to comply with Title VI; and
 3. Provide written notice to the Department or private entity within twenty-four hours if the driver license of any of the school's principals, managers, or instructors is suspended, revoked, cancelled, or disqualified.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-318. Instructor Responsibilities

While licensed or qualified by the Department or private entity under A.R.S. § 32-2372 and this Article to give instruction, an instructor shall:

1. Attend all ongoing training and continuing education as required by the Department or private entity;
2. Provide written notice to the licensed professional driver training school or traffic survival school within twenty-four hours if the instructor's driver license is suspended, revoked, cancelled, or disqualified;
3. Conduct training and courses only at training sites and on driver road training routes approved by the Department or private entity;
4. Follow and complete the curriculum approved by the Department or private entity for each course conducted; and
5. Conduct at least two courses in a calendar year.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-319. Traffic Survival Schools

- A. The Department shall assign an individual only to a traffic survival school licensed by the Director under this Article.
- B. A traffic survival school or qualified instructor shall allow only students who provide acceptable proof of traffic survival school assignment to register for and attend a traffic survival

school course. The following documents are acceptable proof of assignment:

1. Notice of traffic survival school assignment or suspension for failure to attend traffic survival school,
 2. An order from a court or other appropriate tribunal from Arizona or another state indicating traffic survival school assignment,
 3. Traffic survival school proof of assignment form obtained from the Department,
 4. Electronic verification of traffic survival school assignment through the Department's private entity, or
 5. Motor vehicle record.
- C. On enrollment of a student in, or on a student's attendance of, a traffic survival school course, a licensed traffic survival school shall collect the statutory enrollee fee provided in A.R.S. § 28-3411, unless the student has paid the enrollee fee in advance. The licensed traffic survival school also shall collect the records fee prescribed by A.R.S. § 28-446, if applicable, before the student attends the traffic survival school course. The licensed traffic survival school shall fully remit these fees to the private entity within four business days after a student completes the traffic survival school course. If a licensed traffic survival school does not timely remit the enrollee fees, the Department or private entity may notify the traffic survival school that its prospective future students will be required to prepay the enrollee fees until remittances are current. The amount of the enrollee fee charged by the private entity shall be negotiated by the Department and the private entity and shall be set forth in their contract.
 - D. A traffic survival school or qualified instructor shall not:
 1. Conduct courses with a number of students in excess of the classroom's fire safety capacity reported to the Department or private entity by the licensee under R17-5-321;
 2. Conduct courses with more than 30 students per qualified instructor;
 3. Exclude a translator, the Director, the private entity, or Department personnel from attending courses;
 4. Issue a certificate of completion to a student who has not fully completed the required curriculum; or
 5. Issue a certificate of completion for a student whom the instructor did not personally instruct.
 - E. A licensee shall retain for three years all copies of the student's acceptable proof of assignment and the signed class roster of attending students.
 - F. The private entity may develop and administer a web site that allows individuals who are assigned to traffic survival school to locate and enroll online in traffic survival school courses.
 - G. Only an individual who meets the qualifications under R17-5-305, remains in compliance with this Article, and who is granted and retains traffic survival school qualified instructor status, may be allowed to teach individuals assigned by the Department to attend a licensed traffic survival school.
 - H. A licensed traffic survival school must hold at least one course every 60 days at the school's established place of business and each branch, as applicable.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-320. High School Driver Education Program

- A. The following definitions apply to this Section:
 1. "Accountable forms inventory" means a series of distinctly and consecutively numbered documents provided

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- by the Department to an instructor qualified under this Section for:
- a. Recording in a log, the assigned number of each document completed, issued, or voided by a high school qualified instructor; and
 - b. Reporting to the Department the assigned number of each document completed, issued, or voided by a high school qualified instructor.
2. "Certified instructor report" means a report prepared and certified monthly by each high school qualified instructor listing all certificates of completion that were issued and voided.
- B.** The Department shall cooperate with the Arizona Department of Education, under A.R.S. §§ 28-3174 and 32-2353, to enable the issuance of a certificate of completion to a regularly enrolled full-time student as part of a high school driver education program.
- C.** The Director or private entity shall qualify an instructor approved by the Arizona Department of Education to issue a certificate of completion.
- D.** A high school qualified instructor may issue a certificate of completion to a regularly enrolled full-time student who:
1. Successfully completes the classroom course of instruction required by the Arizona Department of Education, which may waive the student's requirement to take the Department's written test; or
 2. Successfully completes the skills course of instruction required by the Arizona Department of Education, which may waive the student's requirement to take the Department's skills test.
- E.** A high school qualified instructor shall submit to the Department, no later than the fifth day of each month, all certified instructor reports and certificates of completion issued by the school during the preceding month. A high school qualified instructor who does not issue any certificates of completion during the preceding month shall submit to the Department a certified instructor report indicating "no activity."
- F.** A high school qualified instructor shall provide the status of certificates of completion to the Department, upon request, by identifying the certificates by number as either issued, not issued, lost, or stolen.
- G.** A high school representative shall promptly return all unused or un-issued certificates of completion to the Department, upon request.
- H.** A certificate of completion constitutes accountable forms inventory to be secured at all times by the high school qualified instructor or other designee of the high school and any misuse, fraud, or negligence by a high school qualified instructor involving the form in consultation with the Arizona Department of Education pursuant to A.R.S. § 28-3174 may lead to Department disqualification of the instructor's authorization to issue the form.
- I.** A high school qualified instructor shall submit to the Department all reports required under this Article by regular mail, certified mail, registered mail, electronic mail, or personal delivery. The following dates shall be used to determine whether a report was received within the required timeframes established under this Section:
1. For regular mail, the postmark date;
 2. For certified or registered mail, the date of receipt by the designated delivery service;
 3. For electronic mail, the send date; and
 4. For personal delivery, the Department's time and date stamp of receipt.
- J.** If a high school qualified instructor fails to timely or accurately submit to the Department a certified instructor report required under this Section, the Department may initiate corrective action. The Department may:
1. Provide an oral or written warning for a first untimely or inaccurate report,
 2. Send a letter of concern for a second untimely or inaccurate report in a 12-month period, and
 3. Request that the Arizona Department of Education disqualify a high school qualified instructor from issuing a certificate of completion under this Article for a third untimely or inaccurate report in a 12-month period.
- K.** A high school shall develop and maintain a driver education class training record for each student, which shall include at least the following information:
1. Student's name;
 2. Student's phone number;
 3. Student's driver license or instruction permit number and its expiration date;
 4. Fee amounts collected for any related services;
 5. Date, type, and duration of all classroom lessons and practical instruction;
 6. Make, model, and license plate number of any motor vehicle used to conduct training, as applicable;
 7. Date and results of all tests administered;
 8. Number of certificates of completion issued; and
 9. Name and Department-issued number of each instructor who conducted a lesson or test.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-321. Periodic Audits, Monitoring, Inspections, and Investigations

- A.** To determine compliance with license requirements, qualification requirements and applicable federal and state laws and rules, the Department or private entity may:
1. Monitor for compliance by attending any licensed school's course or other activities on a scheduled or unscheduled basis;
 2. Audit for compliance by performing periodic reviews of the operations, facilities, equipment, and records;
 3. Inspect for compliance by making random, on-site visits during posted business hours; or
 4. Investigate for compliance by interviewing or submitting questions to school owners, instructors, and former or current students.
- B.** Failure of a school or instructor to allow or cooperate in an audit, monitoring, inspection, or investigation may result in the Department issuing an immediate cease and desist order or requesting a hearing for suspension or revocation of a license issued under this Article.
- C.** During an audit, monitoring, inspection, or investigation of a licensee, the Department, the private entity, a law enforcement agency, or employee of the Federal Motor Carrier Safety Administration may:
1. Review and copy paper and electronic records;
 2. Examine the licensee's principal and established place of business, all branches, training, or road training sites; and
 3. Interview the school's employees, instructors, and customers.
- D.** A licensee shall make records available for audit, monitoring, inspection, or investigation at the licensee's principal place of business.
- E.** After an audit or monitoring, the Department or private entity shall send a report of the results in writing to the school.

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- F. If instances of non-compliance are found as a result of an audit, monitoring, inspection, or investigation, the Department or private entity may determine if either of the following actions is required:
1. An informal meeting to discuss findings, or
 2. A written compliance plan addressing findings.
- G. If greater instances of non-compliance are found as a result of an audit, monitoring, inspection, or investigation, the Department may determine if either of the following actions is required:
1. A probationary period; or
 2. A request for a hearing to cancel, suspend, or revoke a license to operate a school or conduct instruction under this Article.
- H. The Department or private entity may issue a notice of corrective action to a licensee if the licensee fails to comply with a warning letter, with an audit, inspection or investigation request, a monitoring request, or with written findings provided by the Department or private entity. Only the Department may initiate a corrective action provided under subsection (G).
- I. Each site used by a school as an office, training location, or classroom location shall:
1. Be inspected and approved by the Department or private entity prior to initial use or relocation,
 2. Be licensed by the Department or private entity, and
 3. Have office hours displayed in a conspicuous location at each site open to the public during the posted hours.
- J. There shall be a clearly defined and visible separation between a school and any other business if a professional driver training school or traffic survival school is located in an office building, store, or other physical structure shared with any other business or enterprise.
- K. Any request by a school for inspection and approval of a site on a recognized Indian reservation shall contain the written permission of the appropriate Tribal authority.
- L. Any request by a school for inspection and approval of a site on a military base shall contain the written permission of the appropriate military authority.
- M. A school shall submit to the Department or private entity a copy of the written lease or contract agreement or deed of ownership, if the site is owned by the school, for each site, as applicable.
- N. Any request by a traffic survival school for inspection and approval of a site to be used for educational sessions shall include the approved fire safety capacity of the classroom(s) at that site and shall be signed by a principal of the traffic survival school.
2. Provide information regarding the person's right to request a hearing to show cause as to why the Department's order should not be upheld.
- C. On failure or refusal of a licensee to comply with a cease and desist order, or after a requested hearing, the Department may cancel, suspend, or revoke the license of the licensee under A.R.S. § 28-3416 or 32-2391 and R17-5-323.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-323. Non-compliance; Notice of Corrective Action; Cancellation, Suspension, or Revocation of a Professional Driver Training School or Instructor License or Traffic Survival School License; Hearing and Appeal

- A. The following definitions apply to this Section:
1. "Cancellation" means a Department action that withdraws a license issued under A.R.S. Title 28, Chapter 8, Article 7.1 or Title 32, Chapter 23 and this Article.
 2. "Revocation" means a Department action that terminates, for an indefinite period of time, a licensee's privilege to operate a school or conduct instruction under this Article.
 3. "Suspension" means a Department action that prohibits, for a stated period of time, a licensee from operating as a school or instructor under this Article.
- B. The Department or private entity may initiate corrective action on a licensee or a traffic survival school qualified instructor as provided under A.R.S. Title 28, Chapter 8, Article 7.1, Title 32, Chapter 23, Article 3, or Title 41, Chapter 6, Article 6, and this Article, if satisfactory evidence shows that a licensee or traffic survival school qualified instructor, individually or collectively:
1. Violated a federal or state law or rule relating to a duty prescribed under this Article;
 2. Failed to maintain a status of good standing as defined under R17-5-301; or
 3. Provided false, deceptive, or misleading information to the Department or private entity in either an application or in response to an audit or inspection conducted pursuant to R17-5-321.
- C. Corrective action initiated under subsection (A), depending on the severity or number of violations, may result in an action by the Department to impose a term of probation; issue a cease and desist order under A.R.S. § 28-3417 or 32-2394; or request a hearing to cancel, suspend, or revoke an existing license under A.R.S. § 28-3416 or 32-2391.
- D. A notice of corrective action issued by the Department requesting a hearing to cancel, suspend, or revoke an existing license shall include:
1. The grounds for the Department's action and its request for a hearing before the Department's Executive Hearing Office; and
 2. A brief written statement of the hearing and appeal rights for the cancellation, suspension, or revocation of a professional driver training school or instructor license or a traffic survival school license, as provided under A.R.S. § 28-3416 or 32-2391.
- E. A notice of corrective action issued by the Department to cancel, suspend, or revoke an existing qualification of a traffic survival school instructor shall include:
1. The grounds for the Department's action; and
 2. A brief written statement of the hearing and appeal rights for the cancellation, suspension, or revocation of the qualification of a traffic survival school instructor, as provided in A.R.S. §§ 41-1001(12) and 41-1064.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

R17-5-322. Cease and Desist Order; Hearing and Appeal

- A. The Department may immediately issue and serve a cease and desist order on a licensee, as prescribed under A.R.S. § 28-3417 or 32-2394, if the Department or private entity has reasonable cause to believe that the licensee has violated or is violating a federal or state law or rule relating to a duty prescribed under this Article.
- B. A cease and desist order issued by the Department to a licensee under this Article shall:
1. Require the person on receipt of the order to cease and desist from further engaging in the prohibited conduct or in any activity authorized under this Article as specified in the cease and desist order, and

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- F. The Department shall provide notice and conduct hearings as prescribed under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5, as applicable.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

ARTICLE 4. DEALERS**R17-5-401. Reserved****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. Expired**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 1864, effective August 2, 2003 (Supp. 03-2). Section expired under A.R.S. 1056(J) at 22 A.A.R. 3195, effective October 5, 2016 (Supp. 16-3).§

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

NOTICE OF FINAL RULEMAKING
TITLE 17. TRANSPORTATION
CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS

Statutory Authority Including Relevant Statutory Definitions

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.

A.R.S. § 28-3411. Enforcement; contract with private entity

A. Subject to title 41, chapter 6, the director shall adopt rules for the administration and enforcement of this article.

The director or the director's authorized representative shall inspect the school facilities and equipment used by applicants and licensees under this article.

B. The director shall administer and enforce this article.

C. The director may contract with a private entity to conduct inspections pursuant to this section and to administer any rules adopted pursuant to this section that relate to the licensure and administration of traffic survival schools pursuant to this article. The term of any contract entered into pursuant to this subsection shall not exceed five years with a right to renew for an additional five years. The private entity that contracts with the director pursuant to this subsection:

1. Shall not provide traffic survival school courses.
2. May charge a fee to each person who enrolls in a traffic survival school.

A.R.S. § 32-2352. Enforcement; contract with private entity

A. The director, subject to title 41, chapter 6, shall adopt such rules concerning the administration and enforcement of this chapter as are necessary to carry out the intent of this chapter and to protect the public. The director or the director's authorized representative shall inspect the school facilities and equipment used by applicants and licensees under this chapter.

B. The director shall administer and enforce this chapter.

C. The director may contract with a private entity to conduct inspections pursuant to this section and to administer any rules adopted pursuant to this section that relate to the licensure and administration of professional driver training schools pursuant to this chapter. The term of any contract entered into pursuant to this subsection shall not

exceed five years with a right to renew for an additional five years. The private entity that contracts with the director pursuant to this subsection:

1. Shall not provide professional driver training school courses.
2. May charge a fee to each person who enrolls in a professional driver training school.

A.R.S. § 32-2372.01. Commercial motor vehicle instructors; rules

On or before December 31, 2016 the director shall adopt rules to establish requirements and minimum standards for commercial motor vehicle instructors.

Specific Statutes

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 fully or partially 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. "Certificate of ownership" means a paper or an electronic record that is issued in another state or a foreign jurisdiction and that indicates ownership of a vehicle.
12. "Certificate of title" means a paper document or an electronic record that is issued by the department and that indicates ownership of a vehicle.
13. "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.
14. "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.
15. "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.
16. "County highway" means a public road that is constructed and maintained by a county.
17. "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 and has paid fees pursuant to section 28-4302.
18. "Department" means the department of transportation acting directly or through its duly authorized officers and agents.
19. "Digital network or software application" has the same meaning prescribed in section 28-9551.
20. "Director" means the director of the department of transportation.
21. "Drive" means to operate or be in actual physical control of a motor vehicle.
22. "Driver" means a person who drives or is in actual physical control of a vehicle.
23. "Driver license" means a license that is issued by a state to an individual and that authorizes the individual to drive a motor vehicle.
24. "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.
25. "Farm" means any lands primarily used for agriculture production.

26. "Farm tractor" means a motor vehicle designed and used primarily as a farm implement for drawing implements of husbandry.

27. "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.

28. "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.

29. "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.

30. "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.

31. "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.

32. "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.

33. "Local authority" means any county, municipal or other local board or body exercising jurisdiction over highways under the constitution and laws of this state.

34. "Manufacturer" means a person engaged in the business of manufacturing motor vehicles, trailers or semitrailers.

35. "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.

36. "Motor driven cycle" means a motorcycle, including every motor scooter, with a motor that produces not more than five horsepower.

37. "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.

38. "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.

39. "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.

40. "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 a limousine operating under a vehicle for hire company permit issued 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 sections 571.3(b) and 571.500, respectively.

41. "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.

42. "Nonresident" means a person who is not a resident of this state as defined in section 28-2001.

43. "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.

44. "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.

45. "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.

46. "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.

47. "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.

48. "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.

49. "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.

50. "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.
51. "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.
52. "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.
53. "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.
54. "State" means a state of the United States and the District of Columbia.
55. "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.
56. "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.
57. "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.
58. "Taxi" means a motor vehicle that has a seating capacity not exceeding fifteen passengers, including the driver, 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.
59. "Title transfer form" means a paper or an electronic form that is prescribed by the department for the purpose of transferring a certificate of title from one owner to another owner.
60. "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.
61. "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.

62. "Transportation network company" has the same meaning prescribed in section 28-9551.

63. "Transportation network company vehicle" has the same meaning prescribed in section 28-9551.

64. "Transportation network service" has the same meaning prescribed in section 28-9551.

65. "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.

66. "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.

67. "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.

68. "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. § 28-3413. License for schools; requirements; fingerprint clearance card

A. A person may not act as a traffic survival school unless the person applies for and obtains from the director a license in the manner and form prescribed by the director.

B. Rules adopted by the director shall state the requirements for a school license, including requirements concerning location, equipment, courses of instruction, instructors, previous records of the school and instructors, character and reputation of the operators and instructors, insurance in an amount and with provisions that the director deems necessary to protect adequately the interests of the public and other matters prescribed by the director.

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 licensure pursuant to this article shall provide the department or a contracted private entity of the department pursuant to section 28-3411 with a valid fingerprint clearance card issued pursuant to section 41-1758.03.

A.R.S. § 28-3414. Refusal to issue or renew license of school

A. The director may refuse to issue or renew the license for a school if the director determines that the licensee or applicant has not complied with or has knowingly violated any provision of this article or any rule adopted pursuant to this article or has been convicted of a violation of title 13 or this title.

B. An applicant or licensee who is aggrieved by the director's decision may make a written request to the department for a hearing within thirty days after service of notice of the refusal. If the applicant or licensee does not request a hearing within thirty days, the decision is final. If the applicant or licensee requests a hearing, the director shall give

written notice to the applicant or licensee to appear at the hearing and show cause why the refusal to issue or renew the license should not be upheld. After consideration of the evidence presented at the hearing, the director shall serve notice in writing to the applicant or licensee of the director's findings and order.

A.R.S. § 28-3415. License expiration; fees; disposition

- A. Except as provided in section 32-4301, all licenses expire on the last day of the calendar year and may be renewed on application to the director as prescribed by rule.
- B. Each application for an original or renewal license to operate a traffic survival school shall be accompanied by a fee of two hundred dollars.
- C. An application for a branch license shall be accompanied by a fee of fifty dollars.
- D. A license fee may not be refunded if a license is suspended or revoked.
- E. All monies received by the director from the fees provided in this article shall be deposited, pursuant to sections 35-146 and 35-147, in the state highway fund established by section 28-6991.

A.R.S. § 28-3416. Cancellation; suspension and revocation of license; determination; appeal

- A. After conducting a hearing, the director may cancel, suspend or revoke the license of a school if the director finds that the licensee has not complied with or has knowingly violated this article or any rule adopted pursuant to this article or has been convicted of a violation of title 13 or this title.
- B. Decisions of the director are subject to judicial review pursuant to title 12, chapter 7, article 6.

A.R.S. § 32-2351. Definitions

In this chapter, unless the context otherwise requires:

- 1. "Agent" means any person who, for compensation, enrolls or attempts to enroll residents of this state in a professional driver training school through personal or telephone contact, advertisement, mail or any other type of publication.
- 2. "Director" means the director of the department of transportation.
- 3. "Instructor" means any person, whether acting for himself as an operator of a professional driver training school or for any such school for compensation, who teaches, conducts classes of, gives demonstrations to, or supervises the practice of persons learning to operate or drive motor vehicles or preparing to take an examination for a driver license or instruction permit, and any person who supervises the work of any other instructor.
- 4. "Professional driver training school" or "school" means a business enterprise conducted by an individual, association, partnership, or corporation that educates and trains persons, either practically or theoretically, or both, to operate or drive commercial motor vehicles, that prepares applicants for an examination given by the state for a commercial driver license or instruction permit and that charges a consideration or tuition for these services.

A.R.S. § 32-2371. License for schools; requirements; fingerprint clearance card

A. No professional driver training school shall be established nor shall any such existing school be continued on or after March 13, 1968 unless such school applies for and obtains from the director a license in the manner and form prescribed by the director.

B. Rules adopted by the director shall state the requirements for a school license, including requirements concerning location, equipment, courses of instruction, instructors, previous records of the school and instructors, schedule of fees and charges, character and reputation of the operators and instructors, insurance in such sum and with such provisions as the director deems necessary to protect adequately the interests of the public, and such other matters as the director may prescribe for the protection of the public.

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 licensure pursuant to this chapter shall provide the department or a contracted private entity of the department pursuant to section 32-2352 with a valid fingerprint clearance card issued pursuant to section 41-1758.03.

A.R.S. § 32-2371.01. License for agents; requirements

A. The director may require an agent who operates from a location in this state and who solicits students on behalf of a professional driver training school that is located in this state or any other state to obtain a license in the manner and form prescribed by the director.

B. If the director requires licensure of agents, the director shall adopt rules that state the requirements for an agent license, including requirements concerning truthfulness and the adequacy of information provided by the agent to members of the public regarding the professional driver training school that the agent represents.

A.R.S. § 32-2373. Refusal to issue or renew license of school or agent

A. The director may refuse to issue or renew the license for a school or an agent in any case in which the director determines that the licensee or applicant has not complied with, or has knowingly violated, any provision of this chapter or any rule adopted pursuant to this chapter by the director.

B. An applicant or licensee who is aggrieved by the director's decision may make a written request to the department for a hearing within thirty days after service of notice of the refusal. If the applicant or licensee does not request a hearing within thirty days, the decision is final. If the applicant or licensee requests a hearing, the director shall give written notice to the applicant or licensee to appear at the hearing and show cause why the refusal to issue or renew the license should not be upheld. After consideration of the evidence presented at the hearing, the director shall serve notice in writing to the applicant or licensee of the director's findings and order.

A.R.S. § 32-2374. Fees

Except as provided in section 32-4301, all licenses expire on the last day of the calendar year and may be renewed on application to the director as prescribed by rule. Each application for an original or renewal license to operate a

professional driver training school shall be accompanied by a fee of two hundred dollars. Each application for an original or renewal agent's license shall be accompanied by a fee of ten dollars. An application for a branch license shall be accompanied by a fee of fifty dollars. No license fee may be refunded in the event a license is suspended or revoked.

A.R.S. § 32-2391. Suspension and revocation of license; determination; appeal

The director, after conducting a hearing for the licensee, may cancel, suspend or revoke the license of a school or agent in any case in which the director finds that the licensee has not complied with, or has knowingly violated, this chapter or any rule adopted under this chapter. Each cancelled, suspended or revoked license shall be returned to the director by the licensee. Decisions of the director shall be subject to judicial review pursuant to title 12, chapter 7, article 6.

A.R.S. § 41-1009. Inspections and audits; applicability; exceptions

A. An agency inspector, auditor or regulator who enters any premises of a regulated person for the purpose of conducting an inspection or audit shall, unless otherwise provided by law:

1. Present photo identification on entry of the premises.
2. On initiation of the inspection or audit, state the purpose of the inspection or audit and the legal authority for conducting the inspection or audit.
3. Disclose any applicable inspection or audit fees.
4. Afford an opportunity to have an authorized on-site representative of the regulated person accompany the agency inspector, auditor or regulator on the premises, except during confidential interviews.
5. Provide notice of the right to have on request:
 - (a) Copies of any original documents taken by the agency during the inspection or audit if the agency is permitted by law to take original documents.
 - (b) A split of any samples taken during the inspection if the split of any samples would not prohibit an analysis from being conducted or render an analysis inconclusive.
 - (c) Copies of any analysis performed on samples taken during the inspection.
 - (d) Copies of any documents to be relied on to determine compliance with licensure or regulatory requirements if the agency is otherwise permitted by law to do so.
6. Inform each person whose conversation with the agency inspector, auditor or regulator during the inspection or audit is tape recorded that the conversation is being tape recorded.
7. Inform each person who is interviewed during the inspection or audit that:
 - (a) Statements made by the person may be included in the inspection or audit report.
 - (b) Participation in an interview is voluntary, unless the person is legally compelled to participate in the interview.
 - (c) The person is allowed at least twenty-four hours to review and revise any written witness statement that is drafted by the agency inspector, auditor or regulator and on which the agency inspector, auditor or regulator requests the person's signature.

(d) The agency inspector, auditor or regulator may not prohibit the regulated person from having an attorney or any other experts in their field present during the interview to represent or advise the regulated person.

B. On initiation of an audit or an inspection of any premises of a regulated person, an agency inspector, auditor or regulator shall provide the following in writing:

1. The rights described in subsection A of this section and section 41-1001.01, subsection C.
2. The name and telephone number of a contact person who is available to answer questions regarding the inspection or audit.
3. The due process rights relating to an appeal of a final decision of an agency based on the results of the inspection or audit, including the name and telephone number of a person to contact within the agency and any appropriate state government ombudsman.
4. A statement that the agency inspector, auditor or regulator may not take any adverse action, treat the regulated person less favorably or draw any inference as a result of the regulated person's decision to be represented by an attorney or advised by any other experts in their field.
5. A notice that if the information and documents provided to the agency inspector, auditor or regulator become a public record, the regulated person may redact trade secrets and proprietary and confidential information unless the information and documents are confidential pursuant to statute.
6. The time limit or statute of limitations applicable to the right of the agency inspector, auditor or regulator to file a compliance action against the regulated person arising from the inspection or audit, which applies to both new and amended compliance actions.

C. An agency inspector, auditor or regulator shall obtain the signature of the regulated person or on-site representative of the regulated person on the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable, indicating that the regulated person or on-site representative of the regulated person has read the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable, and is notified of the regulated person's or on-site representative of the regulated person's inspection or audit and due process rights. The agency inspector, auditor or regulator may provide an electronic document of the writing prescribed in subsection B of this section and section 41-1001.01, subsection C and, at the request of the regulated person or on-site representative, obtain a receipt in the form of an electronic signature. The agency shall maintain a copy of this signature with the inspection or audit report and shall leave a copy with the regulated person or on-site representative of the regulated person. If a regulated person or on-site representative of the regulated person is not at the site or refuses to sign the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable, the agency inspector, auditor or regulator shall note that fact on the writing prescribed in subsection B of this section and section 41-1001.01, subsection C, if applicable.

D. An agency that conducts an inspection shall give a copy of the inspection report to the regulated person or on-site representative of the regulated person either:

1. At the time of the inspection.
2. Notwithstanding any other state law, within thirty working days after the inspection.
3. As otherwise required by federal law.

E. The inspection report shall contain deficiencies identified during an inspection. Unless otherwise provided by state or federal law, the agency shall provide the regulated person an opportunity to correct the deficiencies unless the agency documents in writing as part of the inspection report that the deficiencies are:

1. Committed intentionally.
2. Not correctable within a reasonable period of time as determined by the agency.
3. Evidence of a pattern of noncompliance.
4. A risk to any person, the public health, safety or welfare or the environment.

F. If the agency is unsure whether a regulated person meets the exemptions in subsection E of this section, the agency shall provide the regulated person with an opportunity to correct.

G. If the agency allows the regulated person an opportunity to correct the deficiencies pursuant to subsection E of this section, the regulated person shall notify the agency when the deficiencies have been corrected. Within thirty days after receipt of notification from the regulated person that the deficiencies have been corrected, the agency shall determine if the regulated person is in substantial compliance and notify the regulated person whether or not the regulated person is in substantial compliance. If the regulated person fails to correct the deficiencies or the agency determines the deficiencies have not been corrected within a reasonable period of time, the agency may take any enforcement action authorized by law for the deficiencies.

H. If the agency does not allow the regulated person an opportunity to correct deficiencies pursuant to subsection E of this section, on the request of the regulated person, the agency shall provide a detailed written explanation of the reason that an opportunity to correct was not allowed.

I. An agency decision pursuant to subsection E or G of this section is not an appealable agency action.

J. At least once every month after the commencement of the inspection, an agency shall provide a regulated person with an update on the status of any agency action resulting from an inspection of the regulated person. An agency is not required to provide an update after the regulated person is notified that no agency action will result from the agency inspection or after the completion of agency action resulting from the agency inspection.

K. For agencies with authority under title 49, if, as a result of an inspection or any other investigation, an agency alleges that a regulated person is not in compliance with licensure or other applicable regulatory requirements, the agency shall provide written notice of that allegation to the regulated person. The notice shall contain the following information:

1. A citation to the statute, regulation, license or permit condition on which the allegation of noncompliance is based, including the specific provisions in the statute, regulation, license or permit condition that are alleged to be violated.
2. Identification of any documents relied on as a basis for the allegation of noncompliance.
3. An explanation stated with reasonable specificity of the regulatory and factual basis for the allegation of noncompliance.
4. Instructions for obtaining a timely opportunity to discuss the alleged violation with the agency.

L. Subsection K of this section applies only to inspections necessary for the issuance of a license or to determine compliance with licensure or other regulatory requirements. Subsection K of this section does not apply to an action

taken pursuant to section 11-871, 11-876, 11-877, 49-457.01, 49-457.03 or 49-474.01. Issuance of a notice under subsection K of this section is not a prerequisite to otherwise lawful agency actions seeking an injunction or issuing an order if the agency determines that the action is necessary on an expedited basis to abate an imminent and substantial endangerment to public health or the environment and documents the basis for that determination in the documents initiating the action.

M. This section does not authorize an inspection or any other act that is not otherwise authorized by law.

N. Except as otherwise provided in subsection L of this section, this section applies only to inspections necessary for the issuance of a license or to determine compliance with licensure or other regulatory requirements applicable to a licensee and audits pursuant to enforcement of title 23, chapters 2 and 4. This section does not apply:

1. To criminal investigations, investigations under tribal state gaming compacts and undercover investigations that are generally or specifically authorized by law.
2. If the agency inspector, auditor or regulator has reasonable suspicion to believe that the regulated person may be engaged in criminal activity.
3. To the Arizona peace officer standards and training board established by section 41-1821.
4. To certificates of convenience and necessity that are issued by the corporation commission pursuant to title 40, chapter 2.

O. If an agency inspector, auditor or regulator gathers evidence in violation of this section, the violation may be a basis to exclude the evidence in a civil or administrative proceeding.

P. Failure of an agency, board or commission employee to comply with this section:

1. May subject the employee to disciplinary action or dismissal.
2. Shall be considered by the judge and administrative law judge as grounds for reduction of any fine or civil penalty.

Q. An agency may make rules to implement subsection A, paragraph 5 of this section.

R. Nothing in this section shall be used to exclude evidence in a criminal proceeding.

S. Subsection A, paragraph 7, subdivision (c) and subsection E of this section do not apply to the department of health services for the purposes of title 36, chapters 4 and 7.1.

T. Subsection B, paragraph 5 and subsection E of this section do not apply to the corporation commission for the purposes of title 44, chapters 12 and 13.

A.R.S. § 41-1064. Licenses; renewal; revocation; suspension; annulment; withdrawal

A. When the grant, denial or renewal of a license is required to be preceded by notice and an opportunity for a hearing, the provisions of this article concerning contested cases apply.

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

C. No revocation, suspension, annulment or withdrawal of any license is lawful unless, prior to the action, the agency provides the licensee with notice and an opportunity for a hearing in accordance with this chapter. If the agency finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

OIL AND GAS CONSERVATION COMMISSION (F-17-0510)

Title 12, Chapter 7, Article 1, Oil, Gas, Helium, and Geothermal Resources



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

MEETING DATE: July 6, 2017

AGENDA ITEM: E-1

TO: Members of the Governor's Regulatory Review Council
FROM: Chris Kleminich, Staff Attorney
DATE : June 20, 2017
SUBJECT: OIL AND GAS CONSERVATION COMMISSION (F-17-0510)
Title 12, Chapter 7, Article 1, Oil, Gas, Helium, and Geothermal Resources

This five-year-review report from the Oil and Gas Conservation Commission (Commission or OGCC) covers 55 rules in A.A.C. Title 12, Chapter 7, Article 1. The rules have been adopted in their current form at various points between 1993 and 2008.

According to its website, the Commission regulates the production of, and drilling for, oil, gas, helium, carbon dioxide, and geothermal resources. The Commission consists of five members appointed by the Governor and one ex-officio member, the State Land Commissioner. In 2016, the administrative duties of the Commission were transferred to the Department of Environmental Quality (DEQ).

Proposed Action

The Commission indicates that it intends to pursue an exception from Executive Order 2017-02 to amend Sections 101, 103, 104, 107, 110, 111, 112, 113, 116, 117, 121, 122, 126, 127, 137, 139, 142, 151, 152, 153, 161, 175, 176, 178, 181, 182, 185, 186, 187, 188, 190, and 194 in accordance with the analysis provided in the report.

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 Commission has certified its compliance with A.R.S. § 41-1091.

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

Yes. The Commission indicates that the following rules could be made more effective:

- Section 103: Performance bond price amounts are too low and out of date when compared to Colorado, New Mexico, Utah, and Nevada. The current performance bond amounts required in the rule are inadequate to cover the state's costs to plug a well properly, should an operator choose to forsake its financial responsibility.
- Section 121: The Commission reviewed well records and discovered that there has been long-term confusion regarding the definition of a "completed well" and "the date the work is done" that has interfered with timely compliance for submitting completion data.
- Section 153: A reference to "geothermal wells" should be added to the rule.
- Section 175: While the Commission indicates that the rule is effective in achieving its immediate objectives, there is potential overlap with competing rules adopted by the Environmental Protection Agency (EPA) and DEQ, which require permits for the same thing.

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 Commission indicates that it has received two written comments related to the rules during the past five years.

In relation to Section 103, Kinder-Morgan CO₂ Company submitted a comment related to the performance bonding requirements in the rule that the Commission interprets as support for its proposed course of action.

In relation to Section 121, Ranger Development submitted a criticism related to its belief that the rule lacks protection of proprietary data for geologic and seismic interpretation. The Commission indicates that Ranger recommended that the Commission develop procedures to safeguard presentation of confidential data made in support of oil and gas drilling applications. In response, the Commission indicates that statute, particularly A.R.S. § 44-1374, protects the needs of operators who must include trade secret material with permit applications. The Commission states that it will add a reminder to its Permit or Permit Application Instructions related to an applicant's need to demonstrate, at the time of submittal of the application, a basis for confidentiality pursuant to the statute.

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

Yes. The Commission cites to both general and specific authority for the rules. Of particular significance is A.R.S. § 27-516(A), which requires the Commission to "make rules and amend them as deemed necessary for the proper administration and enforcement of this article [Title 27, Chapter 4, Article 1, Production and Conservation]." In addition, A.R.S. § 27-656(A) requires the Commission to "adopt rules necessary for the proper administration and enforcement of this article [Title 27, Chapter 4, Article 4, Geothermal Resources]."

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

Yes. The Commission indicates that the rules are consistent with all applicable state and federal statutes and rules, with the possible exception of the Interim Final Rule (IFR) promulgated by the Pipeline Hazardous Materials and Safety Administration (PHMSA) on December 19, 2016. See 81 FR 91860. The Commission indicates that the IFR provides new regulations related to both wellhead and pipeline operation. While the Arizona Corporation Commission (ACC) has jurisdiction over pipeline safety, the OGCC has jurisdiction over the wellheads. The OGCC states that it is working with the Attorney General's Office and the ACC to determine if there are any overlapping responsibilities.

The OGCC notes that Arizona has two intrastate underground storage facilities, neither of which is connected to a natural gas transportation pipeline. The OGCC indicates that the ACC's Pipeline Safety Division interprets the IFR to not currently apply in Arizona because those facilities do not store natural gas. While Sections 175 through 182 may eventually need to be amended to ensure compliance with the IFR, the OGCC states that its preliminary interpretation is that the IFR will not affect the state's rules regulating its two existing underground storage facilities.

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

Yes. The Commission indicates that it enforces the rules as written.

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

Yes. The Commission indicates that the following rules could be made more clear, concise, and understandable:

- Section 101: Modifications to definitions are needed.
- Section 107: Subsections (B) and (E) require an operator to provide additional supporting information to the Commission with any drilling application when the applicant seeks a well spacing exception. The rule could be improved by clearly stating the additional requirements. In addition, though the Commission has always required 15 days' notice for hearings on well spacing exceptions, the rule is silent on the duration of the public notice period for a well spacing exception.
- Sections 110 and 111: Replacing the terms "corrective measures" and "remedial action" with "corrective actions" could improve clarity and conciseness. Understandability would also be improved by replacing the term "witness" with "inspect."
- Section 112: Wording about reporting to the Commission is awkward. In addition, replacing the terms "corrective measures" and "remedial action" with "corrective actions" in subsection (B) could improve clarity and conciseness.
- Section 113: The phrase "high pressures do or are likely to exist" in subsection (A) is vague and subjective.
- Section 116: The time-frame for a hearing is not specified. In addition, the rule should better differentiate "multiple zone completions" from "commingling production." Also,

understandability would be improved by replacing the term “witness” with “inspect” or “observe.”

- Section 117: The rule could be made clearer if coordinated with key requirements from the DEQ aquifer protection program.
- Section 121: Operators are confused by the language of subsection (A). In addition, due to the transfer of administrative responsibilities to DEQ, the mailing address must be updated in subsection (B)(3).
- Section 122: A cross-reference to Section 104(A) could improve clarity.
- Section 126: The rule could be improved by adding language related to the use of Sundry Notices.
- Section 127: Understandability would be improved by replacing the term “witness” with “inspect.”
- Section 137: The time-frame for a hearing is not specified. In addition, a new definition for “pool” could be added to differentiate “multiple zone completions” from “commingling production.” Also, understandability would be improved by replacing the term “witness” with “inspect” or “observe.”
- Section 139: The rule is silent on the duration of the public notice period for a Commission hearing on the use of a vacuum pump in a well.
- Section 142: The term “measure” requires clarification.
- Section 152: The time-frame for a hearing is not specified.
- Section 175: The rule lacks clarity on multiple issues related to the EPA’s Underground Injection Control (UIC) program.
- Section 176: The requirement for a 15-day notice before a public hearing conflicts with the 10-day notice requirement in Section 107(E)(4). A single time frame of 15 calendar days is recommended for consistency and to give the public adequate notice.
- Section 178: The numeral “1” should be changed to “one” in subsection (3).
- Section 181: The rule is not clear as to whether a public hearing is required or that approval can be administratively granted. In addition, the rule is silent on any time-frame that the Commission must comply with in accordance with Section 104(C).
- Section 182: The terms “witness,” “observe,” and “inspect” are used interchangeably in the rule. For consistency, the Commission may, where appropriate, replace “witness” and “observe” throughout the rules with “may inspect” or “shall inspect.”
- Section 186: The rule lacks specificity on content for a typical geothermal report.

8. Stringency of the Rules:

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

No. The Commission indicates that the rules are not more stringent than the federal laws applicable to oil and gas conservation.

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 none of the rules have been adopted after 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. In 2012, the Commission indicated its intent to amend Section 107(E) by December 2013 to clarify that the Commission may grant exceptions to regular locations for horizontally drilled wells after notice and hearing. The Commission has not yet pursued an exception from the moratorium to amend the rule. The Commission states that the regulated community currently applies for, and are regularly granted, exceptions to well spacing.

Conclusion

As noted above, the Commission intends to seek an exception from Executive Order 2017-02 to amend many of the rules. The report generally meets the requirements of A.R.S. § 41-1056 and R1-6-301, and this analyst recommends that the report be approved.



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

MEETING DATE: July 6, 2017

AGENDA ITEM: E-1

TO: Members of the Governor's Regulatory Review Council
FROM: GRRC Economic Team
DATE : June 20, 2017
SUBJECT: OIL AND GAS CONSERVATION COMMISSION (F-17-0510)
Title 12, Chapter 7, Article 1, Oil, Gas, Helium, and Geothermal Resources

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. Economic Impact Comparison

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the Article 1 rules contained in the five-year-review report.

The rules address procedures involved in regulation of properly closing geothermal wells. In the past, the Commission would vote to forfeit the bonds of operators who failed to properly plug geothermal wells. It has since been determined that such action is inadequate to protect the State of Arizona financially from the full liability exposure. The overall objective of the Commission is to conserve and prevent the waste of oil and gas and non-hydrocarbon gases, and regulate oil and gas wells. The responsibility extends to regulating drilling for and production of oil, gas, and non-hydrocarbon substances, such as helium, carbon dioxide, and geothermal resources.

At least seven companies (two publicly-owned businesses, two publicly-owned small businesses, and three privately-owned small businesses) are engaged in oil and gas exploration or development activity in Arizona; two operate 14 liquefied petroleum gas (LPG) storage wells, four operate 41 producing oil and gas wells, and one or more are currently drilling wells.

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

The Commission has determined that the rules are mostly effective and impose the least burden and costs to the regulated community. The cost to comply with these rules is minimal and necessary to protect public health and safety.

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.

4. Conclusion

Staff finds that the report complies with A.R.S. § 41-1056 and recommends approval.



Douglas A. Ducey
Governor

State of Arizona
Oil and Gas Conservation Commission
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Dennis L. Turner, Oil and Gas Administrator

Commissioners:
Frank Thorwald, Chair
Robert L. Wagner, Vice Chair
Stephen R. Cooper
William C. Feyerabend
J. Dale Nations, Ph.D.

March 20, 2017

VIA EMAIL and CERTIFIED MAIL

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

Re: Five Year Rule Review Report, Title 12, Chapter 7, Article 1

Dear Ms. Ong:

The Arizona Oil and Gas Conservation Commission (AOGCC) has reviewed Title 12, Chapter 7, Article 1 pursuant to A.R.S. § 41-1056 and the Governor's Regulatory Review Council's five year review schedule. One hard copy and one electronic copy of the report of the AOGCC's findings, proposed courses of action and justifications is enclosed, as is one electronic copy of the rules being reviewed and of the general and specific statutes authorizing the rules. The submittal meets the requirements of A.A.C. R1-6-301. As the AOGCC reviews and establishes its rulemaking priorities, and pending exceptions under any applicable rule moratorium, the AOGCC anticipates submitting rulemakings to the Council for certain sections in this article as described in the report.

I certify that this agency is in compliance with A.R.S. § 41-1091.

You may contact Dennis Turner, the Oil and Gas Program Administrator, with questions on the report at (602) 771-4501 or email at ogcc@azdeq.gov.

Sincerely,

Robert L. Wagner
Vice Chairman

Enclosures

FIVE-YEAR REVIEW REPORT
TITLE 12. NATURAL RESOURCES
CHAPTER 7. OIL AND GAS CONSERVATION COMMISSION
ARTICLE 1. OIL, GAS, HELIUM, AND GEOTHERMAL RESOURCES

I. Information That is Identical for All Rules in A.A.C. Title 12, Chapter 7, Article 1 (unless stated otherwise in the Section by Section Analysis)

1. Authorization of rules by existing statutes:

The Arizona Oil and Gas Conservation Commission (AOGCC) is granted authority to prevent the waste of oil and gas and non-hydrocarbon gases in Arizona Revised Statutes (A.R.S.) § 27-503. The Commission is granted authority under A.R.S. §§ 27-516(A) and 27-656(A) to adopt the rules in 12 Arizona Administrative Code (A.A.C.) 7, Article 1.

2. Objective of the rules:

The overall objective of the AOGCC is specified in A.R.S. § 27-514 *et seq.*, which is to conserve and prevent the waste of oil and gas and non-hydrocarbon gases and regulate oil and gas wells. The responsibility extends to regulating drilling for and production of oil, gas, and non-hydrocarbon substances, such as helium, carbon dioxide, and geothermal resources.

3. Effectiveness of the rule in achieving the objectives:

RESERVED for Part II – Section by Section Analysis of Rules

4. Consistency of the rules with state and federal statutes and rules:

The AOGCC judges the consistency of its rules in connection with its statutory declaration of policy (A.R.S. § 27-502), obligation to prevent physical waste (A.R.S. § 27-503), authorizing statutes (A.R.S. §§ 27-515, 27-516, and 27-656), and the Arizona Administrative Procedures Act (A.R.S. §§ 41-1001 *et seq.*). A.A.C. Title 12, Chapter 7 is consistent with all applicable state and federal statutes and rules applicable to oil, gas, helium, and geothermal resources, with one possible exception. That exception is the Interim Final Rule promulgated by the Pipeline Hazardous Materials and Safety Administration (PHMSA) on December 19, 2016 at 81 FR 91860, discussed below in item #12.

5. Status of Agency enforcement policy regarding the rules:

The Arizona Administrative Code sets forth rule requirements to drill and produce oil, gas and geothermal resources in a manner that conserves these resources. The AOGCC enforces the rules by conducting inspections, reviewing numerous submitted forms and reports, and when necessary, referring enforcement actions to the Arizona Attorney General’s Office.¹

The existing rule, R12-7-103, only requires a \$10,000 performance bond for any well drilled to 10,000 feet and \$20,000 for wells drilled deeper than 10,000 feet. For multiple wells, an operator must provide a blanket performance bond to cover all wells: \$25,000 (10 or fewer wells); \$50,000 (more than 10, but fewer than 50 wells); or \$250,000 (50 or more wells). The last revision to these performance bond amounts was made in 1994 or earlier.

Ensuring that operators properly close (“plug and abandon”) geothermal wells has been difficult for

¹ Effective August 6, 2016, SB-1530, 52nd Legislature, Second Session, amended A.R.S. § 27-515(A) and assigned the Arizona Department of Environmental Quality to provide staff support to the AOGCC to administer the oil and gas program.

the AOGCC because the mandatory performance bond amounts are very inadequate to cover plugging and abandonment. Geothermal wells typically reach depths of 10,000 feet or more. Plugging costs increase as the wells are drilled deeper; geothermal wells are amongst the deepest wells drilled in the state. A \$20,000 performance bond covers only a fraction of the cost to properly plug and abandon a geothermal well. The state is forced to take action to plug and abandon any well when the operator fails to abandon a well in compliance with R12-7-127. The AOGCC must vote on the performance bond forfeiture and then use the funds to properly abandon the well.

The AOGCC spent up to ten years, between 2000 and 2010, pushing individual geothermal well owners to properly plug and abandon their wells. The wells were in areas undergoing residential development in Chandler. Mandatory and timely operator compliance with the rule reduces the significant threat to public health and safety consistent with Executive Order (EO) 2017-02.

The AOGCC and the state face high costs of plugging and abandonment in excess of the performance bond. In the past, the AOGCC has voted to forfeit the performance bonds of operators who failed to properly plug and abandon shallower oil and gas wells, which were sufficient to cover the Commission's costs at one time. Today, rising costs of drilling, plugging and abandoning make such action inadequate to protect the State of Arizona financially from the full liability exposure.

6. Analysis of clarity, conciseness, and understandability:

Generally, the rules are clear, concise, and understandable and are consistent with the applicable statutes and rules, unless stated otherwise in the Section by Section Analysis.

For consistency and to add clarity, one common recommendation throughout this report is to, "Add clarifying language, 'on a form approved by the Commission'". Over time, the AOGCC has created about twenty forms for operators to use; however their use is inconsistent and the oil and gas program's reporting requirements could be met more timely and efficiently, if use of these forms were required in the rule. Only two places in the current rule refer to a form by a proper name: R12-7-125(B) ("Sundry Notice") and R12-7-129(B) ("notarized water-well responsibility form"). This revision would reduce the regulatory burden while achieving the same regulatory objective, consistent with EO2017-02.

Several AOGCC actions to permit or otherwise authorize an operator action require the Commissioners to vote on approval at a public hearing. The rules could be improved by clearly stating in each instance the time frame for a public notice before the hearing. For example: R12-7-176(A)(B), 15 days is specified for a hearing for an injection well permit; R12-7-107(E)(4) provides 10 days for change of a well classification; elsewhere, the time frame is unspecified. Currently, if the time frames are unspecified, the AOGCC infers it to be 15 calendar days. The rules could be improved by a consistent time frame of 15 calendar days to give the public adequate notice and allow time for preparation. Rule language should be added where noted in the Section by Section Analysis.

The AOGCC recommends amendments to R12-7-107(E), 107(F), 107(G), 116, 137, 139 and 152(B) to clearly designate that 15 calendar days' notice is required before any public hearing.

7. Written criticisms of the rules received within the last five years:

For this Five Year Rule Review Report, on December 16, 2016, the AOGCC invited written comments from industry stakeholders on the effectiveness of its rules in achieving the objectives and an analysis of clarity, conciseness, and understandability of the rules. The AOGCC received one response from Kinder-Morgan CO₂ Company, LP pertaining to the effectiveness of R12-7-103 (Bonds). That comment is discussed in the Section by Section Analysis in Section 103.

The AOGCC received one written criticism on the rules within the past five years in regards to confidentiality of proprietary data submitted with a drilling application. This report will address the details in Section 121, item #7.

8. Comparison of economic, small business, and consumer impact with economic impact statement:

At least seven companies (two publicly-owned businesses, two publicly-owned small businesses, and three privately-owned small businesses) are engaged in oil and gas exploration or development activity in Arizona; two operate 14 liquefied petroleum gas (LPG) storage wells, four operate 41 producing oil and gas wells, and one or more are currently drilling wells.

These rules directly impact the companies engaged in oil, gas, or geothermal exploration or development activities. In the opinion of the AOGCC, the rules are mostly procedural in nature and do not significantly impact the economy, small businesses or consumers. The AOGCC has not identified any information that would alter the economic, small business, and consumer impact statements that were submitted with the rulemakings in 2007, 2005, 2002, 2000, 1998, 1997, 1993, and 1992. These economic, small business and consumer impact statements concluded that the rules would not significantly impact the economy or have a significant impact upon small businesses or consumers.

9. Any analysis submitted to AOGCC by another person that compares the rules' impact on Arizona's business competitiveness to the impact on businesses in other states:

The AOGCC has received no such written analysis for any rule in this Article.

10. Completion of previous proposed courses of action:

In its March 22, 2012 report to the Governor's Regulatory Review Council, the AOGCC stated its intent to amend R12-7-107(E) to clarify that the Commission may grant exceptions to regular locations for horizontally drilled wells after notice and hearing. The report stated the intent to complete the rulemaking by December 2013 if the Governor's rulemaking moratorium ended as scheduled in June 2012. The moratorium has been extended and criteria for exception have changed. Although the AOGCC did not seek an exception to the rulemaking moratorium during this reporting period, the Commission will evaluate the current criteria and pursue an exception. The regulated community regularly applies for, and the Commission grants, exceptions to well spacing. The AOGCC will determine the priority of this rule making exception request based on its overall workload, which is explained in the section by section analysis.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, 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 rules are procedural in nature and the AOGCC believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, which are necessary to achieve the underlying regulatory and statutory objectives. The AOGCC encourages exploration and development of oil and gas resources consistent with industry standards and requirements in surrounding states. In the long experience of the Commission, the issues that arise are of a technical nature, rather than legal, and do not lend themselves to retaining legal counsel.

12. Stringency Compared to Corresponding Federal Law:

The oil and gas rules are consistent with and not more stringent than the federal regulations applicable to oil and gas conservation. The Pipeline Hazardous Materials and Safety Administration (PHMSA), however, promulgated a new Interim Final Rule on December 19, 2016 at 81 FR 91860. A failure at Well SS25 at the Aliso Canyon facility in California in 2015 generated the new rule making at the US Department of Transportation. The well is part of an intrastate regulated facility located in Southern California, which suffered a wellhead failure and a resultant uncontrolled release of methane into the environment. In the aftermath of the emergency, PHMSA promulgated minimum federal standards for the wells and downhole facilities located at both intrastate and interstate underground storage facilities. These standards are more stringent than AOGCC's rules, which do not address safety at

underground natural gas storage facilities in the state.

The new Interim Final Rule provides for new regulations of both wellhead and pipeline operation. In Arizona, the Arizona Corporation Commission (ACC) has jurisdiction over the pipeline safety and the AOGCC has jurisdiction over the wellheads. The new Interim Final Rule may require amendments to R12-7-175 through R12-7-182 to ensure they are as stringent as the new Interim Final Rule. The AOGCC has opened a dialog with the Attorney General's Office and the Pipeline Safety Division of the ACC to determine if there are overlapping responsibilities.

Arizona has two intrastate underground storage facilities; however neither is connected to a natural gas transportation pipeline. According to the ACC's Pipeline Safety Division, the Interim Final Rule applies to natural gas and not to liquefied petroleum gas, or LPG (*e.g.*, propane) and does not apply in Arizona because Arizona's two existing facilities do not store natural gas, only LPG. The Pipeline Safety Division opined that the interim rule will only apply in Arizona if any new underground natural gas storage facilities are permitted in the future.

The AOGCC'S preliminary interpretation of the PHMSA Interim Final Rule is that it will not affect the state's rules regulating the two existing underground storage facilities.

13. Compliance with A.R.S. § 41-1037 (General permits; issuance of traditional permit):

The rules were originally adopted and any amendments were promulgated prior to July 29, 2010.

14. Proposed course of action:

If the AOGCC determines the new Interim Final Rule affects any of the wells within its jurisdiction or is required in anticipation of new wells, it will pursue an exception to any applicable Governor's rulemaking moratorium to adopt safety rules as stringent as the PHMSA Interim Final Rule for the two underground natural gas facilities potentially subject to it within the state and to new wells.

In addition, to better protect public health and safety from wells that have not been timely plugged and abandoned, the AOGCC plans to pursue an exception to amend R12-7-103. To reduce the regulatory burden, but achieve the same objective, the AOGCC could also pursue an exception to complete the rulemaking contemplated in the last Five Year Rule Review Report to amend R12-7-107(E) to clarify that the Commission may grant exceptions to regular locations for horizontally drilled wells after notice and hearing; improve identification and utility of AOGCC's forms; make improvements for clarity, conciseness and understandability discussed in the Section by Section Analysis below; and revise every rule requiring a public hearing by the Commission to require "at least 15 days' notice" for consistency. The AOGCC will determine the priority of these rulemaking exception requests based on its overall workload after a decision is made on the Interim Final Rule jurisdiction. The Interim Final Rule would be the AOGCC's first priority due to safety concerns.

II. Section by Section Analysis of Rules

Sections 101 to 107 -- Procedures to obtain a permit to drill oil, gas, helium, or geothermal wells in Arizona.

R12-7-101. Definitions

2. Objective of the rules:

The definition section defines unique terms and acronyms, words with uncommon meanings and technical terms used in the oil and gas industry as used in 12 A.A.C., Chapter 7, Article 1.

3. Effectiveness of the rule in achieving the objectives:

Generally, the rule is effective in achieving the objectives. To improve clarity, the proposed course of action is discussed below.

6. Analysis of clarity, conciseness, and understandability:

R12-7-153 expands the scope of this rule to include non-hydrocarbon gases (helium, carbon dioxide, etc.). This was an amendment to the rule, effective February 23, 1993, but no other changes were made to harmonize other rules, such as the definition of “gas well,” with this amendment. Also, to improve clarity of what constitutes a completed well, a definition for “completion operations” is needed in this section.

14. Proposed course of action:

The AOGCC plans to revise the definition for “gas” to harmonize with R12-7-153. Many definitions are already covered in A.R.S. § 27-501, such as “completed well,” “drilling unit,” “drainage unit,” “pool,” and “well” apply everywhere. The Commission will consider adding other terms not defined in the current rule, such as “formation,” “reservoir,” and “source of supply” (or replacing these terms with one term) and moving other definitions within individual rules to this section.

To reduce confusion and enhance clarity of what constitutes a well completion, the AOGCC will develop a definition of “completion operations” into R12-7-101 that is consistent with A.R.S. § 27-551(2). For purposes of consistency and where applicable, definitions in A.R.S. § 27-551 will be incorporated into this rule where they are applicable on non-state land.

R12-7-103. Bond

2. Objective of the rules:

This section specifies the mandatory financial assurance to be posted by operators, prescribing performance bond amounts and terms for the purpose of the proper plugging and abandonment of the well. In addition, the performance bond shall cover well site reclamation (including ARS § 27-516.18) and removal of equipment and debris and backfilling of all mud pits. The AOGCC requires operators to fill out one of two notarized forms (cash or performance bond), which are available online for recording performance bond deposits with the state.

3. Effectiveness of the rule in achieving the objectives:

The AOGCC has a history of difficulties with operators who fail to comply with the plug and abandonment rules in R12-7-125 through 127. When compared to neighboring states (Colorado, New Mexico, Utah and Nevada), performance bond price amounts are too low and out of date. The current performance bond amounts required in this rule are very inadequate to cover state’s costs to plug a well properly, should an operator choose to forsake its financial responsibility. There is risk of serious financial loss to the State, if an operator defaults on its legal responsibilities to plug and abandon any well it drills. A failure to properly plug and abandon may lead to a violation of A.R.S. § 27-516(A)(1)

and forfeiture of the undervalued performance bond. Under the current rules, the AOGCC does not have the authority to require operators to pay the difference between the bond amount and the actual plugging costs, if the state assumes control of the well. However, Arizona taxpayers must cover the additional cost of proper plugging and abandonment of the well. Also, the Commission has no authority in its current rule to increase performance bond amounts held by individual operators whose activities the AOGCC deems to be high risk. Oil and gas commissions in other states have greater flexibility to increase a performance bond amount in relation to the State's risk in issuing a permit. Oil and gas commissions in other states have greater flexibility to increase a performance bond amount in relation to the State's risk in issuing a permit.

Kinder-Morgan CO₂ Company, LP provided the AOGCC with cost estimates for nine recently plugged wells, which ranged from \$69,700, with a total depth of 2035 ft. to \$187,250 with a total depth of 1885 ft. The average plugging cost was estimated to be \$75,000 per well, but this estimate is highly dependent on the actual wellbore conditions encountered, such as the depth, number of completion zones and casing integrity. The AOGCC will review appropriate performance bond amounts for emergency relief wells and ensure sufficiency and consistency for bonding of all wells between (A)(1) and (A)(2) in R12-7-103.

6. Analysis of clarity, conciseness, and understandability:

The rule is clear, concise, and understandable.

7. Written criticisms of the rules received within the last five years:

The AOGCC received the following comment from Kinder-Morgan CO₂ Company, LP, regarding the performance bonding requirements in neighboring states as compared to Arizona:

“In response to your inquiry regarding performance bonds (R12-7-102)[sic] [repealed, renumbered as R12-7-103] and Kinder Morgan's experience operating in neighboring states, the financial assurance requirements vary somewhat from the AOGCC rules. The dollar amounts of the performance bonds for single-well plugging and abandonment vary from state to state but usually include a base amount related to the depth of the well and may also include a surcharge per foot of depth. In all cases the regulatory body reserves the authority to increase financial assurance requirements based on complex geologic, environmental, or operational circumstances that might otherwise burden that body with undue cost should the operator fail to fulfill its statutory obligations.”

The AOGCC views this comment as additional support for its proposed course of action.

14. Proposed course of action:

The AOGCC will revise Arizona's performance bond amounts and determine what appropriate increases will meet current financial assurance needs. The Commission intends to conduct a survey to determine the range of actual costs to plug and abandon a well in compliance with regulatory requirements as the basis for rule revisions. The Commission will revise the rule to allow adjustment of individual performance bonds, consider a base amount and a surcharge per foot of depth, and update performance bond amounts to reduce financial risk to the state for taking over improperly abandoned wells.

The AOGCC will also consider requiring a financial assurance demonstration by all operators to establish their financial capability of conducting oil and gas business in Arizona. A statutory change would be necessary to authorize the AOGCC to make financial capability determinations.

The AOGCC plans to use the term “performance bond” consistently throughout the rules. Also, the Commission plans to add clarifying language, “on a form approved by the Commission” to direct operators to use clearly identified forms that must accompany a performance bond deposit, either as

cash or as a surety.

R12-7-104. Application for Permit to Drill

2. Objective of the rules:

This section specifies procedures, requirements and timeframes for permitting all wells under jurisdiction of the AOGCC, including oil, gas, injection (R12-7-175 through 182) and geothermal wells. The AOGCC must issue a permit before any such well can be drilled in the state. A fee of \$25 per well is required.

3. Effectiveness of the rule in achieving the objectives:

The rule is generally effective in establishing who is required to obtain a permit to drill under the oil and gas program. An emergency relief well must also meet the requirements or rules 108 through 118, whether it is eventually used for production or not. If the operator needs additional time for the filing requirements, he may ask for it and the Commission has authority to grant it.

6. Analysis of clarity, conciseness, and understandability:

The rule is clear, concise, and understandable. The rule provides overall requirements for a complete application. "The Commission may authorize" means the AOGCC will issue either a written confirmation electronically or by US Mail.

14. Proposed course of action:

The AOGCC plans to add clarifying language, "on a form approved by the Commission".

The \$25 permit fee, established both in statute and rule, has never been reviewed since its inception and is now too low to support the costs of administering the program. The Commission will review other states' oil and gas fee programs and propose adopting a higher rate that can cover at least some of the expenses of administering Arizona's program.

The Commission will consider adding a definition of "commence."

R12-7-105 Change of Location

2. Objective of the rules:

This section specifies the procedures an operator must follow if there is a change in the approved location before drilling. The emergency relief well situation overrides the normal routine of permitting simply because it is an emergency. The rule allows the Administrator and the Commission discretion to address the emergency first, then require a post-drilling permit and post a performance bond, if necessary.

3. Effectiveness of the rule in achieving the objectives:

The rule is effective in achieving the objectives.

R12-7-106 Identification of Wells, Producing Leases, Tanks, Refineries, Buildings, and Facilities

2. Objective of the rules:

This section specifies the minimum requirements for identification that must be present in the field when drilling and signage that must identify wells, producing leases, tanks, refineries, buildings, and oil and gas related facilities.

3. Effectiveness of the rule in achieving the objectives:

The rule is effective in achieving the objectives.

R12-7-107 Spacing of Wells

2. Objective of the rules:

This section specifies well spacing and acreage dedication requirements, which then become dedicated drilling units. If an operator wants to deviate from the standard requirement, the AOGCC must grant a formal exception in a public hearing. The rule's intent is to protect adjoining landowners and other oil and gas interests, who may be damaged by drilling too close to their holdings. An operator must justify his request for a deviation from spacing and acreage requirements based on geological, geophysical, or other subsurface information. Such deviation may be allowed if the information defines a known geologic structure that makes the unconventional well location necessary. Commission approval requires a public hearing to openly discuss the merits and allow the adjoining interests to be informed and voice their concerns.

3. Effectiveness of the rule in achieving the objectives:

Generally, the rule is effective in achieving the objectives. To improve clarity, the proposed course of action is discussed below. The purpose of a public hearing is to allow the public to be informed and allow all affected parties to bring forth their concerns for well spacing exceptions. The point of 107(F) is to show that the Commission has authority to modify the requested well spacing.

6. Analysis of clarity, conciseness, and understandability:

Two issues in this section are vague and could benefit from more precise rule language. R12-7-107(B) and (E) require the operator to provide the Commission extra supporting information, such as subsurface geologic and seismic data, to be submitted with any drilling application (R12-7-104) when the applicant seeks a well spacing exception. The rule could be improved by clearly stating the extra requirements, in accordance with similar specifics that are found in R12-7-176(B) for injection wells.

The second issue is that the rule is silent on the duration of the public notice period for a well *spacing exception*, although 107(E)(4) requires 10 days' notice for a hearing to change a well's *classification*. The AOGCC has always required 15 days' notice for hearings on well spacing exceptions. R12-7-107 should be clarified and public notice requirements made consistent throughout the entire rule.

As the rule is now written, all operators must appear before the Commission in a public hearing to justify why they want an exception for their proposed well to the spacing required by subsections A, B or C. This applies even to operators who control all adjoining leases to the proposed site. The rule's intent is to protect adjoining leaseholders and landowners from possible drainage of their interest in the oil or gas field, but when an operator controls all contiguous acreage in an oil or gas field, this requirement becomes burdensome causing needless delays to the operator who has to justify why he is drilling near one of his own wells.

14. Proposed course of action:

The AOGCC plans to clarify the language that requires supplemental information to be submitted with all well spacing exceptions. Also, new language in R12-7-107(E), 107(F) and 107(G) must clearly specify that a 15 calendar day public notice period is required before holding a public hearing on well spacing exceptions or well re-classifications.

The AOGCC will add language that includes horizontal drilling in the category requiring public notice and hearing (R12-7-107(E)) and clarifying hearing requirements in 107(F). This request was first made in the previous five year report.

The AOGCC plans to revise the language that requires all operators to appear in a public hearing so that operators who control all contiguous acreage will no longer be bound by this requirement. The

Commission would still require that operator to comply with all other application requirements in R12-7-104.

Sections 108 to 118 -- Requirements for drilling, casing, and testing of wells.

R12-7-108 Pit for Drilling Mud and Drill Cuttings

2. Objective of the rules:
Specifies requirements for drilling mud and construction of reserve pits during drilling activity.
3. Effectiveness of the rule in achieving the objectives:
The rule is effective in achieving the objectives.
6. Analysis of clarity, conciseness, and understandability:
The language of the regulation is clear to the regulated community.

R12-7-110 Surface Casing Requirements

2. Objective of the rules:
Specifies depth, size, cementing, and integrity requirements
3. Effectiveness of the rule in achieving the objectives:
Generally, the rule is effective in achieving the objectives. To improve clarity, the proposed course of action is discussed below.
6. Analysis of clarity, conciseness, and understandability:
The rule could be improved by replacing "witness" with "inspect" to improve the public's understanding of the rule's intent and replacing "corrective measures" and "remedial action" with "corrective actions" to improve clarity and conciseness. Cement requires a minimum of 12 hours curing time, which is the industry standard. No Commission authority is required for additional curing time for the cement.
14. Proposed course of action:
The AOGCC will replace "witness" with "inspect" or "observe." The AOGCC will also replace "corrective measures" and "remedial action" with "corrective actions." The Commission will review the sufficiency of the 1 hour minimum requirement in 110(C).

R12-7-111 Intermediate and Production Casing and Tubing Requirements

2. Objective of the rules:
Specifies size, depth, cementing, and integrity requirements of casing and tubing installed in a well.
3. Effectiveness of the rule in achieving the objectives:
Generally, the rule is effective in achieving the objectives. To improve clarity, the proposed course of action is discussed below.
6. Analysis of clarity, conciseness, and understandability:
Replacing "corrective measures" and "remedial action" with "corrective actions" could improve clarity and conciseness.

Replacing "witness" with "inspect" could improve understandability.

14. Proposed course of action:

The AOGCC will consider replacing "witness" with "inspect" or "observe."

R12-7-112 Defective Casing or Cementing

2. Objective of the rules:

Defines defective casing or cementing and standards for remediation.

3. Effectiveness of the rule in achieving the objectives:

Generally, the rule is effective in achieving the objectives. To improve clarity, the proposed course of action is discussed below.

6. Analysis of clarity, conciseness, and understandability:

Wording about reporting to the Commission is awkward.

Replacing "corrective measures" and "remedial action" with "corrective actions" in R12-7-112(B) could improve clarity and conciseness.

14. Proposed course of action:

The AOGCC plans to rephrase existing rule language with either, "The operator shall report to the Commission in writing the corrective actions taken"; or, "The operator shall report in writing to the Commission the corrective actions taken" to improve consistency with similar language elsewhere in the rules.

R12-7-113 Blowout Prevention and Related Well-control Equipment

2. Objective of the rules:

Specifies blowout control equipment installation and testing requirements.

3. Effectiveness of the rule in achieving the objectives:

Generally, the rule is effective in achieving the objectives. To improve clarity, the proposed course of action is discussed below.

6. Analysis of clarity, conciseness, and understandability:

The language in R12-7-113(A), "high pressures do or are likely to exist" is vague and subjective.

14. Proposed course of action:

The AOGCC will change the language in R12-7-113(A) to, "high pressures may be encountered that would result in safety or environmental hazards."

R12-7-114 Recovery of Casing

2. Objective of the rules:

Specifies requirements for recovery of casing.

3. Effectiveness of the rule in achieving the objectives:

The rule is effective in achieving the objectives.

R12-7-115 Deviation of Hole and Directional Drilling

2. Objective of the rules:

Specifies requirements for directional drilling and deviation surveys. The AOGCC will consider language that exempts emergency wells from any public noticing and hearing requirements and enforcement during the emergency.

3. Effectiveness of the rule in achieving the objectives:

The rule is effective in achieving the objectives. The current members of the Commission accept that operators knowingly deviate, provided that it is within the rule requirements. The AOGCC has broad discretionary authority to enforce non-compliance with any rule, including shutting down a drilling operation, pursuant to A.R.S. § 27-503(7). A.R.S. §§ 27-524(A) and 525 authorize the Commission to bring an action in Superior Court to enforce and obtain injunctive relief. Testing is conducted consistent with current technology.

6. Analysis of clarity, conciseness, and understandability:

There is no need to clarify “short distance” because every situation is unique. The Commission and the operator need discretion to determine what is adequate for a “short distance.”

R12-7-116 Multiple Zone Completions

2. Objective of the rules:

Specifies requirements for well completions with more than one production zone in a well.

3. Effectiveness of the rule in achieving the objectives:

Generally, the rule is effective in achieving the objectives. To improve clarity, the proposed course of action is discussed below.

6. Analysis of clarity, conciseness, and understandability:

The time frame for a hearing is not specified and should be consistent throughout the article.

A new definition that differentiates “multiple zone completions” from “commingling production” could improve understandability. Alternatively, clarification language could be placed in section 116 and section 137 to differentiate the context of the two terms and improve conciseness. Replacing “witness” with “inspect” or “observe” could also improve understandability.

14. Proposed course of action:

The AOGCC will include language in this section that clearly specifies a 15 calendar day public notice period is required before a public hearing on multiple zone completions.

The AOGCC will work with the Interstate Oil and Gas Compact Commission (IOGCC) and other states’ oil and gas commissions to determine the need for clarifying language for “multiple zone completions” and “commingling production” and revise this rule. In addition, the Commission will consider revising the rule to use one term uniformly throughout the rule.

The AOGCC will revise “witness” with “inspect” or “observe.”

R12-7-117 Artificial Stimulation of Oil and Gas Wells

2. Objective of the rules:

Specifies requirements for artificial stimulation and chemical treatment of wells.

3. Effectiveness of the rule in achieving the objectives:

Generally, the rule is effective in achieving the objectives. To improve clarity, the proposed course of action is discussed below.

6. Analysis of clarity, conciseness, and understandability:

The rule could benefit by coordinating key requirements from the ADEQ aquifer protection program. While advance notice is not required under AOGCC rules, an aquifer protection permit is required before drilling begins.

14. Proposed course of action:

The AOGCC will work with ADEQ to develop minimum requirements in the oil and gas rule that would meet the requirements of an aquifer protection permit to eliminate a duplicate permit burden, when the operator is performing artificial stimulation of a well under the oil and gas rules. The rules were consistent with industry standards at the time of adoption. If the governor extends the option to the AOGCC to redraft the rules, the Commission will update the rules to current industry standards.

R12-7-118 Operations in Hydrogen Sulfide Environments

2. Objective of the rules:

Specifies requirements to follow when drilling in hydrogen sulfide environments in order to protect human health.

3. Effectiveness of the rule in achieving the objectives:

The rule is effective in achieving the objectives. A.A.C R12-7-118 is cross-referenced in R12-7-104(A)(2) as the construction plan must meet the requirements of subsection 118. The Commission relies on the industry expertise of the operator to determine the risk associated with encountering hydrogen sulfide environments while drilling. Requiring the presence of a safety company to be present at every site would impose an undue regulatory burden.

Sections 119 to 129 -- Requirements for completion, recompletion, plugging, and abandonment of wells.

R12-7-119 Wellhead and Lease Equipment

2. Objective of the rules:

Specifies requirements for wellheads and other lease equipment to prevent waste, protect the environment and ensure safety at the well site.

3. Effectiveness of the rule in achieving the objectives:

The rule is effective in achieving the objectives. The rules were consistent with industry standards at the time of adoption. If the governor extends the option to the AOGCC to redraft the rules, the Commission will update the rules to current industry standards.

R12-7-120 Notification of Fires, Leaks, Spills, and Blowouts

2. Objective of the rules:

Specifies requirements operators must follow for preventing and reporting fires, spills, and blowouts at any drilling, producing, injection, disposal, transportation or storage facility.

3. Effectiveness of the rule in achieving the objectives:

The rule is effective in achieving the objectives. The AOGCC has broad discretionary authority to enforce non-compliance with any rule, including root cause analysis, pursuant to A.R.S. § 27-503(7). A.R.S. §§ 27-524(A) and 525 authorize the Commission to bring an action in Superior Court to enforce and obtain injunctive relief. If an operator requires more than 15 days to conduct an internal investigation, the Commission has discretion to extend the deadline.

R12-7-121 Well Completion and Filing Requirements

2. Objective of the rules:

Specifies completion and filing requirements for drilled wells and their compliance time frames for submittal to the AOGCC. The rule grants confidentiality to certain types of wells.

3. Effectiveness of the rule in achieving the objectives:

The rule requires operators to submit completion reports with certain specified information to the AOGCC in a timely manner. The Commission protects the confidentiality of the data in completion reports, such as well logs and reports, for one year, if the well was drilled in an area outside of an established producing unit or field. The rule refers to this area as “unproven territory.” The rule does not protect an operator’s competitive advantage, which may include proprietary seismic data or geologic information. Operators must submit a confidentiality request before submitting any documentation to the AOGCC, pursuant to A.R.S. § 44-1374.

The AOGCC reviewed well records and discovered that there has been long-term confusion regarding the definition of a “completed well” and “the date the work is done” that has interfered with timely compliance for submitting completion data. The AOGCC developed a specific form for compiling completion data, but the rule does not require operators to use it.

6. Analysis of clarity, conciseness, and understandability:

Operators are confused by the language of R12-7-121(A). Some operators are submitting the required data a year or more after the well has been completed and in some cases after the well has begun producing, which is not the AOGCC’s intent. Without a new definition in rule, an expansion of the applicability to the definition of “completion operations” in A.R.S. § 27-551(2), or a newly established written policy, the existing language in subsection 121(A), “submit other well data to the Commission within 30 days of the date the work is done” the requirements will remain ineffective.

SB 1530 transferred administrative responsibilities to the Arizona Department of Environmental Quality, effective August 6, 2016 and the mailing address must be updated in R12-7-121(B)(3).

7. Written criticisms of the rules received within the last five years:

Ranger Development, L.L.C. sent the AOGCC an email on 12/31/2016 complaining about the lack of protection of proprietary data for geologic and seismic interpretation that they developed in early 2016. It recommended that the Commission develop procedures to safeguard presentation of confidential data made in support of oil and gas drilling applications. The AOGCC believes that protection under A.R.S. § 44-1374 will satisfy the needs of operators who must include trade secret material with permit applications. The AOGCC will add a reminder to its Permit or Permit Application Instructions about the need for the applicant to demonstrate at the time of submittal of the application confidentiality pursuant to this statute.

A.A.C. R12-7-121(C)(1) grants an automatic one-year of confidential record status that applies only to well completion data, provided that the operator submits the data to the AOGCC within 30 days of

completion of the well. An operator may be granted an extension of confidentiality for up to two years, if requested, and the operator can demonstrate that there is “credible evidence that disclosure of the information is likely to cause harm to the operator’s competitive position with respect to unleased land in the vicinity of the well.” The confidential status only applies to wells drilled outside of established producing fields or units. Confidentiality under this subsection does not extend to proprietary data that may be submitted with a drilling application before drilling begins, unless specifically requested by the operator.

The AOGCC has broad discretionary authority to enforce non-compliance with any rule, including shutting down a drilling operation, pursuant to A.R.S. § 27-503(7). A.R.S. §§ 27-524(A) and 525 authorize the Commission to bring an action in Superior Court to enforce and obtain injunctive relief.

14. Proposed course of action:

At a minimum, the AOGCC plans to update the mailing address of the Oil and Gas Program Administrator to 1110 W. Washington St., Phoenix, Arizona 85007. Mail is no longer delivered to 416 W. Congress St., Tucson.

The AOGCC has created a new form for confidentiality demonstrations in conformance with A.R.S. § 44-1374, which allows operators to claim geologic and seismic data, submitted as part of a drilling application, as a trade secret and therefore be protected from public disclosure. The AOGCC informs oil and gas operators that submit drill permit applications to the Commission to use the new form, requesting confidentiality. There is no need to create a new rule or statute to address this situation.

To reduce confusion and enhance clarity of what constitutes a well completion, the AOGCC will incorporate the definition in A.R.S. § 27-551(2) of “completion operations” into R12-7-101.

To reduce confusion, enhance clarity and expedite reporting of well completion data, the AOGCC will add clarifying language, “on a form approved by the Commission” and enforce the use of Form #4 by operators.

R12-7-122 Recompletion and Routine Maintenance Operations

2. Objective of the rules:

Specifies requirements on workovers, recompletions, or stimulation of wells.

3. Effectiveness of the rule in achieving the objectives:

Generally, the rule is effective in achieving the objectives. To improve clarity, the proposed course of action is discussed below.

6. Analysis of clarity, conciseness, and understandability:

An operator who wants to reenter an existing well shall file with the Commission an application for permit to drill or reenter an existing well (Form #3) and pay the applicable fee. The rule language could be clarified by cross-referencing it with R12-7-104(A). “Zone” is an industry term with a common definition.

14. Proposed course of action:

The AOGCC will consider adding language, “on a form approved by the Commission”. The AOGCC may need to work with the IOGCC on the intent of this rule in order to determine what form best serves this purpose.

R12-7-125 Temporarily Abandoned and Shut-In Wells

2. Objective of the rules:
Specifies requirements for operations that are suspended for 60 days or more
3. Effectiveness of the rule in achieving the objectives:
The rule is effective in achieving the objectives.

R12-7-126 Application to Plug and Abandon

2. Objective of the rules:
Requires operators to submit plugging plans to the AOGCC for review and approval.
3. Effectiveness of the rule in achieving the objectives:
Generally, the rule is effective in achieving the objectives. To improve clarity, the proposed course of action is discussed below.
6. Analysis of clarity, conciseness, and understandability:
The rule could be improved by adding language that the Sundry Notice is used for this purpose
14. Proposed course of action:
The AOGCC plans to add clarifying language, “on a form approved by the Commission.” The AOGCC will consider more specific situations for the use of a Sundry Notice throughout the article.

R12-7-127 Plugging Methods and Procedures

2. Objective of the rules:
Specifies plugging methods, procedures, and reporting requirements to prevent subsurface contamination by oil, gas, and geothermal drilling and production activities.
3. Effectiveness of the rule in achieving the objectives:
Generally, the rule is effective in achieving the objectives. To improve clarity, the proposed course of action is discussed below.
6. Analysis of clarity, conciseness, and understandability:
The rule could be improved by replacing "witness" with "inspect" to improve understandability.
14. Proposed course of action:
The AOGCC will make the following revisions: change the wording from “witness” to “inspect” where applicable; change “bore hole” to “borehole;” add requirements for a wellbore schematic diagram in the application; and require a photograph of the marker in place and its GPS coordinates with the plugging record.

R12-7-128 Stratigraphic, Core, and Seismic Holes

2. Objective of the rules:
Specifies requirements for holes drilled to obtain stratigraphic or seismic info
3. Effectiveness of the rule in achieving the objectives:
The rule is effective in achieving the objectives.

R12-7-129 Wells to be Used as Water Wells

2. Objective of the rules:

Specifies requirements for converting any well or exploratory hole to a water well for use by persons who need a potable water source.

3. Effectiveness of the rule in achieving the objectives:

The rule is effective in achieving the objectives.

Sections 135 to 161 -- Requirements for testing and production of wells.

R12-7-135 Gas-oil Ratio and Potential Tests

2. Objective of the rules:

Requires operators to conduct specific tests for the purpose of measuring oil / gas ratios in producing oil fields. This prevents waste and protects adjoining leaseholders' shared interests in the oil and gas produced.

3. Effectiveness of the rule in achieving the objectives:

The rule is effective in achieving the objectives. "Pool" is a common industry term and is defined in A.R.S. § 27-501(16).

R12-7-136 Subsurface Pressure Tests and Reservoir Surveys

2. Objective of the rules:

Specifies initial and periodic testing requirements for oil and gas wells to ensure prevention of waste of oil and gas resources.

3. Effectiveness of the rule in achieving the objectives:

The rule is effective in achieving the objectives.

R12-7-137 Commingling of Production from Pools

2. Objective of the rules:

Specifies requirements for accounting of production from separate pools to prevent waste and protect adjoining interests from being illegally drained. Protects all producers in a unitized pool by requiring a public hearing and AOGCC approval.

3. Effectiveness of the rule in achieving the objectives:

Generally, the rule is effective in achieving the objectives. To improve clarity, the proposed course of action is discussed below.

6. Analysis of clarity, conciseness, and understandability:

The time frame for a hearing is not specified.

"Pool" is defined in A.R.S. § 27-501(16). The rule could be improved by adding a new definition, to differentiate "multiple zone completions" from "commingling production." Alternatively, clarifying

language could be added to R12-7-116 and 137 to differentiate the context of the two terms to improve conciseness. Replacing "witness" with "inspect" or "observe" would also improve understandability.

14. Proposed course of action:

The AOGCC plans to include language in this section that clearly specifies a 15 calendar day public notice period is required before a public hearing on commingling production from pools.

The AOGCC plans to work with the Interstate Oil and Gas Compact Commission (IOGCC) and other states' oil and gas commissions to determine the need for clarifying language for "commingling production." The AOGCC may consider replacing "witness" with "inspect" or "observe" where appropriate.

R12-7-138 Casinghead Gas

2. Objective of the rules:

Regulates the production, sale and transport and venting of all casinghead gas in order to prevent waste. Specifies measurement and reporting requirements to the AOGCC for gas produced from oil wells.

3. Effectiveness of the rule in achieving the objectives:

The rule is effective in achieving the objectives.

R12-7-139 Use of Vacuum Pumps

2. Objective of the rules:

Prohibits the use of vacuum pumps unless authorized by the AOGCC in order to prevent waste and protect adjoining leaseholders from improper drainage of their interests. The Commission has statutory authority over all wells in A.R.S. § 27-516. Furthermore, the AOGCC has broad discretionary authority to promulgate rules that address the overall production rate and the method of production, pursuant to A.R.S. § 27-515, A.R.S. §§ 27-524(A) and 525.

3. Effectiveness of the rule in achieving the objectives:

Generally, the rule is effective in achieving the objectives. To improve clarity, the proposed course of action is discussed below. The Commission has not received a request for the use of vacuum pumps in the recent history of the AOGCC.

6. Analysis of clarity, conciseness, and understandability:

The rule is silent on the duration of the public notice period for an AOGCC hearing on the use of vacuum pump in a well.

14. Proposed course of action:

The AOGCC plans to include language in this section that clearly specifies a 15 calendar day public notice period is required before a public hearing on the use of a vacuum pump in a well. The AOGCC plans to consult with the IOGCC as to applicability of this rule in Arizona and revise the applicability language, if appropriate.

R12-7-140 Pollution, Surface Damage, and Noise Abatement

2. Objective of the rules:

Requires operators to prevent surface/ subsurface pollution, surface damage, and minimize noise

caused by drilling activity.

3. Effectiveness of the rule in achieving the objectives:

The rule is effective in achieving the objectives. The AOGCC has broad discretionary authority to enforce non-compliance with any rule, including shutting down a drilling operation, pursuant to A.R.S. § 27-503(7). A.R.S. §§ 27-524(A) and 525 authorize the Commission to bring an action in Superior Court to enforce and obtain injunctive relief.

R12-7-142 Measurement of Oil

2. Objective of the rules:

Requires precise measurement of oil produced, purchased or transported in order to minimize and/or prevent waste. Requires oil to be measured before transporting from a lease.

3. Effectiveness of the rule in achieving the objectives:

The rule is effective in achieving the objectives.

6. Analysis of Clarity, conciseness, and understandability:

The term “measure” requires clarification.

14. Proposed course of action:

If the governor extends the option to the AOGCC to redraft the rules, the Commission will update the rules to current industry standards.

R12-7-143 Oil Tanks, Fire Walls, and Fire Hazards

2. Objective of the rules:

Specifies safety requirements for oil tanks, fire walls, and preventing fire hazards pursuant to the Declaration of Policy in A.R.S. 502(A)(6) “Safeguard the health, property and public welfare of citizens of the state and other interested persons.”

3. Effectiveness of the rule in achieving the objectives:

The rule is effective in achieving the objectives.

R12-7-150 Capacity Tests of Gas Wells and Geothermal Wells

2. Objective of the rules:

Requires capacity tests for wells in a certain time frame

3. Effectiveness of the rule in achieving the objectives:

The rule is effective in achieving the objectives.

R12-7-151 Measurement of Gas from Gas Wells and Geothermal Resources

2. Objective of the rules:

Requires precise measurement by metering of gas produced, purchased or transported in order to minimize and/or prevent waste. Requires accurate measurement of geothermal resources produced.

3. Effectiveness of the rule in achieving the objectives:

The rule is effective in achieving the objectives.

14. Proposed course of action:

The rules were consistent with industry standards at the time of adoption. If the governor extends the option to the AOGCC to redraft the rules, the Commission will update the rules to current industry standards.

R12-7-152 Utilization of Gas

2. Objective of the rules:

Restricts and prohibits the use of gas from wells by well owners and operators to specific uses in order to prevent waste.

3. Effectiveness of the rule in achieving the objectives:

Generally, the rule is effective in achieving the objectives. To improve clarity, the proposed course of action is discussed below.

6. Analysis of clarity, conciseness, and understandability:

The time frame for a hearing is not specified.

14. Proposed course of action:

The AOGCC plans to add language in section 152(B) that clearly specifies that a 15 calendar day public notice period is required before a public hearing on whether to approve the utilization of gas in the manufacture of carbon black.

R12-7-153 Non-hydrocarbon Gas

2. Objective of the rules:

R12-7-153 Non-hydrocarbon Gas Expands scope of Title 12, Chapter 7 to include non-hydrocarbon gases (“helium, carbon dioxide, and any other non-hydrocarbon gas.”)

3. Effectiveness of the rule in achieving the objectives:

Generally, the rule is effective in achieving the objectives, although the rule could be improved by adding geothermal wells to the list (even though it’s in the title of Article 1).

14. Proposed course of action:

The AOGCC will consider adding geothermal wells to the list, especially in the case of steam generation as a gas is produced in this process.

R12-7-160 Regulation of Production

2. Objective of the rules:

Gives the AOGCC authority to limit, allocate or apportion oil, gas or geothermal production under specific conditions where waste is, or may be caused. The Commission’s purpose is to promote the production of oil and gas in the state of Arizona, as stated in A.R.S. § 27-502.

3. Effectiveness of the rule in achieving the objectives:

The rule is effective in achieving the objectives.

R12-7-161 Producer's Monthly Report

2. Objective of the rules:

Operators are required to report all oil, water, and gas produced from all wells regulated by the AOGCC in the state. This rule specifies what operators must report to the AOGCC on production from each producing lease and the timeframe for submittal.

3. Effectiveness of the rule in achieving the objectives:

Generally, the rule is effective in achieving the objectives. To improve clarity, the proposed course of action is discussed below.

14. Proposed course of action:

The AOGCC plans to add clarifying language, “on a form approved by the Commission.”

Sections 175 to 182 -- Requirements for injection, re-injection, enhanced recovery, disposal, and storage wells.

R12-7-175 Injection Wells including Enhanced Recovery, Disposal, and Storage Wells

2. Objective of the rules:

Identifies the types of injection wells that require a permit from the AOGCC, pursuant to R12-7-104, and further specifies which types of wells are covered under specific sections of the rule.

3. Effectiveness of the rule in achieving the objectives:

Generally, the rule is effective in achieving the immediate objectives of the AOGCC, but there remains the potential overlap with competing rules adopted by USEPA and ADEQ, which also require permits for the same thing.

6. Analysis of clarity, conciseness, and understandability:

This rule is not clear on a few key issues, all of which are related to the Underground Injection Control (UIC) program administered by the US Environmental Protection Agency (USEPA) and the Arizona Department of Environmental Quality’s (ADEQ) Aquifer Protection Program. The rule references “Class II” and “Class V” wells, which is assumed to be the UIC program, but these terms are not defined in R12-7-101. Furthermore, the rule may have overlapping authorities with the Aquifer Protection Program and UIC with respect to regulatory oversight and financial assurance requirements.

14. Proposed course of action:

The AOGCC shall work with USEPA and ADEQ to understand which permitting requirements are redundant and overlapping with the other programs. The end result should be to remove the conflicts and inconsistencies, streamline the permitting process and amend the oil and gas rules accordingly to reduce the regulatory burden while still achieving the same objectives, consistent with EO2017-02.

R12-7-176 Permits for Injection Wells

2. Objective of the rules:

Specifies special requirements for permitting injection wells before the AOGCC will allow any substance to be injected into any geologic stratum.

3. Effectiveness of the rule in achieving the objectives:

Generally, the rule is effective in achieving the objectives. To improve clarity, the proposed course of action is discussed below.

6. Analysis of clarity, conciseness, and understandability:

The requirement in section 176(A)(B) for a 15 day notice before a public hearing conflicts with the requirement in section 107(E)(4), change of well classification, which is ten days. A single time frame of 15 calendar days is recommended for consistency and to give the public adequate notice.

14. Proposed course of action:

The AOGCC plans to amend the rule to designate that a 15 calendar day notice is required before a public hearing on permitting new injection wells and to change section 176(A) to, "... is prohibited unless ~~1st~~ first authorized by ..."

R12-7-178 Notice of Commencement, Discontinuance, and Transfer of Injection Operations Testing and Monitoring of Injection Wells

2. Objective of the rules:

Requires operators to keep the AOGCC informed of the operational status of all regulated injection wells in the state, including start-up, cessation, temporary abandonment, plugging and abandonment or transfer of injection wells.

3. Effectiveness of the rule in achieving the objectives:

Generally, the rule is effective in achieving the objectives. To improve clarity, the proposed course of action is discussed below.

6. Analysis of clarity, conciseness, and understandability:

The rule could be improved by changing "1" to "one" in R12-7-178(3).

14. Proposed course of action:

The AOGCC plans to change R12-7-178(3)(c) to, "The Commission shall return ~~1~~ one copy of the request for transfer to the operator and ~~1~~ one to the proposed new operator ..." and to change 178(3)(c)(ii) to, "the Commission shall return ~~1~~ one copy of the request to the operator and ~~1~~ one copy to the proposed operator ..."

R12-7-179 Testing and Monitoring of Injection Wells

2. Objective of the rules:

Specifies testing, monitoring, and reporting requirements for operators of injection wells. The testing, monitoring and recordkeeping requirements are to ensure operators are in compliance with the AOGCC rules on injection wells.

3. Effectiveness of the rule in achieving the objectives:

The rule is effective in achieving the objectives.

R12-7-180 Supplementary Requirements for Storage Wells

2. Objective of the rules:

Specifies additional requirements an operator must include in any application for drilling storage (injection) wells to store liquid or gaseous hydrocarbons, or any other substances under the jurisdiction of the Commission.

3. Effectiveness of the rule in achieving the objectives:

The rule is effective in achieving the objectives.

R12-7-181 Design and Construction of Storage Wells and Cavities

2. Objective of the rules:

The rule specifies minimum design, construction and maintenance requirements for underground storage of liquid or gaseous hydrocarbons, or any other substances under the jurisdiction of the Commission. This includes the storage wells that service these cavities to prevent waste, leakage or loss of product and/ or exposure of hazardous gases to people, pursuant to the Declaration of Policy in A.R.S. 502(A)(6) “Safeguard the health, property and public welfare of citizens of the state and other interested persons.”

3. Effectiveness of the rule in achieving the objectives:

Generally, the rule is effective in achieving the objectives. To improve clarity, the proposed course of action is discussed below.

6. Analysis of clarity, conciseness, and understandability:

Section 181(A) provides: “... applicant shall demonstrate to the Commission that ..., etc.” implies that the Commission must approve the applicant’s demonstration that the proposed design will preserve the structural integrity of the host rock. However, the rule is not clear whether a public hearing is required or that approval can be administratively granted. In the past the AOGCC has required this demonstration as part of the drilling application (R12-7-104). The rule is silent on any time frame the Commission must comply with, in accordance with R12-7-104(C). R12-7-181(D) preserves Arizona’s two underground storage facilities, however, if it is determined that the AOGCC has jurisdiction over the PHMSA Interim Rule in the state, these design and construction requirements may change.

14. Proposed course of action:

This section may need revision to comply with the new PHMSA Interim Final Rule on underground natural gas storage. Regardless of that outcome, this section should be amended to refer to the application requirements in R12-7-104.

R12-7-182 Operation, Inspection, and Closure of Storage-well Systems

2. Objective of the rules:

Specifies operation, inspection, reporting and abandonment requirements for underground storage wells for natural gas to prevent waste, leakage or loss of product and/ or exposure of hazardous gases to people. The information from required reports assists the AOGCC in monitoring the operator’s compliance with the oil and gas rules and the amount of product produced. The Commission is authorized to adopt this rule, pursuant to the Declaration of Policy in A.R.S. 502(A)(6) “Safeguard the health, property and public welfare of citizens of the state and other interested persons.”

3. Effectiveness of the rule in achieving the objectives:

Generally, the rule is effective in achieving the objectives. To improve clarity, the proposed course of action is discussed below.

6. Analysis of clarity, conciseness, and understandability:

“Witness”, “observe”, “inspect” are used interchangeably in regards to AOGCC activity at the site. For consistency, the AOGCC may consider replacing “witness” and “observe” throughout the rules with “may inspect”, or “shall inspect,” where appropriate.

14. Proposed course of action:

“Storage well” should not be hyphenated in the rule’s title. The AOGCC will change “Storage-well” to “Storage Well,” as in R12-7-181 and will consider replacing “witness” and “observe” with “may inspect”, or “shall inspect,” where appropriate.

Sections 183 to 194 -- Reporting requirements.

R12-7-183 Certificate of Compliance and Authorization to Transport

2. Objective of the rules:

Specifies requirements to transport oil and gas from a lease. The AOGCC issues a certificate, which authorizes an operator or producer to transport oil, gas, or geothermal resources from a lease for each well.

3. Effectiveness of the rule in achieving the objectives:

The rule’s effectiveness is unknown and untested in achieving the objectives, because no new transporters have applied for a certificate to transport in recent history of the AOGCC.

R12-7-184 Recovered Load Oil

2. Objective of the rules:

Load oil is oil pumped into a wellbore in preparation for, or as part of, a treatment of the well. The rule specifies requirements for transport of load oil that is recovered from the well after treatment. “Using load oil, often produced and processed from adjacent wells in the field, reduces the cost of fluids and can enhance the cleanup process when the treatment is complete” (according to The Schlumberger Oilfield Glossary). The AOGCC approves this activity by issuing a certificate of load oil credit and permit to transport.

3. Effectiveness of the rule in achieving the objectives:

In the last decade, the AOGCC has not been asked to issue a certificate of load oil credit and permit to transport. The rule appears to be effective and should not be repealed.

R12-7-185 Transporter's and Storer's Monthly Report

2. Objective of the rules:

The rule is designed to track an oil transporter’s stocks of oil and condensate on hand and all movements within the state of oil and condensate by pipeline, trucks, or other conveyances except railroads. This is done through a system of monthly reports submitted to the AOGCC. The information assists the AOGCC in monitoring the operator’s compliance with the rules and the amount of product produced.

3. Effectiveness of the rule in achieving the objectives:

Generally, the rule is effective in achieving the objectives. To improve clarity, the proposed course of action is discussed below.

14. Proposed course of action:

The AOGCC plans to add clarifying language, “on a form approved by the Commission.”

R12-7-186 Gas or Geothermal Purchaser's Monthly Report

2. Objective of the rules:

Requires purchasers of gas and geothermal products to report monthly on the acquisition and disposition of gas or geothermal resources produced from a well. The information assists the AOGCC

in monitoring the operator's compliance with the rules and the amount of product produced.

3. Effectiveness of the rule in achieving the objectives:

Generally, the rule is believed to be effective in achieving the objectives, but is unknown/ untested, because there is no active geothermal production and the AOGCC is not receiving geothermal production reports.

6. Analysis of clarity, conciseness, and understandability:

The rule needs more specificity on content for a typical geothermal report.

14. Proposed course of action:

The AOGCC plans to add clarifying language, "on a form approved by the Commission."

R12-7-187 Injection Project Report

2. Objective of the rules:

Requires injection well operators to submit monthly reports including locational data, operational parameters and production data. The information assists the AOGCC in monitoring the operator's compliance with the rules and the amount of product produced.

3. Effectiveness of the rule in achieving the objectives:

The rule is working as intended. Generally, the rule is effective in achieving the objectives. To improve clarity, the proposed course of action is discussed below.

14. Proposed course of action:

The AOGCC plans to add clarifying language, "on a form approved by the Commission."

R12-7-188 Refinery Reports

2. Objective of the rules:

Requires refinery operators to report monthly on oil, condensate and other hydrocarbon products and by-products produced at such a facility. The information assists the AOGCC in monitoring the operator's compliance with the rules and the amount of product produced.

3. Effectiveness of the rule in achieving the objectives:

This rule has not been utilized in Arizona, because the state has no oil refineries.

6. Analysis of clarity, conciseness, and understandability:

Should an oil refinery ever be constructed in Arizona, this rule would satisfy the basic requirements of reporting typical data from such a facility that would be of interest to the state. At some future date if a refinery is operating, the rule may have to be amended to accommodate special factors or circumstances applicable to that refinery. The rule should not be repealed.

14. Proposed course of action:

The AOGCC plans to add clarifying language, "on a form approved by the Commission."

R12-7-190 Gasoline Plant Reports

2. Objective of the rules:

Specifies reporting requirements of all operators of plants that extract any hydrocarbon liquids (*e.g.*, gasoline, kerosene, condensate, oil, etc.) from gas. The information assists the AOGCC in monitoring the operator's compliance with the rules and the amount of product produced.

3. Effectiveness of the rule in achieving the objectives:

This rule has not been utilized in Arizona, because the state has no oil refineries and therefore, no gasoline plants.

6. Analysis of clarity, conciseness, and understandability:

Should a gasoline plant be constructed in Arizona, this rule would satisfy the basic requirements of reporting typical data from such a facility that would be of interest to the state. The rule may have to be amended in the future to accommodate factors applicable to a gasoline plant in this state. The rule should not be repealed.

14. Proposed course of action:

The AOGCC plans to add clarifying language, "on a form approved by the Commission."

R12-7-192 Books and Records to Substantiate Reports

2. Objective of the rules:

Specifies requirements for books and records to verify data reported to the AOGCC on prescribed forms. The rule gives the AOGCC legal access to inspect/ audit production data for up to six years after a well is completed.

3. Effectiveness of the rule in achieving the objectives:

The rule is effective in achieving the objectives.

R12-7-194 Organization Reports

2. Objective of the rules:

Specifies information required in a legal document (organization report) that must be submitted with an application to drill or with a Sundry Notice when the operator name changes. It is a statement made under oath of who the operator/ applicant is and that the operator is a legitimate business/ person doing business in the state of Arizona.

3. Effectiveness of the rule in achieving the objectives:

Generally, the rule is effective in achieving the objectives. To improve clarity, the proposed course of action is discussed below.

14. Proposed course of action:

The AOGCC plans to add clarifying language, "on a form approved by the Commission."

Oil and Gas Conservation Commission

TITLE 12. NATURAL RESOURCES

CHAPTER 7. OIL AND GAS CONSERVATION COMMISSION

(Authority: A.R.S. § 27-514 et seq.)

ARTICLE 1. OIL, GAS, HELIUM, AND GEOTHERMAL RESOURCES

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ARTICLE 2. REPEALED

Article 2, consisting of R12-7-201 through R12-7-221, R12-7-231 through R12-7-234, R12-7-241 through R12-7-246, R12-7-251, R12-7-252, R12-7-261 through R12-7-264, R12-7-271, R12-7-272, R12-7-281, R12-7-291 through R12-7-294, and Appendix 1, repealed effective January 2, 1996 (Supp. 96-1).

ARTICLE 1. OIL, GAS, HELIUM, AND GEOTHERMAL RESOURCES

R12-7-101. Definitions

In this Chapter, unless the context otherwise requires:

“API” means American Petroleum Institute.

“Barrel” means 42 (US) gallons measured at 60° F and atmospheric pressure at sea level.

“BTU” means British thermal unit and represents the quantity of heat required to raise the temperature of 1 pound of water 1° F at or near 39.2° F.

“Condensate” means liquid hydrocarbons recovered at the earth’s surface as a result of condensation due to reduced pressure or temperature of petroleum hydrocarbons that exist in a gaseous phase in subsurface reservoir rocks.

“Cubic foot of gas” means the volume of gas contained in 1 cubic foot of space at a standard pressure base of 14.73 pounds per square inch absolute and a standard temperature base of 60° F.

“Gas well” means a well that produces with a gas-oil ratio in excess of 50,000 cubic feet of gas per barrel of oil.

“Injection well” means a well used to inject air, gas, water, or other substance into an underground stratum.

“Mcf” means 1000 cubic feet of gas reported at a pressure base of 14.73 pounds per square inch absolute and a standard temperature base of 60° F.

“Oil well” means a well that produces with a gas-oil ratio less than 50,000 cubic feet of gas per barrel of oil.

“Operator” means any person authorized by an owner to control the day-to-day activities of a well or production or refining facility.

“Shut-in well” means a well that is capable of production in paying quantities, is completed as a producing well, and is not presently being operated.

“Stratigraphic test or core hole test” means drilling a hole for the sole purpose of obtaining geological information.

“Temporarily abandoned well” means a well that is not capable of production in paying quantities and is not presently being operated.

Historical Note

Former B; Former Section R12-7-101 renumbered and amended as Section R12-7-102, former Section R12-7-100 renumbered and amended as Section R12-7-101 effective September 29, 1982 (Supp. 82-5). Amended effective January 2, 1996 (Supp. 96-1). Amended by final rulemaking at 6 A.A.R. 4827, effective December 7, 2000 (Supp. 00-4).

R12-7-102. Repealed

Historical Note

Former 101; Former Section R12-7-102 renumbered and amended as Section R12-7-103, former Section R12-7-101 renumbered and amended as Section R12-7-102 effective September 29, 1982 (Supp. 82-5). Repealed effective January 19, 1994 (Supp. 94-1).

R12-7-103. Bond

A. An operator shall file a performance bond with the Commission before drilling a new well, re-entering an abandoned well, or assuming responsibility as the operator of an existing well. Choosing one of the following options, an operator shall provide a performance bond for each well or a blanket perfor-

mance bond payable to the Oil and Gas Conservation Commission, State of Arizona and conditioned upon the faithful performance by the operator of the duty to drill each well, plug each dry or abandoned well, repair each well causing waste or pollution, maintain and restore each well site and otherwise act in a manner that is consistent with A.R.S. Title 27 Chapter 4 and this Chapter:

1. For individual wells, an operator shall provide a \$10,000 bond for each well drilled to a total depth of 10,000 feet or less or a \$20,000 bond for each well drilled deeper than 10,000 feet, or
2. For multiple wells, an operator shall provide one of the following blanket bonds to cover all wells:
 - a. \$25,000 for 10 or fewer wells;
 - b. \$50,000 for more than 10 but fewer than 50 wells; or
 - c. \$250,000 for 50 or more wells.

B. An operator shall provide a bond in the form of a surety bond, executed by the operator as principal and a corporate surety, authorized to do business in Arizona; a certified check; or a certificate of deposit at a federally insured bank, authorized to do business in Arizona.

C. Transfer of property does not release the bond. If an operator plans to transfer a property and desires release from the bond, the following rules apply:

1. The operator shall notify the Commission in writing of the proposed transfer, providing the location of each well, the date and number of each permit to drill, and the name, address, and telephone number of the proposed transferee;
2. The operator shall obtain from the proposed transferee a declaration to the Commission in writing, accepting the transfer and responsibility for each well. As the new operator, the proposed transferee shall submit a new bond or bonds unless the transferee has previously provided a blanket bond that complies with subsection (A)(2);
3. If the Commission approves the transfer, the transferor is released from all responsibility with respect to the well or wells, and the Commission shall notify the transferor and the bonding company in writing of the release.

Historical Note

Former Rule 102; Former Section R12-7-103 renumbered and amended as Section R12-7-104, former Section R12-7-102 renumbered and amended as Section R12-7-103 effective September 29, 1982 (Supp. 82-5). Amended effective January 19, 1994 (Supp. 94-1). Amended by final rulemaking at 11 A.A.R. 2948, effective September 10, 2005 (Supp. 05-3).

R12-7-104. Application for Permit to Drill

A. Before drilling or re-entering any well or conducting any surface disturbance associated with such activity, the operator shall submit to the Commission an application for permit to drill or re-enter and obtain approval. The complete application package shall contain:

1. An application for permit to drill on a form provided by the Commission, which shall include the operator’s name, address, and phone number, and a description of the proposed well and its location;
2. A well and well-site construction plan that meets the requirements of R12-7-108 through R12-7-118;
3. A plat, prepared and certified by a registered surveyor bearing the surveyor’s certificate number, on which is shown the exact acreage or legal subdivision allotted to the well as required by R12-7-107, the well’s exact location, and its ground-level elevation;
4. An organization report as required by R12-7-194;

5. A performance bond, as required by R12-7-103; and
 6. A fee of \$25.00 per well.
- B.** The Commission shall mail to the applicant, within 30 days of receipt of the application required in subsection (A), written notice of administrative completeness or a detailed list of deficiencies. Within 30 days of receipt of all items required in subsection (A), the Commission shall review the application and:
1. Issue a permit to drill, or
 2. Provide a written explanation in compliance with A.R.S. § 41-1076 to the applicant if the application is not approved.
- C.** Time-frames
1. The administrative review period is 30 days. The substantive review period is 30 days. The overall time-frame is 60 days.
 2. For the purpose of this subsection, intermediate Saturdays, Sundays, and legal holidays shall be included in the time-frame computation. The last day of the notice period shall be included in the computation unless it is a Saturday, Sunday, or legal holiday.
- D.** Unless operations are commenced within 180 days after date of approval, the permit to drill shall become null and void unless an extension in writing is granted by the Commission.
- E.** In case of imminent danger to public safety or of contamination of the environment, the Commission may authorize the drilling of an emergency relief or offset well to reduce the danger or hazard. Within 10 days of commencing an emergency relief or offset well, the operator shall file an application as required in subsection (A). No well drilled under this subsection shall be used for production unless it conforms to the provisions of R12-7-107.

Historical Note

Former Rule 103; Former Section R12-7-104 renumbered and amended as Section R12-7-105, former Section R12-7-103 renumbered and amended as Section R12-7-104 effective September 29, 1982 (Supp. 82-5). Amended effective January 19, 1994 (Supp. 94-1). Amended effective June 6, 1997 (Supp. 97-2).

R12-7-105. Change of Location

- A.** No operator shall drill a well in a location other than that authorized by the permit issued pursuant to R12-7-104 until the following requirements have been met:
1. If the operator decides to change the location before drilling the well, an amended application for permit to drill shall be filed showing the new location.
 2. If it is determined that the location is erroneously described on the permit after drilling has begun, the operator shall obtain a new permit showing the correct location.
- B.** If the new location is at an authorized point in the approved drilling unit as provided in the initial permit, the application may be made by electronic communication and the Commission may by electronic communication authorize the commencement or continuance of drilling operations. Within ten days after obtaining such authorization, the operator shall file an amended application showing the new location. An amended permit may be issued and the old permit cancelled without payment of additional fee.
- C.** If the new location is located outside the approved drilling unit covered by the initial permit, no drilling shall be commenced or continued until a new application for permit to drill is filed and approved as required by R12-7-104, including payment of an additional fee.

Historical Note

Former Rule 104; Former Section R12-7-105 renumbered and amended as Section R12-7-106, former Section R12-7-104 renumbered and amended as Section R12-7-105 effective September 29, 1982 (Supp. 82-5). Amended effective January 19, 1994 (Supp. 94-1).

R12-7-106. Identification of Wells, Producing Leases, Tanks, Refineries, Buildings, and Facilities

- A.** The operator shall mark each drilling, producing, injection, or shut-in well in a conspicuous place with the operator's name, lease name or number, well number, and the legal description of the well's location.
- B.** The operator shall mark each abandoned well as required in R12-7-127(F).
- C.** The operator shall mark all tank batteries, gasoline plants, structures, storage buildings, compressors, and compressor buildings, and all other storage or transportation equipment with the operator's name, address, telephone number, lease name or number, and location. All structures within a fenced yard may be identified by a single sign at the principal outside entrance to the yard.
- D.** The operator of a storage-well facility shall clearly mark each well with the operator's name, lease name or number, and well number. Each outside entrance to the facility shall be marked with the operator's name, address, and one or more emergency response telephone numbers.
- E.** The operator of a refinery shall mark each facility at each outside entrance with the operator's name, address, and one or more emergency response telephone numbers.
- F.** Sign lettering shall contrast strongly with the background and be large enough to be legible under normal conditions at a distance of 25 feet. The operator shall preserve these markings and keep them legible and up to date.

Historical Note

Former Rule 105; Former Section R12-7-106 renumbered and amended as Section R12-7-107, former Section R12-7-105 renumbered and amended as Section R12-7-106 effective September 29, 1982 (Supp. 82-5). Amended effective January 19, 1994 (Supp. 94-1).

R12-7-107. Spacing of Wells

- A.** Every well drilled for oil shall be located on a drilling unit consisting of approximately 80 contiguous surface acres within two governmental quarter-quarter sections or lots having one side in common, upon which there is not located, and of which no part is attributed to, any other well completed in or drilling to, the same pool.
1. In areas not covered by United States Public Land Surveys, the oil drilling unit shall consist of an area bounded by four sides intersecting at angles of not less than 85 degrees or more than 95 degrees. The unit shall contain at least 76 contiguous surface acres and its maximum dimension shall not exceed 3,000 feet.
 2. No well drilled for oil shall be located closer than 330 feet to any boundary of the drilling unit or closer than 330 feet to the shortest center line of the drilling unit.
 3. No well drilled for oil shall be located within a quarter-quarter section or lot having one side in common with another quarter-quarter section or lot upon which there is located a well completed in or drilling to the same pool.
- B.** Every well drilled for gas shall be located on a drilling unit consisting of approximately 640 but not less than 600 contiguous surface acres within one governmental section upon which there is not located, and of which no part is attributed to, any other well completed in or drilling to the same pool.

1. In areas not covered by United States Public Land Surveys, the gas drilling unit shall consist of an area bounded by four sides intersecting at angles of not less than 85 degrees or more than 95 degrees. The unit shall contain at least 600 contiguous surface acres and its maximum dimension shall not exceed 8,500 feet.
 2. No well drilled for gas shall be located closer than 1,660 feet from any boundary of the drilling unit.
- C.** Every well drilled for geothermal resources shall be located on a drilling unit approved or as modified by the Commission. The Commission may require modification to minimize well interference and provide the necessary volume of geothermal resources for the intended use, to protect correlative rights, and to protect the environment.
- D.** If the operator drills a horizontal segment, that horizontal segment shall be located:
1. At least 330 feet from the boundary of the spacing unit in the case of an oil well;
 2. At least 1,660 feet from the boundary of the spacing unit in the case of a gas well; and
 3. As approved or modified by the Commission in the case of a geothermal well.
- E.** The Commission may grant exceptions to the regular locations specified in subsections (A), (B), and (C) only after notice and hearing.
1. Applications for exception shall fully state the reasons why the exception is necessary and shall include a plat prepared and certified by a registered surveyor bearing the surveyor's certificate number showing all other completed, drilling, and permitted wells on the property and all adjoining surrounding properties and wells.
 2. Exceptions shall be granted only after the operator provides by certified mail a copy of the application to all adjoining lessees, and only after the Commission determines in a duly noted public hearing that the application is valid.
 3. The Commission may grant an exception location without notice or hearing when topography prohibits drilling at a regular location on the drilling unit.
 4. If an existing well's classification changes due to its recompletion or due to a change in the nature of the product being produced, the Commission may approve an irregular location application with supporting data and ten days' notice and hearing, provided that the operator furnish the Commission with proof of mailing of a copy of the application to all operators within a one-mile radius of the acreage to be dedicated.
- F.** In order to prevent waste, the Commission may, after notice and hearing, fix different spacing requirements and require lesser or greater acreage for drilling units in any specific oil, gas, or geothermal resource pool notwithstanding the provisions of subsections (A), (B), and (C).
- G.** The Commission may order pooling and integration of interests pursuant to A.R.S. §§ 27-505 and 27-666.

Historical Note

Former Rule 106; Former Section R12-7-107 renumbered and amended as Section R12-7-108, former Section R12-7-106 renumbered and amended as Section R12-7-107 effective September 29, 1982 (Supp. 82-5). Correction, paragraph (1) "No well drilled for oil shall be located within the bounds of a quarter-quarter section or lot . . ." (Supp. 82-6). Amended effective January 19, 1994 (Supp. 94-1).

R12-7-108. Pit for Drilling Mud and Drill Cuttings

- A.** Each operator shall maintain an adequate supply of drilling mud to confine oil, gas, or water to its native stratum during the drilling of any well and shall provide, before drilling is commenced, an adequate pit, either earthen or portable, for the drilling mud or the accumulation of drill cuttings.
- B.** An earthen pit used for drilling, deepening, testing, reworking, or fracturing shall be constructed of or sealed with an impervious material and shall be maintained to prevent escape of any contained substance. Earthen pits shall be fenced on all sides at all times.
- C.** Earthen pits shall be constructed and maintained to prevent the entrance of outside runoff water and the fluid level in earthen pits shall be kept at all times at least 18 inches below the lowest point of the embankment.
- D.** Any mud contained in an earthen pit shall be water-based and contain no more than one pound per barrel of thinner for each 25 pounds per barrel of barite or hematite. Mud containing chromium lignosulfonate, ferrochrome lignosulfonate or other chromium compounds shall not be used.
- E.** Drilling mud shall be disposed of by either recycling or commercial off-site disposal. Mud described in subsection (D) may be disposed of by evaporation and subsequent leveling of the pits.

Historical Note

Former Rule 107; Former Section R12-7-108 renumbered and amended as Section R12-7-109, former Section R12-7-107 renumbered and amended as Section R12-7-108 effective September 29, 1982 (Supp. 82-5). Amended effective January 19, 1994 (Supp. 94-1).

R12-7-109. Repealed

Historical Note

Former Rule 108; Former Section R12-7-109 renumbered and amended as Section R12-7-110, former Section R12-7-108 renumbered and amended as Section R12-7-109 effective September 29, 1982 (Supp. 82-5). Repealed effective January 19, 1994 (Supp. 94-1).

R12-7-110. Surface Casing Requirements

- A.** Surface casing shall be set at a sufficient depth to protect and isolate all known or reasonably estimated freshwater zones and to prevent blowouts or uncontrolled flows. The surface casing shall:
 1. Be of sufficient size to permit the use of an intermediate string or strings of casing;
 2. Be set in or through an impervious formation and shall be cemented by the pump and plug, displacement, or other method approved by the Commission;
 3. Be cemented back to surface either during the primary cement job or by remedial action; and
 4. Have API-approved centralizers on the bottom three joints as a minimum.
- B.** Cement shall be allowed to set a minimum of 12 hours under the lowest necessary pressure before drilling the cementing plugs or initiating tests.
- C.** Surface casing shall be pressure tested for at least 30 minutes to 70% of internal yield pressure or one psi per foot of casing depth, whichever is less. If a drop of more than 10% of the test pressure should occur, the casing shall be considered defective and corrective measures shall be applied. In wells drilled with cable tools, casing may be tested by bailing the well dry. The hole shall remain satisfactorily dry for one hour before commencing further operations. Results of the above test and any remedial action shall be reported in writing to the Commission within 15 days following the test.

- D. The operator of a well shall notify the Commission at least 48 hours before setting surface casing so that a representative of the Commission may witness all or a part of the operations required in this Section.

Historical Note

Former Rule 109; Former Section R12-7-110 renumbered and amended as Section R12-7-111, former Section R12-7-109 renumbered and amended as Section R12-7-110 effective September 29, 1982 (Supp. 82-5). Amended effective January 19, 1994 (Supp. 94-1).

R12-7-111. Intermediate and Production Casing and Tubing Requirements

- A. All producing wells shall be completed with production casing set directly above or through the producing interval and cemented by the pump and plug method, or other method approved by the Commission, to protect the zones to be produced. An intermediate string of casing may be required to seal off all potentially productive, lost circulation, and abnormally pressured zones that may be encountered in the well, except those to be produced. The Commission may require casing strings to be cemented from the maximum depth of the casing to at least 50 feet inside the previously run string of casing. For liners, a minimum of 100 feet of overlap between a string of casing and the next larger casing is required.
- B. Strings of casing shall stand cemented for at least 12 hours before drilling out the cementing plugs or initiating such tests as the Commission may require.
- C. Strings of intermediate and production casing shall be pressure tested to 70% of the manufacturer's rated internal yield pressure or one psi per foot of casing depth, whichever is less. In cases where combination strings utilizing casing of varied grades and weights are used, the above test pressures shall apply to the lowest pressure rated component used. If pressure declines more than 10% in 30 minutes, the casing shall be considered defective and corrective measures shall be applied.
1. In wells drilled with cable tools, casing may be tested by bailing the well dry, in which case the hole shall remain satisfactorily dry for at least one hour before commencing further operations on the well. Results of the above test and any remedial action shall be reported in writing to the Commission within 15 days following the test.
- D. All flowing oil wells shall have tubing set as near the bottom as practical with tubing perforations not more than 250 feet above the top of the zone to be produced. Wells may be completed with small-diameter casing, which is generally understood in the industry to be "slim hole" or "tubingless" completions, in lieu of tubing.
- E. The operator shall notify the Commission at least 48 hours before setting any casing string so that a representative of the Commission may witness all or a part of the operations required in this Section.

Historical Note

Former Rule 110; Former Section R12-7-111 renumbered and amended as Section R12-7-112, former Section R12-7-110 renumbered and amended as Section R12-7-111 effective September 29, 1982 (Supp. 82-5). Amended effective January 19, 1994 (Supp. 94-1).

R12-7-112. Defective Casing or Cementing

- A. The operator shall take immediate steps to correct the casing condition of any well that may cause, or is causing, underground waste of oil, gas, or geothermal resources or contamination of fresh waters. These steps shall restore the integrity of the casing to the standards set in R12-7-110(C) and R12-7-111(C).

- B. The operator shall report the corrective actions taken in writing to the Commission within 15 days of the completion of the work. If the condition of the casing cannot be corrected, the well shall be plugged and abandoned in compliance with R12-7-127.

Historical Note

Former Rule 111; Former Section R12-7-112 renumbered and amended as Section R12-7-113, former Section R12-7-111 renumbered and amended as Section R12-7-112 effective September 29, 1982 (Supp. 82-5). Amended effective January 19, 1994 (Supp. 94-1).

R12-7-113. Blowout Prevention and Related Well-control Equipment

- A. When drilling in areas where pressures are unknown or high pressures do or are likely to exist, a blowout preventer, control head and related lines, and connections necessary to control the pressures and to keep the well under control at all times shall be installed as soon as the surface casing is set.
- B. Upon installation, all ram-type blowout preventers and related equipment shall be pressure tested to the lesser of the manufacturer's full working pressure rating of the equipment, 70% of the minimum internal yield pressure of any casing subject to test, or one psi per foot of the last casing string depth. Annular or bag-type preventers shall be tested to the lesser of 1000 psi or 50% of full working pressure on installation. The blowout preventer and related equipment shall be tested:
1. After each string of casing is set in the well,
 2. Not less than once each 14 days from each control station, and
 3. Following repairs that require disconnection of any pressure seal in the assembly. Only the component repaired or replaced needs to be tested unless alteration or repair occurs at a normal full blowout preventer test period.
- C. The operator shall maintain records of the tests required in this Section until the well is completed and shall submit copies of these records to the Commission if required.

Historical Note

Former Rule 112; Former Section R12-7-113 renumbered and amended as Section R12-7-114, former Section R12-7-112 renumbered and amended as Section R12-7-113 effective September 29, 1982 (Supp. 82-5). Amended effective January 19, 1994 (Supp. 94-1).

R12-7-114. Recovery of Casing

Recovery of inside or outside strings of casing is prohibited unless written approval is obtained from the Commission. Approval shall be given only for wells where mudding and plugging operations can be carried out safely and the well abandoned in compliance with R12-7-127.

Historical Note

Former Rule 113; Former Section R12-7-114 renumbered and amended as Section R12-7-115, former Section R12-7-113 renumbered and amended as Section R12-7-114 effective September 29, 1982 (Supp. 82-5). Section repealed, new Section adopted effective January 19, 1994 (Supp. 94-1).

R12-7-115. Deviation of Hole and Directional Drilling

- A. An operator drilling a well shall not intentionally deviate from the normal vertical course of the well unless the operator first files an application and obtains approval from the Commission after notice and hearing. The normal vertical course of a well is defined by an average deviation from vertical of not more than five degrees in any 500-foot interval. The operator shall test any vertical or deviated well that is drilled or deepened at

least once each 500 feet or at the first bit change succeeding 500 feet. The operator shall tabulate all deviation tests run and file the tabulation with the Commission within 30 days after drilling is completed. Deviation from the vertical for short distances is permitted in the drilling of a well without special approval only to straighten the hole, sidetrack junk, or correct other mechanical difficulties.

- B.** An application for directional drilling shall include:
1. The name, address, and telephone number of the operator;
 2. The field name, lease name, well number, state permit number, reservoir name, and county where the proposed well is located;
 3. A plat or sketch showing the distance from the surface location to section and lease lines and to the target location within the intended producing interval;
 4. The reason for the intentional deviation; and
 5. The signature of the operator.
- C.** The operator of any well capable of production and whose producing interval or any portion of the producing interval is located 330 feet or less in the case of an oil well or 1,660 feet or less in the case of a gas well from the boundary of any drilling unit shall run a directional survey before running the production casing.
- D.** In order to ensure compliance with this Section, the Commission may require the operator to run a directional survey of any hole at the operator's expense. The Commission may require an operator to run a directional survey of any hole at the request of an offset operator at the expense and risk of the offset operator unless the survey shows that the well is completed at a point outside the drilling unit or at an unauthorized point.
- E.** Within 30 days following the completion of drilling a directionally-drilled well, the operator shall file with the Commission a complete angular deviation and directional survey of the well, obtained by a well survey company.
- F.** An operator shall not drill a well in a manner that results in the well crossing drilling unit lines, except by approval obtained from the Commission after notice and hearing.

Historical Note

Former Rule 114; Former Section R12-7-115 renumbered and amended as Section R12-7-116, former Section R12-7-114 renumbered and amended as Section R12-7-115 effective September 29, 1982 (Supp. 82-5). Amended effective January 19, 1994 (Supp. 94-1). Amended by final rulemaking at 13 A.A.R. 4596, effective February 2, 2008 (Supp. 07-4).

R12-7-116. Multiple Zone Completions

- A.** Completions to include production from more than one common source of supply from a single well are prohibited except as authorized by the Commission after notice and hearing. After notice and hearing, the Commission shall maintain a list of zones or reservoirs, by fields, for which multiple completions have been authorized.
- B.** Operators shall file an application for multiple completion with the Commission and shall demonstrate the method to be used to keep the production streams separate. The application shall be accompanied by:
1. An electrical log or other acceptable log with tops and bottoms of formations or producing zones and perforated intervals shown and marked;
 2. A diagrammatic sketch of the multiple completion installation indicating make, type, and setting depths of packer or packers;
 3. A plat showing the location of the well and all offset wells and the names and addresses of operators of all

- leases offsetting acreage dedicated to applicant's well; and
4. Proof of mailing of application for multiple completion to all offset operators.
- C.** The Commission may approve subsequent applications for multiple completion of the same zones or reservoirs in a field administratively without a hearing, provided that:
1. The applicant can show that the Commission has approved and listed the zones or reservoirs as required in subsection (A);
 2. The subsequent application is filed as required in subsection (B); and
 3. The Commission receives no protest to the application after a 15-day holding period. A hearing shall be called if a protest is received.
- D.** Within 15 days of setting the final packer or packers, the operator shall file a report with the Commission identifying the well and its location showing the make, type, and depth set of each packer and the signature of the supervisor of the work. This report shall include the results of a packer leakage test and detail for each separate common source of supply, its stabilized shut-in pressure, producing pressure, and the simultaneous shut-in pressure on each other separate common source of supply. The operator shall notify the Commission at least 48 hours in advance of performing the tests required in this subsection.
- E.** Every operator of a multi-completed well shall operate, produce, and maintain the well to prevent commingling of production from the separate sources of supply. The Commission may require any multi-completed well to be tested at any time to demonstrate the effectiveness of the separation of sources of supply. These tests may be witnessed by representatives of the Commission and by offset operators.

Historical Note

Former Rule 115; Former Section R12-7-116 renumbered and amended as Section R12-7-117, former Section R12-7-115 renumbered and amended as Section R12-7-116 effective September 29, 1982 (Supp. 82-5). Amended effective January 19, 1994 (Supp. 94-1).

R12-7-117. Artificial Stimulation of Oil and Gas Wells

- A.** An operator shall report the artificial stimulation of any well to the Commission in writing within 15 days of the stimulation showing the type of stimulation, the amounts and types of materials used, stimulation pressures applied, and the flow and pressure results before and after stimulation.
- B.** If the artificial stimulation of a well results in any damage to the producing formation, a freshwater formation, casing, or casingseat that permits communication between fluid-bearing zones, the operator shall immediately notify the Commission and proceed with diligence to correct the damage. If the artificial stimulation results in irreparable damage to the well, the operator shall plug and abandon the well pursuant to R12-7-127.

Historical Note

Former Rule 116; Former Section R12-7-117 renumbered and amended as Section R12-7-118, former Section R12-7-116 renumbered and amended as Section R12-7-117 effective September 29, 1982 (Supp. 82-5). Amended effective January 19, 1994 (Supp. 94-1). Amended effective June 5, 1998 (Supp. 98-2).

R12-7-118. Operations in Hydrogen Sulfide Environments

- A.** When drilling, re-drilling, deepening, or plugging back operations in areas where the formations to be penetrated are known to contain or are expected to contain hydrogen sulfide gas

(H₂S) in excess of 10 ppm and in areas where the presence or absence of H₂S is unknown, the operator shall contract the services of an approved H₂S safety company to be on location at the known or expected depths.

- B.** A written contingency plan providing details of actions to be taken to alert and protect operating personnel and members of the public in the event of an accidental release of H₂S gas shall be submitted to the Commission as part of the initial application for a permit to drill or as a sundry notice.

Historical Note

Former Rule 117; Former Section R12-7-118 renumbered and amended as Section R12-7-119, former Section R12-7-117 renumbered and amended as Section R12-7-118 effective September 29, 1982 (Supp. 82-5). Amended effective January 19, 1994 (Supp. 94-1).

R12-7-119. Wellhead and Lease Equipment

- A.** The operator shall install and maintain valves, fittings, and wellhead connections that
1. Have a rated working pressure equivalent to at least 100% of the calculated or known surface pressure to which they may be subjected from the producing zone;
 2. Allow well production, productivity, deliverability, and transient pressure tests;
 3. Permit pressures to be obtained on both casing and tubing; and
 4. Control the flow of the oil, gas, or geothermal resources on a flowing well.
- B.** The operator shall produce flowing oil wells into tanks equipped with high-low pressure and high-low level shut-in controls and shall install a safety valve that automatically closes on the wellhead in the event of surface production equipment malfunctions.
- C.** The operator shall equip artificial lift wells with wellhead safety sensors to shut off the source of power in the event of abnormally high or low flowline pressures.

Historical Note

Former Rule 118; Former Section R12-7-119 renumbered and amended as Section R12-7-120, former Section R12-7-118 renumbered and amended as Section R12-7-119 effective September 29, 1982 (Supp. 82-5). Amended effective January 2, 1996 (Supp. 96-1).

R12-7-120. Notification of Fire, Leaks, Spills, and Blowouts

- A.** Each operator shall notify the Commission within 24 hours of any fire, break, leak, spill, overflow, or blowout that occurs at any oil, gas, or geothermal drilling, producing, or transportation facility, or at any injection, disposal, or storage facility.
- B.** Each operator shall file a final written report within 15 days of resolving incidents described in subsection (A) giving the location by quarter-quarter section, township, and range; date and time of occurrence; specific nature and cause of the incident; resultant damage; action taken to correct the situation and prevent its reoccurrence; and losses of hydrocarbons or geothermal resources.

Historical Note

Former Rule 119; Former Section R12-7-120 renumbered and amended as Section R12-7-121, former Section R12-7-119 renumbered and amended as Section R12-7-120 effective September 29, 1982 (Supp. 82-5). Amended effective January 2, 1996 (Supp. 96-1).

R12-7-121. Well Completion and Filing Requirements

- A.** An operator shall file a completion report with the Commission within 30 days after a well is completed. The completion report shall contain a description of the well and lease, the cas-

ing, tubing, liner, perforation, stimulation, and cement squeeze records, and data on the initial production. The operator shall submit other well data to the Commission within 30 days of the date the work is done, including any:

1. Lithologic, mud, or wireline log;
2. Directional survey;
3. Core description and analysis;
4. Stratigraphic or faunal determination;
5. Formation or drill-stem test;
6. Formation fluid analysis; or
7. Other similar information or survey.

- B.** An operator shall furnish samples of drilled cuttings, at a maximum interval of 10 feet, to the Commission within 30 days after drilling is completed. The operator may furnish samples of continuous core in chips at 1-foot intervals. The operator shall:

1. Wash and dry all samples;
2. For each sample, place approximately 3 tablespoons of the sample in an envelope with the following identifying information: the well from which the sample originates, the location of the well, the Commission's permit number for the well, and the depth at which the sample is taken; and
3. Package sample envelopes in protective boxes and ship prepaid to:
Oil and Gas Administrator
Arizona Geological Survey
416 W. Congress, Ste. 100
Tucson, AZ 85701

- C.** Confidential records:

1. The Commission shall keep the completion report and all well information required by this Section for any well drilled for oil and gas in unproven territory confidential for one year after the drilling is completed unless the operator gives written permission to release the information at an earlier date. The Commission shall provide notice to the operator 60 days before confidential records become subject to public inspection and, at the operator's request, extend the confidential period for six months to two years from the date of the request if the Commission finds that the operator has provided credible evidence that disclosure of the information is likely to cause harm to the operator's competitive position with respect to unleased land in the vicinity of the well.
2. The Commission shall keep the completion report and all well information required by this Section for any well drilled in search of geothermal resources confidential for one year after drilling is completed upon operator request.

Historical Note

Former Rule 120; Former Section R12-7-121 renumbered and amended as Section R12-7-122, former Section R12-7-120 renumbered and amended as Section R12-7-121 effective September 29, 1982 (Supp. 82-5). Amended effective January 2, 1996 (Supp. 96-1). Amended by final rulemaking at 6 A.A.R. 4827, effective December 7, 2000 (Supp. 00-4). Amended by final rulemaking at 13 A.A.R. 4596, effective February 2, 2008 (Supp. 07-4).

R12-7-122. Recompletion and Routine Maintenance Operations

- A.** After a well has been completed, it shall not be deepened, redrilled, plugged back, reworked, or recompleted in a different zone, without prior approval by the Commission of a written application showing the character of the proposed work and the time it will begin. The Commission shall notify the

applicant in writing whether the proposed work is approved or disapproved.

- B. In the case of an emergency, an application may be made by electronic communication, and the Commission may by electronic communication authorize the work; however, written application required in subsection (A) shall be filed with the Commission within 10 days after emergency authorization is given, even though the work has already been commenced or completed. The Commission shall confirm the emergency authorization in writing upon receipt of the written application.
- C. Written approval from the Commission is not required on acidizing, fracturing, and re-perforating, or other routine well operations designed to restore or maintain production.
- D. Within 15 days following the completion of any work described in this Section, the operator shall file a written report with the Commission identifying the well and fully describing the work performed. If the well is recompleted, a completion report shall be filed as required by R12-7-121.

Historical Note

Former Section R12-7-121 renumbered and amended as Section R12-7-122 effective September 29, 1982 (Supp. 82-5). Amended effective January 2, 1996 (Supp. 96-1).

R12-7-123. Reserved

R12-7-124. Reserved

R12-7-125. Temporarily Abandoned and Shut-in Wells

- A. If drilling, injection, or production operations at a well are suspended, or have been suspended for 60 days, an operator shall plug the well under R12-7-127 unless the Commission permits the well to be temporarily abandoned or shut-in. The Commission shall not classify a well as shut-in until the operator submits a completion report under R12-7-121.
- B. An operator may temporarily abandon or shut-in a well for up to 5 years if the operator demonstrates to a quorum of the Commission a future beneficial use of the well and submits a Sundry Notice to the Commission containing the following information:
 1. Evidence of casing integrity as required in R12-7-112 including a complete description of the current casing, cementing, and perforation record of the well;
 2. The stimulation and cement squeeze record and complete data on the results of any well tests performed to date; and
 3. All other well data required in R12-7-121(A).
- C. Before an approved time-frame for a temporarily abandoned or shut-in well expires, the operator shall return the well to beneficial use under a plan approved by the Commission, permanently plug and abandon the well, or apply for an extension to temporarily abandon or shut-in the well. If the integrity of the well casing is in question, the Commission may require the operator to:
 1. Prove casing integrity in accordance with R12-7-112;
 2. Plug any well that fails to meet the casing integrity required by R12-7-112; and
 3. Re-test the well in accordance with R12-7-150 to continue shut-in status.
- D. An operator shall ensure that no work begins on a temporarily abandoned or shut-in well until approved by the Commission. The operator shall give at least 24 hours' notice to the Commission before any work begins. Within 15 days of completing the proposed work, the operator shall file a written report with the Commission fully describing the work performed including a copy of all test rates, pressures, and fluid analyses.

Historical Note

Adopted effective January 2, 1996 (Supp. 96-1). Amended by final rulemaking at 6 A.A.R. 4827, effective December 7, 2000 (Supp. 00-4).

R12-7-126. Application to Plug and Abandon

- A. Before abandoning any well, the operator shall submit an application to plug and abandon to the Commission and obtain approval. The application shall set forth the name and location of the well, the mechanical condition of the well, the productive zone and latest production, and a complete description of the proposed work. The plan shall provide for the protection of all formations containing usable-quality water, oil, gas, or geothermal resources.
- B. In the case of a drilling well or an emergency, the application may be made by electronic communication, and the Commission may by electronic communication authorize the work; however, the operator shall file a written application within 10 days after the emergency authorization is given even though the work has already been commenced or completed. The Commission shall confirm the emergency authorization in writing upon receipt of the written application.

Historical Note

Former Rule 201; Amended effective September 29, 1982 (Supp. 82-5). Amended effective January 2, 1996 (Supp. 96-1).

R12-7-127. Plugging Methods and Procedures

- A. Before abandoning any well, the operator shall submit an application to plug and abandon to the Commission for approval as required in R12-7-126. All down-hole plugging shall be conducted through drill pipe or tubing, unless otherwise approved by the Commission.
- B. Open hole
 1. A cement plug shall be placed to extend at least 50 feet below the bottom, except as limited by total depth or plugged back total depth, to 50 feet above the top of any zone containing fluid with a potential to migrate, any zone of lost circulation, and any zone containing potentially valuable minerals, including noncommercial hydrocarbons, coal, and oil shale.
 2. All freshwater zones shall be plugged with a continuous cement plug which shall extend from at least 50 feet below to at least 50 feet above the freshwater zone, or a 100-foot plug shall be centered across the base of the freshwater zone and a 100-foot plug shall be centered across the top of the freshwater zone.
 3. Open hole below the shoe of cemented casing shall be plugged with cement which shall extend from at least 50 feet below to at least 50 feet above the shoe.
- C. Cased hole
 1. A cement plug shall be placed opposite all open perforations and extend to a minimum of 50 feet below, except as limited by total depth or plugged back total depth, to 50 feet above the perforated interval. In lieu of the cement plug, a bridge plug may be placed within 50 to 100 feet above the open perforations and followed by at least 50 feet of cement.
 2. If any casing is cut and recovered, a cement plug shall be placed to extend at least 50 feet above and below the stub.
 3. No annular space that extends to the surface shall be left open to the drilled hole below. If this condition exists, a minimum of the top 100 feet of each annulus shall be plugged with cement.
- D. Plugging mud having the proper weight and consistency to prevent movement of other fluids into or within the bore hole shall be placed across all intervals not plugged with cement. In

the absence of other information at the time plugging is approved, plugging mud shall be made up with a minimum of 15 pounds per barrel of sodium bentonite and a nonfermenting polymer, have a minimum consistency of 9 pounds per gallon, a minimum viscosity of 50 seconds per quart, and mixed with fresh water.

- E. A cement surface plug of at least 50 feet shall be placed in the smallest casing which extends to the surface. The top of this plug shall be placed as near the eventual casing cut-off point as possible.
- F. The abandoned well shall be marked by a piece of metal pipe not less than 4 inches in diameter securely set in cement and extending at least 4 feet above the general ground level. The well location and identity shall be permanently inscribed as required in R12-7-106(A). An abandoned well location on tilled or otherwise unique land shall be marked in a manner approved by the Commission.
- G. The drill site of an abandoned well shall be restored as nearly as possible to its natural state, to the satisfaction of the Commission. All pits shall be filled and all equipment and debris shall be removed from the location.
- H. The operator shall notify the Commission at least 48 hours before starting abandonment operations to allow a representative of the Commission to witness the operations required in this Section. To ensure the integrity or placement of any plug, the representative may order the plug to be tested.
- I. Within 15 days after the plugging of any well, the operator shall file with the Commission a plugging record setting forth in detail the method used in plugging the well, including the casing record; the size, kind, and depth of plugs used; and the name and depth interval of each formation containing fresh water, oil, gas, or geothermal resources.
- J. Seismic shot holes
 1. All seismic shot holes shall be plugged and abandoned within 30 days of firing.
 2. Seismic shot holes which do not encounter freshwater zones shall be filled with a high-grade bentonite slurry or some other comparable plugging material as approved by the Commission.
 3. Seismic shot holes which do encounter freshwater zones shall be plugged with cement in accordance with the applicable provisions of subsections (B) and (D).
 4. Seismic shot-hole locations shall be restored in accordance with subsection (G) and the operator shall file a plugging record in accordance with subsection (I).

Historical Note

Former Rule 202; Amended effective September 29, 1982 (Supp. 82-5). Amended effective January 2, 1996 (Supp. 96-1).

R12-7-128. Stratigraphic, Core, and Seismic Holes

- A. Any hole drilled for stratigraphic, core, or seismic purposes shall comply with all rules in this Chapter pertaining to the drilling of a well except the spacing provisions of R12-7-107.
- B. Each hole drilled for stratigraphic, core, or seismic purposes shall be plugged in accordance with R12-7-126 and R12-7-127. The operator of a stratigraphic or core hole shall submit samples and cores and file a completion report in accordance with R12-7-121.

Historical Note

Former Rule 203; Amended effective September 29, 1982 (Supp. 82-5). Amended effective January 2, 1996 (Supp. 96-1).

R12-7-129. Wells to be Used as Water Wells

- A. The landowner, landowner's agent, or lessee may use any well or exploratory hole as a water well provided that:
 1. Written approval is obtained from the Arizona Department of Water Resources;
 2. The operator plugs the well in accordance with R12-7-127 to a point immediately below the freshwater strata; and
 3. The landowner, landowner's agent, or lessee assumes responsibility for the well and compliance with the provisions of A.R.S. Title 45, Chapter 2 in a signed and notarized water-well responsibility form provided by and filed with the Commission.
- B. After filing the notarized water-well responsibility form with the Commission, the landowner, landowner's agent, or lessee shall comply with A.R.S. Title 45, Chapter 2 before modification or abandonment of the well.
- C. Upon filing the notarized water-well responsibility form with the Commission, the Commission shall notify the bonding company and operator in writing so that the bond may be cancelled or made no longer effective with respect to that well.

Historical Note

Former Rule 204; Amended effective September 29, 1982 (Supp. 82-5). Amended effective January 2, 1996 (Supp. 96-1). Amended by final rulemaking at 8 A.A.R. 3363, effective July 15, 2002 (Supp. 02-3).

R12-7-130. Reserved

R12-7-131. Reserved

R12-7-132. Reserved

R12-7-133. Reserved

R12-7-134. Reserved

R12-7-135. Gas-oil Ratio and Potential Tests

- A. Each operator shall conduct a gas-oil ratio test between 5 and 15 days after the completion or recompletion of any well located in a pool which contains both oil and gas. The average daily oil production, the average daily gas production, and the average gas-oil ratio shall be recorded.
- B. The results of the gas-oil ratio test shall be reported in writing to the Commission within 15 days after completion of the test.
- C. Each operator shall conduct a potential test within 30 days following the completion or recompletion of any well for the production of oil. The results of this test shall be reported in writing to the Commission within 15 days after completion of the test.

Historical Note

Former Rule 301; Amended effective September 29, 1982 (Supp. 82-5). Amended effective February 23, 1993 (Supp. 93-1).

R12-7-136. Subsurface Pressure Tests and Reservoir Surveys

- A. Each operator shall conduct a test, within 30 days after completion, to determine the reservoir pressure on the discovery well of any new pool. The test shall be made after the well has been shut-in for at least 24 hours, and the results shall be reported in writing to the Commission within 15 days after the completion of the test.
- B. The Commission may require subsurface pressure measurements on a number of wells in any pool to provide data to determine reservoir characteristics. The survey shall be made by the operator and shall provide a description of the test method and results including fluids, temperature, and pressure data and may require supervision by a qualified agent of the

Commission. The results shall be reported in writing to the Commission within 15 days of the completion of the survey.

Historical Note

Former Rule 302; Amended effective September 29, 1982 (Supp. 82-5). Amended effective February 23, 1993 (Supp. 93-1).

R12-7-137. Commingling of Production from Pools

- A.** Unless authorized by the Commission, each pool shall be produced as a single common reservoir, with the wells completed, cased, maintained, and operated as the producing media for that pool. Oil production from each pool shall at all times be segregated into separate, identified tanks. The commingling of production from different pools is prohibited, unless authorized by order of the Commission after notice and hearing.
- B.** The Commission may approve commingling of production upon demonstration by the applicant that such commingling shall not cause waste of reservoir energy or diminish recovery of the resource. Application for approval of commingling shall include the following:
1. Electric or porosity log with tops and bottoms of formations or producing zones and perforated intervals shown and marked;
 2. Diagrammatic sketch of the proposed well structure, including make, type and setting depths of packers;
 3. The reservoir pressure for each zone or formation proposed for commingling, the specific gravity and BTU content of the gas if the zone produces gas, and the API gravity and gas-oil ratio of the oil if the zone produces oil;
 4. Plat showing the location of the well and all offset wells, and a list of the names and addresses of operators of all leases offsetting the acreage dedicated to the applicant's well;
 5. Waiver consenting to the proposed commingling from each offset operator, or in lieu thereof, copies of letters requesting such waiver; and
 6. Proof of mailing of notice of application for commingling to all offset operators.
- C.** The first application for commingling of pools in a field shall be approved by the Commission only after notice and hearing. Subsequent applications, completed as required in subsection (B), for commingling of the same zones in the same field may be approved administratively if, after a 15-day holding period, there are no protests from offsetting operators.

Historical Note

Former Rule 303; Amended effective September 29, 1982 (Supp. 82-5). Amended effective February 23, 1993 (Supp. 93-1).

R12-7-138. Casinghead Gas

- A.** All casinghead gas produced and sold or transported away from a lease, except amounts of flare gas, shall be metered and reported monthly in writing to the Commission in standard Mcf and gallons of liquids per Mcf. If the casinghead gas is sold as supply stock for a gasoline plant, the gallons of liquids per Mcf shall be reported. The operator of a lease shall not be required to measure the exact amount of casinghead gas produced and used for fuel purposes in the development and normal operation of the lease.
- B.** Pending arrangements for disposition of some useful purpose, all casinghead gas that is authorized to be vented shall be burned, and the estimated volume reported monthly as required by R12-7-161.

Historical Note

Former Rule 304; Amended effective September 29, 1982 (Supp. 82-5). Amended effective February 23, 1993 (Supp. 93-1).

R12-7-139. Use of Vacuum Pumps

- A.** The use of any device for the purpose of putting a vacuum on any stratum containing oil, gas, or geothermal resources is prohibited unless authorized by the Commission.
- B.** The Commission may, after notice and hearing, authorize the use of vacuum pumps if the applicant can show that use of the vacuum will not create waste or infringe on correlative rights.

Historical Note

Former Rule 305. Amended effective February 23, 1993 (Supp. 93-1).

R12-7-140. Pollution, Surface Damage, and Noise Abatement

- A.** An operator of a well, production facility, gasoline plant, gas plant, or pipeline shall conduct operations in a manner that prevents surface or subsurface pollution.
- B.** An operator shall conduct operations in a manner that prevents oil, gas, salt water, fracturing fluid or any other substance from polluting any surface or subsurface waters.
- C.** During swabbing and bailing operations or when purging a well, all substances removed from the bore hole shall be placed in a pit or tank and shall not be allowed to pollute any surface or subsurface waters.
- D.** An operator shall maintain all wellhead connections, surface equipment, lease flow lines, and tank batteries at all times to prevent the escape of oil, gas, produced water, or any other substance.
- E.** An operator shall report any fire, leak, or blowout to the Commission in accordance with R12-7-120. An operator shall ensure that any pit is constructed and operated in accordance with R12-7-108.
- F.** An operator shall minimize noise when conducting air drilling operations or when the well is allowed to produce while drilling. An operator shall ensure that the welfare of the operating personnel and the public is not negatively affected by the noise created by the expanding gases.

Historical Note

Former Rule 306. Amended effective February 23, 1993 (Supp. 93-1). Amended by final rulemaking at 8 A.A.R. 3363, effective July 15, 2002 (Supp. 02-3).

R12-7-141. Renumbered

Historical Note

Former Rule 307; Language transferred and amended, see Section R12-7-176 (Supp. 82-5).

R12-7-142. Measurement of Oil

Oil or condensate shall not be transported from a lease until it has been measured. Each transporter shall file a monthly report of the amount of oil or condensate transported from the lease as required by R12-7-185.

Historical Note

Former Rule 308; Amended effective September 29, 1982 (Supp. 82-5). Amended effective February 23, 1993 (Supp. 93-1).

R12-7-143. Oil Tanks, Fire Walls, and Fire Hazards

- A.** Oil shall not be stored or retained in an earthen reservoir or an open receptacle. The Commission may require dikes or fire walls to protect life, health, or property. All dikes or fire walls shall be erected and continuously maintained around all permanent oil tanks or batteries that are within the corporate limits of any city, town or village, or where such tanks are closer

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than 150 feet to any highway or inhabited dwelling, or closer than 1,000 feet to any school or church. The capacity of the dike or firewall shall be 1 1/2 times the capacity of the tank or tanks that it surrounds. The reservoir so formed within the dike shall be kept free from vegetation, water and oil.

- B.** Anything that might constitute a fire hazard, including potentially flammable items and reckless behavior such as smoking, shall be moved at least 150 feet from the well, tanks, separator, or other equipment.

Historical Note

Former Rule 309. Amended effective February 23, 1993 (Supp. 93-1).

R12-7-144. Reserved

R12-7-145. Reserved

R12-7-146. Reserved

R12-7-147. Reserved

R12-7-148. Reserved

R12-7-149. Reserved

R12-7-150. Capacity Tests of Gas Wells and Geothermal Wells

- A.** The operator of a producing gas well shall determine its open-flow capacity within 30 days following completion. Additional tests shall be taken as requested by the Commission. When a pipeline connection is available, gas wells shall not be tested by open-flow method, but the open-flow capacity shall be determined by the multipoint or single-point back-pressure test method.
- B.** The Commission may require tests to determine the quantity and quality of geothermal resources or reservoir energy.
- C.** The results of the tests required in this Section shall be reported in writing to the Commission within 15 days after the completion of the test.

Historical Note

Former Rule 401; Amended effective September 29, 1982 (Supp. 82-5). Amended effective February 23, 1993 (Supp. 93-1).

R12-7-151. Measurement of Gas from Gas Wells and Geothermal Resources

- A.** All gas produced for whatever purpose in gaseous form from gas wells shall be accounted for by metering as approved by the Commission. If the gas is sold, the purchaser shall report the volume purchased as required by R12-7-186. If the gas is delivered to a transportation facility, the transporter shall report the volume transported as required by R12-7-185. The operator shall report the volume produced as required by R12-7-161.
- B.** Each operator of a geothermal lease shall measure the quantity and quality of all production in accordance with the standard practices, procedures, and specifications generally used in the industry. The operator shall report the production as required in R12-7-161 and the purchaser shall file a report as required in R12-7-186.

Historical Note

Former Rule 402; Amended effective September 29, 1982 (Supp. 82-5). Amended effective February 23, 1993 (Supp. 93-1).

R12-7-152. Utilization of Gas

- A.** No gas from any completed gas well shall be:
1. Permitted to escape into the air except for testing when no pipeline connection is available.

2. Used expansively in engines or pumps and then vented, or
3. Used to gas-lift in oil wells unless all gas produced from such gas-lift operations is processed in a gasoline plant, and the residue gas is used in the manufacture of carbon black or for some other profitable use.

- B.** Utilization of gas in the manufacture of carbon black may be made only if approved by the Commission, after notice and hearing, based on a finding that a more profitable use is not available or will not be available in a reasonable time.

Historical Note

Former Rule 403. Amended effective February 23, 1993 (Supp. 93-1).

R12-7-153. Non-hydrocarbon Gas

The rules of this Chapter shall also apply to helium, carbon dioxide, and any other non-hydrocarbon gas.

Historical Note

Former Rule 404. Amended effective February 23, 1993 (Supp. 93-1).

R12-7-154. Reserved

R12-7-155. Reserved

R12-7-156. Reserved

R12-7-157. Reserved

R12-7-158. Reserved

R12-7-159. Reserved

R12-7-160. Regulation of Production

If the Commission determines that oil, gas, or geothermal resources production in the state is causing waste, the Commission shall limit, allocate, and apportion the total amount of oil, gas, or geothermal resources which may be produced.

Historical Note

Former Rule 501; Amended effective September 29, 1982. See also Section R12-7-170 (Supp. 82-5). Amended effective February 23, 1993 (Supp. 93-1).

R12-7-161. Producer's Monthly Report

- A.** Each operator shall file a producer's monthly report for each producing lease for each calendar month, setting forth the operator's name, each well's lease name or number, well number, state permit number, the actual amounts of oil, gas, water, or geothermal resources produced, the number of days each well produced, and the disposition of the produced oil, gas, water, or geothermal resources. The report shall be filed on or before the 25th day of the next succeeding month.
- B.** If a well is off production for a period exceeding 30 days, the Commission shall be notified in writing with the reasons given.

Historical Note

Former Rule 502; Amended effective September 29, 1982. See also Section R12-7-171 (Supp. 82-5). Amended effective February 23, 1993 (Supp. 93-1).

R12-7-162. Reserved

R12-7-163. Reserved

R12-7-164. Reserved

R12-7-165. Reserved

R12-7-166. Reserved

R12-7-167. Reserved

R12-7-168. Reserved**R12-7-169. Reserved****R12-7-170. Renumbered****Historical Note**

Former Rule 601; Language transferred and amended, see Section R12-7-160 (Supp. 82-5).

R12-7-171. Renumbered**Historical Note**

Former Rule 602; Language transferred and amended, see Section R12-7-161 (Supp. 82-5).

R12-7-172. Reserved**R12-7-173. Reserved****R12-7-174. Reserved****R12-7-175. Injection Wells Including Enhanced Recovery, Disposal, and Storage Wells**

A. The following injection wells used for enhanced recovery, disposal, or storage shall require a permit from the Commission:

1. Class II injection wells
 - a. Saltwater disposal wells: wells used to return salt water associated with oil and gas production to the subsurface.
 - b. Enhanced oil recovery wells: wells used to inject salt water, gases, enhanced waters, and steam in order to maintain and extend oil production;
 - c. Hydrocarbon storage wells: wells used for the underground storage of crude oil, liquified petroleum gas (LPG), and other liquid hydrocarbon products in naturally occurring rock formations.
2. Other injection wells
 - a. Geothermal injection wells: Class V wells used to reinject groundwater or geothermal fluids that are used in or are associated with the production of geothermal energy;
 - b. Other wells: wells used for the underground storage of any hydrocarbons or nonhydrocarbons that are gaseous at standard temperature and pressure, wells used to dissolve salt to create a cavity to be used for underground storage, and wells used to dispose of brine produced in the course of creating a solution-mined salt cavity.

B. In addition to being subject to the applicable provisions of this Chapter, the wells listed in subsection (A) shall be subject to the following specific regulation:

1. Injection wells listed in subsections (A)(1)(a) and (b) and (A)(2)(a) shall be regulated by R12-7-176, R12-7-178, and R12-7-179.
2. Injection wells listed in subsections (A)(1)(c) and (A)(2)(b) shall be regulated by R12-7-176, R12-7-178, R12-7-179, R12-7-180, R12-7-181, and R12-7-182.

C. No permits for injection wells other than those described in this Section shall be issued by the Commission.

Historical Note

Adopted effective January 2, 1996 (Supp. 96-1).

R12-7-176. Permits for Injection Wells

A. The injection of any substance into any geologic formation is prohibited unless 1st authorized by the Commission after notice and hearing. The Commission shall give at least 15 days' notice before a hearing is held for drilling a new injection well or for converting an existing well into an injection well. A permit shall not be required for routine well operations

pursuant to R12-7-122(C) whose physical effects are confined to the area near the well bore.

B. The application for a permit for an injection well as defined in R12-7-175 shall be prepared in accordance with R12-7-104, shall meet all the applicable requirements of this Chapter, and shall contain the following requirements, where applicable:

1. A plat showing the location of each proposed injection well and the location and status of all wells, including drilling wells and dry holes, within 1/2 mile of the proposed well. The plat shall include the lease boundary lines, the names of the surface and subsurface lessees and owners within 1/2 mile of the injection well or wells, and the name of each offset operator.
2. A geologic study, including:
 - a. A contour map drawn on a geologic marker at or near the top of each injection zone in the project area;
 - b. A thickness map of each injection zone in the project area;
 - c. A geologic cross-section drawn through the site of an injection well in the project area showing structural details, any wells that may be affected by the project, and the location of the base of any freshwater strata, defined as water having 10,000 ppm or less of total dissolved solids, or a statement that no fresh water exists; and
 - d. A representative electric log to a depth below the deepest producing zone identifying all geologic units including the injection and confining zones, freshwater aquifers, and oil, gas, or geothermal zones.
3. An engineering study, including:
 - a. A statement of the primary purpose of the project;
 - b. The characteristics of the injection and confining zones including porosity, permeability, thickness, areal extent, fracture gradient, original and present temperature and pressure, and residual oil, gas, and water saturations;
 - c. The reservoir fluid data for each injection zone including oil gravity and viscosity, water quality, and specific gravity of gas;
 - d. A description of each injection well's casing, or the proposed casing and cementing program, and the proposed method of testing the casing before use of the injection well. The casing shall be designed and tested in accordance with R12-7-181(C) with respect to the injection zone;
 - e. A diagram of the proposed wellhead;
 - f. A casing diagram, including cement plugs, and the actual or calculated cement fill behind the casing of all wells within the area affected by the project, including abandoned wells, showing that they will not cause damage to life, health, property, or natural resources;
 - g. The well stimulation program if stimulation is planned; and
 - h. The planned well-drilling and abandonment program to complete the project, including a flood-pattern map showing all injection, production, and abandoned wells, and unit boundaries.
4. An injection plan, including:
 - a. A diagram and plan of the injection facilities;
 - b. The maximum surface injection pressure expected during the life of the project and the estimated daily rate of fluid injection, by well. The operator shall provide calculations showing that the maximum

injection pressure will not initiate fractures in the confining zone;

- c. A description of the area affected by the volumetric method and by the pressure-buildup method and the radius affected during the life of the project;
 - d. The monitoring system or method to be used to ensure that no damage is occurring and that the injection fluid is confined to the permitted injection zone and to the area controlled by the operator;
 - e. The method of injection such as casing, tubing, tubing with packer, between strings;
 - f. The protective methods to be used on each injection line and well and a contingency plan for well failure or a shut-in period, including a plan for disposition of fluids not injected as a consequence of well failure;
 - g. The source and chemical analysis of the injection fluid, and chemical analysis of the water in the injection zone. If the water in the injection zone has 10,000 ppm or less of total dissolved solids, the applicant shall provide evidence of commercial oil or gas producibility of the zone by means of historical production in the field or by log information, core data, and values for the porosity and permeability of the zone; and
 - h. The location and depth of each water-source well that will be used in conjunction with the project.
5. Proof of notification to neighboring operators and surface owners within 1/2 mile of the proposed well.
 6. Supplementary data as required in R12-7-180 for storage-well projects.
 7. Any additional information that the Commission may determine is necessary to adequately clarify the information submitted pursuant to R12-7-176(B)(1) through (B)(6).
 8. All maps, diagrams, and exhibits required in this subsection shall be clearly labeled as to scale and purpose and shall clearly identify wells, boundaries, zones, contacts, and other relevant data.
- C. Permits may be issued for a period up to the operating life of the well with review once every 5 years. Permits may be modified or terminated during their term if the Commission determines that the operator is not in compliance with the requirements of this Chapter.

Historical Note

Former Rule 701; Amended effective September 29, 1982. See also Section R12-7-141 (Supp. 82-5). Amended effective January 2, 1996 (Supp. 96-1).

R12-7-177. Repealed

Historical Note

Former Rule 702; Amended effective September 29, 1982 (Supp. 82-5). Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-178. Notice of Commencement, Discontinuance, and Transfer of Injection Operations

The following provisions apply to all injection projects defined in R12-7-175:

1. The operator shall notify the Commission of the date that injection operations will begin.
2. The operator shall notify the Commission of the date that injection operations will cease and provide the reasons for discontinuing the injection operations.
 - a. The temporary abandonment of any injection well shall be in accordance with R12-7-125. Temporarily

abandoned injection wells shall meet the testing requirements of R12-7-179(D).

- b. All injection wells shall be plugged and abandoned, in accordance with R12-7-126 and R12-7-127.
3. An injection well shall not be transferred from 1 operator to another without the written approval of the Commission.
 - a. The operator shall file the request for transfer of ownership of an injection well in triplicate with the Commission at least 45 days before the proposed transfer date. The request shall include the name, address, and telephone number of the proposed new operator and provide the location and status of each well involved.
 - b. The proposed new operator shall file with the Commission an organization report as required in R12-7-194 and bond as required in R12-7-103 before the request for transfer will be considered.
 - c. The Commission shall return 1 copy of the request for transfer to the operator and 1 to the proposed new operator within 30 days after receipt of the information required in subsections (3)(a) and (b), designating approval or denial of the transfer of authority to inject for the subject well.
 - i. If the proposed transfer is approved, a copy of the order authorizing injection shall be attached to the approved request for transfer.
 - ii. If the proposed transfer is denied, the Commission shall return 1 copy of the request to the operator and 1 copy to the proposed operator together with the reasons for the denial and the steps necessary for its approval.

Historical Note

Former Rule 703; Amended effective September 29, 1982 (Supp. 82-5). Amended effective January 2, 1996 (Supp. 96-2).

R12-7-179. Testing and Monitoring of Injection Wells

- A. The operator of an injection well shall file a weekly sundry report with the Commission on all drilling, completion, recompletion, and workover operations.
- B. The operator of an injection well shall monitor operations to ensure that injection pressure at the wellhead does not exceed the maximum pressure authorized in the permit, and that no injection shall cause movement of injection or formation fluids into an underground source of drinking water.
- C. The operator shall keep accurate records of the amount of oil, gas, water, or geothermal resources produced, the volume of substances injected, the average and maximum pressure used for injection, and the nature of the injected fluid. The operator of an enhanced recovery or disposal well shall submit a report as required in R12-7-187. The operator of a storage well shall submit a report as required in R12-7-185.
- D. The operator shall run the following pressure or monitoring tests on new injection wells to establish the mechanical integrity of the tubing, casing, and packer. Existing wells being converted to an injection well shall be tested in the same manner and shall maintain the same mechanical integrity as a new well.
 1. The casing-tubing annulus above the packer shall be tested upon completion and at least once every 5 years, under the supervision of the Commission, at a pressure equal to the lesser of the maximum authorized injection pressure or 1,000 psi, provided that no testing pressure shall be less than 300 psi. Documentation of the test shall be submitted to the Commission. Test pressures shall be

applied for a period of 30 minutes. If a drop of more than 10% of the test pressure should occur, corrective measures shall be applied. If the tubing, casing, or packer cannot be brought up to standard, the well shall be plugged and abandoned in accordance with R12-7-126 and R12-7-127.

2. The Commission may require the operator to run a tracer survey, a temperature log, or a noise log to demonstrate the absence of fluid movement in vertical channels adjacent to the injection well.
- E.** Mechanical failure or downhole problems which indicate an injection well is not, or may not be, directing the injected fluid into the permitted injection zone may be cause to shut in the well. The operator shall notify the Commission within 24 hours of any such failure or problem. A written notice shall be filed within 5 days of the occurrence, with a plan for testing and repairing the well. If the well cannot be brought up to the standard required in subsection (D), it shall be plugged and abandoned in accordance with R12-7-126 and R12-7-127.

Historical Note

Former Rule 704; Amended effective September 29, 1982 (Supp. 82-5). Amended effective January 2, 1996 (Supp. 96-1).

R12-7-180. Supplementary Requirements for Storage Wells

The application for a storage well as defined in R12-7-175(B)(2) shall be prepared in accordance with R12-7-176 and shall contain the following, where applicable:

1. Information on any oil or gas production within 5 miles of each proposed well;
2. Information on the oil and gas reserves of each storage zone before starting injection, including calculations;
3. A comprehensive plan for disposition of brine and salt produced in the course of creating a solution-mined salt cavity. Cavities shall be designed and constructed in accordance with R12-7-181;
 - a. Surface disposition shall be subject to the rules of the Department of Water Resources and the Department of Environmental Quality;
 - b. Saltwater disposal wells shall be permitted in accordance with R12-7-176;
 - c. Surface brine reservoirs used in the operation of the storage system and disposal reservoirs shall be designed to prevent the contamination of air, fresh water, and soil;
4. A list of proposed surface and subsurface safety devices, tests, and precautions to be taken to ensure safety of the project. The operator shall install a flare or other safety system acceptable to the Commission at or near each brine pit or any other location where escape of gases is likely to occur.

Historical Note

Former Rule 705; Amended effective September 29, 1982 (Supp. 82-5). Amended effective January 2, 1996 (Supp. 96-1).

R12-7-181. Design and Construction of Storage Wells and Cavities

- A.** Before drilling a storage well for storing liquid or gaseous hydrocarbons, or any other substances under the jurisdiction of the Commission, in an underground cavity, the applicant shall demonstrate to the Commission that the proposed storage will preserve the structural integrity of the host rock, including halite, and the overlying sediments. The evidence presented shall include:

1. An investigation to determine the feasibility of a storage system at the particular site; and
 2. An assessment of the stability of each proposed cavity design, particularly with regard to the size, shape and depth of the storage cavity, the amount of separation between storage cavities, and the amount of separation between the storage cavity and the periphery of the host rock.
- B.** The design of a solution-mined storage system shall be based on site-specific geologic and engineering parameters including type of storage use, location of each cavity, number of cavities, cavity capacity, and maximum development diameter of each cavity. The design shall ensure that project development can be conducted in a reasonable, prudent, and systematic manner and shall stress physical and environmental safety and the prevention of waste. The design and solution mining shall be continually reviewed throughout the construction phase to account for any new subsurface information and shall include provisions for protection from damage caused by hydraulic shock. The original development and operational plans shall be modified, as necessary, to conform with good engineering practice. The design shall incorporate the standards outlined below:
1. The minimum separation between the nearest outer walls of adjacent storage cavities as measured in any direction shall be established considering:
 - a. The properties of the host rock;
 - b. The elevation of the top and bottom of the adjacent cavities;
 - c. Their maximum development diameter relative to the spacing of the cavities; and
 - d. Other considerations deemed appropriate for the specific site; however, in no case shall such separation at any time during the storage project be less than 200 feet.
 2. The walls of a storage cavity shall be no less than 200 feet from the boundary of the lands included in the storage project on which the chambers are located.
 3. If the design involves the intentional subsurface connection between 2 adjacent storage cavities under 1 property (that is, a "U"-tube storage-cavity system), the minimum separation between cavities specified in subsection (B)(1)(d) shall not apply.
- C.** The borehole shall be dually cased from the surface into the cavity in accordance with R12-7-110 and R12-7-111. At least 2 strings of casing shall be fully cemented from the surface into the host rock either during the primary cement job or by remedial action. The Commission may administratively grant an exception to the requirement for 2 strings of cemented casing if the applicant can show that the exception is reasonable, justified by site-specific geologic or engineering parameters, is no less stringent, and consistent with the intent of these rules regarding physical and environmental safety, conservation of the resource, and the prevention of waste.
1. The final cemented casing string shall have tensile and collapse strengths, as approved by the Commission, for the setting depth and shall be set a minimum of 200 feet into the formation to be used for the storage cavity.
 2. The casing seat of the final cemented casing string shall be pressure-tested after drilling at least 10 feet into the formation below the casing seat. The test pressure calculated at the casing seat shall equal the proposed maximum operating pressure at that point and shall not exceed 0.9 psi per foot of depth.
 3. After the wellhead has been installed and before products are stored, the system shall be pressure-tested as a unit.

4. All tests required in this subsection shall meet the integrity standards set in R12-7-179(D).
- D.** Storage facilities in existence prior to June 1, 1978, shall not be required to meet the planning and construction requirements of subsections (B) and (C), except for future expansions or additions.

Historical Note

Adopted effective August 31, 1978 (Supp. 78-4).
 Amended effective September 29, 1982 (Supp. 82-5).
 Amended (and subsections (A)(1)(h) through (m) moved to Section R12-7-182) effective January 2, 1996 (Supp. 96-1)

R12-7-182. Operation, Inspection, and Closure of Storage-well Systems

- A.** The maximum and minimum operating pressures of a storage system shall be determined in consideration of the lithologic characteristics of the host rock. The maximum operating pressure at the shallower of the casing seat or cavity ceiling shall not exceed 0.9 psi per foot of depth.
1. The storage system shall not be subjected to pressures exceeding the maximum operating pressure even for short periods of time, including pressure pulsation peaks and abnormal operating conditions.
 2. The wellhead, flowlines, valves, and all related connections shall have a test pressure rating equivalent to 125% of the maximum pressure which could be exerted at the surface. All valves shall be periodically inspected and maintained in good working order.
 3. The wellhead and storage system shall be protected with safety devices to prevent pressures exceeding the maximum operating pressure from being exerted on the storage system and to prevent backflow of stored products in the event of flowline rupture.
 4. Personnel shall be at either the well or other control sites for the well during injection or withdrawal from any storage well.
- B.** The flare, as required in R12-7-180(4), shall be burned continuously when a liquified gas or other flammable substance is being injected into a cavern.
- C.** Each operator of a storage well shall conduct semiannual safety inspections of the operator's facility and file with the Commission a written report on the inspection procedures and results within 5 days following the inspection. The operator shall notify the Commission at least 5 days before an inspection to allow a representative of the Commission to witness the inspection. Inspections shall include, the following:
1. Operation of all manual valves;
 2. Operation of all automatic shut-in safety valves, including sounding or alarm devices;
 3. Examination of flare system or other safety system installation;
 4. Examination of earthen brine pits, tanks, firewalls, and related equipment;
 5. Examination of flowlines, manifolds, and related equipment;
 6. Examination of warning signs and safety fences;
 7. Examination of housekeeping practices including the removal of weeds, used equipment, and debris from the area of operations;
 8. The Commission may require additional inspections at any time during regular working hours and upon reasonable notice to the operator.
- D.** A capacity determination for each storage cavity shall be made and filed with the Commission upon completion of the storage

cavity. These determinations shall be verified at least once every 5 years.

- E.** Safety precaution signs shall be displayed and unauthorized personnel kept out of the storage area. Each storage wellhead shall be visibly marked in accordance with R12-7-106(D). Guard rails shall be installed where the Commission determines it is necessary to ensure safety.
- F.** Storage wells shall be plugged and abandoned in accordance with R12-7-126 and R12-7-127.
- G.** If the Commission determines that the continued operation of a storage well or associated facilities, including valves, brine tanks or pits, flares, dehydrators, and loading and docking facilities, would cause unsafe operating conditions, waste, pollution, or contamination of air, fresh water, or soil, or encroachment on adjacent property, the Commission shall order discontinuance of operations of the storage facility or any part thereof until the Commission determines that the project can and will be conducted in a physically and environmentally safe manner.
- H.** The operator shall notify the Commission within 24 hours of every accident or equipment malfunction which causes loss of life or requires hospitalization of personnel; threatens the public health and safety; pollutes the air, soil, or fresh water; or causes loss of the stored substance. A final written report shall be filed with the Commission in accordance with R12-7-120(B).
- I.** The Commission may administratively grant exceptions to the guidelines and requirements of this Section if the applicant can show that the exception is reasonable, justified by site-specific geologic or engineering parameters, are no less stringent, and consistent with the intent of these rules regarding physical and environmental safety, conservation of the resource, and the prevention of waste. An applicant may request a hearing pursuant to A.R.S. § 27-517.

Historical Note

Adopted by moving subsections (A)(1)(h) through (m) of R12-7-181 and amending the text effective January 2, 1996 (Supp. 96-1).

R12-7-183. Certificate of Compliance and Authorization to Transport

- A.** Each producer or operator of any well shall execute under oath and file with the Commission an operator's certificate of compliance and authorization to transport oil, gas, or geothermal resources from lease provided by the Commission for each well.
- B.** The certificate, when properly executed and approved by the Commission, shall constitute authorization to the pipeline or other transporter to transport oil, gas or geothermal resources from the developed unit named. The Commission may provide written permission for the transportation of production in order to prevent waste, pending execution and approval of the certificate.
- C.** The certificate shall remain in full force and effect until:
1. The operating ownership of the developed unit changes, or
 2. The transporter changes, or
 3. The certificate is cancelled by the Commission.
- D.** When a change occurs in operating ownership of any developed unit, or when a change occurs in the transporter from any developed unit, the operator shall file a new certificate with the Commission within 10 days of the change. With respect to a temporary change in transporter which involves less than the production of one month, the producer may, in lieu of filing a new certificate, notify the Commission and the transporter in writing of the estimated amount of oil, gas, or geothermal

resources to be moved by the temporary transporter, and the name of the temporary transporter. The operator shall furnish a copy of the notice to the temporary transporter.

- E. The temporary transporter shall not move any greater quantity of oil, gas, or geothermal resources than the estimated amount shown in the notice.
- F. Time-frames
1. The Commission shall mail to the producer or operator, within 10 days of receipt of the certificate required in subsection (A), written notice of administrative completeness or a detailed list of deficiencies. Within 10 days of receipt of an administratively complete certificate, the Commission shall approve the certificate or provide a written explanation in compliance with A.R.S. § 41-1076 to the producer or operator if the certificate is not approved. The overall time-frame is 20 days.
 2. For the purpose of this subsection, intermediate Saturdays, Sundays, and legal holidays are not included in the time-frame computation.

Historical Note

Former Rule 801; Amended effective September 29, 1982 (Supp. 82-5). Amended effective February 23, 1993 (Supp. 93-1). Amended effective June 6, 1997 (Supp. 97-2).

R12-7-184. Recovered Load Oil

Recovered load oil may be run from a lease on which it is recovered only upon approval by the Commission of a certificate for load oil credit and permit to transport recovered load oil showing the source and amount of the load oil. Upon approval, the Commission shall forward one copy to the designated transporter as authority to transport the oil. This rule applies only to oil obtained from a source other than the lease on which it is used.

Historical Note

Former Rule 802; Amended effective September 29, 1982 (Supp. 82-5). Amended effective February 23, 1993 (Supp. 93-1).

R12-7-185. Transporter's and Storer's Monthly Report

- A. Each transporter of oil and condensate shall furnish for each calendar month a report containing information and data respecting stocks of oil and condensate on hand and all movements within the state of oil and condensate by pipeline, trucks, or other conveyances except railroad, from leases to storers or refiners; movements between transporters within the state; movements between storers within the state; movements between refiners within the state; and movements between storers and refiners within the state.
- B. Each storer of oil and condensate shall furnish for each calendar month a report containing information and data respecting the storage of oil and condensate within the state.
- C. Each storer of natural gas, liquified petroleum gas, or other hydrocarbon or nonhydrocarbon gases in storage wells shall furnish for each calendar month a report containing information and data respecting the storage, including receipts and deliveries, of such products within the state.
- D. Transporters and storers shall file reports required in this Section with the Commission on or before the 25th day of the next succeeding month.

Historical Note

Former Rule 803; Amended effective September 29, 1982 (Supp. 82-5). Amended effective February 23, 1993 (Supp. 93-1).

R12-7-186. Gas or Geothermal Purchaser's Monthly Report

- A. Each purchaser or taker of gas in gaseous form or geothermal resources from any well, lease, pool or proration unit shall file for each calendar month a report detailing acquisition and disposition of all gas in gaseous form or geothermal resources purchased or taken during that month.
- B. Purchasers and takers shall file reports required in this Section with the Commission on or before the 25th day of the next succeeding month.

Historical Note

Former Rule 804; Amended effective September 29, 1982 (Supp. 82-5). Amended effective February 23, 1993 (Supp. 93-1).

R12-7-187. Injection Project Report

- A. Each operator of an injection project shall furnish for each injection well for each calendar month a report of injection project containing information and data including the lease and well number, the well's state permit number, average injection pressure during the month, amount of fluid in barrels injected during the month, the total amount of fluid injected to date, the source of the injected fluid, and the number of days the injection well was operated during the month.
- B. Operators of injection projects shall file reports required in this Section with the Commission on or before the 25th day of the next succeeding month.

Historical Note

Adopted effective February 23, 1993 (Supp. 93-1).

R12-7-188. Refinery Reports

- A. Each refiner of oil or condensate shall furnish for each calendar month a refinery monthly report containing information and data respecting oil, condensate and products involved in the refiner's operations during each month.
- B. Refiners shall file reports required in this Section with the Commission on or before the 25th day of the next succeeding month.

Historical Note

Former Rule 901; Amended effective September 29, 1982 (Supp. 82-5). Amended effective February 23, 1993 (Supp. 93-1).

R12-7-189. Repealed

Historical Note

Former Rule 902; Amended effective September 29, 1982 (Supp. 82-5). Repealed effective February 23, 1993 (Supp. 93-1).

R12-7-190. Gasoline Plant Reports

- A. Each operator of a gasoline plant, cycling plant, or any other plant at which gasoline, butane, propane, condensate, kerosene, oil or other liquid products are extracted from gas shall furnish for each calendar month a gasoline plant or pressure maintenance plant monthly report containing information and data respecting gas and products involved in the operation of each plant during each month.
- B. Operators shall file reports required by this Section with the Commission on or before the 25th day of the next succeeding month.

Historical Note

Former Rule 903; Amended effective September 29, 1982 (Supp. 82-5). Amended effective February 23, 1993 (Supp. 93-1).

R12-7-191. Reserved

R12-7-192. Books and Records to Substantiate Reports

- A.** Each operator, producer, transporter, storer, refiner, processor, gasoline or extraction or geothermal generating plant operator, and initial purchaser of oil, gas, or geothermal resources shall make and keep books and records covering operations in Arizona, from which are made and which will substantiate all reports required by the Commission.
- B.** Books and records required in this Section shall be available for inspection by the Commission for at least a six-year period.

Historical Note

Former Rule 1001; Amended effective September 29, 1982 (Supp. 82-5). Amended effective February 23, 1993 (Supp. 93-1).

R12-7-193. Repealed**Historical Note**

Former Rule 1002. Amended effective February 23, 1993 (Supp. 93-1). Repealed effective September 22, 1993 (Supp. 93-3).

R12-7-194. Organization Reports

- A.** Before any person shall engage in any activity covered by this Chapter, that person shall file with the Commission an organization report that includes a statement under oath giving the following information:
1. The name under which the business is being operated or conducted;
 2. The name and post office address of the person and the business or businesses engaged in;
 3. The plan or organization, and, if a reorganization, the name and address of the previous organization;
 4. The state where incorporated, if a foreign corporation, and the name and post office address of the Arizona agent, together with the date of permit to do business in Arizona; and
 5. The names and addresses of the principal officers or partners and the names and addresses of the directors.
- B.** When a change occurs, as to facts stated in the report filed, a new organization report shall be filed with the Commission within ten days of the change.

Historical Note

Former Rule 1003. Amended effective February 23, 1993 (Supp. 93-1).

R12-7-195. Repealed**Historical Note**

Former Rule 1004; Amended effective September 29, 1982 (Supp. 82-5). Amended effective February 23, 1993 (Supp. 93-1). Repealed effective September 22, 1993 (Supp. 93-3).

Appendix 1. Repealed**Historical Note**

(For the convenience of the operator, the forms and reports in common use by the United States Geological Survey, and for the purpose for which each form was designed, may be submitted in lieu of similar Commission forms. Commission forms No. 1, 2, 3, 4, and 27 must be used for their designated purpose and no substitutes will be acceptable.) Repealed effective January 2, 1996 (Supp. 96-1).

ARTICLE 2. REPEALED**R12-7-201. Repealed****Historical Note**

Former A. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-202. Repealed**Historical Note**

Former B. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-203. Repealed**Historical Note**

Former Rule G-101. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-204. Repealed**Historical Note**

Former Rule G-102. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-205. Repealed**Historical Note**

Former Rule G-103. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-206. Repealed**Historical Note**

Former Rule G-104. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-207. Repealed**Historical Note**

Former Rule G-105. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-208. Repealed**Historical Note**

Former Rule G-106. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-209. Repealed**Historical Note**

Former Rule G-107. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-210. Repealed**Historical Note**

Former Rule G-108. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-211. Repealed**Historical Note**

Former Rule G-109. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-212. Repealed**Historical Note**

Former Rule G-110. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-213. Repealed**Historical Note**

Former Rule G-111. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-214. Repealed**Historical Note**

Former Rule G-112. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-215. Repealed**Historical Note**

Former Rule G-113. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-216. Repealed**Historical Note**

Former Rule G-114. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-217. Repealed**Historical Note**

Former Rule G-115. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-218. Repealed**Historical Note**

Former Rule G-116. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-219. Repealed**Historical Note**

Former Rule G-117. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-220. Repealed**Historical Note**

Former Rule G-118. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-221. Repealed**Historical Note**

Former Rule G-119. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-222. Reserved**R12-7-223. Reserved****R12-7-224. Reserved****R12-7-225. Reserved****R12-7-226. Reserved****R12-7-227. Reserved****R12-7-228. Reserved****R12-7-229. Reserved****R12-7-230. Reserved****R12-7-231. Repealed****Historical Note**

Former Rule G-201. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-232. Repealed**Historical Note**

Former Rule G-202. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-233. Repealed**Historical Note**

Former Rule G-203. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-234. Repealed**Historical Note**

Former Rule G-204. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-235. Reserved**R12-7-236. Reserved****R12-7-237. Reserved****R12-7-238. Reserved****R12-7-239. Reserved****R12-7-240. Reserved****R12-7-241. Repealed****Historical Note**

Former Rule G-301. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-242. Repealed**Historical Note**

Former Rule G-302. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-243. Repealed**Historical Note**

Former Rule G-303. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-244. Repealed**Historical Note**

Former Rule G-304. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-245. Repealed**Historical Note**

Former Rule G-305. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-246. Repealed**Historical Note**

Former Rule G-306. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-247. Reserved**R12-7-248. Reserved****R12-7-249. Reserved****R12-7-250. Reserved****R12-7-251. Repealed****Historical Note**

Former Rule G-401. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-252. Repealed**Historical Note**

Former Rule G-402. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-253. Reserved

Oil and Gas Conservation Commission

R12-7-254. Reserved
 R12-7-255. Reserved
 R12-7-256. Reserved
 R12-7-257. Reserved
 R12-7-258. Reserved
 R12-7-259. Reserved
 R12-7-260. Reserved
 R12-7-261. Repealed

Historical Note

Former Rule G-501. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-262. Repealed

Historical Note

Former Rule G-502. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-263. Repealed

Historical Note

Former Rule G-503. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-264. Repealed

Historical Note

Former Rule G-504. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-265. Reserved

R12-7-266. Reserved

R12-7-267. Reserved

R12-7-268. Reserved

R12-7-269. Reserved

R12-7-270. Reserved

R12-7-271. Repealed

Historical Note

Former Rule G-601. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-272. Repealed

Historical Note

Former Rule G-602. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-273. Reserved

R12-7-274. Reserved

R12-7-275. Reserved

R12-7-276. Reserved

R12-7-277. Reserved

R12-7-278. Reserved

R12-7-279. Reserved

R12-7-280. Reserved

R12-7-281. Repealed

Historical Note

Former Rule G-701. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-282. Reserved

R12-7-283. Reserved

R12-7-284. Reserved

R12-7-285. Reserved

R12-7-286. Reserved

R12-7-287. Reserved

R12-7-288. Reserved

R12-7-289. Reserved

R12-7-290. Reserved

R12-7-291. Repealed

Historical Note

Former Rule G-801. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-292. Repealed

Historical Note

Former Rule G-802. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-293. Repealed

Historical Note

Former Rule G-803. Repealed effective January 2, 1996 (Supp. 96-1).

R12-7-294. Repealed

Historical Note

Former Rule G-804. Repealed effective January 2, 1996 (Supp. 96-1).

Appendix 1. Repealed

Historical Note

Repealed effective January 2, 1996 (Supp. 96-1).

27-502. Declaration of policy

A. It is the public policy of the state to:

- 1. Conserve the natural resources of oil and gas and products thereof.**
- 2. Prevent waste of oil and gas resources.**
- 3. Provide for protection and adjustment of correlative rights of owners of land wherein the natural resources lie and of owners and producers of oil and gas resources and products thereof, and of others interested therein.**
- 4. Encourage development of natural resources of oil and gas and their products.**
- 5. Encourage continuous and economic supply thereof and demand therefor.**
- 6. Safeguard the health, property and public welfare of citizens of the state and other interested persons.**
- 7. Promote all purposes indicated by the provisions of this article.**

B. This article shall be administered by the oil and gas conservation commission.

C. The legislature finds and declares that oil and gas in commercial quantities have now been discovered and are being produced within this state.

27-503. Waste of oil or gas prohibited; powers of commissioner to prevent waste

A. Waste of oil or gas is unlawful and is prohibited.

B. The commissioner shall make inquiries he deems proper to determine whether waste exists or is imminent. In the exercise of such power the commissioner may:

1. Collect data.

2. Make investigations and inspections.

3. Examine property, leases, papers, books and records, including drilling records and logs.

4. Examine, check, test and gauge oil and gas wells, tanks, refineries and modes of transportation.

5. Hold hearings.

6. Require keeping of records and making of reports.

7. Take action he deems necessary to enforce and effectuate the provisions of this article.

C. The commissioner may in order to prevent waste and avoid drilling unnecessary wells, permit the cycling of gas in any pool or portion thereof or the introduction of gas or other substance into an oil or gas reservoir for the purpose of repressuring the reservoir, maintaining pressure or carrying on secondary recovery operations of any type. The commissioner shall permit the pooling or integration of separate tracts when reasonably necessary in connection with the operations.

27-514. Commission; appointment; terms; compensation

A. There is created an oil and gas conservation commission.

B. The commission shall consist of the state land commissioner ex officio who shall have no vote, and five members to be appointed by the governor, no more than three of whom shall be of the same political party. The appointive members shall be United States citizens and shall have been residents of Arizona for not less than the five years immediately preceding their appointment. Three members of the commission shall constitute a quorum for the transaction of business.

C. Of the members first appointed, one shall be appointed for a term ending December 31, 1960, and one each for terms ending one, two, three and four years thereafter. Subsequent appointments shall be for a full term of five years which shall expire on the third Monday in January in the appropriate year.

D. Appointive members of the commission shall receive compensation as determined pursuant to section 38-611 for each day actually spent in the performance of official duties.

27-515. Administration; powers of the commission; fees

A. The commission shall administer and enforce this article and other laws relating to conservation of oil and gas. The commission and administrative staff, at any time, may enter property and inspect wells drilled for oil or gas, and well records, and shall control property, machinery and appliances necessary to gauge the wells. The department of environmental quality shall provide staff support to the commission to administer this chapter.

B. The commission may:

1. Administer oaths to a witness in any hearing, investigation or proceeding held under this article or any other law relating to conservation of oil and gas.

2. Issue subpoenas requiring attendance and testimony of witnesses and production of books, papers and records deemed material or necessary, and direct service of subpoenas by a sheriff or other officer authorized by law to serve process.

3. Prescribe rules and do all acts necessary or advisable to carry out this article.

4. Collect fees to cover the costs of services, including reproduction of records or any portion of records and copies of rules. The monies collected are not subject to section 27-523 but shall be deposited, pursuant to sections 35-146 and 35-147, by the commission in the fund from which the expenditure was originally made.

5. Publish technical maps, cross sections and reports and sell these materials for fees that will cover the costs incurred in their preparation, reproduction and distribution.

C. The commission may enter into cooperative agreements with agencies of the United States government, with agencies of state or local government or with Indian tribes for the purpose of protection of the fresh water supplies of this state from contamination or pollution brought about by the drilling of any well or for any other purpose of this article.

D. The commission may apply for and accept gifts, devises and donations of books, well records, maps or other materials. All donated materials shall become public records.

E. Monies collected under subsection B, paragraph 5 of this section are not subject to section 27-523 but shall be deposited, pursuant to sections 35-146 and 35-147, in the permit administration fund established by section 49-455 and shall be used to prepare, reproduce and distribute further publications.

27-516. Rules

- A. The commission shall make rules and amend them as deemed necessary for the proper administration and enforcement of this article, including the following rules and orders:**
- 1. Requiring the drilling, casing and plugging of wells in a manner to prevent:**
 - (a) Escape of oil and gas from one stratum to another.**
 - (b) Intrusion of water into an oil or gas stratum from a separate stratum.**
 - (c) Pollution of fresh water supplies by oil, gas or salt water.**
 - (d) Waste.**
 - 2. Requiring reports showing the location of oil and gas wells and requiring filing of logs and drilling records within thirty days after drilling is completed for a well drilled for oil or gas.**
 - 3. Requiring a reasonable bond with good and sufficient surety conditioned on the performance of the duties prescribed in paragraphs 1 and 2 of this subsection including the obligation to plug each dry or abandoned well.**
 - 4. Preventing drowning by water of any stratum or part capable of producing oil or gas in paying quantities and preventing the premature and irregular encroachment of water which reduces or tends to reduce the total ultimate recovery of oil or gas from any pool.**
 - 5. Requiring the operation of wells with efficient gas-oil ratio and fixing the limits of such ratios.**
 - 6. Preventing blowouts, caving and seepage.**
 - 7. Preventing creation of unnecessary fire hazards.**
 - 8. Requiring identification of ownership of oil and gas wells, producing leases, refineries, tanks, plants, structures and storage and transportation equipment and facilities.**
 - 9. Regulating shooting, perforating and chemical treatment of wells.**
 - 10. Regulating gas cycling operations.**
 - 11. Regulating secondary recovery methods, including introduction of gas, air, water or any other substances into producing formations.**
 - 12. Regulating spacing of wells and establishing drilling units.**
 - 13. Limiting, allocating and apportioning production of oil and gas from a pool or field for prevention of waste, and allocating production between tracts of land under separate ownership in a pool on a fair and equitable basis so that each tract will be permitted to produce not more than its just and equitable share from such pool.**
 - 14. Preventing, so far as practicable, reasonably avoidable drainage from each developed unit, not equalized by counterdrainage.**
 - 15. Requiring a producer of oil or gas to submit for each oil or gas well operated, on a form prescribed by the commission, a monthly report of actual production from each oil or gas well. Such report shall be submitted on or before the twenty-fifth day of the next succeeding month.**
 - 16. Requiring persons making settlement with the owner of oil or gas interests to render statements to the owner showing the quantity and gravity purchased and the price per barrel of oil or the price per one thousand cubic feet of gas.**
 - 17. Requiring, either generally or in a particular area, a certificate of clearance for transportation or delivery of oil, gas or any product.**
 - 18. Requiring the applicant for a drilling permit, if the surface of the land is owned by another not in a contractual relationship with the applicant, to post bond in a reasonable sum with good and sufficient surety conditioned on payment of just compensation to the landowner for**

actual damages to the surface of or improvements on the land caused by the drilling permittee's operations.

19. Requiring all forms and reports requested by the commission to be submitted to the commission on or before the twentieth day of the next succeeding month for monthly reports or within twenty days following the completion of the action requiring the report, except as otherwise provided by the commission.

20. Requiring the permitting of all wells and the approval of all equipment and methods:

(a) To create or use existing storage space for the underground storage of hydrocarbon substances, whether liquid or gaseous.

(b) Used for the injection of any substance into geological strata for the purpose of pressure maintenance or for the purpose of increasing ultimate recovery.

(c) Used for the purpose of secondary and tertiary recovery.

(d) Used for the disposal of any substance.

B. No rule or order, or change, renewal or extension, except as otherwise provided by this article, shall, in the absence of an emergency, be made by the commission under the provisions of this article except after a public hearing of which not less than ten days' notice has been given. The public hearing shall be held at such time and place as may be prescribed by the commission, and any interested person shall be entitled to be heard. Notice shall be given by personal service, by publication or by United States mail addressed, postage prepaid, to the last known mailing address of the person or persons affected. The date of service shall be the date on which service was made in the case of personal service, the date of first publication in the case of notice by publication and the date of mailing in the case of notice by mailing. The notice shall issue in the name of the state, shall be signed by a member of the commission or its deputy, shall specify the style and number of the proceeding and the time and place of the hearing and shall briefly state the purpose of the proceeding. If the commission gives notice by personal service, such service may be made by an officer authorized to serve process or by the commission in the same manner as is provided by law for the service of process in civil actions in the courts of this state. Proof of service by the commission shall be by the affidavit of the commission or its authorized representative making personal service. If service is made by the sheriff, the proof of service shall be as required by law for service of process in civil actions. If the matter to be heard concerns the adoption, amendment or repeal of a rule of general applicability, notice shall be by publication.

C. If an emergency is found by the commission to exist, which in its judgment requires making, changing, renewing or extending a rule or order without first having a hearing, the emergency rule or order shall have the same validity as if a hearing had been held after due notice. The emergency rule or order shall remain in force for not to exceed thirty days from its effective date but shall expire when a rule or order with respect to the subject matter of the emergency rule or order becomes effective after due notice and hearing.

27-656. Rules and orders; hearing

A. The commission shall adopt rules necessary for the proper administration and enforcement of this article.

B. The commission shall comply with title 41, chapter 6 in adopting, modifying, renewing or extending rules under this article.

C. Any order, or change, renewal or extension of an order, except as otherwise provided by this article, shall be made in compliance with title 41, chapter 6, article 10.

D. If the commission makes a finding that an order is necessary as an emergency measure, the order may be made without first complying with the notice and hearing requirements prescribed by title 41, chapter 6, article 10. All affected persons shall be notified of the emergency order. If oral notice is given, it shall be followed by immediate written notice. The emergency order shall be valid for thirty days from its effective date. The effective date is the date affected persons receive the order by oral or written communication, whichever occurs first. The commission shall hold a hearing within ten days after the effective date of the emergency order. Unless otherwise provided in this section, the hearing shall be conducted in compliance with title 41, chapter 6, article 10. Any order made at the hearing shall expressly repeal the emergency order. For purposes of this subsection, "emergency" means a situation which requires an order without compliance with the notice provisions prescribed in title 41, chapter 6, article 10 because the order is necessary for immediate preservation of the public safety, welfare, natural resources or property and the notice and hearing requirements are impracticable.

DEPARTMENT OF TRANSPORTATION (F-17-0601)

Title 17, Chapter 5, Article 8, Mandatory Insurance and Financial Responsibility



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

MEETING DATE: July 6, 2017

AGENDA ITEM: E-2

TO: Members of the Governor's Regulatory Review Council
FROM: Nicholas Young, Legal Intern
DATE : June 20, 2017
SUBJECT: DEPARTMENT OF TRANSPORTATION (F-17-0601)
Title 17, Chapter 5, Article 8, Mandatory Insurance and Financial Responsibility

Purpose of the Agency and Number of Rules in the Report

The Department of Transportation ("Department") is responsible for planning, building and operating a complex highway system in addition to building and maintaining bridges and the Grand Canyon Airport. The Department is responsible for registering motor vehicles, licensing drivers, designing and constructing transportation facilities and administering transportation safety programs.

This five-year review report covers eleven rules relating to reportable activities by companies that provide motor vehicle liability insurance coverage. The rules prescribe insurance company electronic reporting requirements for motor vehicle liability insurance coverage, information that shall be transmitted to the Department for vehicle-specific and non-vehicle specific commercial policies, electronic data interchange reporting methods, the Department's responses to reporting errors, notification of company failure to submit insurance data, self-insurance applicant requirements, and use of a certificate of deposit as an alternate proof of financial responsibility.

Year that Each Rule was Last Amended or Newly Made

The rules were made in 2007 and have not been amended.

Proposed Action

The Department anticipates submitting a rulemaking package to the Council by March 2019 to make various clarifying and conforming changes to the rules. These changes include:

- R17-5-801: Clarifying, striking, and adding definitions, in order to bring better clarity to the rules.

- R17-5-802: Strike “Effective May 1, 2007” since this date is no longer necessary. Replace references to “Division” with “Department” to refer to all agency actions. Replace the references to R17-5-806 with references to the *Arizona Mandatory Insurance Reporting System Guide for Insurance Companies*, which is prepared by the Department and is available on-line to insurance companies. This guide provides the electronic data interchange methods and technical procedures for submitting reportable activity to the Department.
- R17-5-803: Commercial policy reissuances should be added to the types of reportable activity; commercial policies that are reissued are a type of reportable activity for insurance companies. In Subsection (B)(7), strike reference to “Effective May 1, 2007” since this date is no longer necessary. Replace the reference to “Division” with “Department” to refer to all agency actions.
- R17-5-804: Strike the reference to “MVD” customers and insert “Department” customers and to strike “Division” and insert “Department” to refer to all agency actions.
- R17-5-805: Remove the language in Subsection (B), which is inapplicable to a non-vehicle specific commercial policy. Change the references from “MVD” customer or customers to “Department” customer or customers, as appropriate. In Subsection (A)(1), amend rule to allow a customer number to be system-generated. In Subsection (A)(3) change the reference from the National Association of Insurance Commissioners (NAIC) number of the reporting company to the NAIC number of the responsible company. Replace the reference to “Division” with reference to “Department” to refer to all agency actions.
- R17-5-806: Revise R17-5-806(A) to require a company to transmit reportable activity using a Department-authorized Electronic Data Interchange (EDI) reporting method specified in the *Arizona Mandatory Insurance Reporting System Guide for Insurance Companies* provided by the Department, and strike the references to the methods in Subsections (A)(1) and (A)(2).
- R17-5-807: Strike references to the “Division” and insert “Department” to refer to all agency actions. Add language to R17-5-807 stating that the Department shall return an acknowledgment that a transmission of reportable activity was received and processed using the format in the *Arizona Mandatory Insurance Reporting System Guide for Insurance Companies*. Under subsection (B), add that the format used by the Department for reporting errors is the X12 Error Return format.
- R17-5-808: Under subsection (A)(1), clarify that the Department will return reporting errors received after a transmission. Strike references to the “Division” and insert “Department” to refer to all agency actions.
- R17-5-809: Under subsection (1)(c), clarify that the civil penalty of up to \$250 per day is for each violation. Strike references to the “Division” and insert “Department” to refer to all agency actions.
- R17-5-810: Under subsection (G), clarify the language to require periodic, written notification updates of vehicles added or removed from self-insurance coverage. The current language provides that written notification is required for each vehicle added or removed from self-insurance coverage, which was not intended. Strike references throughout the rule to ‘Division’ and insert “Department” as appropriate.

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 rules are effective except for R17-5-807, which should be updated to state that the Department shall return to a company an acknowledgment that a transmission of reportable activity was received and processed using the format in the *Arizona Mandatory Insurance Reporting System Guide for Insurance Companies*.

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 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. For general authority, the Department cites to A.R.S. § 28-366(1)-(4), which provides that, "[t]he 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; and (4) the use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes." The Department also cites to § 28-4002, which provides that "[t]he director shall administer and enforce this chapter." Further, the Department cites to specific authority for each rule in the report.

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 generally clear, concise, and understandable, however the Department anticipates amending several rules in order to improve clarity. These amendments, which are noted under *proposed action* in this report, include changes to defined terms, clarified references to external sources, and striking outdated subsections.

8. **Has the agency analyzed whether:**

a. **The rules are more stringent than corresponding federal law?**

Yes. The Department 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?**

The rules were adopted prior to July 29, 2010 and 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. The Department indicates that the Department proposed to make and submit rule changes to the Council by March 2014, however the Department was unable to complete the course of action stated in the report due to other agency rulemaking priorities. Although the Department was involved in numerous other rulemakings, the administration at the time wanted a limited number of requests for an exemption from the moratorium to repeal and improve rules, and the Department submitted only the most important rulemakings, many of which were required by recent legislation. The majority of the proposed actions from the previous report are included in the current report, along with new proposed changes.

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: July 6, 2017

AGENDA ITEM: E-2

TO: Members of the Governor's Regulatory Review Council
FROM: GRRC Economic Team
DATE : June 20, 2017
SUBJECT: DEPARTMENT OF TRANSPORTATION (F-17-0601)
Title 17, Chapter 5, Article 8, Mandatory Insurance and Financial Responsibility

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

1. Economic Impact Comparison

The economic, small business, and consumer impact statement (EIS) from the most recent Department rulemaking completed in 2007 was reviewed. The rules address mandatory insurance and financial responsibility for both individuals and businesses that operate motor vehicles. Key stakeholders that are impacted are the Department, businesses that operate motor vehicles, individuals who operate motor vehicles, insurance companies, and the public. In 2016, the Department received 9,420,671 mandatory insurance and financial responsibility reports from insurers. The Department concludes that the economic impact has generally been as predicted in the prior EIS for the rules in the Article cited above.

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

Once the language of the rules is updated, the Department expects that they will impose the least burden and costs to persons regulated by 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.

4. Conclusion

Staff finds 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 Blesty, Deputy Director for Policy
Dallas Hammit, Deputy Director for Transportation

March 24, 2017

Ms. Nicole A. Ong
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

Re: Five-Year Review Report, 17 A.A.C. 5, Article 8 - Mandatory Insurance and Financial Responsibility

Dear Ms. Ong:

The Arizona Department of Transportation is submitting the attached Five-Year Review Report on 17 A.A.C. 5, Article 8, Mandatory Insurance and Financial Responsibility, as requested by the Governor's Regulatory Review Council. This report meets the requirements of A.R.S. § 41-1056 and A.A.C. R1-6-301. The Arizona Department of Transportation certifies that the agency is in compliance with A.R.S. § 41-1091. All of the rules in 17 A.A.C. 5, Article 8 were reviewed. None of the rules in 17 A.A.C. 5, Article 8 were rescheduled.

If you have any questions about the report, please contact Jane McVay, Administrative Rules Analyst, at (602) 712-4279.

Sincerely,

John S. Halikowski
ADOT Director

FIVE-YEAR REVIEW REPORT

TITLE 17. TRANSPORTATION

Chapter 5. DEPARTMENT OF TRANSPORTATION - COMMERCIAL PROGRAMS

ARTICLE 8. MANDATORY INSURANCE AND FINANCIAL RESPONSIBILITY

1. Five-Year Review Summary - Section A	2
2. Information That Is Identical For All Rules - Section B	3
3. Analysis of Individual Rules - Section C	9
4. Current Rules - Section D	14
5. Statutory Authority - Section E	19
6. Economic, Small Business, And Consumer Impact Statement (Submitted 2012) - Section F	24

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 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 5, Article 8, Mandatory Insurance and Financial Responsibility, contains the mandatory insurance and financial responsibility requirements for persons and companies operating motor vehicles, and the electronic data interchange system and reporting requirements. A.R.S. § 28-4148 requires that effective August 1, 1998, insurers must provide notification to ADOT of cancellations, nonrenewal, and issuances of motor vehicle insurance policies. Insurers with fewer than 10,000 policies were required to comply with cancellation notification requirements by August 1, 1999. Insurers are also required to notify policy holders of vehicle insurance cancellation. A.R.S. § 28-4009 sets forth the policy limits and requirements for an owner's vehicle liability policy. A.R.S. § 28-4033 prescribes the amount of liability insurance that is required for commercial vehicles classified by vehicle weight, the number of passengers, and the type of hazardous materials or other materials conveyed. A.R.S. § 28-4007 provides that the ADOT Director may adopt rules to implement self-insurance procedures. A.R.S. § 28-4148 requires an insurer to provide mandatory insurance information by electronic data interchange in a format pursuant to a schedule and in a manner prescribed by the Director.

A.A.C. Title 17, Chapter 5, Article 8 contains eleven rules relating to mandatory insurance and financial responsibility. The rules prescribe insurance company electronic reporting requirements for motor vehicle liability insurance coverage, information that shall be transmitted to ADOT for vehicle-specific and non-vehicle specific commercial policies, electronic data interchange reporting methods, ADOT responses to reporting errors, notification of company failure to submit insurance data, self-insurance applicant requirements, and use of a certificate of deposit as an alternate proof of financial responsibility. These rules were approved as new rules by GRRC in 2007 and have not been amended.

The Department's review of these rules based on the factors in A.R.S. § 41-1056 follows.

INFORMATION THAT IS IDENTICAL WITHIN RULE GROUPS - SECTION B

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION - COMMERCIAL PROGRAMS

ARTICLE 8. MANDATORY INSURANCE AND FINANCIAL RESPONSIBILITY

1. General authority for rulemaking.

The Department's general rulemaking authority is in A.R.S. §§ 28-366 and 28-4002, and specific rulemaking authority is in A.R.S. §§ 20-237, 28-4033, 28-4076, 28-4007, 28-4084, 28-4135, and 28-4148.

- R17-5-801. Definitions
- R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability
- R17-5-803. Insurance Company Reportable Activity
- R17-5-804. Record Matching Criteria for a Vehicle-specific Policy
- R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy
- R17-5-806. Division-authorized EDI Reporting Methods; Reporting Schedule
- R17-5-807. X12 Data Format for Policy Receipt and Error Return
- R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance
- R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing
- R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability
- R17-5-811. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability

3. Effectiveness of the rules in achieving the objectives.

The stated objectives of the following rules are effectively met because the rules detail the mandatory insurance and financial responsibility reporting process and the information that insurance companies must report.

- R17-5-801. Definitions
- R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability
- R17-5-803. Insurance Company Reportable Activity
- R17-5-804. Record Matching Criteria for a Vehicle-specific Policy
- R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy
- R17-5-806. Division-authorized EDI Reporting Methods; Reporting Schedule
- R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance
- R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing
- R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability
- R17-5-811. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability

During 2016 the Department received 9,420,671 mandatory insurance and financial responsibility reports from insurance companies in the state. Of the total data volume, 77% of the reports were submitted by file transfer protocol and 23% by information exchange.

4. Consistent with state and federal statutes and other rules made by the Department.

The following rules are consistent with state and federal statutes and other rules made by the Department:

- R17-5-801. Definitions
- R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability
- R17-5-803. Insurance Company Reportable Activity
- R17-5-804. Record Matching Criteria for a Vehicle-specific Policy
- R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy
- R17-5-806. Division-authorized EDI Reporting Methods; Reporting Schedule
- R17-5-807. X12 Data Format for Policy Receipt and Error Return
- R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance
- R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing
- R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability
- R17-5-811. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability

5. Agency enforcement policy, including whether the rule is currently being enforced.

The Department enforces the following rules as written:

- R17-5-801. Definitions
- R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability
- R17-5-803. Insurance Company Reportable Activity
- R17-5-804. Record Matching Criteria for a Vehicle-specific Policy
- R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy
- R17-5-806. Division-authorized EDI Reporting Methods; Reporting Schedule
- R17-5-807. X12 Data Format for Policy Receipt and Error Return
- R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance
- R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing
- R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability
- R17-5-811. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability

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

Although the following rules are generally clear, concise, and understandable, the Department anticipates amending some of the rules as indicated in item 14 of Section C.

- R17-5-801. Definitions
- R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability
- R17-5-803. Insurance Company Reportable Activity
- R17-5-804. Record Matching Criteria for a Vehicle-specific Policy
- R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy
- R17-5-806. Division-authorized EDI Reporting Methods; Reporting Schedule
- R17-5-807. X12 Data Format for Policy Receipt and Error Return

- R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance
- R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing
- R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability
- R17-5-811. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability

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.

No written criticisms have been received for the following rules:

- R17-5-801. Definitions
- R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability
- R17-5-803. Insurance Company Reportable Activity
- R17-5-804. Record Matching Criteria for a Vehicle-specific Policy
- R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy
- R17-5-806. Division-authorized EDI Reporting Methods; Reporting Schedule
- R17-5-807. X12 Data Format for Policy Receipt and Error Return
- R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance
- R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing
- R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability
- R17-5-811. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability

8. Estimated economic, small business, and consumer impact compared with the last rulemaking.

The economic impact of the following rules has essentially remained the same as estimated in the economic impact statement prepared on the last amendment of the rules:

- R17-5-801. Definitions
- R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability
- R17-5-803. Insurance Company Reportable Activity
- R17-5-804. Record Matching Criteria for a Vehicle-specific Policy
- R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy
- R17-5-806. Division-authorized EDI Reporting Methods; Reporting Schedule
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- R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance
- R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing
- R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability
- R17-5-811. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability

9. Any 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.

No analysis regarding any of the following rules was submitted by another person that compares the rule's impact on this state's business competitiveness to the impact on business in other states:

- R17-5-801. Definitions

- R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability
- R17-5-803. Insurance Company Reportable Activity
- R17-5-804. Record Matching Criteria for a Vehicle-specific Policy
- R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy
- R17-5-806. Division-authorized EDI Reporting Methods; Reporting Schedule
- R17-5-807. X12 Data Format for Policy Receipt and Error Return
- R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance
- R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing
- R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability
- R17-5-811. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability

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

The Department proposed in the previous five-year review to make and submit rule changes to GRRC by March 2014. The Department was unable to complete the course of action stated in the 2012 rule review report for these rules due to other agency rulemaking priorities.

- R17-5-801. Definitions
- R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability
- R17-5-803. Insurance Company Reportable Activity
- R17-5-804. Record Matching Criteria for a Vehicle-specific Policy
- R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy
- R17-5-806. Division-authorized EDI Reporting Methods; Reporting Schedule
- R17-5-807. X12 Data Format for Policy Receipt and Error Return
- R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance
- R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing
- R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability

The Department proposed to make the following changes in the 2012 Five-Year Review Report:

R17-5-801: Make clarifying changes to the definitions of customer number, EDI reporting, error return, and service provider.

R17-5-803: Add commercial policies that are reissued annually as a type of reportable activity.

R7-5-805: Clarify that the customer number may be system-generated and that the NAIC number is from the responsible company. Remove the provision allowing a vehicle identification number instead of the customer number.

R17-5-807: Amend the rule to state that the *Arizona Mandatory Insurance Reporting System Guide* is available on the Department’s website.

R17-5-808: Amend the rule to clarify that errors may occur after the transmission.

In all the rules except R17-5-811, the Department proposed replacing references to “Division” with “Department.”

11. A determination that 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 option necessary to achieve a regulatory objective. The rules approved by GRRC in 2007 imposed costs on insurance companies to electronically report mandatory insurance coverage. Approximately half of the states require insurance companies to report vehicle liability insurance coverage. Although there are some moderate upfront costs for a new insurance company that issues 1,000 or more SR22 policies per calendar year to comply with the electronic reporting requirement, the Department uses the standardized data format and reporting method adopted by the insurance industry to notify state agencies about motor vehicle insurance coverage. This method lessens the burden on insurance companies and is consistent with the electronic reporting format in many other states. The Department believes that these rules impose the least burden and cost to persons regulated by the rules, including paperwork and other compliance costs necessary to achieve the underlying objectives:

- R17-5-801. Definitions
- R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability
- R17-5-803. Insurance Company Reportable Activity
- R17-5-804. Record Matching Criteria for a Vehicle-specific Policy
- R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy
- R17-5-806. Division-authorized EDI Reporting Methods; Reporting Schedule
- R17-5-807. X12 Data Format for Policy Receipt and Error Return
- R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance
- R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing
- R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability
- R17-5-811. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability

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.

- R17-5-801. Definitions
- R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability
- R17-5-803. Insurance Company Reportable Activity
- R17-5-804. Record Matching Criteria for a Vehicle-specific Policy
- R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy
- R17-5-806. Division-authorized EDI Reporting Methods; Reporting Schedule
- R17-5-807. X12 Data Format for Policy Receipt and Error Return
- R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance
- R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing

R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability

R17-5-811. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability

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.

These rules do not require a permit, license, or authorization from the Department of Transportation and are in compliance with A.R.S. § 41-1037.

R17-5-801. Definitions

R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability

R17-5-803. Insurance Company Reportable Activity

R17-5-804. Record Matching Criteria for a Vehicle-specific Policy

R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy

R17-5-806. Division-authorized EDI Reporting Methods; Reporting Schedule

R17-5-807. X12 Data Format for Policy Receipt and Error Return

R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance

R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing

R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability

R17-5-811. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability

14. Proposed Course of Action.

The Department proposes to make the rule changes to update and improve the following rules and anticipates submitting these and any necessary conforming changes to the Council by March 2019:

R17-5-801. Definitions

R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability

R17-5-803. Insurance Company Reportable Activity

R17-5-804. Record Matching Criteria for a Vehicle-specific Policy

R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy

R17-5-806. Division-authorized EDI Reporting Methods; Reporting Schedule

R17-5-807. X12 Data Format for Policy Receipt and Error Return

R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance

R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing

R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability

ANALYSIS OF INDIVIDUAL RULES - SECTION C

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION - COMMERCIAL PROGRAMS

ARTICLE 8. MANDATORY INSURANCE AND FINANCIAL RESPONSIBILITY

R17 -5-801. Definitions

2. Objective

This rule defines terms necessary to enable persons and private companies to understand the mandatory insurance and financial responsibility reporting process.

14. Proposed Action

The Department proposes to make the following changes to update and improve the rule and anticipates submitting these and any necessary conforming changes to the Council by March 2019:

Definition of customer number - Amend the definition to delete repeated information and add a cross-reference to R17-5-805.

Definition of EDI reporting - With regard to the computer-to-computer transmission of data, strike “weekly”. The time when insurance companies report may be daily, every few days, or weekly.

Definition of error return - Regarding the computer-to-computer transmission, strike “immediate.”

The Department’s submission of error returns is not always immediately after submission.

Definition of Arizona Mandatory Insurance Reporting System Guide for Insurance Companies - Insert a definition of this guide, which is prepared by the Department of Transportation.

Definition of MVD - Strike “MVD” and insert “Motor Vehicle Division,” which is used in the rules.

Definition of self-insurer - Strike “Section.”

Definition of service provider - The definition of service provider should be revised to avoid confusion. The rule should state that a service provider reports for an insurance company through a connection to a private information network or an FTP (file transfer protocol).

Definition of Arizona Mandatory Reporting System Guide - Add a new definition of the *Arizona Mandatory Insurance Reporting System Guide for Insurance Companies*, which is referenced in the rules.

References to Division

The Department proposes to replace references to “Division” with references to “Department” to refer to all agency actions.

17-5-802. Insurance Company Electronic Reporting Requirement; Applicability

2. Objective

The objective of this rule is to inform insurance companies and the public about the methods of reporting insurance information electronically and the applicability of this requirement to companies based on the number of their annual SR22 policy issuances.

14. Proposed Action

The Department proposes to make the following changes to update and improve the rule and anticipates submitting these and any necessary conforming changes to the Council by March 2019:

Subsections A and B - Replace the references to R17-5-806 with references to the *Arizona Mandatory Insurance Reporting System Guide for Insurance Companies*, which is prepared by the Department and is available on-line to insurance companies. This guide provides the electronic data interchange methods and technical procedures for submitting reportable activity to the Department.

Effective date - Strike reference to “Effective May 1, 2007” since this date is no longer necessary.

References to Division - The Department proposes to replace references to “Division” with references to “Department” to refer to all agency actions.

R17-5-803. Insurance Company Reportable Activity

2. Objective

The objective of this rule is to specify the types of reportable activity that insurance companies should report to the Department and the timeframe for reporting.

14. Proposed Action

The Department proposes to make the following changes to update and improve the rule and anticipates submitting these and any necessary conforming changes to the Council by March 2019:

Commercial policy reissuance - Commercial policy reissuances should be added to the types of reportable activity. Commercial policies that are reissued are a type of reportable activity for insurance companies.

Effective date - In Subsection (B)(7), strike reference to “Effective May 1, 2007” since this date is no longer necessary.

Reference to Division - The Department proposes to replace the reference to “Division” with reference to “Department” to refer to all agency actions.

R17-5-804. Record Matching Criteria for a Vehicle-specific Policy

2. Objective

This rule informs insurance companies about the information that must be reported to the Department for each vehicle-specific insurance policy to ensure that information can be identified and any appropriate action can be taken.

14. Proposed Action

The Department proposes to make the following changes to update and improve the rule and anticipates submitting these and any necessary conforming changes to the Council by March 2019:

Conforming changes - The Department proposes to strike the reference to “MVD” customers and insert “Department” customers and to strike “Division” and insert “Department” to refer to all agency actions.

R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy

2. Objective

This rule informs the public and insurance companies about the specific information to report to the Department for a non-vehicle specific commercial insurance policy, and the reporting timeframe, to ensure that information can be identified and any appropriate action can be taken.

14. Proposed Action

The Department proposes to make the following changes to update and improve the rule and anticipates submitting these and any necessary conforming changes to the Council by March 2019:

Subsection (A) - Change the references from “MVD” customer or customers to “Department” customer or customers, as appropriate. In Subsection (A)(1), amend rule to allow a customer number to be system-generated. In Subsection (A)(3) change the reference from the NAIC number of the reporting company to the NAIC number of the responsible company.

Subsection (B) - Remove this language which is inapplicable to a non-vehicle specific commercial policy.

Reference to Division - The Department proposes to replace the reference to “Division” with reference to “Department” to refer to all agency actions.

R17-5-806. Division-authorized EDI Reporting Methods; Reporting Schedule

2. Objective

This rule specifies the electronic data interchange methods that must be used for an insurance company to submit reportable activity to the Department to ensure uniformity in reporting.

14. Proposed Action

The Department proposes to make the following change to update and improve the rule and anticipates submitting these and any necessary conforming changes to the Council by March 2019:

EDI Reporting Method - Revise R17-5-806(A) to require a company to transmit reportable activity using a Department-authorized EDI reporting method specified in the *Arizona Mandatory Insurance Reporting System Guide for Insurance Companies* provided by the Department, and strike the references to the methods in Subsections (A)(1) and (A)(2).

R17-5-807. X12 Data Format for Policy Receipt and Error Return

2. Objective

This rule informs the public and insurance companies that the format for insurance companies to submit reportable activity to the Department and the format used by the Department to return reporting errors is in the *Arizona Mandatory Insurance Reporting System Guide for Insurance Companies*.

3. Effectiveness of the rule in achieving the objectives.

The effectiveness of this rule can be improved by stating that the Department shall return to a company an acknowledgment that a transmission of reportable activity was received and processed using the format in the *Arizona Mandatory Insurance Reporting System Guide for Insurance Companies*.

14. Proposed Action

The Department proposes to make the following changes to update and improve the rule and anticipates submitting these and any necessary conforming changes to the Council by March 2019:

Subsection (B) - Add that the format used by the Department for reporting errors is the X12 Error Return format.

Acknowledgment - Add language to R17-5-807 stating that the Department shall return an acknowledgment that a transmission of reportable activity was received and processed using the format in the *Arizona Mandatory Insurance Reporting System Guide for Insurance Companies*.

Conforming changes - Strike references to the “Division” and insert “Department” to refer to all agency actions.

17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance

2. Objective

The objectives of the rule are to inform insurance companies about the Division’s format to return, correct, and notify the Division about reporting errors. Fulfilling these objectives ensures that mandatory insurance information reported will be accurate, information is properly identified, and appropriate action is taken.

14. Proposed Action

The Department proposes to make these changes to update and improve the rule and anticipates submitting this and any necessary conforming changes to the Council by March 2019:

Subsection (A)(1) - Clarify that the Department will return reporting errors received after a transmission.

References to Division - Change references to Department, as appropriate.

R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing

2. Objective

This rule’s objective is to inform insurance companies and the public regarding the Department’s process, a company’s right to a hearing, and the actions that will occur if an insurance company does not submit mandatory insurance information required in A.R.S. § 28-4148.

14. Proposed Action

The Department proposes to make these changes to update and improve the rule and anticipates submitting this and any necessary conforming changes to the Council by March 2019:

Subsection (1)(c) - Clarify that the civil penalty of up to \$250 per day is for each violation.

References to Division - Change references to Department.

R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability

2. Objective

This rule provides the qualifications and information required for a person or company that applies for self-insurance under A.R.S. § 28-4007.

14. Proposed Action

The Department proposes to make these changes to update and improve the rule and anticipates submitting this and any necessary conforming changes to the Council by March 2019:

Subsection (G) - Clarify the language to require periodic, written notification updates of vehicles added or removed from self-insurance coverage. The current language provides that written notification is required for each vehicle added or removed from self-insurance coverage, which was not intended.

References to Division - Strike references throughout the rule to ‘Division’ and insert ‘Department’ as appropriate.

R17-5-811. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability

2. Objective

The objective of this rule is to cap the number of registered non-commercial vehicles that may be registered in the person’s name when a person uses a certificate of deposit or cash to meet proof of financial responsibility requirements through a certificate of deposit or cash.

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

The Department did not propose any action on this rule in the previous five-year review.

14. Proposed Action

This rule is clear, concise, and understandable, meets its objective, is effective, and the Department proposes no action on this rule.

CURRENT RULES - SECTION D

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION - COMMERCIAL PROGRAMS

ARTICLE 8. MANDATORY INSURANCE AND FINANCIAL RESPONSIBILITY

R17-5-801. Definitions

In addition to the definitions under A.R.S. §§ 28-101 and 28-4001, in this Chapter, unless otherwise specified:

“Company” means an insurance or indemnity company authorized to write motor vehicle liability coverage in Arizona.

“Customer number” means the system-generated, or other distinguishing number, assigned by the Division to each person conducting business with the Division. The customer number of a private individual is generally the person’s driver license or non-operating identification license number. The customer number of a business is generally its federal employer identification number.

“Division” means the Arizona Department of Transportation’s Motor Vehicle Division.

“EDI” means electronic data interchange, which is the transmission of data in a standardized format from one computer to another without the use of magnetic tape.

“EDI reporting” means the weekly computer-to-computer transmission of data from a company to the Division.

“Error return” means the immediate computer-to-computer transmission, from the Division to a company, of all data reporting errors received during EDI reporting.

“FEIN” means the federal employer identification number or federal tax identification number used to identify a business entity.

“FTP” means file transfer protocol, which is a common protocol used by the Division for exchanging files over any network that supports EDI reporting transmitted through the Internet or Intranet.

“Information exchange” means EDI reporting where a company or service provider transmits a report to the Division through a connection to a private information network.

“MVD” means the Arizona Department of Transportation’s Motor Vehicle Division.

“NAIC” means the National Association of Insurance Commissioners.

“Private information network” means the value-added network used by a company or service provider to facilitate EDI transmissions to the Division and to provide other network services where fees are charged for the network connection based on the number of characters and messages transmitted.

“Reportable activity” means the information required to be transmitted to the Division under A.R.S. § 28-4148 and this Article.

“Self-insurer” means a person or entity that has met the qualifications, completed the application process, and received a certificate of self-insurance issued by the Division under Section R17-5-810.

“Service provider” means a person or entity that provides the connection to a private information network for EDI reporting.

“SR22” means a certification filed, by a company duly authorized to transact business in this state, as proof of financial responsibility for the future, which guarantees that the insured owner or operator has in effect at least the minimum motor vehicle liability insurance coverage required under A.R.S. Title 28, Chapter 9, Article 3.

“SR26” means a certification filed by a company duly authorized to transact business in this state, which notifies the Division that an insured owner or operator required to maintain proof of financial responsibility for the future, under A.R.S. Title 28, Chapter 9, Article 3, is no longer covered under a previously reported SR22.

“Value-added Network” means a private network provider that is hired by a company to facilitate EDI or provide other network services.

“X12” means the American National Standards Institute, Accredited Standards Committee, uniform standards for the inter-industry electronic exchange of business transactions by EDI.

“X12 (TS811)” means X12 Transaction Set 811, Consolidated Service Invoice – Statement, version 3050, which is the specific set of EDI transactions developed for the insurance industry in the X12 standard format for automobile liability insurance reporting.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-802. Insurance Company Electronic Reporting Requirement; Applicability

- A. A company that provides motor vehicle liability insurance coverage for an Arizona vehicle shall electronically transmit to the Division all reportable activity under A.R.S. § 28-4148 and R17-5-803 using one of the authorized EDI reporting methods identified in R17-5-806. Each transmission shall include all of the applicable record matching criteria prescribed under R17-5-804 or R17-5-805.
- B. Effective May 1, 2007, a company that issues 1,000 or more SR22 policies per calendar year shall electronically transmit to the Division all SR22 and SR26 activity using one of the Division-authorized EDI reporting methods identified in R17-5-806. Each transmission shall include all of the applicable record matching criteria prescribed under R17-5-804 or R17-5-805.
- C. The Division shall not accept or record an out-of-state motor vehicle liability insurance policy for a passenger vehicle, even if written by a company authorized to transact business in this state.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-803. Insurance Company Reportable Activity

- A. A company shall transmit to the Division:
 - 1. All reportable activity, not previously reported, that was processed by the company seven or fewer days before each reporting date; or
 - 2. A statement of inactivity, if no reportable activity occurred by the reporting date.
- B. For the purpose of this Article, reportable activity shall include:
 - 1. A policy cancellation;
 - 2. A policy non-renewal;
 - 3. A new policy issuance;
 - 4. A vehicle added to a policy;
 - 5. A vehicle deleted from a policy;
 - 6. A policy reinstatement; and
 - 7. Effective May 1, 2007, all SR22 and SR26 filings by insurance companies issuing 1,000 or more SR22 policies per calendar year.
- C. Reportable activity does not include the addition or deletion of a vehicle to or from a non-vehicle-specific commercial policy.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-804. Record Matching Criteria for a Vehicle-specific Policy

For each vehicle-specific policy transmitted to the Division, a company shall include all of the following information to assist with the matching of policies to MVD customers:

- 1. The complete and valid vehicle identification number;
- 2. The policy number; and
- 3. The NAIC number of the reporting company.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy

A. For each non-vehicle-specific commercial policy transmitted to the Division, a company shall include all of the following information to assist with the matching of policies to MVD customers:

- 1. The MVD Customer number of the insured:
 - a. If a policy covers all vehicles registered in the name of a business or organization, the Customer number is the FEIN of the business or organization; or
 - b. If a policy covers all vehicles registered in the name of a private individual, the Customer number is the Arizona Driver License number of the private individual;
- 2. The policy number; and
- 3. The NAIC number of the reporting company.

- B. If the MVD Customer number required under subsection (A)(1) is not available to a company, the company may provide the complete and valid vehicle identification number of each vehicle covered under the policy in lieu of the MVD Customer number.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-806. Division-authorized EDI Reporting Methods; Reporting Schedule

- A. A company shall transmit to the Division all reportable activity listed in R17-5-803 using one of the following Division-authorized EDI reporting methods:
 - 1. EDI reporting by information exchange; or
 - 2. EDI reporting by encrypted FTP.
- B. A company shall transmit all reportable activity to the Division at least once every seven days.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-807. X12 Data Format for Policy Receipt and Error Return

- A. Reporting format. A company shall transmit to the Division all reportable activity using the format prescribed in the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies provided by the Division.
- B. Error return format. The Division shall return to a company all reporting errors received during a transmission of reportable activity using the format prescribed in the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance

- A. The Division shall:
 - 1. Return to a company, using the X12 Error Return format provided in R17-5-807(B), all reporting errors received during a transmission; and
 - 2. Instruct the company to correct all reporting errors affecting the Division's processing of the required data.
- B. All companies reporting electronic policy information shall notify the Division prior to making changes to any reporting systems, or previously established policy reporting formats, that may affect the Division's ability to match and process the information received.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing

If a company fails to submit the data required under A.R.S. § 28-4148, and this Article, the Division shall:

- 1. Send to the company, a dated written notice, which:
 - a. Identifies the business week or reporting period in which the company did not submit the required information;
 - b. Instructs the company to submit the information for the identified business week or reporting period within seven days of the date of the notice;
 - c. Informs the company that a failure to respond to the Division's request within the allotted time-frame, shall result in a referral of the matter to the Arizona Department of Insurance, under A.R.S. § 20-237, which may result in a civil penalty of up to \$250 per day for each day the insurer is in violation of A.R.S. § 28-4148; and
 - d. Provides notice of the company's right to request a hearing with the Arizona Department of Insurance under A.R.S. § 20-237; and
- 2. Advise the Arizona Department of Insurance if the company fails to comply with the Division's written notice provided under this Section.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability

- A.** Self-insurance applicant qualification. A person or entity may apply for self-insurance under this Section if the applicant:
1. Owns the minimum number of vehicles prescribed under A.R.S. § 28-4007(A) with current Arizona registration;
 2. Demonstrates minimum assets of \$1 million on documentation required under subsections (C) and (D);
 3. Meets any additional financial responsibility requirements under A.R.S. § 28-4033(A), according to the insured vehicle's weight and/or intended use; and
 4. Provides a business office contact for the company with a current phone number and mailing information.
- B.** A self-insurance applicant shall provide, on a self-insurance application form provided by the Division, the following information:
1. Applicant's name;
 2. Business name, if applicable;
 3. Mailing address, city, state, and ZIP code;
 4. A selection of coverage type:
 - a. Public liability only; or
 - b. Public liability and property damage;
 5. Number of vehicles in the applicant's fleet;
 6. A selection list that describes the nature of the applicant's business;
 7. A description of any hazardous materials transported by type, class, and weight;
 8. A report of all accidents in the prior 39-month period before the application date;
 9. The applicant's signature and official business title to certify that all information is true and correct; and
 10. Acknowledgment by a notary public or by the signature of an authorized Motor Vehicle Division agent.
- C.** Supplementary documentation. In addition to a completed self-insurance application form, the applicant shall submit a profit and loss statement certified by a Certified Public Accountant for the 12-month period before the application date. The profit and loss statement shall include one of the following:
1. A balance sheet; or
 2. An annual financial report.
- D.** On approval of an application, the Division shall issue a certificate of self-insurance that is continuously valid but shall require the self-insurer to submit a 12-month update of supplementary documentation prescribed under subsection (C) on or before July 1 of each successive year.
- E.** An initial self-insurance applicant or a self-insurer making an annual update shall submit documentation required under subsections (B) through (D) to the following address:
- Motor Vehicle Division
Financial Responsibility Unit
P.O. Box 2100, Mail Drop 535M
Phoenix, AZ 85001-2100
- F.** A self-insurer shall keep a copy of the self-insurance certificate in each covered vehicle at all times.
- G.** A self-insurer shall submit written notification to the Division of each vehicle to be added or removed from self-insurance coverage. The written notification shall include the vehicle identification number of each vehicle.
- H.** A self-insurer that terminates self-insurance shall provide new evidence of financial responsibility as required under A.R.S. § 28-4135 for each vehicle previously covered under a self-insurance certificate.
- I.** In addition to the reasonable grounds prescribed under A.R.S. § 28-4007(C), the Division may cancel a self-insurance certificate under the following circumstances:
1. A self-insurer fails to comply with provisions of the Division's annual update requirement under subsection (D), or
 2. A self-insurer no longer owns the covered business or fleet.
- J.** For the purpose of A.R.S. § 28-4007(C) and this Section, the Division shall conduct a self-insurance cancellation hearing according to the provisions prescribed under 17 A.A.C. 1, Article 5.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-811. Certificate of Deposit as Alternate Proof of Financial Responsibility; Applicability

For the purpose of A.R.S. §§ 28-4076(2) and 28-4084, a person depositing a \$40,000 certificate of deposit with the state treasurer as alternate proof of financial responsibility may apply the certificate to a maximum of 25 non-commercial vehicles registered in the person's name.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

STATUTORY AUTHORITY - SECTION E
TITLE 17. TRANSPORTATION
CHAPTER 5. DEPARTMENT OF TRANSPORTATION - COMMERCIAL PROGRAMS
ARTICLE 8. MANDATORY INSURANCE AND FINANCIAL RESPONSIBILITY

20-237. Failure to provide information; penalty

If after a hearing and certification by the department of transportation the director of insurance finds that an insurer has failed to comply with the provisions of section 28-4148, the director of insurance shall impose a civil penalty for each violation of not more than two hundred fifty dollars per day for each day the insurer is in violation of section 28-4148. The director of insurance also may suspend the insurer's certificate of authority until the insurer complies with the provisions of section 28-4148. No penalty shall be imposed pursuant to this section if noncompliance is determined by the director of insurance to have been inadvertent or accidental. The burden of proving that the noncompliance was inadvertent or accidental shall be on the insurer.

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.

28-4001. Definitions

In this chapter, unless the context otherwise requires:

1. "Judgment" means a judgment that has become final by expiration without appeal of the time within which an appeal might have been perfected or by final affirmation on appeal and that is rendered by a court of competent jurisdiction of any state or of the United States on a cause of action either:
 - (a) Arising out of the ownership, maintenance or use of a motor vehicle for damages, including damages for care and loss of services, because of either bodily injury to or death of a person or injury to or destruction of property, including the loss of use of the property.
 - (b) On an agreement of settlement for damages described in subdivision (a) of this paragraph.
2. "License" means a license, temporary instruction permit or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles.
3. "Motor vehicle" means a self-propelled vehicle that is registered or required to be registered under the laws of this state.
4. "Motor vehicle liability policy" means an owner's or an operator's policy of liability insurance that is both:
 - (a) Certified as provided in section 28-4077 or 28-4078 as proof of financial responsibility.
 - (b) Issued by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named as the insured, except as otherwise provided in section 28-4078.
5. "Nonresident operating privilege" means the privilege conferred on a nonresident by the laws of this state pertaining to the nonresident's operation of a motor vehicle or the use of a motor vehicle owned by the nonresident in this state.
6. "Operator" means a person who is in actual physical control of a motor vehicle, whether or not the person has a license.
7. "Proof of financial responsibility" means proof of ability to respond in damages for liability on account of accidents occurring after the effective date of the proof and arising out of the ownership, maintenance or use of a motor vehicle, in the amounts required by section 28-4009 or 28-4033.
8. "Registration" means the registration certificate or certificates and license plates issued under the laws of this state pertaining to the registration of motor vehicles.
9. "State" means a state, territory or possession of the United States, the District of Columbia or a province of the Dominion of Canada.

28-4002. Director; duties

The director shall:

1. Administer and enforce this chapter.

2. Print for distribution to the public rules adopted to administer this chapter and furnish the rules to a person on application and payment of the cost as prescribed by the director.

28-4007. Self-insurers

A. Except as provided in subsection E of this section, a person in whose name more than ten motor vehicles are registered or who is required to comply with the financial responsibility requirements prescribed in article 2 of this chapter may qualify as a self-insurer or partial self-insurer by obtaining a certificate of self-insurance or partial self-insurance issued by the director as provided in this section.

B. After determining that the person is financially able and will continue to be able to pay judgments obtained against the person, the director may issue a certificate of self-insurance or partial self-insurance.

C. On not less than five days' notice and after a hearing, the director may cancel a certificate of self-insurance or a certificate of partial self-insurance on reasonable grounds. For the purposes of this subsection, "reasonable grounds" includes any of the following circumstances:

1. Failure to pay a judgment within thirty days after the judgment becomes final.
2. Determination by the director that the person has not complied with the financial responsibility requirements of this chapter.
3. Determination by the director that the person knowingly submitted false information that is required by this chapter to this state, a political subdivision of this state, a court or a law enforcement agency.
4. Determination by the director that the person knowingly failed to respond within thirty days to a claim for damages for liability arising out of the ownership, maintenance or use of a motor vehicle.
5. Determination by the director that the person does not meet the bond requirements prescribed in section 28-4011.

D. A person who is required to comply with the financial responsibility requirements prescribed in article 2 of this chapter may file an application with the department for partial self-insurance to cover any portion of the financial responsibility requirements.

E. A person may also qualify as a self-insurer if the person is insured by a captive insurer that is domiciled and authorized by the department of insurance to transact business in this state and that provides coverage in an amount of at least that required by section 28-4033.

F. A person applying for self-insurance or partial self-insurance pursuant to this section shall comply with both of the following at the time of application:

1. The person shall submit evidence in a form prescribed by the director that the person is financially able and will continue to be able to pay the entire amount of self-insurance or partial self-insurance allowed by the director for judgments obtained against the person for liability arising out of the ownership, maintenance or use of a motor vehicle.
2. If applicable, the person shall submit evidence in a form prescribed by the director that the person has a valid insurance policy that meets the requirements prescribed in section 28-4033 and that is issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state.

G. The director may adopt rules to implement this section, including rules requiring additional evidence that the person meets the financial responsibility requirements of this chapter and rules providing for the periodic submission of evidence demonstrating that the person meets the standards required by the department to qualify as a self-insurer, a captive insurer or partial self-insurer.

H. The director of the department of transportation, in consultation with the director of the department of insurance, may establish procedures that allow a person to apply for and file a certificate of either partial self-insurance or self-insurance.

I. The director of the department of transportation, in consultation with the director of the department of insurance, shall establish procedures to exchange information regarding changes in the self-insurance status of persons who are subject to this section.

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.

28-4076. Alternate methods of proof

If required by this chapter, a person may give proof of financial responsibility by filing one of the following:

1. A certificate of insurance pursuant to section 28-4077 or 28-4078.
2. Certificates of deposit or cash pursuant to section 28-4084.

28-4084. Monies or certificates of deposit as proof; exception

- A. The state treasurer may issue a certificate that gives evidence of proof of financial responsibility that the person named in the certificate has deposited with the state treasurer forty thousand dollars in cash or certificates of deposit with a value of forty thousand dollars issued by a financial institution.
- B. The state treasurer shall not accept the deposit and issue a certificate for and the director shall not accept the certificate unless the depositor provides evidence that there are no unsatisfied judgments of any kind against the depositor in the county where the depositor resides.
- C. The state treasurer shall hold the deposit to satisfy, in accordance with this chapter, an execution on a judgment issued against the person making the deposit for damages, including damages for care and loss of services, because

of bodily injury to or death of a person or for damages because of injury to or destruction of property, including the loss of use of the property, resulting from the ownership, maintenance, use or operation of a motor vehicle after the deposit is made.

D. Monies or certificates of deposit deposited pursuant to this section are not subject to attachment or execution unless the attachment or execution arises out of a suit for damages described in subsection C.

E. Deposits of cash or certificates of deposit under this section do not satisfy the financial responsibility requirements prescribed in article 2 of this chapter.

28-4135. Motor vehicle financial responsibility requirement; civil penalties; evidence at hearing

A. A motor vehicle that is operated on a highway in this state shall be covered by one of the following:

1. A motor vehicle or automobile liability policy that provides limits not less than those prescribed in section 28-4009.

2. An alternate method of coverage as provided in section 28-4076.

3. A certificate of self-insurance as prescribed in section 28-4007.

4. A policy that satisfies the financial responsibility requirements prescribed in article 2 of this chapter.

B. A person operating a motor vehicle on a highway in this state shall have evidence within the motor vehicle of current financial responsibility applicable to the motor vehicle. The evidence may be displayed on a wireless communication device that is in the motor vehicle. If a person displays the evidence on a wireless communication device pursuant to this subsection, the person is not consenting for law enforcement to access other contents of the wireless communication device.

C. Failure to produce evidence of financial responsibility on the request of a law enforcement officer investigating a motor vehicle accident or an alleged violation of a motor vehicle law of this state or a traffic ordinance of a city or town is a civil traffic violation that is punishable as prescribed in this section.

D. A citation issued for violating subsection B or C of this section shall be dismissed if the person to whom the citation was issued produces evidence to the appropriate court officer on or before the date and time specified on the citation for court appearance and in a manner specified by the court, including the certification of evidence by mail, of either of the following:

1. The financial responsibility requirements prescribed in this section were met for the motor vehicle at the date and time the citation was issued.

2. A motor vehicle or automobile liability policy that meets the financial responsibility requirements of this state and that insured the person and the motor vehicle the person was operating at the time the person received the citation regardless of whether or not the motor vehicle was named in the policy.

E. Except as provided in section 28-4137, a person who violates this section is subject to a civil penalty as follows:

1. The court shall impose a minimum civil penalty of five hundred dollars for the first violation. On receipt of the abstract of the record of judgment, the department shall suspend the driver license of the person and the registration and license plates of the motor vehicle involved for three months.

2. If a person violates this section a second time within a period of thirty-six months, the court shall impose a minimum civil penalty of seven hundred fifty dollars. On receipt of the abstract of the record of judgment, the department shall suspend the driver license of the person and the registration and license plates of the motor vehicle involved for six months.

3. If a person violates this section three or more times within a period of thirty-six months, the court shall impose a minimum civil penalty of one thousand dollars. On receipt of the abstract of the record of judgment, the department shall suspend the driver license of the person and the registration and license plates of the motor vehicle involved for one year. The department shall require on reinstatement of the driver license, the registration and the license plates that the person file with the department proof of financial responsibility in accordance with article 3 of this chapter.

F. A court may require a person to produce an insurance identification card as evidence in a hearing for a violation of this section.

28-4148. Notice of insurance cancellation or nonrenewal

A. Effective from and after January 1, 1998 and through July 31, 1998, each insurer who cancels or becomes aware of the cancellation or nonrenewal of or failure to renew or issuance of a motor vehicle liability insurance policy issued on a vehicle in this state shall provide to the department all cancellations, nonrenewals or new issues for any reason after thirty or fewer days have elapsed from the time of processing the cancellation, nonrenewal or new issue of a policy.

B. Effective August 1, 1998, each insurer who cancels or becomes aware of the cancellation or nonrenewal of or failure to renew or issuance of a motor vehicle liability insurance policy issued on a vehicle in this state shall provide to the department all cancellations, nonrenewals or new issues for any reason after seven or fewer days have elapsed from the time of processing the cancellation, nonrenewal or new issue of a policy. Any insurer with less than ten thousand policies in place as of the effective date of this section, shall have until August 1, 1999 to comply with the requirements of this section.

C. The insurer shall provide the information by electronic data interchange in a format pursuant to a schedule specified by and in a manner prescribed by the director.

D. The department shall not require an insurer to specify the vehicle identification number of a vehicle covered under a commercial vehicle policy that provides automatic coverage for additional or newly acquired vehicles until the policy's expiration date.

E. The department shall provide the notice of cancellation or nonrenewal information to all law enforcement agencies on an on-line computerized call in basis from law enforcement vehicles.

F. On cancellation or nonrenewal of a policy, an insurer shall notify the insured that the department has been notified of the cancellation or nonrenewal and that the insured's motor vehicle registration may be suspended.

G. Except as provided in section 28-4143, subsection E, information provided by an insurer to the department pursuant to this section shall be made available only to law enforcement agencies for law enforcement purposes.

SECTION F - ECONOMIC, SMALL BUSINESS and CONSUMER IMPACT STATEMENT

TITLE 17. TRANSPORTATION

CHAPTER 5. COMMERCIAL PROGRAMS

ARTICLE 8. MANDATORY INSURANCE AND FINANCIAL RESPONSIBILITY

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION

COMMERCIAL PROGRAMS

ARTICLE 8. MANDATORY INSURANCE AND FINANCIAL RESPONSIBILITY

R17-5-502, R17-5-503, R17-5-801, R17-5-802, R17-5-803, R17-5-804, R17-5-805, R17-5-806, R17-5-807,

R17-5-808, R17-5-809, R17-5-810, & R17-5-811

Economic, Small Business and Consumer Impact Statement

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rule making:

The Arizona Department of Transportation, Motor Vehicle Division, is repealing Sections R17-5-502 and R17-5-503, which currently contain antiquated electronic reporting guidelines and processes for insurance companies authorized to conduct business in Arizona, and creating a new Article within Chapter 5; Article 8, Mandatory Insurance and Financial Responsibility. This new Article incorporates updated electronic reporting guidelines, mandatory insurance rules, and financial responsibility rules that reflect current business practices and are more clear, concise, and understandable. This action complies with recommendations made in the Division's five-year-review report approved by the Governor's Regulatory Review Council on August 2, 2005.

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

The Division anticipates, as a result of this rulemaking, a minimal economic impact to qualified persons and business entities seeking to self-insure under A.R.S. §§ 28-4007 and 28-4076. Costs may include administrative expenses for preparing the application and providing the Division with the required annual update documentation needed to maintain a current self-insurance certificate. However, the Division anticipates a benefit of substantial savings for self-insuring entities in standard financial responsibility coverage of fleet vehicles.

The Division anticipates that insurance companies issuing 1000 or more SR22 policies per year may experience a moderate economic impact for the initial programming and implementation of the electronic SR22 and SR26 reporting requirement under R17-5-802. However, the Division is currently working closely with all affected insurance companies to ensure a smooth transition, and since the electronic reporting system to be used for reporting SR22 and SR26 information is the same electronic reporting system the insurance companies currently use to report all other motor vehicle liability insurance policies to the Division, and to other states, the Division anticipates a smooth transition.

The new electronic SR22 and SR26 reporting functionality is expected to significantly benefit the insurance companies and their customers by providing increased accuracy, timeliness in processing, and the ability to provide immediate updates to the customer’s insurance information on file with the Division. The Division and the motoring public will benefit significantly with enhanced reporting and compliance capability and increased reporting accuracy.

The proposed rules also provide an exemption from the electronic SR22 and SR26 reporting requirement for companies issuing less than 1000 SR22 policies per calendar year. The Division anticipates this exemption may benefit the smaller businesses by allowing them to voluntarily convert their manual SR22 and SR26 policy reporting to the electronic reporting process as appropriate for their business needs.

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

Telephone: (602) 712-8804
 Name: John Lindley, Administrative Rules Analyst
 Address: Administrative Rules Unit
 Department of Transportation, Motor Vehicle Division
 1801 W. Jefferson St., Mail Drop 530M
 Phoenix, AZ 85007
 Fax: (602) 712-3081
 E-mail: jlindley@azdot.gov

B. Economic, small business and consumer impact statement:

1. Identification of the proposed rule making:

See paragraph (A)(1) above.

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

Persons to bear costs	Persons to benefit
Arizona Department of Transportation, Motor Vehicle Division	Arizona Department of Transportation, Motor Vehicle Division
Arizona insurance companies that issue 1000 or	Arizona insurance companies

Persons to bear costs	Persons to benefit
more SR22 insurance policies per year	
Qualified persons and business entities seeking to self-insure	Customers of Arizona insurance companies
	Arizona's motoring public

3. Cost benefit analysis:

Cost-revenue scale. Annual costs or revenues are defined as follows:

Minimal	less than \$10,000
Moderate	\$10,000 to \$99,999
Substantial	\$100,000 or more

- a. Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the proposed rulemaking:

The anticipated economic impact to the Division is moderate and includes the costs associated with implementation of the rules, system programming changes, and the resources necessary for rulemaking. However, the Division expects to benefit with a significant reduction in the administrative costs currently expended to manually process and maintain the large number of SR22 and SR26 forms received from all insurance companies, which totaled 285,127 in calendar year 2006. There is no economic impact to any other state agency.

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

The Division anticipates no economic impact to political subdivisions of this state as a result of this rulemaking. However, in terms of preserving the public safety, the new electronic SR22 and SR26 reporting requirement under R17-5-802 may benefit political subdivisions with an anticipated increase in reporting accuracy and the timely communication and recording of a driver's proof of future financial responsibility. This information allows the Division to immediately: 1) verify whether a driver's SR22 policy is still in force; 2) take action when a required SR22 policy is cancelled; and 3) provide accurate up-to-date information to citizens and political subdivisions who may submit a lawful request for a driver's insurance information.

The rules additionally preserve the public safety by limiting a \$40,000 certificate of deposit filed with the state treasurer, as alternate proof of financial responsibility, to a maximum of 25 non-commercial vehicles registered in a person's name.

- c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking:**

The Division anticipates a moderate economic impact to insurance companies that issue 1000 or more SR22 policies per year. Anticipated costs include the resources necessary for implementation of the rules, system programming changes, and the administrative costs involved with preparing the SR22 and SR26 policy information for electronic processing with the Division.

The Division anticipates that the insurance companies affected by the rules will benefit significantly. The new SR22 and SR26 electronic reporting system is the same system the insurance companies currently use to electronically report liability insurance information to the Division. Customers of the insurance companies will benefit from the significantly reduced processing times and increased accuracy in the recording of all policy information. The insurance companies will benefit from the elimination of the cumbersome paper process they currently use to report SR22 and SR26 policy information to the Division.

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

The Division anticipates no economic impact on private and public employment as a result of this rulemaking.

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

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

The small businesses subject to these rules are those identified under (3)(c) and also qualify under A.R.S. § 41-1001(19).

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

The Division anticipates, as a result of this rulemaking, a minimal economic impact to qualified persons and business entities seeking to self-insure under A.R.S. §§ 28-4007 and 28-4076. Costs may include additional administrative expenses for preparing the application and providing the Division with the annual update documentation required to maintain a current self-insurance certificate. However, the Division anticipates a benefit of substantial savings for self-insuring entities in standard financial responsibility coverage of fleet vehicles.

The Division anticipates that the new requirement to electronically report SR22 and SR26 policy information, under R17-5-802, will require insurance companies that issue 1000 or more SR22 policies per year to provide the resources necessary for implementation of the rules, system programming changes, and the administrative costs involved with preparing the SR22 and SR26 policy information for electronic processing with the Division. However, the Division expects that the administrative costs currently expended by the insurance companies to manually report SR22 and SR26 policy information to the Division will be significantly reduced with the new electronic reporting functionality.

With the exception of the new requirement to electronically report SR22 and SR26 policy information, as identified under (3)(c), the Division anticipates no additional administrative or other costs associated with

compliance of this rulemaking. The rules are generally intended to incorporate the updated electronic reporting guidelines that Arizona insurance companies are currently using to report insurance information to the Division.

c. Description of the methods ADOT may use to reduce the impact on small businesses:

The Division anticipates that of the 492 insurance companies that currently issue and report SR22 policies to the Division, only 44 will be affected by the new SR22 and SR26 electronic reporting requirement, under R17-5-802. Additionally, nine of the 44 affected companies have already converted their SR22 and SR26 filings to the electronic format.

The Division provided an exemption from the new electronic SR22 and SR26 reporting requirement for insurance companies that issue less than 1,000 SR22 policies per calendar year. Additionally, a delayed effective date of May 1, 2007, was provided to ensure that the insurance companies have enough time to appropriately plan and re-program their systems. The Division continues to work closely with all affected companies and industry representatives to ensure successful implementation of the rules.

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

The Division anticipates that the customers of all affected insurance companies will benefit significantly by the new electronic SR22 and SR26 reporting requirement. The insurance company can immediately update the customer's SR22 and SR26 insurance information on file with the Division.

The Division anticipates no economic impact on private persons, consumers, or small businesses as a result of the 25-vehicle limit being placed on the number of vehicles that can be covered under a \$40,000 Certificate of Deposit on file with the State Treasurer's Office. Division records indicate that 100% of the customers currently opting to submit a \$40,000 Certificate of Deposit, in-lieu of purchasing separate motor vehicle liability insurance policies for each of their vehicles, are private individuals, each owning less than 25 vehicles.

6. Statement of the probable effect on state revenues:

The Division anticipates no economic impact on state revenues.

7. Description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking:

See 5(c)

C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement:

None

ARTICLE 8. MANDATORY INSURANCE AND FINANCIAL RESPONSIBILITY

R17-5-801. Definitions

In addition to the definitions under A.R.S. §§ 28-101 and 28-4001, in this Chapter, unless otherwise specified:

“Company” means an insurance or indemnity company authorized to write motor vehicle liability coverage in Arizona.

“Customer number” means the system-generated, or other distinguishing number, assigned by the Division to each person conducting business with the Division. The customer number of a private individual is generally the person’s driver license or non-operating identification license number. The customer number of a business is generally its federal employer identification number.

“Division” means the Arizona Department of Transportation’s Motor Vehicle Division.

“EDI” means electronic data interchange, which is the transmission of data in a standardized format from one computer to another without the use of magnetic tape.

“EDI reporting” means the weekly computer-to-computer transmission of data from a company to the Division.

“Error return” means the immediate computer-to-computer transmission, from the Division to a company, of all data reporting errors received during EDI reporting.

“FEIN” means the federal employer identification number or federal tax identification number used to identify a business entity.

“FTP” means file transfer protocol, which is a common protocol

used by the Division for exchanging files over any network that supports EDI reporting transmitted through the Internet or Intranet.

“Information exchange” means EDI reporting where a company or service provider transmits a report to the Division through a connection to a private information network.

“MVD” means the Arizona Department of Transportation’s Motor Vehicle Division.

“NAIC” means the National Association of Insurance Commissioners.

“Private information network” means the value-added network used by a company or service provider to facilitate EDI transmissions to the Division and to provide other network services where fees are charged for the network connection based on the number of characters and messages transmitted.

“Reportable activity” means the information required to be transmitted to the Division under A.R.S. § 28-4148 and this Article.

“Self-insurer” means a person or entity that has met the qualifications, completed the application process, and received a certificate of self-insurance issued by the Division under Section R17-5-810.

“Service provider” means a person or entity that provides the connection to a private information network for EDI reporting.

“SR22” means a certification filed, by a company duly authorized to transact business in this state, as proof of financial responsibility for the future, which guarantees that the insured owner or operator has in effect at least the minimum motor vehicle liability insurance coverage required under A.R.S.

Title 28, Chapter 9, Article 3.

“SR26” means a certification filed by a company duly authorized to transact business in this state, which notifies the Division that an insured owner or operator required to maintain proof of financial responsibility for the future, under A.R.S.

Title 28, Chapter 9, Article 3, is no longer covered under a previously reported SR22.

“Value-added Network” means a private network provider that is hired by a company to facilitate EDI or provide other network services.

“X12” means the American National Standards Institute, Accredited Standards Committee, uniform standards for the inter-industry electronic exchange of business transactions by EDI.

“X12 (TS811)” means X12 Transaction Set 811, Consolidated Service Invoice – Statement, version 3050, which is the specific set of EDI transactions developed for the insurance industry in the X12 standard format for automobile liability insurance reporting.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-802. Insurance Company Electronic Reporting

Requirement; Applicability

A. A company that provides motor vehicle liability insurance coverage for an Arizona vehicle shall electronically transmit to the Division all reportable activity under A.R.S. § 28-4148 and R17-5-803 using one of the authorized EDI reporting methods

identified in R17-5-806. Each transmission shall include all of the applicable record matching criteria prescribed under R17-5-804 or R17-5-805.

B. Effective May 1, 2007, a company that issues 1,000 or more SR22 policies per calendar year shall electronically transmit to the Division all SR22 and SR26 activity using one of the Divi17

A.A.C. 5 Arizona Administrative Code Title 17, Ch. 5

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sion-authorized EDI reporting methods identified in R17-5-806. Each transmission shall include all of the applicable record matching criteria prescribed under R17-5-804 or R17-5-805.

C. The Division shall not accept or record an out-of-state motor vehicle liability insurance policy for a passenger vehicle, even if written by a company authorized to transact business in this state.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-803. Insurance Company Reportable Activity

A. A company shall transmit to the Division:

1. All reportable activity, not previously reported, that was processed by the company seven or fewer days before each reporting date; or
2. A statement of inactivity, if no reportable activity occurred by the reporting date.

B. For the purpose of this Article, reportable activity shall

include:

1. A policy cancellation;
2. A policy non-renewal;
3. A new policy issuance;
4. A vehicle added to a policy;
5. A vehicle deleted from a policy;
6. A policy reinstatement; and
7. Effective May 1, 2007, all SR22 and SR26 filings by insurance companies issuing 1,000 or more SR22 policies per calendar year.

C. Reportable activity does not include the addition or deletion of a vehicle to or from a non-vehicle-specific commercial policy.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-804. Record Matching Criteria for a Vehicle-specific Policy

For each vehicle-specific policy transmitted to the Division, a company shall include all of the following information to assist with the matching of policies to MVD customers:

1. The complete and valid vehicle identification number;
2. The policy number; and
3. The NAIC number of the reporting company.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-805. Record Matching Criteria for a Non-vehicle-specific Commercial Policy

A. For each non-vehicle-specific commercial policy transmitted to the Division, a company shall include all of the following information to assist with the matching of policies to MVD customers:

1. The MVD Customer number of the insured:
 - a. If a policy covers all vehicles registered in the name of a business or organization, the Customer number is the FEIN of the business or organization; or
 - b. If a policy covers all vehicles registered in the name of a private individual, the Customer number is the Arizona Driver License number of the private individual;
2. The policy number; and
3. The NAIC number of the reporting company.

B. If the MVD Customer number required under subsection (A)(1) is not available to a company, the company may provide the complete and valid vehicle identification number of each vehicle covered under the policy in-lieu of the MVD Customer number.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-806. Division-authorized EDI Reporting Methods; Reporting Schedule

A. A company shall transmit to the Division all reportable activity listed in R17-5-803 using one of the following Divisionauthorized EDI reporting methods:

1. EDI reporting by information exchange; or
2. EDI reporting by encrypted FTP.

B. A company shall transmit all reportable activity to the Division at least once every seven days.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-807. X12 Data Format for Policy Receipt and Error Return

A. Reporting format. A company shall transmit to the Division all reportable activity using the format prescribed in the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies provided by the Division.

B. Error return format. The Division shall return to a company all reporting errors received during a transmission of reportable activity using the format prescribed in the Arizona Mandatory Insurance Reporting System Guide for Insurance Companies.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-808. Insurance Company Reporting Errors; Resolution; Noncompliance

A. The Division shall:

1. Return to a company, using the X12 Error Return format provided in R17-5-807(B), all reporting errors received during a transmission; and
2. Instruct the company to correct all reporting errors affecting the Division's processing of the required data.

B. All companies reporting electronic policy information shall notify the Division prior to making changes to any reporting

systems, or previously established policy reporting formats, that may affect the Division's ability to match and process the information received.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-809. Insurance Company Failure to Submit Required Data; Request for Hearing

If a company fails to submit the data required under A.R.S. § 28-4148, and this Article, the Division shall:

1. Send to the company, a dated written notice, which:

a. Identifies the business week or reporting period in which the company did not submit the required information;

b. Instructs the company to submit the information for the identified business week or reporting period within seven days of the date of the notice;

c. Informs the company that a failure to respond to the Division's request within the allotted time-frame, shall result in a referral of the matter to the Arizona Department of Insurance, under A.R.S. § 20-237,

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Department of Transportation - Commercial Programs which may result in a civil penalty of up to \$250 per day for each day the insurer is in violation of A.R.S. § 28-4148; and

d. Provides notice of the company's right to request a

hearing with the Arizona Department of Insurance under A.R.S. § 20-237; and

2. Advise the Arizona Department of Insurance if the company fails to comply with the Division's written notice provided under this Section.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-810. Self-insurance as Alternate Proof of Financial Responsibility; Provisions; Applicability

A. Self-insurance applicant qualification. A person or entity may apply for self-insurance under this Section if the applicant:

1. Owns the minimum number of vehicles prescribed under A.R.S. § 28-4007(A) with current Arizona registration;
2. Demonstrates minimum assets of \$1 million on documentation required under subsections (C) and (D);
3. Meets any additional financial responsibility requirements under A.R.S. § 28-4033(A), according to the insured vehicle's weight and/or intended use; and
4. Provides a business office contact for the company with a current phone number and mailing information.

B. A self-insurance applicant shall provide, on a self-insurance application form provided by the Division, the following information:

1. Applicant's name;
2. Business name, if applicable;
3. Mailing address, city, state, and ZIP code;
4. A selection of coverage type:

- a. Public liability only; or
- b. Public liability and property damage;
5. Number of vehicles in the applicant's fleet;
6. A selection list that describes the nature of the applicant's business;
7. A description of any hazardous materials transported by type, class, and weight;
8. A report of all accidents in the prior 39-month period before the application date;
9. The applicant's signature and official business title to certify that all information is true and correct; and
10. Acknowledgment by a notary public or by the signature of an authorized Motor Vehicle Division agent.

C. Supplementary documentation. In addition to a completed self-insurance application form, the applicant shall submit a profit and loss statement certified by a Certified Public Accountant for the 12-month period before the application date. The profit and loss statement shall include one of the following:

1. A balance sheet; or
2. An annual financial report.

D. On approval of an application, the Division shall issue a certificate of self-insurance that is continuously valid but shall require the self-insurer to submit a 12-month update of supplementary documentation prescribed under subsection (C) on or before July 1 of each successive year.

E. An initial self-insurance applicant or a self-insurer making an annual update shall submit documentation required under subsections (B) through (D) to the following address:

Motor Vehicle Division

Financial Responsibility Unit

P.O. Box 2100, Mail Drop 535M

Phoenix, AZ 85001-2100

F. A self-insurer shall keep a copy of the self-insurance certificate in each covered vehicle at all times.

G. A self-insurer shall submit written notification to the Division of each vehicle to be added or removed from self-insurance coverage. The written notification shall include the vehicle identification number of each vehicle.

H. A self-insurer that terminates self-insurance shall provide new evidence of financial responsibility as required under A.R.S. § 28-4135 for each vehicle previously covered under a selfinsurance certificate.

I. In addition to the reasonable grounds prescribed under A.R.S. § 28-4007(C), the Division may cancel a self-insurance certificate under the following circumstances:

1. A self-insurer fails to comply with provisions of the Division's annual update requirement under subsection (D),

or

2. A self-insurer no longer owns the covered business or fleet.

J. For the purpose of A.R.S. § 28-4007(C) and this Section, the Division shall conduct a self-insurance cancellation hearing according to the provisions prescribed under 17 A.A.C. 1, Article 5.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858,

effective March 6, 2007 (Supp. 07-1).

**R17-5-811. Certificate of Deposit as Alternate Proof of
Financial Responsibility; Applicability**

For the purpose of A.R.S. §§ 28-4076(2) and 28-4084, a person depositing a \$40,000 certificate of deposit with the state treasurer as alternate proof of financial responsibility may apply the certificate to a maximum of 25 non-commercial vehicles registered in the person's name.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 858,
effective March 6, 2007 (Supp. 07-1).

ARTICLE 9. TRANSPORTATION NETWORK COMPANIES

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.

28-4002. Director; duties

The director shall:

1. Administer and enforce this chapter.
2. Print for distribution to the public rules adopted to administer this chapter and furnish the rules to a person on application and payment of the cost as prescribed by the director.

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.

28-4076. [Alternate methods of proof](#)

If required by this chapter, a person may give proof of financial responsibility by filing one of the following:

1. A certificate of insurance pursuant to section 28-4077 or 28-4078.
2. Certificates of deposit or cash pursuant to section 28-4084.

28-4007. Self-insurers

A. Except as provided in subsection E of this section, a person in whose name more than ten motor vehicles are registered or who is required to comply with the financial responsibility requirements prescribed in article 2 of this chapter may qualify as a self-insurer or partial self-insurer by obtaining a certificate of self-insurance or partial self-insurance issued by the director as provided in this section.

B. After determining that the person is financially able and will continue to be able to pay judgments obtained against the person, the director may issue a certificate of self-insurance or partial self-insurance.

C. On not less than five days' notice and after a hearing, the director may cancel a certificate of self-insurance or a certificate of partial self-insurance on reasonable grounds. For the purposes of this subsection, "reasonable grounds" includes any of the following circumstances:

1. Failure to pay a judgment within thirty days after the judgment becomes final.
2. Determination by the director that the person has not complied with the financial responsibility requirements of this chapter.
3. Determination by the director that the person knowingly submitted false information that is required by this chapter to this state, a political subdivision of this state, a court or a law enforcement agency.
4. Determination by the director that the person knowingly failed to respond within thirty days to a claim for damages for liability arising out of the ownership, maintenance or use of a motor vehicle.
5. Determination by the director that the person does not meet the bond requirements prescribed in section 28-4011.

D. A person who is required to comply with the financial responsibility requirements prescribed in article 2 of this chapter may file an application with the department for partial self-insurance to cover any portion of the financial responsibility requirements.

E. A person may also qualify as a self-insurer if the person is insured by a captive insurer that is domiciled and authorized by the department of insurance to transact business in this state and that provides coverage in an amount of at least that required by section 28-4033.

F. A person applying for self-insurance or partial self-insurance pursuant to this section shall comply with both of the following at the time of application:

1. The person shall submit evidence in a form prescribed by the director that the person is financially able and will continue to be able to pay the entire amount of self-insurance or partial self-insurance allowed by the director for judgments obtained against the person for liability arising out of the ownership, maintenance or use of a motor vehicle.

2. If applicable, the person shall submit evidence in a form prescribed by the director that the person has a valid insurance policy that meets the requirements prescribed in section 28-4033 and that is issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state.

G. The director may adopt rules to implement this section, including rules requiring additional evidence that the person meets the financial responsibility requirements of this chapter and rules providing for the periodic submission of evidence demonstrating that the person meets the standards required by the department to qualify as a self-insurer, a captive insurer or partial self-insurer.

H. The director of the department of transportation, in consultation with the director of the department of insurance, may establish procedures that allow a person to apply for and file a certificate of either partial self-insurance or self-insurance.

I. The director of the department of transportation, in consultation with the director of the department of insurance, shall establish procedures to exchange information regarding changes in the self-insurance status of persons who are subject to this section.

28-4084. Monies or certificates of deposit as proof; exception

A. The state treasurer may issue a certificate that gives evidence of proof of financial responsibility that the person named in the certificate has deposited with the state treasurer forty thousand dollars in cash or certificates of deposit with a value of forty thousand dollars issued by a financial institution.

B. The state treasurer shall not accept the deposit and issue a certificate for and the director shall not accept the certificate unless the depositor provides evidence that there are no unsatisfied judgments of any kind against the depositor in the county where the depositor resides.

C. The state treasurer shall hold the deposit to satisfy, in accordance with this chapter, an execution on a judgment issued against the person making the deposit for damages, including damages for care and loss of services, because of bodily injury to or death of a person or for damages because of injury to or destruction of property, including the loss of use of the property, resulting from the ownership, maintenance, use or operation of a motor vehicle after the deposit is made.

D. Monies or certificates of deposit deposited pursuant to this section are not subject to attachment or execution unless the attachment or execution arises out of a suit for damages described in subsection C.

E. Deposits of cash or certificates of deposit under this section do not satisfy the financial responsibility requirements prescribed in article 2 of this chapter.

28-4135. Motor vehicle financial responsibility requirement; civil penalties; evidence at hearing

A. A motor vehicle that is operated on a highway in this state shall be covered by one of the following:

1. A motor vehicle or automobile liability policy that provides limits not less than those prescribed in section 28-4009.

2. An alternate method of coverage as provided in section 28-4076.

3. A certificate of self-insurance as prescribed in section 28-4007.

4. A policy that satisfies the financial responsibility requirements prescribed in article 2 of this chapter.

B. A person operating a motor vehicle on a highway in this state shall have evidence within the motor vehicle of current financial responsibility applicable to the motor vehicle. The evidence may be displayed on a wireless communication device that is in the motor vehicle. If a person displays the evidence on a wireless communication device pursuant to this subsection, the person is not consenting for law enforcement to access other contents of the wireless communication device.

C. Failure to produce evidence of financial responsibility on the request of a law enforcement officer investigating a motor vehicle accident or an alleged violation of a motor vehicle law of this state or a traffic ordinance of a city or town is a civil traffic violation that is punishable as prescribed in this section.

D. A citation issued for violating subsection B or C of this section shall be dismissed if the person to whom the citation was issued produces evidence to the appropriate court officer on or before the date and time specified on the citation for court appearance and in a manner specified by the court, including the certification of evidence by mail, of either of the following:

1. The financial responsibility requirements prescribed in this section were met for the motor vehicle at the date and time the citation was issued.

2. A motor vehicle or automobile liability policy that meets the financial responsibility requirements of this state and that insured the person and the motor vehicle the person was operating at the time the person received the citation regardless of whether or not the motor vehicle was named in the policy.

E. Except as provided in section 28-4137, a person who violates this section is subject to a civil penalty as follows:

1. The court shall impose a minimum civil penalty of five hundred dollars for the first violation. On receipt of the abstract of the record of judgment, the department shall suspend the driver license of the person and the registration and license plates of the motor vehicle involved for three months.

2. If a person violates this section a second time within a period of thirty-six months, the court shall impose a minimum civil penalty of seven hundred fifty dollars. On receipt of the abstract of the record of judgment, the department shall suspend the driver license of the person and the registration and license plates of the motor vehicle involved for six months.

3. If a person violates this section three or more times within a period of thirty-six months, the court shall impose a minimum civil penalty of one thousand dollars. On receipt of the abstract of the record of judgment, the department shall suspend the driver license of the person and the registration and license plates of the motor vehicle involved for one year. The department shall require on reinstatement of the driver license, the registration and the license plates that the person file with the department proof of financial responsibility in accordance with article 3 of this chapter.

F. A court may require a person to produce an insurance identification card as evidence in a hearing for a violation of this section.

28-4148. Notice of insurance cancellation or nonrenewal

A. Effective from and after January 1, 1998 and through July 31, 1998, each insurer who cancels or becomes aware of the cancellation or nonrenewal of or failure to renew or issuance of a motor vehicle liability insurance

policy issued on a vehicle in this state shall provide to the department all cancellations, nonrenewals or new issues for any reason after thirty or fewer days have elapsed from the time of processing the cancellation, nonrenewal or new issue of a policy.

B. Effective August 1, 1998, each insurer who cancels or becomes aware of the cancellation or nonrenewal of or failure to renew or issuance of a motor vehicle liability insurance policy issued on a vehicle in this state shall provide to the department all cancellations, nonrenewals or new issues for any reason after seven or fewer days have elapsed from the time of processing the cancellation, nonrenewal or new issue of a policy. Any insurer with less than ten thousand policies in place as of the effective date of this section, shall have until August 1, 1999 to comply with the requirements of this section.

C. The insurer shall provide the information by electronic data interchange in a format pursuant to a schedule specified by and in a manner prescribed by the director.

D. The department shall not require an insurer to specify the vehicle identification number of a vehicle covered under a commercial vehicle policy that provides automatic coverage for additional or newly acquired vehicles until the policy's expiration date.

E. The department shall provide the notice of cancellation or nonrenewal information to all law enforcement agencies on an on-line computerized call in basis from law enforcement vehicles.

F. On cancellation or nonrenewal of a policy, an insurer shall notify the insured that the department has been notified of the cancellation or nonrenewal and that the insured's motor vehicle registration may be suspended.

G. Except as provided in section 28-4143, subsection E, information provided by an insurer to the department pursuant to this section shall be made available only to law enforcement agencies for law enforcement purposes.

20-237. Failure to provide information; penalty

If after a hearing and certification by the department of transportation the director of insurance finds that an insurer has failed to comply with the provisions of section 28-4148, the director of insurance shall impose a civil penalty for each violation of not more than two hundred fifty dollars per day for each day the insurer is in violation of section 28-4148. The director of insurance also may suspend the insurer's certificate of authority until the insurer complies with the provisions of section 28-4148. No penalty shall be imposed pursuant to this section if noncompliance is determined by the director of insurance to have been inadvertent or accidental. The burden of proving that the noncompliance was inadvertent or accidental shall be on the insurer.

DEPARTMENT OF REVENUE (F-17-0605)

Title 15, Chapter 5, Article 22, Transaction Privilege Tax - Administration; Article 23, Use Tax



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

MEETING DATE: July 6, 2017

AGENDA ITEM: E-3

TO: Members of the Governor's Regulatory Review Council
FROM: Justin Larson, Legal Intern
DATE : June 20, 2017
SUBJECT: DEPARTMENT OF REVENUE (F-17-0605)
Title 15, Chapter 5, Article 22, Transaction Privilege Tax - Administration;
Article 23, Use Tax

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

The Department of Revenue ("Department") is established to "[f]ormulate policies, plans and programs to effectuate the missions and purposes of the department...[p]rovide information and advice within the scope of its duties...[and] [p]rovide an integrated, coordinated and uniform system of tax administration and revenue collection for the state." A.R.S. § 42-1004(A)(1), (6), and (9).

The transaction privilege tax is imposed upon income or proceeds derived from engaging in a taxable business within Arizona. The use tax is imposed upon the purchaser of tangible personal property which is used, stored, or consumed in Arizona when the sale was not subject to the transaction privilege tax. Out-of-state retailers or utility businesses that sell to Arizona customers are required to collect the Arizona use tax and remit it to the department.

This report includes forty-one (41) rules, covering the transaction privilege tax in Article 22 and the use tax in Article 23. Each of the individual rules were adopted and amended at various times. The Department did not review R15-5-2212, R15-5-2313, R15-5-2321, or R15-5-3035 (the only active rule in Article 30) and those rules have expired.

Proposed Action

The Department proposes to amend the following eighteen (18) rules by July 2018: R15-5-2201, R15-5-2207, R15-5-2214, R15-5-2215, R15-5-2220, R15-5-2221, R15-5-2222, R15-5-2304, R15-5-2310, R15-5-2320, R15-5-2326, R15-5-2328, R15-5-2332, R15-5-2341, R15-5-2351, R15-5-2353, R15-5-2361, R15-5-2362.

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 certifies that it is in 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 meeting their objectives with the following exceptions:

- R15-5-2207 Incorrect or outdated reference to a state statute or rule.
- R15-5-2214 Incorrect or outdated reference to a state statute or rule.
- R15-5-2215 Fails to address taxpayers that pay by electronic funds transfer.
- R15-5-2220 Fails to address voluntary registration by out-of-state vendors with no Arizona nexus.
- R15-5-2221 Uses outdated terminology and fails to clarify that a person holding a transaction privilege tax license is not required to separately register to pay use tax.
- R15-5-2222 Incorrect or outdated reference to a state statute or rule.
- R15-5-2304 Subsection (A) and (B) contain conflicting language regarding whether tangible personal property purchased outside of Arizona will be presumed to be subject to use tax.
- R15-5-2310 Subsection (B) conflicts with statutes that require retailers to collect and pay use tax.
- R15-5-2320 Fails to define "processing" and distinguish "manufacturing" from "processing."
- R15-5-2332 Fails to address the relationship between shipping and handling charges and freight charges.
- R15-5-2341 Fails to address statutory changes regarding equipment necessary to pipes and the issue of sewage transported by pipes.
- R15-5-2361 Fails to reflect a statutory change requiring only a 501(c)(3) designated organization be recognized as having tax-exempt status with the I.R.S.
- R15-5-2362 Fails to address a statutory change in A.R.S. § 42-5001(9)(b) and A.R.S. § 42-5001(11)(d) to include definitions for a "qualifying community health center" or a "qualifying hospital" respectively.

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 rules during the last five years.

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

Yes. The Department cites general statutory authority for the rules reviewed in A.R.S. §§ 42-1005 and 42-5003, which establish the powers and duties of the director and provide for administration and enforcement of Title 42, Chapter 5, Article 1, General Administrative Provisions, which relate to transaction privilege and use taxes. Specific statutory authority is also cited for each rule reviewed.

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 with the following exceptions:

- R15-5-2207 Incorrect or outdated reference to a state statute or rule.
- R15-5-2214 Incorrect or outdated reference to a state statute or rule.
- R15-5-2215 Incorrect or outdated reference to a state statute or rule.
- R15-5-2220 Fails to address voluntary registration by out-of-state vendors with no Arizona nexus.
- R15-5-2221 Refers to “unlicensed vendors” and an “out-of-state retailer who is not licensed” while A.R.S. § 42-5160 refers to “registered retailers” and uses the outdated terminology for what is now called the Transaction Privilege, Use and Severance Tax Return.
- R15-5-2222 Incorrect or outdated reference to a state statute or rule.
- R15-5-2304 Subsection (A) and (B) contain conflicting language regarding whether tangible personal property purchased outside of Arizona will be presumed to be subject to use tax.
- R15-5-2310 Subsection (B) conflicts with statutes that require retailers to collect and pay use tax.
- R15-5-2361 Fails to reflect a statutory change requiring only a 501(c)(3) designated organization be recognized as having tax-exempt status with the I.R.S.

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

Yes. The Department indicates that the rules are consistently and fairly enforced. However, the Department indicates that R15-5-2361 is consistently and fairly enforced only to the extent that it is consistent with current law.

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

Yes. In addition to the effectiveness and consistency issues identified, the Department indicates that the rules are generally clear, concise, and understandable with the following exceptions:

- R15-5-2201 Language does not conform to existing rule writing standards.
- R15-5-2215 Language does not conform to existing rule writing standards.

- R15-5-2220 Incorrectly refers to “use tax license” and “licensing” since a use tax collector receives a registration certificate from the Department rather than a use tax license.
- R15-5-2222 Language does not conform to existing rule writing standards.
- R15-5-2310 Language does not conform to existing rule writing standards.
- R15-5-2326 Language does not conform to existing rule writing standards.
- R15-5-2320 Language does not conform to existing rule writing standards.
- R15-5-2328 Language does not conform to existing rule writing standards. Additionally, the rule is not clear that it applies to the utilities classification.
- R15-5-2341 Language does not conform to existing rule writing standards.
- R15-5-2351 Language does not conform to existing rule writing standards.
- R15-5-2353 Language does not conform to existing rule writing standards.
- R15-5-2361 Language does not conform to existing rule writing standards.

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

Yes. The Department indicates that the rules are based on state law. Therefore, there are no federal statutes or regulations to be compared for stringency.

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?

Yes. The agency indicates that none of the rules require issuance of a regulatory permit, license, or agency authorization, and none of the rules were adopted after July 29, 2010.

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. In the previous five-year review, the Department proposed action for twenty (20) rules, eighteen (18) of which are also proposed in this report, with the remaining two (2) expiring. The Department did not seek an exception to the moratorium because it did not believe that it had the proper justification under the previous Executive Orders. However, the

Department anticipates seeking an exception to the moratorium under the current Executive Order and amending the rules by July, 2018.

Conclusion

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



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

MEETING DATE: July 6, 2017

AGENDA ITEM: E-3

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : June 20, 2017

SUBJECT: DEPARTMENT OF REVENUE (F-17-0605)
Title 15, Chapter 5, Article 22, Transaction Privilege Tax - Administration;
Article 23, Use Tax

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. Economic Impact Comparison

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the rules. The rules in Article 22 detail the administration of the Transaction Privilege Tax, a tax that is imposed on the business for the privilege of conducting business in this state. The rules in Article 23 address the general application of the use tax and reduces the need for Department personnel to explain the issues addressed in the rule. The Department concludes that the economic impact has generally been as predicted in the prior EIS for the rules. The Department, other state agencies, businesses, and consumers have benefited from increased clarification in 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 are mostly effective and impose the least burden and costs to the regulated community. The cost to comply with these rules is minimal.

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.

4. Conclusion

Staff finds that the report complies with A.R.S. § 41-1056 and recommends approval.

STATE OF ARIZONA
Department of Revenue



June 19, 2017

Ms. Nicole Ong Colyer
Chairperson
Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Room 402
Phoenix, Arizona 85007

Douglas A. Ducey
Governor

David Briant
Director

Dear Ms. Ong Colyer:

The enclosed report is a summarization of the five-year rule review undertaken by the Department of Revenue ("Department") covering the administrative rules in Title 15, Chapter 5, Articles 22 and 23 pertaining to the administration of Arizona transaction privilege and use tax. The review was conducted pursuant to A.R.S. § 41-1056.

The Department anticipates submission of the following rules proposed for amendment to the Governor's Regulatory Review Council by July, 2018.

- R15-5-2201 Display of License
- R15-5-2326 Manufacturing Labor
- R15-5-2351 Purchases by Non-U.S. Citizens
- R15-5-2353 Property Purchased Outside of the United States
- R15-5-2207 Taxpayer Bonds
- R15-5-2214 Establishing the Right to a Deduction by Use of a Certificate or Other Documentation
- R15-5-2222 Record Retention
- R15-5-2215 Return and Payment of Tax-estimated Tax
- R15-5-2220 Registration and Licensing
- R15-5-2221 Remittal of Use Tax on Purchases from Unlicensed Retailers
- R15-5-2304 Presumption of Taxability of Property Brought into Arizona
- R15-5-2310 Payment of Use Tax by Purchaser
- R15-5-2320 Exemptions - - Machinery or Equipment
- R15-5-2328 Electric Power Transmission and Distribution
- R15-5-2332 Delivery Charges
- R15-5-2341 Four-inch Pipes or Valves
- R15-5-2361 Nonprofit Organizations

Ms. Nicole Ong Colyer, Chairperson
Governor's Regulatory Review Council
Arizona Department of Administration
June 19, 2017
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R15-5-2362 Exempt Purchases by Health Organizations

The Department has chosen not to review the following rules and to allow them to expire.

R15-5-2212 Payment of Taxes

R15-5-2313 Lease-purchase Agreements

R15-5-2321 Exemptions - - Articles to be Incorporated into a Manufactured Product

R15-5-3035 Determination of Taxable Basis: nuclear fuel

The Department of Revenue certifies that the agency is in compliance with A.R.S. § 41-1091.

If you have any questions, please contact Kerry Montgomery, Attorney III, Tax Research & Analysis Section at (602) 716-6850 or via email at KMontgomery@azdor.gov. Thank you for your consideration.

Sincerely,

Christie Comanita by Kerry Montgomery

Christie Comanita
Policy and Research Administrator
Taxpayer Services Division

Enclosures

This report summarizes the result of a review of the rules promulgated by the Department of Revenue governing the administration of Arizona transaction privilege and use tax.

Information that is Identical within Groups of Rules

The following information is identical for each group of rules in Title 15, Chapter 5, Articles 22 and 23. Because this information is the same for each rule, pursuant to A.A.C. R1-6-301(B), it is discussed only once and is not included in the analysis of individual rules.

A. Authorization

General Authorization for the Rules:

All of the rules are generally authorized by Arizona Revised Statutes (“A.R.S.”) § 42-1005, which provides that the Director of the Department of Revenue may make administrative rules as he deems necessary and proper to effectively administer the Department and enforce A.R.S. Title 42 and Title 43. A.R.S. § 42-5003 also vests administration of the transaction privilege and use taxes in the Department of Revenue.

Specific Authorization for the Rules:

1. A.R.S. § 42-5005 is the specific statute upon which the following rules are based:
 - R15-5-2201 Display of License
 - R15-5-2202 Change in Ownership
 - R15-5-2203 Change of Name or Trade Name
 - R15-5-2204 Change of Business Location or Mailing Address
 - R15-5-2205 Surrender of License upon Sale or Termination of Business
 - R15-5-2206 Cancellation of License
2. A.R.S. § 42-5002 is the specific statute upon which the following rules are based:

R15-5-2210 Collection of Tax by the Vendor

R15-5-2210.01 Factoring

R15-5-2211 Election of Basis to Report and Pay Taxes

3. A.R.S. § 42-5151 is the specific statute upon which the following rules are based:

R15-5-2301 Definitions

R15-5-2309 Exemptions - - Purchases for Resale or Lease

R15-5-2326 Manufacturing Labor

R15-5-2332 Delivery Charges

R15-5-2350 Mail Order Retailers

4. A.R.S. § 42-5155 is the specific statute upon which the following rules are based:

R15-5-2310 Payment of Use Tax by Purchaser

R15-5-2312 Casual Sales

R15-5-2314 Purchases from Trustees, Receivers, and Assignees

R15-5-2342 Computer Hardware and Software

R15-5-2351 Purchases by Non-U.S. Citizens

5. A.R.S. § 42-5159 is the specific statute upon which the following rules are based:

R15-5-2320 Exemptions - - Machinery or Equipment

R15-5-2327 Fuels

R15-5-2328 Electric Power Transmission and Distribution

R15-5-2334 Purchases of Restaurant Accessories

R15-5-2340 Tangible Personal Property Used in Soil Remediation Activities

R15-5-2341 Four-inch Pipes or Valves

R15-5-2343 Purchases of Prescription Drugs and Prosthetic Appliances

R15-5-2353 Property Purchased Outside of the United States

R15-5-2360 Government Purchases

R15-5-2361 Nonprofit Organizations

R15-5-2362 Exempt Purchases by Health Organizations

6. A.R.S. §§ 42-5155 and 42-5159 are the specific statutes upon which the following rules are based:

R15-5-2302 General

R15-5-2344 Postage Stamps

C. Effectiveness of the Rules in Achieving Their Objectives:

With the exceptions noted in the consistency and clarity portions of the report, the stated objectives of the following rules are effectively met.

R15-5-2201 Display of License

R15-5-2202 Change in Ownership

R15-5-2203 Change of Name or Trade Name

R15-5-2204 Change of Business Location or Mailing Address

R15-5-2205 Surrender of License upon Sale or Termination of Business

R15-5-2206 Cancellation of License

R15-5-2210 Collection of Tax by the Vendor

R15-5-2210.01 Factoring

R15-5-2211 Election of Basis to Report and Pay Taxes

R15-5-2213 Alternative Reporting

R15-5-2301 Definitions

- R15-5-2302 General
- R15-5-2309 Exemptions - - Purchases for Resale or Lease
- R15-5-2312 Casual Sales
- R15-5-2314 Purchases from Trustees, Receivers, and Assignees
- R15-5-2326 Manufacturing Labor
- R15-5-2327 Fuels
- R15-5-2328 Electric Power Transmission and Distribution
- R15-5-2330 Tangible Personal Property Used in Conjunction with Warranty or Service
Contracts
- R15-5-2334 Purchases of Restaurant Accessories
- R15-5-2340 Tangible Personal Property Used in Soil Remediation Activities
- R15-5-2342 Computer Hardware and Software
- R15-5-2343 Purchases of Prescription Drugs and Prosthetic Appliances
- R15-5-2344 Postage Stamps
- R15-5-2350 Mail Order Retailers
- R15-5-2351 Purchases by Non-U.S. Citizens
- R15-5-2353 Property Purchased Outside of the United States
- R15-5-2360 Government Purchases

Each of the following rules is only partially effective in meeting its objective. Each contains an incorrect or outdated reference to a state statute or rule:

- R15-5-2207 Taxpayer Bonds

R15-5-2214 Establishing the Right to a Deduction by Use of a Certificate or Other Documentation

R15-5-2222 Record Retention

D. Consistency of the Rules with State and Federal Statutes and Rules

The following rules are consistent with state and federal statutes and rules.

R15-5-2201 Display of License

R15-5-2202 Change in Ownership

R15-5-2203 Change of Name or Trade Name

R15-5-2204 Change of Business Location or Mailing Address

R15-5-2205 Surrender of License upon Sale or Termination of Business

R15-5-2206 Cancellation of License

R15-5-2210 Collection of Tax by the Vendor

R15-5-2210.01 Factoring

R15-5-2211 Election of Basis to Report and Pay Taxes

R15-5-2213 Alternative Reporting

R15-5-2301 Definitions

R15-5-2302 General

R15-5-2309 Exemptions - - Purchases for Resale or Lease

R15-5-2312 Casual Sales

R15-5-2314 Purchases from Trustees, Receivers, and Assignees

R15-5-2320 Exemptions - - Machinery or Equipment

R15-5-2326 Manufacturing Labor

- R15-5-2327 Fuels
- R15-5-2328 Electric Power Transmission and Distribution
- R15-5-2330 Tangible Personal Property Used in Conjunction with Warranty or Service
Contracts
- R15-5-2332 Delivery Charges
- R15-5-2334 Purchases of Restaurant Accessories
- R15-5-2340 Tangible Personal Property Used in Soil Remediation Activities
- R15-5-2341 Four-inch Pipes or Valves
- R15-5-2342 Computer Hardware or Software
- R15-5-2343 Purchases of Prescription Drugs and Prosthetic Appliances
- R15-5-2344 Postage Stamps
- R15-5-2350 Mail Order Retailers
- R15-5-2351 Purchases by Non-U.S. Citizens
- R15-5-2353 Property Purchased Outside of the United States
- R15-5-2360 Government Purchases
- R15-5-2362 Exempt Purchases by Health Organizations

The following rules are consistent with state and federal statutes and rules. However, each contains an incorrect or outdated reference to a state statute or rule:

- R15-5-2207 Taxpayer Bonds
- R15-5-2214 Establishing the Right to a Deduction by Use of a Certificate or Other
Documentation
- R15-5-2222 Record Retention

E. Agency Enforcement Policy:

The following rules reflect established policy and procedures and are consistently and fairly enforced.

- R15-5-2201 Display of License
- R15-5-2202 Change in Ownership
- R15-5-2203 Change of Name or Trade Name
- R15-5-2204 Change of Business Location of Mailing Address
- R15-5-2205 Surrender of License upon Sale or Termination of Business
- R15-5-2206 Cancellation of License
- R15-5-2207 Taxpayer Bonds
- R15-5-2210 Collection of Tax by the Vendor
- R15-5-2210.01 Factoring
- R15-5-2211 Election of Basis to Report and Pay Taxes
- R15-5-2213 Alternative Reporting
- R15-5-2214 Establishing the Right to a Deduction by Use of a Certificate or Other Documentation
- R15-5-2215 Return and Payment of Tax-estimated Tax
- R15-5-2220 Registration and Licensing
- R15-5-2221 Remittal of Use Tax on Purchases from Unlicensed Retailers
- R15-5-2222 Record Retention
- R15-5-2301 Definitions
- R15-5-2302 General

- R15-5-2304 Presumption of Taxability of Property Brought into Arizona
- R15-5-2309 Exemptions - - Purchases for Resale or Lease
- R15-5-2310 Payment of Use Tax by Purchaser
- R15-5-2312 Casual Sales
- R15-5-2314 Purchases from Trustees, Receivers, and Assignees
- R15-5-2320 Exemptions - - Machinery or Equipment
- R15-5-2326 Manufacturing Labor
- R15-5-2327 Fuels
- R15-5-2328 Electric Power Transmission and Distribution
- R15-5-2330 Tangible Personal Property Used in Conjunction with Warranty or Service
Contracts
- R15-5-2332 Delivery Charges
- R15-5-2334 Purchases of Restaurant Accessories
- R15-5-2340 Tangible Personal Property Used in Soil Remediation Activities
- R15-5-2341 Four-inch Pipes or Valves
- R15-5-2342 Computer Hardware and Software
- R15-5-2343 Purchases of Prescription Drugs and Prosthetic Appliances
- R15-5-2344 Postage Stamps
- R15-5-2350 Mail Order Retailers
- R15-5-2351 Purchases by Non-U.S. Citizens
- R15-5-2353 Property Purchased Outside of the United States
- R15-5-2360 Government Purchases
- R15-5-2362 Exempt Purchases by Health Organizations

F. Clarity, Conciseness, and Understandability:

The following rules are clear, concise and understandable:

- R15-5-2202 Change in Ownership
- R15-5-2203 Change of Name or Trade Name
- R15-5-2204 Change of Business Location or Mailing Address
- R15-5-2205 Surrender of License upon Sale or Termination of Business
- R15-5-2206 Cancellation of License
- R15-5-2210 Collection of Tax by the Vendor
- R15-5-2210.01 Factoring
- R15-5-2211 Election of Basis to Report and Pay Taxes
- R15-5-2213 Alternative Reporting
- R15-5-2301 Definitions
- R15-5-2302 General
- R15-5-2309 Exemptions - - Purchases for Resale or Lease
- R15-5-2312 Casual Sales
- R15-5-2314 Purchases from Trustees, Receivers, and Assignees
- R15-5-2327 Fuels
- R15-5-2330 Tangible Personal Property Used in Conjunction with Warranty or Service
Contracts
- R15-5-2334 Purchases of Restaurant Accessories
- R15-5-2340 Tangible Personal Property Used in Soil Remediation Activities
- R15-5-2342 Computer Hardware and Software
- R15-5-2343 Purchases of Prescription Drugs and Prosthetic Appliances

- R15-5-2344 Postage Stamps
- R15-5-2350 Mail Order Retailers
- R15-5-2360 Government Purchases

The following rules are generally clear, concise, and understandable. However, these rules contain language that does not conform to existing rulewriting standards:

- R15-5-2201 Display of License
- R15-5-2326 Manufacturing Labor
- R15-5-2351 Purchases by Non-U.S. Citizens
- R15-5-2353 Property Purchased Outside of the United States
- R15-5-2362 Exempt Purchases by Health Organizations

The following rules are generally clear, concise, and understandable. However, each rule contains language that does not conform to existing rulewriting standards and contains an incorrect or outdated reference to a state statute or rule:

- R15-5-2207 Taxpayer Bonds
- R15-5-2214 Establishing the Right to a Deduction by Use of a Certificate or Other Documentation
- R15-5-2222 Record Retention

G. Written Criticisms Received within the Last Five Years:

The Arizona Department of Revenue has not received any written criticism regarding any of the rules in Title 15, Chapter 5, Articles 22 and 23 during the past five years.

H. Economic, Small Business, and Consumer Impact:

Generally, the economic impact of the taxation regulatory scheme is derived from the statutes themselves, and not the rules adopted to interpret the application of the tax. It is only when a rule imposes the requirement to prepare a form or submit documentation, not specifically required by statute, that the rule has an economic impact.

No current economic impact studies have been conducted by the Department. Thus, the Department's analysis in this section is limited to prior economic impact studies as well as the data available to it through personnel in its various divisions and sections. Any probable cost ranges referenced in this section are as follows:

- Minimal costs = less than \$1,000
- Moderate costs = \$1,000 to \$10,000
- Substantial costs = more than \$10,000

Where such ranges are not referenced, the Department characterizes probable or anticipated impacts in qualitative terms, pursuant to A.R.S. § 41-1055(C).

1. Rules in A.A.C. Title 15, Chapter 5, Article 22

With the exception of R15-5-2207, R15-5-2211, R15-5-2213 and R15-5-2215, all of the rules in Article 22 were renumbered, renumbered and amended, or adopted effective October 14, 1993. An economic impact statement was prepared at that time.

Consequences affecting the Department, other state agencies, taxpayers, and consumers were discussed, as well as the impact on small businesses.

Overall, the Department believed that any costs incurred by itself and other state agencies would be minimal. It was anticipated that the licensing and registration section of the Department would experience the most direct benefit from the clarification and combining of concepts in these rules. It was thought, however, that the Department may experience an influx of requests regarding use tax registration as a result of the increased understanding by the public based on the clarification in the rules. Increased man-hours required to process the additional use tax registration applications were anticipated to be offset by a possible decrease in informal use tax payments and a reduction in the number of questions regarding registration.

The Department expected that R15-5-2214, "Establishing the Right to a Deduction by Use of a Certificate or Other Documentation," would result in an increase in compliance based on clarification of the vendor's responsibility. Purchasers providing documentation would also be made more aware of the consequences if false or misleading documentation is provided. As a result of this clarification, the Department would be aided in the audit function due to increased compliance and a more complete audit trail.

No direct cost to the average consumer was expected. It was believed that consumers who purchase from out-of-state vendors may be affected by the clarification in

these rules. As a result, such persons would need to obtain a use tax registration, or at a minimum, begin to pay the tax directly to the Department.

It was thought that persons purchasing under an exemption certificate may require some aid from accounting or legal professionals to ensure that they were completing exemption certificates correctly and that any consumer who was abusing their right to an exemption would find that vendors were not as apt to accept an incomplete or statutorily incorrect certificate.

It was thought that all small businesses would be impacted by the rules. The impact would be beneficial due to the concise, clear and understandable presentation of concepts in the rules. The clarification and addition of concepts in some of the rules would aid greatly in the day-to-day functioning of any business. The clarity regarding licensing requirements as well as the delineation of what accounting methods or collection methods may be implemented could prove invaluable to someone starting a business. As a result of the clarification in the rules, it was thought that some small businesses would save in bookkeeping or accounting costs, or at a minimum, be able to more clearly conceptualize what the tax responsibilities are when operating a business.

The Department believes that the economic impacts that were projected at the time that these rules were renumbered, renumbered and amended, or adopted were accurate.

R15-5-2207 was enacted in September of 1987 originally as R15-10-201. The Department anticipated an increased administrative expense in establishing bonding procedures during the implementation of delinquent bonding. However, time demands and costs were expected to diminish as taxpayer bonding became more routine. The Department anticipated that because bonded taxpayers would be required to remain current in their tax payments, tax collections would increase. Additional costs expected by the Department included hearings for licensees who protested the bond and costs associated with changing the existing computer program to automatically compute the average monthly tax liability and determine whether the taxpayer had maintained a good payment and filing record for the previous 24 months. The State Treasurer's Office, the Board of Tax Appeals, and the Attorney General's Office were expected to experience indeterminable costs for the reallocation of personnel and resources in the implementation of bonding procedures or protest hearings.

The Department expected that taxpayers would spend time and money acquiring the necessary bonds. It was believed that if a small business fell within the targeted high risk group of licensees, it may be subject to the bonding requirements and procedures set out in the rule. If a small business was delinquent in the statutorily indicated circumstances, it would be required to post a bond under the rule. If the small business met its statutory obligations, the rule would not affect the small business.

The Department believes that the economic impacts that were projected at the time that these rules were renumbered, renumbered and amended, or adopted were accurate.

R15-5-2215 was amended effective April 8, 1997 to reflect a change in statute that requires the payment of an estimated tax on an annual basis instead of a quarterly basis. An economic impact statement was prepared at that time. Consequences affecting the Department, other state agencies, taxpayers, and consumers were discussed, as well as the impact on small businesses.

It was believed that any costs incurred by the Department and other state agencies would be minimal. The amendment of the rule would result in time and cost savings for the Department since it would not be necessary for personnel to explain to taxpayers the requirements and procedures addressed in the rule.

Taxpayers would benefit from the amendment to the rule by having definitive requirements and procedures to follow and there would be no direct or indirect costs or benefits to consumers.

Small businesses would potentially be impacted by the rule. However, the amendment to the rule caused no additional reporting or compliance requirements for small businesses. In fact, the decrease from 12 monthly payments of estimated tax to one

annual payment computed on a current monthly tax liability would have a positive impact on small businesses.

The Department believes that the economic impacts that were projected at the time that this rule was amended were accurate.

R15-5-2213 was amended effective October 5, 2001. Consequences affecting the Department, other state agencies, taxpayers, and consumers were discussed, as well as the impact on small businesses.

It was believed that any costs incurred by the Department and other state agencies would be minimal. The Department was expected to experience time and cost savings in answering inquiries from the public regarding filing requirements.

The amendment to the rule was expressly designed to benefit small businesses in that the frequency of reporting and remitting transaction privilege tax would decrease. In addition, the Department estimated that there would be approximately 104,000 fewer returns to mail and process during a calendar year if first-time licensees with tax liabilities of zero to \$1249 filed quarterly. It was anticipated that this would save an average of \$40,167 yearly in postage costs and an average of approximately \$182,726 yearly in processing costs. However, because monies are distributed to counties and cities based on monthly collections, the decrease in the number of monthly filers would decrease the amount of money distributed to counties and cities. Rather than receiving

money on a more even monthly distribution, the counties and cities would receive moderate amounts quarterly and significant amounts annually. This would be offset by a decrease in the cost of processing zero dollar documents and a decrease in the number of reports submitted to the counties and cities. Taxpayers meeting the lower liability thresholds were expected to benefit by being allowed to report and remit taxes on a less frequent basis.

The Department believes that the economic impacts that were projected at the time that this rule was amended were accurate.

R15-5-2211 was amended effective November 8, 2008 to conform to existing rulewriting standards and to clarify the rule. An economic impact statement was prepared at that time. Consequences affecting the Department, other state agencies, private entities, and consumers were discussed as well as the impact on small business.

It was believed that any costs incurred by the Department and other state agencies would be minimal. The Department was expected to experience time and cost savings because the amended rule would not require the Department to provide written approval to each taxpayer that notifies the Department of a change in its method of reporting. The Department also anticipated a benefit from time saved by customer service and taxpayer assistance personnel in answering questions from taxpayers, businesses, and tax professionals on issues that are addressed in the rule. The Department believed it might see either a slight increase or decrease in revenues collected because of the increased

compliance. In addition, the Department believed that better compliance might increase the amount of refund requests from taxpayers, which might affect the workload of the Department staff that processes refunds.

It was thought that businesses subject to tax might see an increase or decrease in the amount of taxes remitted to the Department because the increased clarification of the rule would result in increased compliance with the applicable tax laws. Taxpayers who had been inaccurately calculating their tax liability to their detriment may be entitled to tax refunds. The increased clarification might also result in tax savings from spending less time obtaining advice from tax professionals.

The Department believes that the economic impacts that were projected at the time that this rule was amended were accurate.

2. Rules in A.A.C. Title 15, Chapter 5, Article 23

R15-5-2310 has been in effect since sometime prior to 1976. There was no economic impact statement requirement for administrative rules adopted prior to 1984. As such, the Department has never prepared an economic analysis for this rule. This rule addresses the general application of the use tax and reduces the need for Department personnel to explain the issues addressed in the rule. This results in time and cost savings to the Department, vendors and consumers. In addition, this rule interprets the statutory provisions and does not impose any additional requirements not listed in statute.

The following rules were amended, renumbered, or added effective September 29, 1993: R15-5-2301, R15-5-2304, R15-5-2312, R15-5-2320, R15-5-2326, R15-5-2328, R15-5-2332, R15-5-2341, R15-5-2342, R15-5-2350, R15-5-2351, R15-5-2353, R15-5-2360, R15-5-2361. Seven rules were repealed.

An economic impact statement was prepared at that time. Consequences affecting the Department, other state agencies, private entities, and consumers were discussed as well as the impact on small business.

Overall, it was believed that the hearing office of the Department might experience a decrease in contested cases due to the clarification of the use tax rules, while at the same time the Department might experience an initial increase in taxpayer questions. Over time the number of questions was anticipated to decrease. Since the adoption of these rules, contested cases involving the use tax have been transferred to the Office of Administrative Hearings.

It was anticipated that the overall changes in the use tax rules might result in increased cash flow to the general fund due to increased compliance thereby resulting in more timely compliance and more efficient audits.

The Department was to incur costs due to holding public hearings and meeting other Administrative Procedures Act (“APA”) requirements. The Secretary of State’s

Office, the Executive Budget Office and the Office of Attorney General were to incur costs for noticing, printing, reviewing, analyzing and processing the rules.

Private entities were thought to be able to voluntarily comply to a greater degree with the applicable law. Entities transacting business outside the State have always been affected by the use tax. The clarification in the rules was thought to ease the impact. While internal and external bookkeeping and accounting costs were to possibly increase due to the rule and statutory changes, the clarification was thought to decrease these costs overall.

Consumers or purchasers were to be directly impacted by the clarification and expanded meaning in the rules since the use tax is imposed on the purchaser. The revision of the rules was also thought to clarify and provide guidance regarding the responsibility for the use tax. This in turn was thought to encourage greater voluntary compliance.

While the small businessperson may require more financial, bookkeeping and accounting assistance in the short-term, the need was expected to decrease as the businessperson became more familiar with the tax laws through the clarified rules. There was no method under statute to simplify compliance or reporting requirements or to exempt small businesses from these requirements. Generally, the consequences pertaining to private entities were thought to also apply to small businesses.

Small businesses were expected to see the same consequences as other private entities. Any additional costs were anticipated to be temporary, with no undue hardship in the correct application of the tax law to each business setting.

The Department believes that the economic impacts that were projected at the time of adoption and amendment of these rules in Article 23 were accurate.

R15-5-2362 was amended in 1995. An economic impact statement was prepared at that time. Consequences affecting the Department, other state agencies, private entities, and consumers were discussed as well as the impact on small business.

The amendment of this rule was expected to result in time and cost savings to the Department since it would not be necessary for personnel to explain to taxpayers the requirements and procedures delineated in the rule.

The Transaction Privilege and Use Tax Audit Section, which issues the exemption letter, would experience a time savings in the decrease of questions concerning fiscal year entities' requirements for obtaining exempt status.

The Secretary of State was expected to incur the costs of noticing and printing the proposed rule. The Office of Strategic Planning and Budgeting would incur costs in reviewing and analyzing the rule package for submission to the Governor's Regulatory Review Council and to the Secretary of State. The Office of the Attorney General would

incur costs in reviewing the proposed rule package as part of the certification process. Minimal costs would be incurred by state agencies in obtaining copies of the new rule.

Private entities (vendors) were expected to incur a direct cost in obtaining copies of the new rule. Private entities should benefit from this rule by having a clear understanding of the exemption letter process.

Consumers, i.e., qualified health organizations who request exemption letters, that have established fiscal year accounting periods would benefit from the amendment to the rule because of the change from a specific required submission date coinciding with calendar year reporting for the exemption request to a requirement that the request be made 30 days prior to the exemption period. The exemption period would be determined by the accounting period of the individual entity.

The amendment of this rule would also result in time and cost savings to the Department since it would not be necessary for personnel to explain to taxpayers the requirements and procedures explained in the rule.

With respect to small business, the amendment to the rule was not expected to cause any additional reporting or compliance requirements. The amendment to the rule would benefit small nonprofit health organizations that utilize a fiscal year accounting period by eliminating the need to submit an exemption request based on a calendar year period.

The Department believes that the economic impacts that were projected at the time of this rule were accurate.

R15-5-2340 was adopted in 1998. An economic impact statement was prepared at that time. Consequences affecting the Department, other state agencies, private entities, and consumers were discussed as well as the impact on small business.

The Department of Revenue would incur minimal costs meeting the APA requirements. The Department should experience savings in the continued smooth operation of the system without the need for additional personnel.

The new section would also result in time and cost savings to the Department since it would not be necessary for personnel to explain to taxpayers the requirements and procedures explained in the rules.

The Secretary of State would incur minimal costs in noticing and printing the new section. The Governor's Regulatory Review Council staff would incur costs in reviewing and analyzing the rule package for submission to the Governor's Regulatory Review Council and to the Secretary of State. Minimal costs would be incurred by state agencies to obtain copies of the new section.

Public entities could incur a minimal cost in obtaining copies of the new rules. Public entities should benefit from these rules by having definitive requirements and procedures to follow.

Private entities could incur a direct cost in obtaining copies of the new rules. Private entities should benefit from these rules by having definitive requirements and procedures to follow.

Consumers or purchasers would be directly impacted by the adoption of the rule since the use tax is imposed on the purchaser. The adoption of the rule was also thought to clarify and provide guidance regarding availability of a deduction under the use tax. This in turn was thought to encourage greater voluntary compliance on the part of consumers.

With respect to small business, the adoption of the rule was not expected to cause any additional reporting or compliance requirements. The adoption of the rule would benefit small businesses purchasing tangible personal property used in soil remediation activities.

The Department believes that the economic impacts projected at the time of this rule were accurate.

R15-5-2344 was amended effective October 4, 2000. An economic impact statement was prepared at that time. Consequences affecting the Department, other state agencies, private entities, and consumers were discussed as well as the impact on small business.

Overall, the Department expected costs incurred by itself and other state agencies would be minimal.

The Department anticipated that personnel would experience time and cost savings answering inquiries from the public regarding the taxation of postage stamps since the rule would provide clear guidance. In addition, the fifty-percent presumption in the rule was expected to reduce the Department's cost in determining when the sale or purchase of postage stamps is for a purpose other than transporting mail. This benefit would be achieved without increasing the taxpayer's cost since the taxpayer already has the burden of proof regarding deductions from the tax base.

It was believed that taxpayers would benefit from this rule by having accurate and definitive requirements and procedures to follow. The fifty-percent presumption in the rule was expected to reduce the taxpayer's cost in documenting when the sale or purchase of postage stamps is for transporting mail, since the taxpayer's burden of proof would be reduced for postage stamps that are sold for less than fifty percent more than the face value.

The Department believes that the economic impacts projected at the time of amendment of this rule were accurate.

R15-5-2327 was amended effective December 4, 2004. An economic impact statement was prepared at that time. Consequences affecting the Department, other state agencies, private entities, and consumers were discussed as well as the impact on small business.

Overall, it was expected that any costs incurred by the Department and other state agencies would be minimal.

The Department expected to benefit from time saved by customer service and taxpayer assistance personnel in answering questions on issues that are addressed by this rule. The Department believed that some businesses and taxpayers might experience minimal costs, if any, associated with adjusting compliance efforts if they misunderstood or had otherwise been unaware of the tax treatment discussed. However, the Department anticipated that the costs would vary greatly depending on, among other factors, the size of a lessor's business operation, the sophistication of its operation, and quality of its records. In addition, affected taxpayers would benefit from greater clarity regarding the tax treatment of various types of fuels that were not addressed specifically in previous iterations and greater certainty as to satisfaction of their Arizona use tax obligation.

The Department believes that the economic impacts projected at the time of amendment of this rule were accurate.

R15-5-2302 was amended effective August 6, 2005. An economic impact statement was prepared at that time. Consequences affecting the Department, other state agencies, private entities, and consumers were discussed as well as the impact on small business.

Overall, it was expected that any costs incurred by the Department and other state agencies would be minimal.

The Department expected to benefit from time saved by customer service and taxpayer assistance personnel in answering questions on issues that are addressed by this rule. The Department believed that because the new rule eliminated misleading or erroneous information contained in the rule, businesses directly affected by the rulemaking would benefit. Similar to the benefits the rulemaking was thought to provide businesses, the elimination of misleading or erroneous information contained in the rule was thought to benefit private persons and consumers subject to Arizona use tax (e.g., on out-of-state purchases).

The Department believes that the economic impacts projected at the time of amendment of this rule were accurate.

R15-5-2343 was amended effective September 10, 2005. An economic impact statement was prepared at that time. Consequences affecting the Department, other state agencies, private entities, and consumers were discussed as well as the impact on small business.

The Department did not anticipate a significant economic impact to Arizona businesses or consumers arising from the rulemaking, although there was a potential positive impact upon these persons due to clarification regarding the tax-exempt status of certain homeopathic remedies. The new rulemaking reflected already-existing Department policy and interpretation. The amendments would benefit both the agency and the public by making the rule conform to current statute and rulemaking guidelines, which will make the rule more accurate as well as clearer and easier to understand.

The Department believes that the economic impacts projected at the time of amendment of this rule were accurate.

R15-5-2309 and R15-5-2314 were amended effective December 4, 2006. An economic impact statement was prepared at that time. Consequences affecting the Department, other state agencies, private entities, and consumers were discussed as well as the impact on small business.

Overall, it was expected that any costs incurred by the Department and other state agencies would be minimal.

The Department expected to benefit from time saved by customer service and taxpayer assistance personnel in answering questions from taxpayers, businesses, and tax professionals on issues that are addressed by each rule. The Department also believed it might see a slight increase or decrease in revenues collected because of the increased compliance with transaction privilege and use taxes. In addition, the Department believed that better compliance might increase the amount of refunds requested from taxpayers, which might affect the workload of the Department staff that processes refunds.

It was thought that businesses subject to tax under the retail classification or subject to use tax might see a slight increase or decrease in the amount of taxes remitted to the Department because the increased clarification of these rules would result in increased compliance with the applicable tax laws. Taxpayers who had been inaccurately calculating their tax liability to their detriment may be entitled to tax refunds. The increased clarification might also result in tax savings from spending less time obtaining advice from tax professionals.

R15-5-2330 and R15-5-2334 were amended effective April 7, 2007. An economic impact statement was prepared at that time. Consequences affecting the Department, other state agencies, private entities, and consumers were discussed as well as the impact on small business.

Overall, it was expected that any costs incurred by the Department and other state agencies would be minimal.

The Department expected to benefit from time saved by customer service and taxpayer assistance personnel in answering questions from taxpayers, businesses, and tax professionals on issues that are addressed by each rule. The Department also believed it might see a slight increase or decrease in revenues collected because of the increased compliance with transaction privilege and use taxes. In addition, the Department believed that better compliance might increase the amount of refunds requested from taxpayers, which might affect the workload of the Department staff that processes refunds.

It was thought that businesses subject to tax under the retail classification or subject to use tax might see a slight increase or decrease in the amount of taxes remitted to the Department because the increased clarification of these rules would result in increased compliance with the applicable tax laws. Taxpayers who had been inaccurately calculating their tax liability to their detriment may be entitled to tax refunds. The increased clarification might also result in tax savings from spending less time obtaining advice from tax professionals.

I. Business Competitiveness Analysis:

The Arizona Department of Revenue has not received any analysis that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states during the past five years.

J. Previous Five Year Review Report

In the previous five year review, the Department considered proposed action for sixteen (16) rules. In addition, the Department intended to amend four (4) rules to comply with the Secretary of State's guidelines. Due to the rules moratorium, those anticipated amendments were not made. The Department did not seek an exception to the rules moratorium because it did not have proper justification to do so under the previous Executive Orders. However, the Department anticipates seeking an exception to the rules moratorium under the current Executive Order by July 2018.

K. Cost/Benefit Analysis

Once these rules are amended, the probable benefits of all the rules within this state will outweigh the probable costs and all the rules will impose the least burden and costs to persons regulated by them, including paperwork and other costs necessary to achieve the underlying regulatory objective.

L. Stringency Compared with Federal Law

The rules are based on state law. There are no federal statutes or regulations with which the rules would be compared for stringency.

M. Compliance with A.R.S. § 41-1037 (for Rules Adopted after July 29, 2010)

None of the rules require the issuance of a regulatory permit, license or agency authorization, and none of the rules were adopted after July 29, 2010.

N. Proposed Course of Action:

The Department of Revenue proposes no changes to the following rules:

R15-5-2202 Change in Ownership

R15-5-2203 Change of Name or Trade Name

R15-5-2204 Change of Business Location or Mailing Address

R15-5-2205 Surrender of License upon Sale or Termination of Business

R15-5-2206 Cancellation of License

R15-5-2210 Collection of Tax by the Vendor

R15-5-2210.01 Factoring

R15-5-2211 Election of Basis to Report and Pay Taxes

R15-5-2213 Alternative Reporting

R15-5-2301 Definitions

R15-5-2302 General

R15-5-2309 Exemptions - - Purchases for Resale or Lease

R15-5-2312 Casual Sales

R15-5-2314 Purchases from Trustees, Receivers, and Assignees

R15-5-2327 Fuels

R15-5-2330 Tangible Personal Property Used in Conjunction with Warranty or Service
Contracts

R15-5-2334 Purchases of Restaurant Accessories

- R15-5-2340 Tangible Personal Property Used in Soil Remediation Activities
- R15-5-2342 Computer Hardware and Software
- R15-5-2343 Purchases of Prescription Drugs and Prosthetic Appliances
- R15-5-2344 Postage Stamps
- R15-5-2350 Mail Order Retailers
- R15-5-2360 Government Purchases

The following rules contain language that does not meet the requirements of the Secretary of State. These rules are either not written in the active voice or in the present tense, or both. The Department anticipates submitting the amended rules to the Governor's Regulatory Review Council by July 2018.

- R15-5-2201 Display of License
- R15-5-2326 Manufacturing Labor
- R15-5-2351 Purchases by Non-U.S. Citizens
- R15-5-2353 Property Purchased Outside of the United States

The following rules contain language that does not meet the requirements of the Secretary of State. These rules are either not written in the active voice or in the present tense, or both. In addition, these rules contain an incorrect or outdated reference to a statute or rule. The Department anticipates submitting the amended rules to the Governor's Regulatory Review Council by July 2018.

R15-5-2207 Taxpayer Bonds

R15-5-2214 Establishing the Right to a Deduction by Use of a Certificate or Other
Documentation

R15-5-2222 Record Retention

Analysis of Individual Rules

Title 15. Revenue

Chapter 5. Department of Revenue

Article 22. Transaction Privilege Tax -- Administration

R15-5-2201. Display of License

- B. Objective: This rule informs taxpayers that a person maintaining a public place of business in Arizona must display the transaction privilege tax license in a location conspicuous to the public.

R15-5-2202. Change in Ownership

- B. Objective: This rule informs taxpayers that a transaction privilege tax license or use tax registration is issued to a specific person. If a licensee has any change in ownership, the licensee must apply for a new license or registration.

R15-5-2203. Change of Name or Trade Name

- B. Objective: This rule informs taxpayers that if a change is made in the name or trade name under which the business is operating, the taxpayer must apply for a new license or registration.

R15-5-2204. Change of Business Location or Mailing Address

- B. Objective: This rule informs taxpayers that if the physical location of the business changes, the taxpayer must apply for a new transaction privilege tax license or use tax registration. If the mailing address changes, the taxpayer must notify the Department in writing.

R15-5-2205. Surrender of License upon Sale or Termination of Business

- B. Objective: This rule informs taxpayers that if a business is sold or terminated, the taxpayer must notify the Department in writing of the date of such sale or termination and surrender the transaction privilege tax license or use tax registration to the Department.

R15-5-2206. Cancellation of License

- B. Objective: This rule explains when the Department may cancel a license for lack of activity and the procedures that the Department must follow.

R15-5-2207. Taxpayer Bonds

- A. Authorization: This rule specifically implements A.R.S. § 42-1102.
- B. Objective: This rule informs taxpayers of the amount of the bond required under A.R.S. § 42-1102.

R15-5-2210. Collection of Tax by the Vendor

- B. Objective: This rule explains that a vendor may pass on the economic burden of the transaction privilege tax either as an unspecified portion of the overall selling price or as a separate and distinct charge.

R15-5-2210.01. Factoring

- B. Objective: This rule defines “factoring” as a method by which the taxpayer may determine the amount of the tax when the tax is collected as an unspecified part of the selling price and provides the factoring method approved and recommended by the Department.

R15-5-2211. Election of Basis to Report and Pay Taxes

- B. Objective: This rule informs taxpayers that they must elect to report and pay taxes on either a cash receipts or accrual method when applying for a transaction privilege tax

license or use tax registration. In addition, this rule informs taxpayers that they may not change the basis of reporting without notifying the Department prior to making any change.

R15-5-2213. Alternative Reporting

- A. Authorization: This rule specifically implements A.R.S. § 42-5014(B).
- B. Objective: This rule explains when a taxpayer must report on an annual, quarterly or monthly basis.

R15-5-2214. Establishing the Right to a Deduction by Use of a Certificate or Other Documentation

- A. Authorization: This rule specifically implements A.R.S. §§ 42-5009 and 42-5022.
- B. Objective: This rule informs taxpayers of the documentation that is required to be maintained in their records in order to establish entitlement to an exclusion or deduction from the tax base.

R15-5-2215. Return and Payment of Tax-estimated Tax

- A. Authorization: This rule specifically implements A.R.S. § 42-5014.
- B. Objective: This rule defines the terms used in connection with the requirement to make estimated payments of transaction privilege tax. In addition, this rule explains the imposition of penalties and interest when a taxpayer fails to make estimated tax payments.
- C. Effectiveness: This rule is generally effective in meeting its stated objective. However, it fails to address taxpayers that pay by electronic funds transfer.

- D. Consistency: This rule is consistent with state and federal statutes and rules. However, it contains outdated references to state statutes and rules. In addition, it fails to address taxpayers that pay by electronic funds transfer.
- F. Clarity, Conciseness, and Understandability: This rule is generally clear, concise and understandable except that it does not comply with the Secretary of State's guidelines and contains outdated references to state statutes and rules. It also fails to address taxpayers that pay by electronic funds transfer.
- N. Proposed Course of Action: The Department proposes to amend the existing rule to comply with the Secretary of State's guidelines and to address taxpayers that pay by electronic funds transfer. In addition, the Department proposes to amend the rule to correct outdated references to state statutes and rules. The Department anticipates submitting the amended rule to the Governor's Regulatory Review Council by July 2018.

R15-5-2220. Registration and Licensing

- A. Authorization: This rule specifically implements A.R.S. §§ 42-5154 and 42-5162.
- B. Objective: This rule informs out-of-state vendors who make sales to Arizona purchasers that they must obtain a use tax registration. In addition, this rule explains that use tax collected on an isolated sale to an Arizona customer may be remitted under a cover letter.
- C. Effectiveness: This rule is generally effective in meeting its stated objective. However, it fails to address voluntary registration by out-of-state vendors with no Arizona nexus.
- D. Consistency: This rule is consistent with state and federal statutes and rules. However, it fails to address voluntary registration by out-of-state vendors with no Arizona nexus.
- F. Clarity, Conciseness, and Understandability: This rule is generally clear, concise and understandable. However, it does not comply with the Secretary of State's guidelines

and fails to address voluntary registration by out-of-state vendors with no Arizona nexus. In addition, it incorrectly refers to a “use tax license” and “licensing.” A use tax collector receives a registration certificate from the Department rather than a use tax license.

- N. Proposed Course of Action: The Department proposes to amend the existing rule to comply with the Secretary of State’s guidelines and to address voluntary registration by out-of-state vendors with no Arizona nexus. In addition, the Department proposes to amend the rule to correct references to a “use tax license” and “licensing.” The Department anticipates submitting the amended rule to the Governor’s Regulatory Review Council by July 2018.

R15-5-2221. Remittal of Use Tax on Purchases from Unlicensed Retailers

- A. Authorization: This rule specifically implements A.R.S. § 42-5160.
- B. Objective: This rule informs taxpayers who regularly make purchases subject to use tax from unlicensed vendors that they must obtain a use tax registration and make payments directly to the Department. This rule also informs Arizona purchasers who are not licensed in Arizona that they may remit the use tax to the Department under a cover letter if the out-of-state vendor is not registered to collect use tax.
- C. Effectiveness: This rule is generally effective in meeting its stated objective. However, this rule refers to the purchaser’s Sales, Use, and Severance Tax Return (ST-1). This return is now named the Transaction Privilege, Use and Severance Tax Return (TPT-1). In addition, this rule fails to clarify that a person holding a transaction privilege tax license is not required to separately register to pay use tax.
- D. Consistency: This rule is consistent with state and federal statutes and rules. However, this rule refers to “unlicensed vendors” and an “out-of-state retailer who is not licensed”

while the statute, A.R.S. § 42-5160, refers to “registered retailers”. In addition, this rule refers to the purchaser’s Sales, Use, and Severance Tax Return (ST-1) which is now named the Transaction Privilege, Use and Severance Tax Return (TPT-1).

- F. Clarity, Conciseness, and Understandability: This rule is generally clear, concise and understandable. However, this rule fails to clarify that a person holding a transaction privilege tax license is not required to separately register to pay use tax. In addition, this rule refers to “unlicensed vendors” and an “out-of-state retailer who is not licensed” while the statute, A.R.S. § 42-5160, refers to “registered retailers”. Finally, this rule refers to the purchaser’s Sales, Use, and Severance Tax Return (ST-1) which is now named the Transaction Privilege, Use and Severance Tax Return (TPT-1).

- N. Proposed Course of Action: The Department proposes to amend the existing rule to clarify that a person holding a transaction privilege tax license is not required to separately register to pay use tax. The Department also proposes to correct references to “unlicensed vendors,” an “out-of-state retailer who is not licensed” and the purchaser’s Sales, Use, and Severance Tax Return (ST-1). The Department anticipates submitting the amended rule to the Governor’s Regulatory Review Council by July 2018.

R15-5-2222. Record Retention

- A. Authorization: This rule specifically implements A.R.S. § 42-1105.

- B. Objective: This rule informs a vendor who collects use tax from a purchaser that he or she must keep and preserve suitable records for the limitation period prescribed by statute. In addition, this rule explains that such records must be open for inspection by the Department or its authorized agent.

Title 15. Revenue

Chapter 5. Department of Revenue

Article 23. Use Tax

R15-5-2301. Definitions

- B. Objective: This rule defines the terms “mail order retailer” and “purchases,” and clarifies the term “retailer” for purposes of the Department’s administration of the use tax under Article 23 of the Arizona Administrative Code and A.R.S. § 42-5151.

R15-5-2302. General

- B. Objective: This rule generally explains the imposition of Arizona’s use tax.

R15-5-2304. Presumption of Taxability of Property Brought into Arizona

- A. Authorization: This rule specifically implements A.R.S. § 42-5152.
- B. Objective: This rule explains that tangible personal property that is purchased outside Arizona and subsequently brought into Arizona will be presumed to be subject to use tax. This rule also explains that the burden of proof for a purchase that is not subject to use tax rests with the purchaser and explains how this presumption may be overcome.
- C. Effectiveness: This rule is only partially effective in meeting its objective. Subsection (A) and Subsection (B) contain conflicting language regarding whether tangible personal property purchased outside of Arizona will be presumed to be subject to use tax.
- D. Consistency: Subsection (A) and Subsection (B) contain conflicting language regarding whether tangible personal property purchased outside of Arizona will be presumed to be subject to use tax.

- F. Clarity, Conciseness, and Understandability: Although this rule is generally understandable, Subsection (A) and Subsection (B) contain conflicting language and therefore, make the rule confusing.
- N. Proposed Course of Action: The Department proposes to amend the existing rule to make Subsection (A) and Subsection (B) consistent. The Department anticipates submitting the amended rule to the Governor's Regulatory Review Council by July 2018.

R15-5-2309. Exemptions - - Purchases for Resale or Lease

- B. Objective: This rule explains that purchases of tangible personal property from a retailer for resale, or subsequent leasing or renting, in the ordinary course of the purchaser's business are not subject to use tax.

R15-5-2310. Payment of Use Tax by Purchaser

- B. Objective: This rule explains how payment of use tax by a purchaser must be made.
- C. Effectiveness: This rule is only partially effective in meeting its objective. Subsection B of the rule conflicts with the statute.
- D. Consistency: Subsection B of the rule conflicts with statutes that require retailers to collect and pay use tax.
- F. Clarity, Conciseness, and Understandability: Although this rule is generally understandable, it is repetitive of the statute and is misleading in light of the conflict with the statute found in Subsection B. In addition, the rule does not comply with the Secretary of State's guidelines.
- N. Proposed Course of Action: The Department proposes to amend the existing rule to strike Subsection B and to comply with the Secretary of State's guidelines. The Department

anticipates submitting the amended rule to the Governor's Regulatory Review Council by July 2018.

R15-5-2312. Casual Sales

- B. Objective: This rule informs taxpayers that purchases of tangible personal property in a casual sale, as defined in R15-5-2001, are not subject to use tax.

R15-5-2314. Purchases from Trustees, Receivers, and Assignees

- B. Objective: This rule explains when tangible personal property purchased for storage, use or consumption in Arizona from a trustee, receiver, or assignee is subject to use tax.

R15-5-2320. Exemptions - - Machinery or Equipment

- B. Objective: This rule explains what is included within the terms "machinery or equipment used in manufacturing or processing" and "manufacturing" as they are used in A.R.S. § 42-5159. This rule also defines the term "repair or replacement parts" and states that the purchase of repair or replacement parts for exempt machinery or equipment is exempt from use tax.
- C. Effectiveness: This rule is only partially effective in meeting its objective. It fails to define the term "processing". Many questions are raised regarding the distinction between "manufacturing" and "processing" and the addition of a definition of the term "processing" would greatly increase the effectiveness of the rule.
- F. Clarity, Conciseness, and Understandability: This rule is generally clear, concise and understandable. However, it does not comply with the Secretary of State's guidelines and fails to define the term "processing". In addition, the rule would be more clear if it stated that it was clarifying terms used in A.R.S. § 42-5159.

- N. Proposed Course of Action: The Department proposes to amend the existing rule to comply with the Secretary of State’s guidelines and to define the term “processing”. The Department anticipates submitting the amended rule to the Governor’s Regulatory Review Council by July 2018.

R15-5-2326. Manufacturing Labor

- B. Objective: This rule explains that the cost of labor employed in manufacturing, processing or fabricating tangible personal property is not allowed as a deduction from the sales price on the purchase of such property.

R15-5-2327. Fuels

- B. Objective: This rule explains when aviation fuel, dyed diesel fuel, use fuel and jet fuel are subject to use tax. In addition, this rule explains that liquefied petroleum gas or natural gas used to propel a motor vehicle is exempt from use tax.

R15-5-2328. Electric Power Transmission and Distribution

- B. Objective: This rule explains when the purchase of machinery, equipment, or transmission lines for direct use in a transmission system or for use in a distribution system is subject to use tax.
- F. Clarity, Conciseness, and Understandability: This rule is generally clear, concise and understandable. However, it does not comply with the Secretary of State’s guidelines and is not clear that it applies to the utilities classification.
- N. Proposed Course of Action: The Department proposes to amend the existing rule to comply with the Secretary of State’s guidelines. Additionally, the Department will amend the rule to clarify that it only applies to sales to businesses taxable under the

utilities classification. The Department anticipates submitting the amended rule to the Governor's Regulatory Review Council by July 2018.

R15-2330. Tangible Personal Property Used in Conjunction with Warranty or Service Contracts

- A. Authorization: This rule specifically implements A.R.S. § 42-5156.
- B. Objective: This rule explains when tangible personal property used in the servicing of a warranty or service contract is subject to use tax.

R15-5-2332. Delivery Charges

- B. Objective: This rule informs taxpayers that a delivery charge by a retailer for delivery from the retailer's location to the purchaser's location is not subject to use tax if it is separately stated on the sales invoice.
- C. Effectiveness: This rule is only partially effective in meeting its objective. It fails to address the issue of shipping and handling charges and how they relate to freight charges.
- F. Clarity, Conciseness, and Understandability: This rule is generally clear, concise and understandable. However, it does not address the relationship between freight and shipping and handling charges.
- N. Proposed Course of Action: The Department proposes to amend the existing rule to further clarify the relationship between freight and shipping and handling charges. The Department anticipates submitting the amended rule to the Governor's Regulatory Review Council by July 2018.

R15-5-2334. Purchases of Restaurant Accessories

- B. Objective: This rule explains when the purchase of restaurant accessories is subject to use tax and when it is considered a purchase for resale.

R15-5-2340. Tangible Personal Property Used in Soil Remediation Activities

- B. Objective: This rule explains that the purchase of tangible personal property for incorporation or fabrication into any real property, structure, project, development or improvement under a contract specified in A.R.S. § 42-5159(A)(13)(g) is exempt from tax. However, tangible personal property that is not incorporated or fabricated is subject to tax.

R15-5-2341. Four-inch Pipes or Valves

- B. Objective: This rule explains that purchases of pipes, valves or fire hydrants with an inside diameter of four inches or more are not subject to use tax if the pipes, valves or fire hydrants are to be used to transport oil, natural gas, artificial gas, water, or coal slurry.
- C. Effectiveness: This rule is only partially effective in meeting its objective. It fails to address statutory changes regarding equipment necessary to pipes and the issue of sewage transported by these pipes.
- F. Clarity, Conciseness, and Understandability: This rule is generally clear, concise and understandable. However, it does not comply with the Secretary of State's guidelines and does not address statutory changes regarding equipment necessary to pipes and the issue of sewage transported by these pipes.
- N. Proposed Course of Action: The Department proposes to amend the existing rule to comply with the Secretary of State's guidelines and to address statutory changes regarding equipment necessary to pipes and the issue of sewage transported by these pipes. The Department anticipates submitting the amended rule to the Governor's Regulatory Review Council by July 2018.

R15-5-2342. Computer Hardware and Software

- B. Objective: This rule explains that purchases of computer hardware and software are subject to use tax based on the same provisions as delineated in the rule under the retail classification.

R15-5-2343. Purchases of Prescription Drugs and Prosthetic Appliances

- B. Objective: This rule further explains to taxpayers the statutory exemptions for prescription drugs, prosthetic appliances, prescription eyewear, insulin and certain related supplies, hearing aids and durable medical equipment.

R15-5-2344. Postage Stamps

- B. Objective: This rule informs taxpayers that the purchase of postage stamps is not subject to use tax if the stamps are purchased for the purpose of transporting mail. However, the purchase of postage stamps is subject to use tax if purchased for any purpose other than transporting mail. This rule also explains the Department's presumption regarding whether a postage stamp is purchased for a purpose other than transporting mail.

R15-5-2350. Mail Order Retailers

- B. Objective: This rule defines the term "substantial and recurring" as used in A.R.S. § 42-5151(17) in connection with mail order retailers.

R15-5-2351. Purchases by Non-U.S. Citizens

- B. Objective: This rule explains that purchases of tangible personal property by non-U.S. citizens are subject to use tax unless otherwise exempt.

R15-5-2353. Property Purchased Outside of the United States

- B. Objective: This rule informs taxpayers of the applicability of use tax to purchases made outside the United States.

R15-5-2360. Government Purchases

- B. Objective: This rule explains that purchases of tangible personal property by any state or its political subdivisions are subject to use tax. However, purchases by the federal government are not subject to use tax.

R15-5-2361. Nonprofit Organizations

- B. Objective: This rule explains when purchases of tangible personal property by nonprofit organizations are subject to use tax. This rule also explains the process by which a nonprofit organization may obtain tax-exempt status.
- C. Effectiveness: This rule is only partially effective in meeting its objective. This rule states that purchases of tangible personal property from a charitable nonprofit organization recognized as having tax-exempt status for income tax purposes with the Internal Revenue Service and the Department are not taxable. Therefore, this rule fails to reflect a statutory change that requires only that an I.R.C. § 501(c)(3) organization be recognized as having tax-exempt status with the Internal Revenue Service and not the Department.
- D. Consistency: This rule is inconsistent with A.R.S. § 42-5159(A)(15)(a) for the above stated reason.
- E. Enforcement: This rule is consistently and fairly enforced to the extent that it is not inconsistent with current law.
- F. Clarity, Conciseness, and Understandability: This rule is generally clear, concise and understandable. However, it does not comply with the Secretary of State's guidelines and does not reflect statutory changes.

N. Proposed Course of Action: The Department proposes to amend the existing rule to comply with the Secretary of State’s guidelines. Additionally, the Department proposes to amend the rule to recognize a change in A.R.S. § 42-5159(A)(15)(a) that provides that an I.R.C. § 501(c)(3) organization does not need to be recognized by the Department. The Department anticipates submitting the amended rule to the Governor’s Regulatory Review Council by July 2018.

R15-5-2362. Exempt Purchases by Health Organizations

B. Objective: This rule explains that purchases of tangible personal property by qualifying health organizations are not taxable if such purchases are made pursuant to statutory provisions.

C. Effectiveness: This rule is only partially effective in meeting its objective. It fails to address a statutory change to A.R.S. § 42-5001(9)(b) that provides that a “qualifying community health center” includes clinics that are being constructed as qualifying community health centers. In addition, it fails to address a statutory change to A.R.S. § 42-5001(11)(d) that provides that a “qualifying hospital” includes a facility that is under construction and that upon completion will meet the definition of a qualifying hospital.

N. Proposed Course of Action: The Department proposes to amend the existing rule to comply with the Secretary of State’s guidelines. Additionally, the Department proposes to amend the rule to recognize a change in A.R.S. § 42-5001(9)(b) that provides that a qualifying community health center includes clinics that are being constructed and to recognize a change in A.R.S. § 42-5001(11)(d) that provides that a qualifying hospital includes a facility that is under construction and that on completion will meet the

definition of a qualifying hospital. The Department anticipates submitting the amended rule to the Governor's Regulatory Review Council by July 2018.

Title 15. Revenue

Chapter 5. Department of Revenue - Transaction Privilege and Use Tax Section

ARTICLE 22. TRANSACTION PRIVILEGE TAX – ADMINISTRATION

R15-5-2201. Display of License

- A. A person maintaining a public place of business in Arizona shall display the transaction privilege tax license in a location conspicuous to the public.
- B. If a person maintains more than one place of business in Arizona, a transaction privilege tax license shall be displayed at each location.
- C. For lessors engaged in the business of commercial leasing, a transaction privilege tax license shall be displayed in each location from which the lessor engages in business transactions.

Historical Note

Amended effective November 7, 1978, unless otherwise noted (Supp. 78-6). Amended effective October 15, 1980 (Supp. 80-5). Repealed effective February 22, 1989 (Supp. 89-1). Section R15-5-2201 renumbered from R15-5-2203 and amended effective October 14, 1993 (Supp. 93-4).

R15-5-2202. Change in Ownership

- A. A transaction privilege tax or use tax license is issued to a specific person. The license shall not be transferred to the new owner when selling a business. The new owner shall apply to the state for a new license before engaging in business transactions.
- B. Court-appointed trustees, receivers, and others in cases of liquidation or operational bankruptcies shall obtain a transaction privilege tax or use tax license.
- C. If a licensee has any change in ownership, the licensee shall apply for a new license.

Historical Note

Repealed effective February 22, 1989 (Supp. 89-1). Section R15-5-2202 renumbered from R15-5-2205 and amended effective October 14, 1993 (Supp. 93-4).

R15-5-2203. Change of Name or Trade Name

If a change is made in the name or trade name under which the business is operating and the ownership remains the same, the taxpayer shall apply for a new license.

Historical Note

Section R15-5-2203 renumbered to R15-5-2201, new Section R15-5-2203 renumbered from R15-5-2206 and amended effective October 14, 1993 (Supp. 93-4).

R15-5-2204. Change of Business Location or Mailing Address

- A. The taxpayer shall apply for a new transaction privilege tax or use tax license if the physical location of the business changes.
- B. The taxpayer shall notify the Department in writing of a change in mailing address.

Historical Note

Amended effective October 15, 1980 (Supp. 80-5). Section R15-5-2204 repealed, new Section R15-5-2204 renumbered from R15-5-2207 and amended effective October 14, 1993 (Supp. 93-4).

R15-5-2205. Surrender of License upon Sale or Termination of Business

If a business is sold or terminated, the taxpayer shall notify the Department in writing of the date of sale or termination and shall surrender the transaction privilege tax or use tax license to the Department.

Historical Note

Amended effective November 7, 1978 (Supp. 78-6). Section R15-5-2205 renumbered to R15-5-2202, new Section R15-5-2205 renumbered from R15-5-2209 effective October 14, 1993 (Supp. 93-4).

R15-5-2206. Cancellation of License

- A. The Department may cancel a license if:
1. During any consecutive 12-month period, the licensee reports no taxable transaction; and
 2. The licensee is not a subcontractor or wholesaler.
- B. The Department shall notify a licensee in writing of its intention to cancel the license. The notice shall explain the action the licensee may take to contest cancellation of the license and when cancellation is final.
- C. The Department shall cancel a license 30 days after the notice of intention to cancel is mailed unless, within 30 days, the licensee objects to the cancellation in writing and produces documentation that the licensee is actively engaged in a taxable business. Suitable documentation includes, but is not limited to, the following:
1. Evidence that the licensee holds an inventory of raw or finished tangible personal property for sale or resale;
 2. Evidence that the licensee maintains segregated bank accounts for the purpose of transacting business;
 3. Bona fide contracts for future sale or resale of tangible personal property;
 4. Profit and loss statements for federal or state income tax purposes; or
 5. Evidence that the licensee otherwise actually engages in bona fide business activities.
- D. Within 30 days of receipt of the licensee's objections and documentation, the Department shall notify the licensee in writing of its decision to cancel or retain the license. If the decision is to cancel the license, the licensee may request an administrative hearing.

Historical Note

Section R15-5-2206 renumbered to R15-5-2203, new Section R15-5-2206 renumbered from R15-5-3018 effective October 14, 1993 (Supp. 93-4).

R15-5-2207. Taxpayer Bonds

- A. The amount of the bond required under A.R.S. § 42-112 shall be the greater of five hundred dollars, or:
1. For licensees reporting monthly, four times the average monthly tax liability;
 2. For licensees reporting quarterly, six times the average monthly tax liability; or
 3. For licensees reporting annually, fourteen times the average monthly tax liability.
- B. For purposes of determining the bond amount, the average monthly tax liability is equal to the average monthly tax due from the licensee for the preceding six consecutive months. If an applicant does not have a six-month payment history, the bond amount shall be a minimum of five hundred dollars.
- C. If a licensee provides a surety bond and the bond lapses, the licensee must deposit with the Department cash or other security in an amount equal to the lapsed surety bond within five business days of the licensee's receipt of written notification by the Department.
- D. The bond amount may be increased or decreased as necessary based upon a change in the licensee's previous filing period, filing compliance record, or payment history. If the bond amount has been increased above the amount computed under subsection (B) of this rule, the

licensee may request a hearing pursuant to A.R.S. § 42-112 to show why the order increasing the bond amount is in error.

Historical Note

Former Section R15-5-2207 renumbered to R15-5-2204 effective October 14, 1993 (Supp. 93-4). New Section R15-5-2207 renumbered from R15-10-201 (Supp. 94-1).

R15-5-2210. Collection of Tax by the Vendor

- A. The vendor may pass on the economic burden of the transaction privilege tax, either as an unspecified portion of the overall selling price or as a separate and distinct item of charge.
 - 1. If a vendor elects to pass on the economic burden of the tax as a separate and distinct item of charge, the vendor's tax base shall not include any collected state, county, city, or town taxes.
 - 2. If the vendor does not pass on the tax as a separate and distinct item of charge, the vendor may factor out the tax. See R15-5-2210.01.
 - 3. The amount of tax on a transaction shall be the same whether the tax is stated as a separate and distinct item of charge or the tax is calculated using the factoring method.
 - 4. Calculation of the amount of the tax using the separate and distinct item of charge method shall be as follows:
 - Price of tangible personal property \$100
 - Multiply the price by the applicable tax rate
 - \$100 times 5% equals the tax as calculated \$5
 - Total cost to the consumer \$105
- B. All taxes collected shall be remitted to the Department and applicable taxing jurisdictions. If a vendor has collected tax in excess of the tax liability for the reporting period, the excess tax shall also be remitted.

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2). New Section adopted effective October 14, 1993 (Supp. 93-4). Reference correction (Supp. 95-2).

R15-5-2210.01. Factoring

"Factoring" means a method by which the taxpayer may determine the amount of the tax when the tax is collected as an unspecified part of the selling price.

- 1. The taxpayer may use any factoring method resulting in a tax amount equal to the tax as calculated using the separate and distinct item of charge method.
- 2. The following factoring method is approved and recommended by the Department.

To calculate the tax under the factoring method, the total cost to the consumer is divided by one plus the cumulative amount of the state and applicable county, city, and town tax rates, stated as a decimal. The result of this calculation is then multiplied by the cumulative tax rate to arrive at the amount of the tax on the sale. The gross receipts subject to tax, plus the cumulative tax on that amount, shall equal the total cost to the consumer.

To factor:

Total cost to the consumer \$105
Divide the total cost to the consumer by 1 plus the tax rate (1.00 plus .05)
\$105 divided by 1.05 equals the price of tangible personal property \$100
Tax as calculated (\$100 times 5%) \$5

Historical Note

New Section adopted effective October 14, 1993
(Supp. 93-4).

R15-5-2211. Election of Basis to Report and Pay Taxes

- A. For purposes of this Section, the following definitions apply:
1. "Accrual method" means that a sale is reported in the reporting period in which the sale occurs regardless of when payment is received.
 2. "Cash receipts method" means that a sale is reported in the reporting period in which payment is received.
 3. "Method of reporting" means a method to report and pay transaction privilege tax.
 4. "Payment" means all consideration received including cash, credit, property, and services.
 5. "Reporting period" means a calendar month or as prescribed by A.R.S. § 42-5014.
- B. A taxpayer shall elect a method of reporting based on either the accrual or the cash receipts method at the time of making the application for a transaction privilege tax license or use tax registration.
- C. A taxpayer shall report allowable exclusions, deductions, and exemptions in a manner consistent with the method of reporting elected under subsection (B).
- D. A taxpayer shall provide written notification to the Department prior to changing its method of reporting elected under subsection (B). The Department may audit the books of the taxpayer to adjust any tax liability resulting from the change in the method of reporting.

Historical Note

Repealed effective July 23, 1985 (Supp. 85-4). New Section renumbered from R15-5-2213 and amended effective October 14, 1993 (Supp. 93-4). Amended by final rulemaking at 14 A.A.R. 3616, effective November 8, 2008 (Supp. 08-3).

R15-5-2213. Alternative Reporting

- A. The Department shall authorize taxpayers to report on an annual or quarterly basis, if the taxpayer has established a filing history that shows that the taxpayer is not currently delinquent and that the taxpayer's annual tax liability is between \$500 and \$1250 for quarterly reporting or \$500 or less for annual reporting.
- B. The Department shall authorize new businesses that reasonably estimate their annual tax liability for the succeeding 12 months will be between \$500 and \$1,250 to report and remit tax on a quarterly basis.
- C. A taxpayer shall increase the reporting frequency to monthly and notify the Department of the change in reporting if the taxpayer's annual tax liability equals or exceeds or can reasonably be expected to equal or exceed \$1,250. The taxpayer shall increase the reporting frequency to quarterly and notify the Department of the change in reporting if the taxpayer's annual tax liability exceeds or can reasonably be expected to exceed \$500, but is or will be less than \$1,250. Failure to increase reporting frequency will subject the taxpayer to interest. Failure to increase reporting frequency will also subject the taxpayer to penalties unless the taxpayer can show that the failure was due to reasonable cause and not willful neglect.
- D. A taxpayer shall begin to report on a monthly basis at any time during a 12-month period if the annualized tax liability for the taxpayer reporting on an annual or quarterly basis equals or exceeds \$1,250. A taxpayer shall begin to report on a quarterly basis at any time during a 12-month period if the annualized tax liability for the taxpayer reporting on an annual basis is expected to exceed \$500, but be less than \$1,250.

Historical Note

Former Section R15-5-2213 renumbered to R15-5-2211, new Section R15-5-2213 adopted effective October 14, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 5065, effective October 5, 2001 (Supp. 01-4).

R15-5-2214. Establishing the Right to a Deduction by Use of a Certificate or Other Documentation

- A. The vendor is responsible for the payment of tax and therefore shall provide sufficient documentation in support of all deductions.
- B. The vendor may establish a deduction or exclusion from the tax base pursuant to A.R.S. § 42-1316 or 42-1328.
 - 1. If the purchaser does not have a valid license number, the purchaser shall indicate the reason on any certificate.
 - 2. Marking an invoice may be done either by recording the purchaser's transaction privilege tax license number on the invoice or by cross referencing the specific transaction to the specific exemption certificate of the specific purchaser.
 - 3. The Department has prescribed a certificate for establishing entitlement to statutory deductions. Reproductions of the blank prescribed original certificate shall be acceptable for use.
 - 4. The appropriate certificate shall be accurately and fully completed by the purchaser.
 - 5. If the vendor has reason to believe that the information contained in the certificate is not accurate, complete, or applicable to the transaction, the vendor may refuse to accept the certificate.
 - 6. If at any time the vendor has reason to believe that the certificate is not applicable to a transaction, the vendor may refuse to honor the certificate for that transaction.
 - 7. The Department may challenge the certificate as accepted by the vendor if the Department has reason to believe that the information in the certificate is incomplete, inaccurate, or if the exemption claimed is not based on statutory provisions. The burden of proof lies with the Department when a vendor accepts a completed departmental certificate and marks the applicable invoice pursuant to statute.
- C. A blanket certificate may be accepted if the vendor and purchaser agree. The blanket certificate may continue in force, for applicable transactions, for a period of time as set forth on the certificate. For purposes of this rule, a blanket certificate is one which covers the indicated type of transaction over a specified period of time.
 - 1. The vendor may refuse to honor a blanket certificate and shall cancel such a certificate if, at any time, the vendor has reason to believe that the information contained in the certificate is no longer accurate or complete or no longer applies.
 - 2. A new, accurate, and complete certificate may then be accepted.
- D. Documentation, including a certificate other than a departmental certificate, may be accepted by the vendor to establish the right to a deduction.
 - 1. If the vendor accepts a form of documentation other than a completed departmental certificate, the burden of proof remains with the vendor to establish the right to the deduction.
 - 2. Other documentation necessary to establish a deduction from the tax base shall contain the information required by A.R.S. § 42-1316(A).
- E. Documentation or a certificate to establish a deduction from the tax base shall be provided for each transaction or if a blanket certificate is used for each different exemption category.
- F. The vendor shall retain all documentation for the required statutory period pursuant to A.R.S. § 42-113.

Historical Note

Repealed effective April 13, 1987 (Supp. 87-2). New Section R15-5-2214 adopted effective October 14, 1993 (Supp. 93-4).

R15-5-2215. Return and Payment of Tax-estimated Tax

- A. For purposes of this rule, the following definitions apply:
1. "Annual estimated tax payment" means of the total tax liability for the entire month of May or the total tax liability for the first 15 days of the month of June.
 2. "Annual tax liability" means a total tax liability of \$100,000.00 or more in the preceding calendar year or a reasonable anticipation of a total tax liability of \$100,000.00 or more in the current year.
 3. "Taxpayer" has the meaning set forth in A.R.S. § 42-1322(J). The following are considered a single taxpayer:
 - a. Members of an Arizona-affiliated group filing a consolidated corporate income tax return under A.R.S. § 43-947;
 - b. Corporations in a unitary business filing a combined corporate income tax return under A.A.C. R15-2-1131(E);
 - c. Married taxpayers operating separate sole proprietorships and filing a joint income tax return; or
 - d. Partnerships, Limited Liability Companies, S Corporations, trusts, or estates conducting multiple businesses, filing a single income tax return.
 4. "Total tax liability" means the combined total of the transaction privilege tax, telecommunications services excise tax, and county excise tax liabilities.
- B. The requirement to make an annual estimated tax payment is based on the annual tax liability. Use tax and severance tax are not subject to the estimated tax provisions.
1. A taxpayer shall make an annual estimated tax payment if during the current calendar year the taxpayer, through use of ordinary business care and prudence, can anticipate incurring the annual tax liability. For example:

ABC Company has been selling home electronics for several years. Its tax liability for previous calendar years has averaged between \$60,000 and \$70,000. In February of the current year, ABC Company begins selling computers and accessories as well. Early sales reports show an increase in total sales of approximately 50%. Based on these facts, ABC Company can reasonably anticipate incurring the annual tax liability.
 2. Taxpayers with multiple locations shall make the annual estimated tax payment based on the combined actual or anticipated annual tax liability from all locations. Taxpayers with multiple locations, shall make a single estimated payment each June.
- C. A taxpayer shall not amend an annual estimated tax payment except to increase the amount of the payment.
- D. The annual estimated tax payment shall not be applied, credited, or refunded until a Transaction Privilege, Use, and Severance Tax Return (TPT-1) for the month of June is filed.
- E. Late payment, underpayment, or non-payment of the annual estimated tax payment shall result in the following:
1. Application of the penalty provisions under A.R.S. § 42-136;
 2. Accrual of interest beginning from the due date of the annual estimated tax payment as prescribed in A.R.S. § 42-1322(D); and
 3. Loss of the accounting credit, as defined in A.R.S. § 42-1322.04 for the June reporting period.
- F. Taxpayers who are not required to make the annual estimated tax payment but make a voluntary annual estimated payment are not subject to subsection (E).

Historical Note

Former Section R15-5-2215 renumbered to R15-5-2004, new Section R15-5-2215 renumbered from R15-5-212 effective October 14, 1993 (Supp. 93-4). Amended effective April 8, 1997 (Supp. 97-2).

R15-5-2220. Registration and Licensing

- A. Out-of-state vendors making sales to Arizona purchasers shall obtain a use tax license from the Department.
- B. Use tax collected on an isolated sale to an Arizona customer may be remitted under a cover letter rather than on a standard report form.

Historical Note

Repealed effective July 23, 1985 (Supp. 85-4). New Section R15-5-2220 renumbered from R15-5-2363 and amended effective October 14, 1993 (Supp. 93-4).

R15-5-2221. Remittal of Use Tax on Purchases from Unlicensed Retailers

- A. Arizona purchasers regularly making purchases from unlicensed vendors, where the purchases are subject to use tax, shall obtain a use tax license and remit payments directly to the Department.
- B. An Arizona purchaser who is licensed in Arizona shall remit the use tax to the Department on the purchaser's Sales, Use, and Severance Tax Return (ST-1) if tangible personal property is purchased from an out-of-state retailer who is not licensed to collect the use tax.
- C. An Arizona purchaser who is not licensed in Arizona shall remit the use tax to the Department under a cover letter if tangible personal property is purchased from an out-of-state retailer who is not licensed to collect the use tax.

Historical Note

Amended effective March 18, 1981 (Supp. 81-2). Repealed effective February 22, 1989 (Supp. 89-1). New Section adopted effective October 14, 1993 (Supp. 93-4).

R15-5-2222. Record Retention

A vendor collecting use tax from a purchaser shall keep and preserve suitable records and other books and accounts necessary to determine the tax collected for the statutorily prescribed limitation period. For purposes of this rule, the limitation period is the period of time for which the Department may assess tax, penalties, or interest pursuant to A.R.S. § 42-113. Records, books, and accounts shall be open for inspection at any reasonable time by the Department or its authorized agent.

Historical Note

Repealed effective February 22, 1989 (Supp. 89-1). New Section adopted effective October 14, 1993 (Supp. 93-4).

ARTICLE 23. USE TAX

R15-5-2301. Definitions

The following definitions apply for the Department's administration of use tax:

1. "Mail order retailer" means a retailer who solicits orders by mail, notwithstanding the fact that orders may be received by telephone or by mail or that goods may be delivered by mail or by private delivery system.
2. "Purchases" means purchase for storage, use, or consumption in Arizona.
3. "Retailer" includes any retailer located outside this state who solicits orders for tangible personal property by mail from points in this state if the solicitations are substantial and recurring.

Historical Note

Repealed effective July 23, 1985 (Supp. 85-4). New Section R15-5-2301 adopted effective December 6, 1990 (Supp. 90-4). Amended effective September 29, 1993 (Supp. 93-3).

R15-5-2302. General

- A. In this Section, "retailer" and "utility business" have the same meanings as prescribed in A.R.S. § 42-5151.
- B. A.R.S. § 42-5155 imposes Arizona use tax upon a purchaser that purchases tangible personal property from an out-of-state retailer or utility business if the retailer or utility business's gross receipts from the sale have not already been included in the measure of Arizona transaction privilege tax. Because Arizona transaction privilege tax and Arizona use tax are complementary taxes, only one of the taxes is imposed on a given transaction.
- C. Arizona use tax generally applies to the use, storage, or consumption in this state of tangible personal property purchased from an out-of-state retailer or utility business.
- D. If a purchaser pays to an out-of-state retailer or utility business a tax of another state levied on the sale or use of tangible personal property that is subject to Arizona use tax, the purchaser may apply the amount of tax paid to the other state against the purchaser's use tax liability.
- E. A purchaser that purchases tangible personal property exempt from tax because the property is purchased for resale in the ordinary course of business but subsequently uses or consumes the tangible personal property shall pay Arizona use tax.

Historical Note

Amended by final rulemaking at 11 A.A.R. 2293, effective August 6, 2005 (Supp. 05-2).

R15-5-2304. Presumption of Taxability of Property Brought into Arizona

- A. If tangible personal property is purchased outside Arizona and is subsequently brought into this state for use, storage, or consumption, the purchaser of such property shall be subject to the Arizona use tax unless the purchaser establishes to the satisfaction of the Department:
 - 1. That the property is not used in conducting a business in Arizona; and
 - 2. That the property was purchased for bona fide use or consumption outside Arizona. Unless shown otherwise, it shall be presumed that the property was purchased for bona fide use or consumption outside of Arizona if the property was purchased at least three months prior to its initial entry into Arizona; or
 - 3. If the property was purchased by a nonresident individual, that the first actual use or consumption of the property occurred outside Arizona.
- B. It shall be presumed that property brought into the state is subject to the use tax. The burden of proof that a purchase is not subject to use tax rests upon the purchaser.

Historical Note

Former Section R15-5-2311 repealed, new Section R15-5-2311 adopted effective August 7, 1985 (Supp. 85-4). Former Section R15-5-2304 repealed, new Section R15-5-2304 renumbered from R15-5-2311 and amended effective September 29, 1993 (Supp. 93-3).

R15-5-2309. Exemptions -- Purchases for Resale or Lease

- A. Purchases of tangible personal property from a retailer for resale in the ordinary course of the purchaser's business are not subject to use tax.
- B. Purchases of tangible personal property from a retailer for subsequent leasing or renting in the ordinary course of the purchaser's business are not subject to use tax.

Historical Note

Former Section R15-5-2309 renumbered to R15-5-2363, new Section R15-5-2309 renumbered from R15-5-2322 and amended effective September 29, 1993 (Supp. 93-3). Amended by final rulemaking at 12 A.A.R. 4099, effective December 4, 2006 (Supp. 06-4).

R15-5-2310. Payment of Use Tax by Purchaser

- A. The Use Tax must be paid to:
 - 1. An out-of-state vendor holding a certificate of authority for the collection of Use Tax, or

2. The Arizona Department of Revenue in cases where the vendor is not registered for the collection of the tax.
- B. Arizona purchasers making recurring purchases from out of state may apply to the Department for a registration certificate and remit payment directly to the state on a monthly report form in lieu of making payment to the vendor.
- C. The purchaser will be relieved of his liability for the tax when payment is made directly to the out-of-state vendor registered and a receipt of the tax paid is obtained by him.

R15-5-2312. Casual Sales

Tangible personal property purchased in a casual sale, as defined in R15-5-2001, is not taxable.

Historical Note

Former Section R15-5-2312 repealed, new Section R15-5-2312 adopted effective September 29, 1993 (Supp. 93-3).

R15-5-2314. Purchases from Trustees, Receivers, and Assignees

- A. Tangible personal property purchased for storage, use, or consumption in Arizona from a trustee, receiver, or assignee is subject to use tax if the purchase of the tangible personal property in the hands of the owner would be subject to use tax.
- B. Tangible personal property purchased for storage, use, or consumption in Arizona from a trustee, receiver, or assignee is not subject to use tax if the purchase of the property from the owner would not be subject to use tax.

Historical Note

Former Section R15-5-2314 renumbered to R15-5-2321, new Section adopted effective September 29, 1993 (Supp. 93-3). Amended by final rulemaking at 12 A.A.R. 4099, effective December 4, 2006 (Supp. 06-4).

R15-5-2320. Exemptions -- Machinery or Equipment

- A. Machinery or equipment used in manufacturing or processing includes machinery or equipment that constitutes the entire primary manufacturing or processing operation from the initial stage where actual processing begins through the completion of the finished end product, and that is used in the production, manufacture, fabrication, processing, finishing, or packaging of articles of commerce. Manufacturing is the performance as a business of an integrated series of operations which place tangible personal property in a form, composition, or character different from that in which it was acquired, and transforms it into a different product with a distinctive name, character, or use.
- B. Purchase of repair or replacement parts for exempt machinery or equipment is not subject to the use tax. Repair or replacement parts are defined as those individual component and constituent items which, together, comprise exempt machinery or equipment.

Historical Note

Amended effective November 7, 1978, unless otherwise noted (Supp. 78-6). Amended subsection (B) effective March 18, 1981 (Supp. 81-2). Former Section R15-5-2320 renumbered to R15-5-2362, new Section R15-5-2320 renumbered from R15-5-2321 and amended effective September 29, 1993 (Supp. 93-3).

R15-5-2326. Manufacturing Labor

The cost of labor employed in the manufacturing, processing, or fabricating of tangible personal property shall not be allowed as a deduction from the sales price on a purchase of such property.

Historical Note

Former Section R15-5-2326 repealed, new Section R15-5-2326 adopted effective September 29, 1993 (Supp. 93-3).

R15-5-2327. Fuels

- A. In this Section, "aviation fuel," "dyed diesel fuel," and "use fuel" have the same meanings as prescribed in A.R.S. §§ 28-101 and 28-5601.
- B. Except as provided in subsection (D), a purchase of use fuel is subject to use tax under A.R.S. § 42-5155 on the date the consumer is issued a refund because the use fuel is not subject to the use fuel tax under A.R.S. § 28-5606.
- C. Dyed diesel fuel is subject to use tax if transaction privilege tax is not imposed by the Department.
- D. Liquefied petroleum gas or natural gas used to propel a motor vehicle is exempt from use tax.
- E. Aviation fuel is subject to tax under A.R.S. § 28-8344 only.
- F. A purchase of jet fuel is subject to the jet fuel excise and use tax under A.R.S. § 42-5352.

Historical Note

Former Section R15-5-2327 renumbered to R15-5-2360, new Section R15-5-2327 renumbered from R15-5-3006 and amended effective September 29, 1993 (Supp. 93-3). Section amended by final rulemaking at 10 A.A.R. 4480, effective December 4, 2004 (Supp. 04-4).

R15-5-2328. Electric Power Transmission and Distribution

Purchases of machinery, equipment, or transmission lines for direct use in producing or transmitting power but not including distribution are subject to use tax based on the same definitions as in R15-5-128.

Historical Note

Former Section R15-5-2328 renumbered to R15-5-2361, new Section R15-5-2328 adopted effective September 29, 1993 (Supp. 93-3).

R15-5-2330. Tangible Personal Property Used in Conjunction with Warranty or Service Contracts or Provisions

- A. For purposes of this rule, the following definition applies:
"Covered" means covered as defined in R15-5-138 for tangible personal property under a warranty or service contract, or covered as defined in R15-5-137 for tangible personal property under a warranty or service provision.
- B. A warrantor or service person is subject to use tax on the cost of covered tangible personal property that is purchased for resale but is subsequently taken out of inventory and used in the servicing of a warranty or service contract.
- C. Tangible personal property that is covered under a warranty or service contract and used in the servicing of the contract is subject to use tax unless transaction privilege tax was paid when the tangible personal property was acquired or the tangible personal property is otherwise statutorily exempt.
- D. Tangible personal property that is covered under a warranty or service provision and used in the servicing of the provision is not subject to use tax as the transaction privilege tax was paid when the tangible personal property was acquired.

Historical Note

Adopted effective September 3, 1978 (Supp. 78-6). Former Section R15-5-2330 renumbered to R15-5-2343, new Section R15-5-2330 adopted effective September 29, 1993 (Supp. 93-3). Amended effective April 7, 2007.

R15-5-2332. Delivery Charges

A charge by a retailer for delivery from the retailer's location to the purchaser's location, if separately stated on the sales invoice, is not taxable.

Historical Note

Adopted effective December 6, 1990 (Supp. 90-4). Former Section R15-5-2332 renumbered to R15-5-2350, new Section R15-5-2332 adopted effective September 29, 1993 (Supp. 93-3).

R15-5-2334. Purchases of Restaurant Accessories

- A. If a person engaged in the restaurant business purchases disposable containers, paper napkins, and other similar food accessories and, transfers these accessories in the regular course of business to facilitate the consumption of the food, drink, or condiment the purchases are considered purchases for resale.
- B. If a person engaged in the restaurant business purchases matchbooks, advertisement fliers, and other similar tangible personal property and transfers this property for the convenience, operation, or benefit of the restaurant business, the purchases are subject to tax. .

Historical Note

Adopted effective September 29, 1993 (Supp. 93-3). Amended by final rulemaking at 13 A.A.R. 679, effective April 7, 2007 (Supp. 07-1).

R15-5-2340. Tangible Personal Property Used in Soil Remediation Activities

The purchase of tangible personal property for incorporation or fabrication into any real property, structure, project, development or improvement under a contract specified in A.R.S. § 42-5075 (B)(6) is exempt from tax. The purchase of tangible personal property used in soil remediation activities but not incorporated or fabricated into any real property, structure, project, development or improvement is taxable.

Historical Note

Adopted effective December 11, 1998 (Supp. 98-4). R15-5-2340 corrected to reflect updated citation reference to Arizona Revised Statutes (Supp. 07-2).

R15-5-2341. Four-inch Pipes or Valves

Purchases of pipes, valves, or fire hydrants with an inside diameter of four inches or more are not taxable if the pipes, valves, or fire hydrants are to be used to transport oil, natural gas, artificial gas, water, or coal slurry.

Historical Note

Adopted effective September 29, 1993 (Supp. 93-3).

R15-5-2342. Computer Hardware and Software

Purchases of computer hardware and software are subject to the use tax based on the same provisions as delineated in R15-5-154.

Historical Note

Adopted effective September 29, 1993 (Supp. 93-3).

R15-5-2343. Purchases of Prescription Drugs and Prosthetic Appliances

A. In this Section:

- 1. "Drug" means an article that, according to federal or state law, is:
 - a. Recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, official National Formulary, or any supplement to these documents; or
 - b. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals; or

- c. Not food and is intended to affect the structure or any function of the body of humans or animals; or
 - d. Intended for use as a component of any article specified in subsections (a), (b), or (c).
 - 2. "Drug on a prescription" means a prescription drug.
 - 3. "Food" means an article used for food or drink for humans or animals, chewing gum, or an article used as a component of such an article.
 - 4. "Hearing aid" means any wearable device designed as a remedy or to compensate for defective human hearing, including parts, attachments, accessories, and earmolds.
 - 5. "Legend drug" means a drug that 21 U.S.C. 353(b)(4)(A) requires to bear the symbol "Rx only" before dispensing.
 - 6. "Nonprescription product" means a drug or other article that can be purchased by the final consumer of the drug or article without a prescription, regardless of whether purchased on the advice or recommendation of a member of the medical, dental, or veterinarian profession. Examples include over-the-counter drugs and those dietary supplements, vitamins, minerals, herbs, and other similar supplements that do not qualify as prescription drugs.
 - 7. "Over-the-counter drug" means a drug that is subject to federal labeling requirements in 21 CFR 201.66.
 - 8. "Prescriber" means a member of the medical, dental, or veterinary profession authorized by federal or state law to prescribe a drug.
 - 9. "Prescription" means an order for a drug issued in any form.
 - 10. "Prescription drug" means a legend drug or a drug that, according to federal or state law, can be dispensed only:
 - a. Upon a written prescription of a prescriber for the drug;
 - b. Upon an oral prescription by the prescriber for the drug that federal or state law requires be reduced promptly to a form of writing by the prescriber and then filed by a pharmacist or the prescriber; or
 - c. By refilling a written or oral prescription if refilling is authorized by the prescriber for the drug either in the original prescription or by oral order that is first reduced promptly to writing and then filed by a pharmacist or the prescriber.
 - 11. "Prescription eyeglasses" includes frames and other component parts of eyeglasses if purchased for use with the prescription lenses.
 - 12. "Prosthetic appliance" means an artificial device that fully or partially replaces a part or function of the human body or increases the acuity of a sense organ.
- B. The storage, use, or consumption in this state of the following kinds of tangible personal property is not subject to tax:
- 1. Prescription drugs, including those used in the course of treating patients;
 - 2. Medical oxygen, pursuant to A.R.S. § 42-5159(A)(16);
 - 3. Insulin, insulin syringes, and glucose strips, whether or not prescribed;
 - 4. Prosthetic appliances, prescribed or recommended by a statutorily-authorized individual;
 - 5. Durable medical equipment, pursuant to A.R.S. § 42-5159(A)(21);
 - 6. Prescription eyeglasses and contact lenses; and
 - 7. Hearing aids. Batteries and cords are subject to tax.
- C. The purchase of component and repair parts for any tangible personal property that is exempt under either subsection (B) or (F) is not subject to tax.
- D. If a written prescription or recommendation is required to purchase tangible personal property, a taxpayer shall maintain the prescription or recommendation as part of the taxpayer's records. The taxpayer's records for documenting purchases shall provide reasonable detail to allow the Department, upon inspection, to identify property as exempt.
- E. Purchases by a final consumer of nonprescription products and those medical supplies or appliances not provided for under subsection (B) are subject to tax.

- F. Purchases of nonprescription products or other medical supplies or appliances by doctors, dentists, or veterinarians are subject to tax unless the purchase qualifies as a purchase for resale and the doctor, dentist, or veterinarian is a retailer in the business of reselling the property.

Historical Note

Renumbered from R15-5-2330 and amended effective September 29, 1993 (Supp. 93-3).
Amended by final rulemaking at 11 A.A.R. 2952, effective September 10, 2005 (Supp. 05-3).

R15-5-2344. Postage Stamps

- A. The purchase of postage stamps is not subject to use tax if the stamps are purchased for the purpose of transporting mail.
- B. The purchase of postage stamps is subject to use tax if the stamps are purchased for any purpose other than transporting mail.
- C. The Department shall presume that a postage stamp is purchased for a purpose other than transporting mail if the postage stamp is purchased for at least 50% more than its face value. A purchaser may overcome the presumption; however, the burden of proof will remain on the purchaser.
- D. The purchase of cancelled postage stamps is subject to use tax.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 4112, effective October 4, 2000 (Supp. 00-4).

R15-5-2350. Mail Order Retailers

This rule is not a limitation on other provisions of Arizona Revised Statutes, Title 42, Chapter 8, Article 2. A mail order retailer's transactions are substantial and recurring if the following conditions are satisfied:

1. The sale of tangible personal property would be subject to transaction privilege taxation if the transaction would have occurred in this state, and
2. During any 12-month period:
 - a. The retailer's total sales in this state exceed \$100,000.00; or
 - b. Two or more mailings, aggregating 5,000 or more solicitations, are made to points in this state.

Historical Note

Adopted effective December 6, 1990 (Supp. 90-4). Renumbered from R15-5-2332 effective September 29, 1993 (Supp. 93-3).

R15-5-2351. Purchases by Non-U.S. Citizens

Purchases of tangible personal property by non-U.S. citizens shall be subject to the use tax unless otherwise exempt.

Historical Note

Adopted effective September 29, 1993 (Supp. 93-3).

R15-5-2353. Property Purchased Outside of the United States

- A. Tangible personal property purchased outside of the United States is taxable when purchased for business use.
- B. In any one calendar month, tangible personal property purchases with a cumulative purchase price of \$200 or less are not taxable if purchased for nonbusiness use. Purchases in excess of the \$200 exemption are taxable on the excess amount.

Historical Note

Section R15-5-2353 renumbered from R15-5-2319 and amended effective September 29, 1993 (Supp. 93-3).

R15-5-2360. Government Purchases

- A. Purchases of tangible personal property by any state or its political subdivisions are taxable.
- B. Purchases by the Federal Government are not taxable.

Historical Note

Section R15-5-2360 renumbered from R15-5-2327 and amended effective September 29, 1993 (Supp. 93-3).

R15-5-2361. Nonprofit Organizations

- A. Purchases of tangible personal property by nonprofit churches, schools, and other nonprofit organizations are taxable unless otherwise exempt.
- B. Purchases of tangible personal property from a charitable nonprofit organization recognized as having tax-exempt status for income tax purposes with the Internal Revenue Service and the Department are not taxable.
- C. If an organization wishes to obtain tax-exempt status by being recognized by the Department as a nonprofit charitable organization, it shall submit a letter to the Department requesting tax-exempt status and shall include a copy of its Internal Revenue Service recognition.
- D. For purposes of the statutory exemption and for this rule, the Internal Revenue Service recognition of a charitable nonprofit organization is as defined in Internal Revenue Code § 501(c)(3).

Historical Note

Section R15-5-2361 renumbered from R15-5-2328 and amended effective September 29, 1993 (Supp. 93-3).

R15-5-2362. Exempt Purchases by Health Organizations

- A. Purchases by qualifying hospitals, nursing care institutions, qualifying health care organizations, rehabilitation programs for mentally or physically handicapped persons, and qualifying community health centers are exempt from tax pursuant to statutory provisions.
- B. The Department may, upon review of the written request and any other information requested by the Department to make a proper determination, provide an Exemption Letter to organizations meeting the statutory criteria. The Exemption Letter shall be valid for a period of 12 months from the first day of the month following the issue date of the Exemption Letter unless the organization's tax exempt status changes prior to the end of the 12-month period, or the organization misrepresented or omitted material information in its exemption request.
- C. Qualifying hospitals, qualifying health care organizations, rehabilitation programs for mentally or physically handicapped persons, and qualifying community health centers shall annually submit to the Department a written request for an Exemption Letter. The request shall be submitted at least 30 days prior to the first day of the exemption period. For purposes of this rule, "exemption period" means the 12-month period beginning on the first day of the month following the issue date of the Exemption Letter or the 12-month period requested by the organization.
 - 1. Qualifying hospitals shall attach to their annual exemption request a copy of their current license issued by the Department of Health Services.
 - 2. Qualifying health care organizations shall attach to their exemption request letter the statutorily required annual financial audit and a copy of their Internal Revenue Code 501(c) recognition unless the Department has previously received a copy of this recognition.
 - 3. Rehabilitation programs for mentally or physically handicapped persons shall attach to their exemption request a copy of their Internal Revenue Code 501(c)(3) recognition unless the Department has previously received a copy of this recognition.

4. Qualifying community health centers shall attach to their exemption request documentation supporting the statutory criteria and a copy of their Internal Revenue Code 501(c)(3) recognition unless the Department has previously received a copy of this recognition.

Historical Note

Section R15-5-2362 renumbered from R15-5-2310 and amended effective September 29, 1993 (Supp. 93-3). Amended effective April 21, 1995 (Supp. 95-2).

General and Specific Authorizing Statutes:

42-1005. Powers and duties of director

A. The director shall be directly responsible to the governor for the direction, control and operation of the department and shall:

1. Make such administrative rules as he deems necessary and proper to effectively administer the department and enforce this title and title 43.

2. On or before November 15 of each year issue a written report to the governor and legislature concerning the department's activities during the year. In any election year a copy of this report shall be made available to the governor-elect and to the legislature-elect.

3. On or before December 15 of each year issue a supplemental report which shall also contain proposed legislation recommended by the department for the improvement of the system of taxation in the state.

4. In addition to the report required by paragraph 2 of this subsection, on or before November 15 of each year issue a written report to the governor and legislature detailing the approximate costs in lost revenue for all state tax expenditures in effect at the time of the report. For the purpose of this paragraph, "tax expenditure" means any tax provision in state law which exempts, in whole or in part, any persons, income, goods, services or property from the impact of established taxes including deductions, subtractions, exclusions, exemptions, allowances and credits.

5. Annually, on or before January 10, prepare and submit to the legislature a report containing a summary of all the revisions made to the internal revenue code during the preceding calendar year.

6. Provide such assistance to the governor and the legislature as they may require.

7. Delegate such administrative functions, duties or powers as he deems necessary to carry out the efficient operation of the department.

B. The director may enter into an agreement with the taxing authority of any state which imposes a tax on or measured by income to provide that compensation paid in that state to residents of this state is exempt in that state from liability for income tax, the requirement for filing a tax return and withholding tax from compensation. Compensation paid in this state to residents of that state is reciprocally exempt from the requirements of title 43.

42-5003. Administration and enforcement of article; employees; bonds

A. The administration of this article is vested in and shall be exercised by the department of revenue according to chapter 1, articles 1 and 3 of this title and this article, and all payments required by this article shall be made to the department.

B. The enforcement of this article in any court of the state shall be under the exclusive jurisdiction of the department and the attorney general.

C. The department shall appoint, as necessary, such agents, clerks and stenographers as authorized by law, who shall perform such duties as may be required not inconsistent with this article, and who shall be authorized to act for the department as it prescribes and as provided by this article. Each agent shall execute a bond in the amount of five thousand dollars conditioned upon the faithful discharge of the agent's duties, but the department may, in its discretion, bond all or any of its agents by a multiple or joint bond. The agents, clerks and stenographers may be removed by the department for cause, and the department shall be the final judge of the sufficiency of the cause.

42-5005. Transaction privilege tax and municipal privilege tax licenses; renewal; revocation; violation; classification

A. Every person who receives gross proceeds of sales or gross income on which a transaction privilege tax is imposed by this article and who desires to engage or continue in business shall apply to the department for an annual transaction privilege tax license accompanied by a fee of twelve dollars. A person shall not engage or continue in business until the person has obtained a transaction privilege tax license.

B. A person desiring to engage or continue in business within a city or town that imposes a municipal privilege tax shall apply to the department of revenue for an annual municipal privilege tax license accompanied by a fee of up to fifty dollars, as established by ordinance of the city or town. The person shall submit the fee with each new license application. The person may not engage or continue in business until the person has obtained a municipal privilege tax license. The department must collect, hold, pay and manage the fees in trust for the city or town and may not use the monies for any other purposes.

C. A transaction privilege tax license is valid only for the calendar year in which it is issued, but it may be renewed for the following calendar year. There is no fee for the renewal of the transaction privilege tax license. The transaction privilege tax license must be renewed at the same time and in the manner as the municipal privilege tax license renewal.

D. A municipal privilege tax license is valid only for the calendar year in which it is issued, but it may be renewed for the following calendar year by the payment of a license renewal fee of up to fifty dollars. The renewal fee is due and payable on January 1 and is considered delinquent if not received on or before the last business day of January. The department must collect, hold, pay and manage the fees in trust for the city or town and may not use the monies for any other purposes.

E. A licensee that remains in business after the municipal privilege tax license has expired is subject to the payment of the license renewal fee and the civil penalty prescribed in section 42-1125, subsection R.

F. If the applicant is not in arrears in payment of any tax imposed by this article, the department shall issue a license authorizing the applicant to engage and continue in business on the condition that the applicant complies with this article. The license number shall be continuous.

G. The transaction privilege tax license and the municipal privilege tax license are not transferable on a complete change of ownership or change of location of the business. For the purposes of this subsection:

1. "Location" means the business address appearing in the application for the license and on the transaction privilege tax or municipal privilege tax license.

2. "Ownership" means any right, title or interest in the business.

3. "Transferable" means the ability to convey or change the right or privilege to engage or continue in business by virtue of the issuance of the transaction privilege tax or municipal privilege tax license.

H. When the ownership or location of a business on which a transaction privilege tax or municipal privilege tax is imposed has been changed within the meaning of subsection G of this section, the licensee shall surrender the license to the department. The license shall be reissued to the new owners or for the new location on application by the taxpayer and payment of the twelve-dollar fee for a transaction privilege tax license and a fee of up to fifty dollars per jurisdiction for a municipal privilege tax license. The department must collect, hold, pay and manage the fees in trust for the city or town and may not use the monies for any other purposes.

I. A person who is engaged in or conducting a business in two or more locations or under two or more business names shall procure a transaction privilege tax license for each location or business name regardless of whether all locations or business names are reported on a consolidated return under a single transaction privilege tax license number. This requirement shall not be construed as conflicting with section 42-5020.

J. A person who is engaged in or conducting a business in two or more locations or under two or more business names shall procure a municipal privilege tax license for each location or business name regardless of whether all locations or business names are reported on a consolidated return.

K. A person who is engaged in or conducting business at two or more locations or under two or more business names and who files a consolidated return under a single transaction privilege tax license number as provided by section 42-5020 is required to pay only a single municipal privilege tax license renewal fee for each local jurisdiction pursuant to subsection D of this section. A person who is engaged in or conducting business at two or more locations or under two or more business names and who does not file a consolidated return under a single license number is required to pay a license renewal fee for each location or license in a local jurisdiction.

L. For the purposes of this chapter and chapter 6 of this title, an online lodging marketplace, as defined in section 42-5076, may register with the department for a license for the payment of taxes levied by this state and one or more counties, cities, towns or special taxing districts, at the election of the online lodging marketplace, for taxes due from an online lodging operator on any online lodging transaction facilitated by the online lodging marketplace, subject to sections 42-5076 and 42-6009.

M. For the purposes of this chapter and chapter 6 of this title, a person who is licensed pursuant to title 32, chapter 20 and who files an electronic consolidated tax return for individual real properties under management on behalf of the property owners may be licensed with the department for the payment of taxes levied by this state and by any county, city or town with respect to those properties.

N. If a person violates this article or any rule adopted under this article, the department upon hearing may revoke any transaction privilege tax or municipal privilege tax license issued to the

person. The department shall provide ten days' written notice of the hearing, stating the time and place and requiring the person to appear and show cause why the license or licenses should not be revoked. The department shall provide written notice to the person of the revocation of the license. The notices may be served personally or by mail pursuant to section 42-5037. After revocation, the department shall not issue a new license to the person unless the person presents evidence satisfactory to the department that the person will comply with this article and with the rules adopted under this article. The department may prescribe the terms under which a revoked license may be reissued.

O. A person who violates any provision of this section is guilty of a class 3 misdemeanor.

42-5002. Exclusions from gross income, receipts or proceeds

A. For the purpose of this article the total amount of gross income, gross receipts or gross proceeds of sales shall be deemed to be the amount received, exclusive of:

1. The taxes imposed by this chapter and chapter 6, article 3 of this title, sales or transaction privilege taxes imposed by municipalities in this state and sales or transaction privilege taxes imposed in this state by Indian tribes, if the Indian tribal tax is imposed with respect to sales by non-Indian or nonaffiliated Indian vendors to nonmembers of the tribe. A person who imposes an added charge to cover the tax levied by this article or which is identified as being imposed to cover transaction privilege tax shall not remit less than the amount so collected to the department.

2. Freight costs billed to and collected from a purchaser by a retailer for tangible personal property which, upon the order of the retailer, is shipped directly from a manufacturer or wholesaler to the purchaser.

B. For the purposes of this article the total amount of gross income, gross receipts or gross proceeds of sales for nuclear fuel shall be deemed to be the value of the purchase price of uranium oxide used in producing the fuel. The tax imposed by this article may be imposed only once for any one quantity or batch of nuclear fuel regardless of the number of transactions or financing arrangements which may occur with respect to that nuclear fuel.

42-5151. Definitions

In this article, unless the context otherwise requires:

1. "Ancillary services" means those services so designated in federal energy regulatory commission order 888 adopted in 1996 that include the services necessary to support the transmission of electricity from resources to loads while maintaining reliable operation of the transmission system according to good utility practice.

2. "Electric distribution service" means distributing electricity to retail electric customers through the use of electric distribution facilities.

3. "Electric generation service" means providing electricity for sale to retail electric customers but excluding electric distribution or transmission services.

4. "Electric transmission service" means transmitting electricity to retail electric customers or to electric distribution facilities so classified by the federal energy regulatory commission or, to the extent permitted by law, so classified by the Arizona corporation commission.

5. "Electric utility services" means the business of providing electric ancillary services, electric distribution services, electric generation services, electric transmission services and other services related to providing electricity.

6. "Electricity" means electric energy, electric capacity or electric capacity and energy.

7. "Electricity supplier" means a person, whether acting in a principal, agent or other capacity, that offers to sell electricity to a retail electric customer in this state.

8. "Natural gas" means natural or artificial gas, and includes methane and propane gas, the natural gas commodity, natural gas pipeline capacity or natural gas commodity and pipeline capacity.

9. "Natural gas utility services" means the business of selling natural gas or providing natural gas transportation services or other services related to providing natural gas.

10. "Notice" means written notice served personally or by certified mail and addressed to the last known address of the person to whom such notice is given.

11. "Other services" includes metering, meter reading services, billing and collecting services.

12. "Person" means an individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver or syndicate, this state or a county, city, municipality, district or other political subdivision or agency thereof.

13. "Purchase" means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means, of tangible personal property for a consideration, including transactions by which the possession of property is transferred but the seller retains the title as security for payment.

14. "Purchase price" or "sales price" means the total amount for which tangible personal property is sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and any amount for which credit is given to the purchaser by the seller without any deduction on account of the cost of the property sold, materials used, labor or services performed, interest charged, losses or other expenses, but does not include:

(a) Discounts allowed and taken.

(b) Charges for labor or services in installing, remodeling or repairing.

(c) Freight costs billed to and collected from a purchaser by a retailer for tangible personal property which, on the order of the retailer, is shipped directly from a manufacturer or wholesaler to the purchaser.

(d) Amounts attributable to federal excise taxes imposed by 26 United States Code section 4001, 4051 or 4081 on sales of heavy trucks and trailers and automobiles or on sales of use fuel, as defined in section 28-5601.

(e) The value of merchandise that is traded in on the purchase of new or pre-owned merchandise when the trade-in allowance is deducted from the sales price of the new or pre-owned merchandise before the completion of the sale.

15. "Retail electric customer" means a person who purchases electricity for that person's own use, including use in that person's trade or business, and not for resale, redistribution or retransmission.

16. "Retail natural gas customer" means a person who purchases natural gas for that person's own use, including use in that person's trade or business, and not for resale, redistribution or retransmission.

17. "Retailer" includes:

(a) Every person engaged in the business of making sales of tangible personal property for storage, use or other consumption or in the business of making sales at auction of tangible personal property owned by that person or others for storage, use or other consumption. If in the opinion of the department it is necessary for the efficient administration of this article to regard any salesmen, representatives, peddlers or canvassers as the agents of the dealers, distributors, supervisors or employers under whom they operate or from whom they obtain the tangible personal property sold by them, regardless of whether they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors or employers, the department may so regard them and may regard the dealers, distributors, supervisors or employers as retailers for purposes of this article.

(b) A person who solicits orders for tangible personal property by mail if the solicitations are substantial and recurring or if the retailer benefits from any banking, financing, debt collection, telecommunication, television shopping system, cable, optic, microwave or other communication system or marketing activities occurring in this state or benefits from the location in this state of authorized installation, servicing or repair facilities.

18. "Solar daylighting" means a device that is specifically designed to capture and redirect the visible portion of the solar beam, while controlling the infrared portion, for use in illuminating interior building spaces in lieu of artificial lighting.

19. "Solar energy device" means a system or series of mechanisms designed primarily to provide heating, to provide cooling, to produce electrical power, to produce mechanical power, to provide solar daylighting or to provide any combination of the foregoing by means of collecting and transferring solar generated energy into such uses by either active or passive means, including wind generator systems that produce electricity. Solar energy systems may also have the capability of storing solar energy for future use. Passive systems shall clearly be designed as a solar energy device, such as a trombe wall, and not merely as a part of a normal structure, such as a window.

20. "Storage" means keeping or retaining tangible personal property purchased from a retailer for any purpose except sale in the regular course of business or subsequent use solely outside this state. For the purposes of this paragraph, sale in the regular course of business does not include the transfer of title or possession of coal back and forth between an owner or operator of a power plant and a person who is responsible for refining coal if both of the following apply:

(a) The transfer of title or possession of the coal is for the purpose of refining the coal.

(b) The title or possession of the coal is transferred back to the owner or operator of the power plant after completion of the coal refining process. For the purposes of this subdivision, "coal refining process" means the application of a coal additive system that aids the reduction of power plant emissions during the combustion of coal and the treatment of flue gas.

21. "Taxpayer" means any retailer or person storing, using or consuming tangible personal property the storage, use or consumption of which is subject to the tax imposed by this article when such tax was not paid to a retailer.

22. "Use or consumption" means the exercise of any right or power over tangible personal property incidental to owning the property except holding for sale or selling the property in the regular course of business. For the purposes of this paragraph, selling the property in the regular course of business does not include the transfer of title or possession of coal back and forth between an owner or operator of a power plant and a person who is responsible for refining coal if both of the following apply:

(a) The transfer of title or possession of the coal is for the purpose of refining the coal.

(b) The title or possession of the coal is transferred back to the owner or operator of the power plant after completion of the coal refining process. For the purposes of this subdivision, "coal refining process" means the application of a coal additive system that aids the reduction of power plant emissions during the combustion of coal and the treatment of flue gas.

23. "Utility business" means a person that is engaged in the business of providing electric utility services to retail electric customers or natural gas utility services to retail natural gas customers.

42-5155. Levy of tax; tax rate; purchaser's liability

A. There is levied and imposed an excise tax on the storage, use or consumption in this state of tangible personal property purchased from a retailer or utility business, as a percentage of the sales price. A manufactured building purchased outside this state and set up in this state is subject to tax under this section and in this case the percentage is sixty-five per cent of the sales price.

B. The tax imposed by this section applies to any purchaser which purchased tangible personal property for resale but subsequently uses or consumes the property.

C. The tax rate shall equal the rate of tax prescribed by section 42-5010, subsection A as applied to retailers and utility businesses according to the respective classification under articles 1 and 2 of this chapter for the same type of transaction or business activity.

D. In addition to the rate prescribed by subsection C of this section, if approved by the qualified electors voting at a statewide general election, an additional rate increment of six-tenths of one per cent is imposed and shall be collected through June 30, 2021. The taxpayer shall pay taxes pursuant to this subsection at the same time and in the same manner as under subsection C of this section. The department shall separately account for the revenues collected with respect to the rate imposed pursuant to this subsection, and the state treasurer shall pay all of those revenues in the manner prescribed by section 42-5029, subsection E.

E. Every person storing, using or consuming in this state tangible personal property purchased from a retailer or utility business is liable for the tax. The person's liability is not extinguished until the tax has been paid to this state.

F. A receipt from a retailer or utility business that maintains a place of business in this state or from a retailer or utility business that is authorized by the department to collect the tax, under such rules as it may prescribe, and that is for the purposes of this article regarded as a retailer or utility business maintaining a place of business in this state, given to the purchaser as provided in section 42-5161 is sufficient to relieve the purchaser from further liability for the tax to which the receipt refers.

42-5159. Exemptions

A. The tax levied by this article does not apply to the storage, use or consumption in this state of the following described tangible personal property:

1. Tangible personal property, sold in this state, the gross receipts from the sale of which are included in the measure of the tax imposed by articles 1 and 2 of this chapter.

2. Tangible personal property, the sale or use of which has already been subjected to an excise tax at a rate equal to or exceeding the tax imposed by this article under the laws of another state of the United States. If the excise tax imposed by the other state is at a rate less than the tax imposed by this article, the tax imposed by this article is reduced by the amount of the tax already imposed by the other state.

3. Tangible personal property, the storage, use or consumption of which the constitution or laws of the United States prohibit this state from taxing or to the extent that the rate or imposition of tax is unconstitutional under the laws of the United States.

4. Tangible personal property that directly enters into and becomes an ingredient or component part of any manufactured, fabricated or processed article, substance or commodity for sale in the regular course of business.

5. Motor vehicle fuel and use fuel, the sales, distribution or use of which in this state is subject to the tax imposed under title 28, chapter 16, article 1, use fuel that is sold to or used by a person holding a valid single trip use fuel tax permit issued under section 28-5739, aviation fuel, the sales, distribution or use of which in this state is subject to the tax imposed under section 28-8344, and jet fuel, the sales, distribution or use of which in this state is subject to the tax imposed under article 8 of this chapter.

6. Tangible personal property brought into this state by an individual who was a nonresident at the time the property was purchased for storage, use or consumption by the individual if the first actual use or consumption of the property was outside this state, unless the property is used in conducting a business in this state.

7. Purchases of implants used as growth promotants and injectable medicines, not already exempt under paragraph 16 of this subsection, for livestock and poultry owned by, or in possession of, persons who are engaged in producing livestock, poultry, or livestock or poultry products, or who are engaged in feeding livestock or poultry commercially. For the purposes of this paragraph, "poultry" includes ratites.

8. Purchases of:

(a) Livestock and poultry to persons engaging in the businesses of farming, ranching or producing livestock or poultry.

(b) Livestock and poultry feed, supplies, salts, vitamins and other additives sold to persons for use or consumption in the businesses of farming, ranching and producing or feeding livestock or poultry or for use or consumption in noncommercial boarding of livestock. For the purposes of this paragraph, "poultry" includes ratites.

9. Seeds, seedlings, roots, bulbs, cuttings and other propagative material for use in commercially producing agricultural, horticultural, viticultural or floricultural crops in this state.

10. Tangible personal property not exceeding two hundred dollars in any one month purchased by an individual at retail outside the continental limits of the United States for the individual's own personal use and enjoyment.

11. Advertising supplements that are intended for sale with newspapers published in this state and that have already been subjected to an excise tax under the laws of another state in the United States that equals or exceeds the tax imposed by this article.

12. Materials that are purchased by or for publicly funded libraries including school district libraries, charter school libraries, community college libraries, state university libraries or federal, state, county or municipal libraries for use by the public as follows:

(a) Printed or photographic materials, beginning August 7, 1985.

(b) Electronic or digital media materials, beginning July 17, 1994.

13. Tangible personal property purchased by:

(a) A hospital organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(b) A hospital operated by this state or a political subdivision of this state.

(c) A licensed nursing care institution or a licensed residential care institution or a residential care facility operated in conjunction with a licensed nursing care institution or a licensed kidney dialysis center, which provides medical services, nursing services or health related services and is not used or held for profit.

(d) A qualifying health care organization, as defined in section 42-5001, if the tangible personal property is used by the organization solely to provide health and medical related educational and charitable services.

(e) A qualifying health care organization as defined in section 42-5001 if the organization is dedicated to providing educational, therapeutic, rehabilitative and family medical education training for blind and visually impaired children and children with multiple disabilities from the time of birth to age twenty-one.

(f) A nonprofit charitable organization that has qualified under section 501(c)(3) of the United States internal revenue code and that engages in and uses such property exclusively in programs for persons with mental or physical disabilities if the programs are exclusively for training, job placement, rehabilitation or testing.

(g) A person that is subject to tax under this chapter by reason of being engaged in business classified under section 42-5075, or a subcontractor working under the control of a person that is engaged in business classified under section 42-5075, if the tangible personal property is any of the following:

(i) Incorporated or fabricated by the person into a structure, project, development or improvement in fulfillment of a contract.

(ii) Incorporated or fabricated by the person into any project described in section 42-5075, subsection O.

(iii) Used in environmental response or remediation activities under section 42-5075, subsection B, paragraph 6.

(h) A person that is not subject to tax under section 42-5075 and that has been provided a copy of a certificate described in section 42-5009, subsection L, if the property purchased is incorporated or fabricated by the person into the real property, structure, project, development or improvement described in the certificate.

(i) A nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code if the property is purchased from the parent or an affiliate organization that is located outside this state.

(j) A qualifying community health center as defined in section 42-5001.

(k) A nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that regularly serves meals to the needy and indigent on a continuing basis at no cost.

(l) A person engaged in business under the transient lodging classification if the property is a personal hygiene item or articles used by human beings for food, drink or condiment, except alcoholic beverages, which are furnished without additional charge to and intended to be consumed by the transient during the transient's occupancy.

(m) For taxable periods beginning from and after June 30, 2001, a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that provides residential apartment housing for low income persons over sixty-two years of age in a facility that qualifies for a federal housing subsidy, if the tangible personal property is used by the organization solely to provide residential apartment housing for low income persons over sixty-two years of age in a facility that qualifies for a federal housing subsidy.

(n) A qualifying health sciences educational institution as defined in section 42-5001.

(o) A person representing or working on behalf of any person described in subdivision (a), (b), (c), (d), (e), (f), (i), (j), (k), (m) or (n) of this paragraph, if the tangible personal property is incorporated or fabricated into a project described in section 42-5075, subsection O.

14. Commodities, as defined by title 7 United States Code section 2, that are consigned for resale in a warehouse in this state in or from which the commodity is deliverable on a contract for future delivery subject to the rules of a commodity market regulated by the United States commodity futures trading commission.

15. Tangible personal property sold by:

(a) Any nonprofit organization organized and operated exclusively for charitable purposes and recognized by the United States internal revenue service under section 501(c)(3) of the internal revenue code.

(b) A nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the organization is associated with a major league baseball team or a national touring professional golfing association and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

(c) A nonprofit organization that is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6), 501(c)(7) or 501(c)(8) of the internal revenue code if the organization sponsors or operates a rodeo featuring primarily farm and ranch animals and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

16. Drugs and medical oxygen, including delivery hose, mask or tent, regulator and tank, on the prescription of a member of the medical, dental or veterinarian profession who is licensed by law to administer such substances.

17. Prosthetic appliances, as defined in section 23-501, prescribed or recommended by a person who is licensed, registered or otherwise professionally credentialed as a physician, dentist, podiatrist, chiropractor, naturopath, homeopath, nurse or optometrist.

18. Prescription eyeglasses and contact lenses.

19. Insulin, insulin syringes and glucose test strips.

20. Hearing aids as defined in section 36-1901.

21. Durable medical equipment that has a centers for medicare and medicaid services common procedure code, is designated reimbursable by medicare, is prescribed by a person who is licensed under title 32, chapter 7, 13, 17 or 29, can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of illness or injury and is appropriate for use in the home.

22. Food, as provided in and subject to the conditions of article 3 of this chapter and section 42-5074.

23. Items purchased with United States department of agriculture food stamp coupons issued under the food stamp act of 1977 (P.L. 95-113; 91 Stat. 958) or food instruments issued under section 17 of the child nutrition act (P.L. 95-627; 92 Stat. 3603; P.L. 99-661, section 4302; 42 United States Code section 1786).

24. Food and drink provided without monetary charge by a taxpayer that is subject to section 42-5074 to its employees for their own consumption on the premises during the employees' hours of employment.

25. Tangible personal property that is used or consumed in a business subject to section 42-5074 for human food, drink or condiment, whether simple, mixed or compounded.

26. Food, drink or condiment and accessory tangible personal property that are acquired for use by or provided to a school district or charter school if they are to be either served or prepared and served to persons for consumption on the premises of a public school in the school district or on the premises of the charter school during school hours.

27. Lottery tickets or shares purchased pursuant to title 5, chapter 5.1, article 1.

28. Textbooks, sold by a bookstore, that are required by any state university or community college.

29. Magazines, other periodicals or other publications produced by this state to encourage tourist travel.

30. Paper machine clothing, such as forming fabrics and dryer felts, purchased by a paper manufacturer and directly used or consumed in paper manufacturing.

31. Coal, petroleum, coke, natural gas, virgin fuel oil and electricity purchased by a qualified environmental technology manufacturer, producer or processor as defined in section 41-1514.02 and directly used or consumed in the generation or provision of on-site power or energy solely for environmental technology manufacturing, producing or processing or environmental protection. This paragraph shall apply for twenty full consecutive calendar or fiscal years from the date the first paper manufacturing machine is placed in service. In the case of an environmental technology manufacturer, producer or processor who does not manufacture paper, the time period shall begin with the date the first manufacturing, processing or production equipment is placed in service.

32. Motor vehicles that are removed from inventory by a motor vehicle dealer as defined in section 28-4301 and that are provided to:

(a) Charitable or educational institutions that are exempt from taxation under section 501(c)(3) of the internal revenue code.

(b) Public educational institutions.

(c) State universities or affiliated organizations of a state university if no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

33. Natural gas or liquefied petroleum gas used to propel a motor vehicle.

34. Machinery, equipment, technology or related supplies that are only useful to assist a person with a physical disability as defined in section 46-191 or a person who has a developmental disability as defined in section 36-551 or has a head injury as defined in section 41-3201 to be more independent and functional.

35. Liquid, solid or gaseous chemicals used in manufacturing, processing, fabricating, mining, refining, metallurgical operations, research and development and, beginning on January 1, 1999, printing, if using or consuming the chemicals, alone or as part of an integrated system of chemicals, involves direct contact with the materials from which the product is produced for the purpose of causing or permitting a chemical or physical change to occur in the materials as part of the production process. This paragraph does not include chemicals that are used or consumed in activities such as packaging, storage or transportation but does not affect any exemption for such chemicals that is otherwise provided by this section. For the purposes of this paragraph, "printing" means a commercial printing operation and includes job printing, engraving, embossing, copying and bookbinding.

36. Food, drink and condiment purchased for consumption within the premises of any prison, jail or other institution under the jurisdiction of the state department of corrections, the department of public safety, the department of juvenile corrections or a county sheriff.

37. A motor vehicle and any repair and replacement parts and tangible personal property becoming a part of such motor vehicle sold to a motor carrier who is subject to a fee prescribed in title 28, chapter 16, article 4 and who is engaged in the business of leasing or renting such property.

38. Tangible personal property that is or directly enters into and becomes an ingredient or component part of cards used as prescription plan identification cards.

39. Overhead materials or other tangible personal property that is used in performing a contract between the United States government and a manufacturer, modifier, assembler or repairer, including property used in performing a subcontract with a government contractor who is a manufacturer, modifier, assembler or repairer, to which title passes to the government under the terms of the contract or subcontract. For the purposes of this paragraph:

(a) "Overhead materials" means tangible personal property, the gross proceeds of sales or gross income derived from which would otherwise be included in the retail classification, that is used or consumed in the performance of a contract, the cost of which is charged to an overhead expense account and allocated to various contracts based on generally accepted accounting principles and consistent with government contract accounting standards.

(b) "Subcontract" means an agreement between a contractor and any person who is not an employee of the contractor for furnishing of supplies or services that, in whole or in part, are necessary to the performance of one or more government contracts, or under which any portion of the contractor's obligation under one or more government contracts is performed, undertaken or assumed, and that includes provisions causing title to overhead materials or other tangible

personal property used in the performance of the subcontract to pass to the government or that includes provisions incorporating such title passing clauses in a government contract into the subcontract.

40. Through December 31, 1994, tangible personal property sold pursuant to a personal property liquidation transaction, as defined in section 42-5061. From and after December 31, 1994, tangible personal property sold pursuant to a personal property liquidation transaction, as defined in section 42-5061, if the gross proceeds of the sales were included in the measure of the tax imposed by article 1 of this chapter or if the personal property liquidation was a casual activity or transaction.

41. Wireless telecommunications equipment that is held for sale or transfer to a customer as an inducement to enter into or continue a contract for telecommunications services that are taxable under section 42-5064.

42. Alternative fuel, as defined in section 1-215, purchased by a used oil fuel burner who has received a permit to burn used oil or used oil fuel under section 49-426 or 49-480.

43. Tangible personal property purchased by a commercial airline and consisting of food, beverages and condiments and accessories used for serving the food and beverages, if those items are to be provided without additional charge to passengers for consumption in flight. For the purposes of this paragraph, "commercial airline" means a person holding a federal certificate of public convenience and necessity or foreign air carrier permit for air transportation to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

44. Alternative fuel vehicles if the vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in section 1-215.

45. Gas diverted from a pipeline, by a person engaged in the business of:

(a) Operating a natural or artificial gas pipeline, and used or consumed for the sole purpose of fueling compressor equipment that pressurizes the pipeline.

(b) Converting natural gas into liquefied natural gas, and used or consumed for the sole purpose of fueling compressor equipment used in the conversion process.

46. Tangible personal property that is excluded, exempt or deductible from transaction privilege tax pursuant to section 42-5063.

47. Tangible personal property purchased to be incorporated or installed as part of environmental response or remediation activities under section 42-5075, subsection B, paragraph 6.

48. Tangible personal property sold by a nonprofit organization that is exempt from taxation under section 501(c)(6) of the internal revenue code if the organization produces, organizes or promotes cultural or civic related festivals or events and no part of the organization's net earnings inures to the benefit of any private shareholder or individual.

49. Prepared food, drink or condiment donated by a restaurant as classified in section 42-5074, subsection A to a nonprofit charitable organization that has qualified under section 501(c)(3) of the internal revenue code and that regularly serves meals to the needy and indigent on a continuing basis at no cost.

50. Application services that are designed to assess or test student learning or to promote curriculum design or enhancement purchased by or for any school district, charter school, community college or state university. For the purposes of this paragraph:

(a) "Application services" means software applications provided remotely using hypertext transfer protocol or another network protocol.

(b) "Curriculum design or enhancement" means planning, implementing or reporting on courses of study, lessons, assignments or other learning activities.

51. Motor vehicle fuel and use fuel to a qualified business under section 41-1516 for off-road use in harvesting, processing or transporting qualifying forest products removed from qualifying projects as defined in section 41-1516.

52. Repair parts installed in equipment used directly by a qualified business under section 41-1516 in harvesting, processing or transporting qualifying forest products removed from qualifying projects as defined in section 41-1516.

53. Renewable energy credits or any other unit created to track energy derived from renewable energy resources. For the purposes of this paragraph, "renewable energy credit" means a unit created administratively by the corporation commission or governing body of a public power entity to track kilowatt hours of electricity derived from a renewable energy resource or the kilowatt hour equivalent of conventional energy resources displaced by distributed renewable energy resources.

54. Computer data center equipment sold to the owner, operator or qualified colocation tenant of a computer data center that is certified by the Arizona commerce authority under section 41-1519 or an authorized agent of the owner, operator or qualified colocation tenant during the qualification period for use in the qualified computer data center. For the purposes of this paragraph, "computer data center", "computer data center equipment", "qualification period" and "qualified colocation tenant" have the same meanings prescribed in section 41-1519.

55. Coal acquired from an owner or operator of a power plant by a person who is responsible for refining coal if both of the following apply:

(a) The transfer of title or possession of the coal is for the purpose of refining the coal.

(b) The title or possession of the coal is transferred back to the owner or operator of the power plant after completion of the coal refining process. For the purposes of this subdivision, "coal refining process" means the application of a coal additive system that aids the reduction of power plant emissions during the combustion of coal and the treatment of flue gas.

56. Tangible personal property incorporated or fabricated into a project described in section 42-5075, subsection O, that is located within the exterior boundaries of an Indian reservation for

which the owner, as defined in section 42-5075, of the project is an Indian tribe or an affiliated Indian. For the purposes of this paragraph:

(a) "Affiliated Indian" means an individual native American Indian who is duly registered on the tribal rolls of the Indian tribe for whose benefit the Indian reservation was established.

(b) "Indian reservation" means all lands that are within the limits of areas set aside by the United States for the exclusive use and occupancy of an Indian tribe by treaty, law or executive order and that are recognized as Indian reservations by the United States department of the interior.

(c) "Indian tribe" means any organized nation, tribe, band or community that is recognized as an Indian tribe by the United States department of the interior and includes any entity formed under the laws of the Indian tribe.

57. Cash equivalents, precious metal bullion and monetized bullion purchased by the ultimate consumer, but coins or other forms of money for manufacture into jewelry or works of art are subject to tax, and tangible personal property that is purchased through the redemption of any cash equivalent by the holder as a means of payment for goods that are subject to tax under this article is subject to tax. For the purposes of this paragraph:

(a) "Cash equivalents" means items, whether or not negotiable, that are sold to one or more persons, through which a value denominated in money is purchased in advance and that may be redeemed in full or in part for tangible personal property, intangibles or services. Cash equivalents include gift cards, stored value cards, gift certificates, vouchers, traveler's checks, money orders or other tangible instruments or orders. Cash equivalents do not include either of the following:

(i) Items that are sold to one or more persons and through which a value is not denominated in money.

(ii) Prepaid calling cards for telecommunications services.

(b) "Monetized bullion" means coins and other forms of money that are manufactured from gold, silver or other metals and that have been or are used as a medium of exchange in this or another state, the United States or a foreign nation.

(c) "Precious metal bullion" means precious metal, including gold, silver, platinum, rhodium and palladium, that has been smelted or refined so that its value depends on its contents and not on its form.

B. In addition to the exemptions allowed by subsection A of this section, the following categories of tangible personal property are also exempt:

1. Machinery, or equipment, used directly in manufacturing, processing, fabricating, job printing, refining or metallurgical operations. The terms "manufacturing", "processing", "fabricating", "job printing", "refining" and "metallurgical" as used in this paragraph refer to and include those operations commonly understood within their ordinary meaning. "Metallurgical operations" includes leaching, milling, precipitating, smelting and refining.

2. Machinery, or equipment, used directly in the process of extracting ores or minerals from the earth for commercial purposes, including equipment required to prepare the materials for extraction and handling, loading or transporting such extracted material to the surface. "Mining" includes underground, surface and open pit operations for extracting ores and minerals.

3. Tangible personal property sold to persons engaged in business classified under the telecommunications classification under section 42-5064, including a person representing or working on behalf of such a person in a manner described in section 42-5075, subsection O, and consisting of central office switching equipment, switchboards, private branch exchange equipment, microwave radio equipment and carrier equipment including optical fiber, coaxial cable and other transmission media that are components of carrier systems.

4. Machinery, equipment or transmission lines used directly in producing or transmitting electrical power, but not including distribution. Transformers and control equipment used at transmission substation sites constitute equipment used in producing or transmitting electrical power.

5. Neat animals, horses, asses, sheep, ratites, swine or goats used or to be used as breeding or production stock, including sales of breedings or ownership shares in such animals used for breeding or production.

6. Pipes or valves four inches in diameter or larger used to transport oil, natural gas, artificial gas, water or coal slurry, including compressor units, regulators, machinery and equipment, fittings, seals and any other part that is used in operating the pipes or valves.

7. Aircraft, navigational and communication instruments and other accessories and related equipment sold to:

(a) A person holding a federal certificate of public convenience and necessity, a supplemental air carrier certificate under federal aviation regulations (14 Code of Federal Regulations part 121) or a foreign air carrier permit for air transportation for use as or in conjunction with or becoming a part of aircraft to be used to transport persons, property or United States mail in intrastate, interstate or foreign commerce.

(b) Any foreign government, or sold to persons who are not residents of this state and who will not use such property in this state other than in removing such property from this state.

8. Machinery, tools, equipment and related supplies used or consumed directly in repairing, remodeling or maintaining aircraft, aircraft engines or aircraft component parts by or on behalf of a certificated or licensed carrier of persons or property.

9. Rolling stock, rails, ties and signal control equipment used directly to transport persons or property.

10. Machinery or equipment used directly to drill for oil or gas or used directly in the process of extracting oil or gas from the earth for commercial purposes.

11. Buses or other urban mass transit vehicles that are used directly to transport persons or property for hire or pursuant to a governmentally adopted and controlled urban mass transportation program and that are sold to bus companies holding a federal certificate of

convenience and necessity or operated by any city, town or other governmental entity or by any person contracting with such governmental entity as part of a governmentally adopted and controlled program to provide urban mass transportation.

12. Groundwater measuring devices required under section 45-604.

13. New machinery and equipment consisting of agricultural aircraft, tractors, tractor-drawn implements, self-powered implements, machinery and equipment necessary for extracting milk, and machinery and equipment necessary for cooling milk and livestock, and drip irrigation lines not already exempt under paragraph 6 of this subsection and that are used for commercial production of agricultural, horticultural, viticultural and floricultural crops and products in this state. For the purposes of this paragraph:

(a) "New machinery and equipment" means machinery or equipment that has never been sold at retail except pursuant to leases or rentals that do not total two years or more.

(b) "Self-powered implements" includes machinery and equipment that are electric-powered.

14. Machinery or equipment used in research and development. For the purposes of this paragraph, "research and development" means basic and applied research in the sciences and engineering, and designing, developing or testing prototypes, processes or new products, including research and development of computer software that is embedded in or an integral part of the prototype or new product or that is required for machinery or equipment otherwise exempt under this section to function effectively. Research and development do not include manufacturing quality control, routine consumer product testing, market research, sales promotion, sales service, research in social sciences or psychology, computer software research that is not included in the definition of research and development, or other nontechnological activities or technical services.

15. Tangible personal property that is used by either of the following to receive, store, convert, produce, generate, decode, encode, control or transmit telecommunications information:

(a) Any direct broadcast satellite television or data transmission service that operates pursuant to 47 Code of Federal Regulations part 25.

(b) Any satellite television or data transmission facility, if both of the following conditions are met:

(i) Over two-thirds of the transmissions, measured in megabytes, transmitted by the facility during the test period were transmitted to or on behalf of one or more direct broadcast satellite television or data transmission services that operate pursuant to 47 Code of Federal Regulations part 25.

(ii) Over two-thirds of the transmissions, measured in megabytes, transmitted by or on behalf of those direct broadcast television or data transmission services during the test period were transmitted by the facility to or on behalf of those services.

For the purposes of subdivision (b) of this paragraph, "test period" means the three hundred sixty-five day period beginning on the later of the date on which the tangible personal property is

purchased or the date on which the direct broadcast satellite television or data transmission service first transmits information to its customers.

16. Clean rooms that are used for manufacturing, processing, fabrication or research and development, as defined in paragraph 14 of this subsection, of semiconductor products. For the purposes of this paragraph, "clean room" means all property that comprises or creates an environment where humidity, temperature, particulate matter and contamination are precisely controlled within specified parameters, without regard to whether the property is actually contained within that environment or whether any of the property is affixed to or incorporated into real property. Clean room:

(a) Includes the integrated systems, fixtures, piping, movable partitions, lighting and all property that is necessary or adapted to reduce contamination or to control airflow, temperature, humidity, chemical purity or other environmental conditions or manufacturing tolerances, as well as the production machinery and equipment operating in conjunction with the clean room environment.

(b) Does not include the building or other permanent, nonremovable component of the building that houses the clean room environment.

17. Machinery and equipment that are used directly in the feeding of poultry, the environmental control of housing for poultry, the movement of eggs within a production and packaging facility or the sorting or cooling of eggs. This exemption does not apply to vehicles used for transporting eggs.

18. Machinery or equipment, including related structural components, that is employed in connection with manufacturing, processing, fabricating, job printing, refining, mining, natural gas pipelines, metallurgical operations, telecommunications, producing or transmitting electricity or research and development and that is used directly to meet or exceed rules or regulations adopted by the federal energy regulatory commission, the United States environmental protection agency, the United States nuclear regulatory commission, the Arizona department of environmental quality or a political subdivision of this state to prevent, monitor, control or reduce land, water or air pollution.

19. Machinery and equipment that are used in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state, including production by a person representing or working on behalf of such a person in a manner described in section 42-5075, subsection O, if the machinery and equipment are used directly and primarily to prevent, monitor, control or reduce air, water or land pollution.

20. Machinery or equipment that enables a television station to originate and broadcast or to receive and broadcast digital television signals and that was purchased to facilitate compliance with the telecommunications act of 1996 (P.L. 104-104; 110 Stat. 56; 47 United States Code section 336) and the federal communications commission order issued April 21, 1997 (47 Code of Federal Regulations part 73). This paragraph does not exempt any of the following:

(a) Repair or replacement parts purchased for the machinery or equipment described in this paragraph.

(b) Machinery or equipment purchased to replace machinery or equipment for which an exemption was previously claimed and taken under this paragraph.

(c) Any machinery or equipment purchased after the television station has ceased analog broadcasting, or purchased after November 1, 2009, whichever occurs first.

21. Qualifying equipment that is purchased from and after June 30, 2004 through June 30, 2024 by a qualified business under section 41-1516 for harvesting or processing qualifying forest products removed from qualifying projects as defined in section 41-1516. To qualify for this exemption, the qualified business must obtain and present its certification from the Arizona commerce authority at the time of purchase.

C. The exemptions provided by subsection B of this section do not include:

1. Expendable materials. For the purposes of this paragraph, expendable materials do not include any of the categories of tangible personal property specified in subsection B of this section regardless of the cost or useful life of that property.

2. Janitorial equipment and hand tools.

3. Office equipment, furniture and supplies.

4. Tangible personal property used in selling or distributing activities, other than the telecommunications transmissions described in subsection B, paragraph 15 of this section.

5. Motor vehicles required to be licensed by this state, except buses or other urban mass transit vehicles specifically exempted pursuant to subsection B, paragraph 11 of this section, without regard to the use of such motor vehicles.

6. Shops, buildings, docks, depots and all other materials of whatever kind or character not specifically included as exempt.

7. Motors and pumps used in drip irrigation systems.

8. Machinery and equipment or tangible personal property used by a contractor in the performance of a contract.

D. The following shall be deducted in computing the purchase price of electricity by a retail electric customer from a utility business:

1. Revenues received from sales of ancillary services, electric distribution services, electric generation services, electric transmission services and other services related to providing electricity to a retail electric customer who is located outside this state for use outside this state if the electricity is delivered to a point of sale outside this state.

2. Revenues received from providing electricity, including ancillary services, electric distribution services, electric generation services, electric transmission services and other services related to providing electricity with respect to which the transaction privilege tax imposed under section 42-5063 has been paid.

E. The tax levied by this article does not apply to the purchase of solar energy devices from a retailer that is registered with the department as a solar energy retailer or a solar energy contractor.

F. The following shall be deducted in computing the purchase price of electricity by a retail electric customer from a utility business:

1. Fees charged by a municipally owned utility to persons constructing residential, commercial or industrial developments or connecting residential, commercial or industrial developments to a municipal utility system or systems if the fees are segregated and used only for capital expansion, system enlargement or debt service of the utility system or systems.

2. Reimbursement or contribution compensation to any person or persons owning a utility system for property and equipment installed to provide utility access to, on or across the land of an actual utility consumer if the property and equipment become the property of the utility. This deduction shall not exceed the value of such property and equipment.

G. The tax levied by this article does not apply to the purchase price of electricity, natural gas or liquefied petroleum gas by:

1. A qualified manufacturing or smelting business. A utility that claims this deduction shall report each month, on a form prescribed by the department, the name and address of each qualified manufacturing or smelting business for which this deduction is taken. This paragraph applies to gas transportation services. For the purposes of this paragraph:

(a) "Gas transportation services" means the services of transporting natural gas to a natural gas customer or to a natural gas distribution facility if the natural gas was purchased from a supplier other than the utility.

(b) "Manufacturing" means the performance as a business of an integrated series of operations that places tangible personal property in a form, composition or character different from that in which it was acquired and transforms it into a different product with a distinctive name, character or use. Manufacturing does not include job printing, publishing, packaging, mining, generating electricity or operating a restaurant.

(c) "Qualified manufacturing or smelting business" means one of the following:

(i) A business that manufactures or smelts tangible products in this state, of which at least fifty-one percent of the manufactured or smelted products will be exported out of state for incorporation into another product or sold out of state for a final sale.

(ii) A business that derives at least fifty-one percent of its gross income from the sale of manufactured or smelted products manufactured or smelted by the business.

(iii) A business that uses at least fifty-one percent of its square footage in this state for manufacturing or smelting and business activities directly related to manufacturing or smelting.

(iv) A business that employs at least fifty-one percent of its workforce in this state in manufacturing or smelting and business activities directly related to manufacturing or smelting.

(v) A business that uses at least fifty-one percent of the value of its capitalized assets in this state, as reflected on the business's books and records, for manufacturing or smelting and business activities directly related to manufacturing or smelting.

(d) "Smelting" means to melt or fuse a metalliferous mineral, often with an accompanying chemical change, usually to separate the metal.

2. A business that operates an international operations center in this state and that is certified by the Arizona commerce authority pursuant to section 41-1520.

H. For the purposes of subsection B of this section:

1. "Agricultural aircraft" means an aircraft that is built for agricultural use for the aerial application of pesticides or fertilizer or for aerial seeding.

2. "Aircraft" includes:

(a) An airplane flight simulator that is approved by the federal aviation administration for use as a phase II or higher flight simulator under appendix H, 14 Code of Federal Regulations part 121.

(b) Tangible personal property that is permanently affixed or attached as a component part of an aircraft that is owned or operated by a certificated or licensed carrier of persons or property.

3. "Other accessories and related equipment" includes aircraft accessories and equipment such as ground service equipment that physically contact aircraft at some point during the overall carrier operation.

I. For the purposes of subsection D of this section, "ancillary services", "electric distribution service", "electric generation service", "electric transmission service" and "other services" have the same meanings prescribed in section 42-5063.

42-1102. Taxpayer bonds; definition

A. If the department deems it necessary to protect the revenues to be collected under this title and title 43, it may require a person liable for the tax to file a bond to secure the payment of the tax, penalty or interest which may become due from that person. The bond shall be:

1. Issued by a surety company authorized to transact business in this state and approved by the director of insurance of this state as to solvency and responsibility or composed of securities or cash that are deposited with, and kept in the custody of, the department.

2. Except as otherwise provided in this section, in the amount which the department prescribes by administrative rule to secure the payment of any tax, penalty or interest which may become due from the person.

B. For the purposes of licenses to sell tobacco products issued under section 42-3401, the amount of the bond required under this section is the greater of five hundred dollars or four times the average monthly tax liability. For the purposes of determining the bond amount, the average monthly tax liability is equal to the average monthly tax due from the applicant for the preceding

six consecutive months. If an applicant does not have a six-month payment history, the bond amount is a minimum of five hundred dollars. If an applicant provides a surety bond and the bond lapses, the applicant shall deposit with the department cash or other security in an amount equal to the lapsed surety bond within five business days after the applicant's receipt of written notification by the department. The bond amount may be increased or decreased as necessary based on any reason listed in subsection D of this section or a change in the applicant's previous filing period, filing compliance record or payment history. If the bond amount is increased above the amount computed under this subsection, the applicant may request a hearing pursuant to subsection C of this section to show why the order increasing the bond amount is in error.

C. If the department determines that a person is to file such a bond it shall notify him to that effect, specifying the amount of the bond required. The person shall file the bond within five days after the giving of notice unless within that time he requests in writing a hearing before the department at which time the department shall determine the necessity, propriety and amount of the bond. The determination is final unless within fifteen days after the giving of notice of the determination the person appeals the determination to the state board of tax appeals. The board shall decide on the appeal within fifteen days of its receipt. The bond, at any time without notice, may be applied to any tax, penalties or interest due, and for that purpose the securities may be sold at public or private sale without notice to the depositor.

D. For purposes of this section a bond may be required if:

1. After investigation of financial status, the department determines that an applicant for a new license would be unable to timely remit amounts due.
2. An applicant for a new license held a license for a prior business, and the remittance record for the prior business falls within one of the conditions in paragraph 5.
3. The department experienced collection problems while the applicant was engaged in business under a prior license.
4. The applicant is substantially similar to a person who would have been required to post a bond under paragraph 5 of this subsection or the person had a previous license that was revoked. An applicant is substantially similar if it is owned or controlled by persons who owned or controlled a previous licensee.
5. An existing licensee has had two or more delinquencies in remitting tax during the preceding twenty-four months if filing on a quarterly or less frequent basis or four or more delinquencies during the preceding twenty-four months if filing on a monthly or more frequent basis.

E. If a licensee who is required to post a bond or security maintains a good filing and payment record for a period of two years, the licensee may request that the department waive the continued bond or security requirement.

F. In this section "person" includes a firm, partnership, joint venture, association, corporation, sole proprietorship or any other business or governmental entity subject to a tax administered by this article but does not include an individual subject to individual income tax.

42-5014. Return and payment of tax; estimated tax; extensions; abatements

A. Except as provided in subsection B, C, D, E or F of this section, the taxes levied under this article:

1. Are due and payable monthly in the form required by section 42-5018 for the amount of the tax, to the department, on or before the twentieth day of the month next succeeding the month in which the tax accrues.

2. Are delinquent as follows:

(a) For taxpayers that are required or elect to file and pay electronically in any month, if not received by the department on or before the last business day of the month.

(b) For all other taxpayers, if not received by the department on or before the business day preceding the last business day of the month.

B. The department, for any taxpayer whose estimated annual liability for taxes imposed or administered by this article or chapter 6 of this title is between two thousand dollars and eight thousand dollars, shall authorize such taxpayer to pay such taxes on a quarterly basis. The department, for any taxpayer whose estimated annual liability for taxes imposed by this article is less than two thousand dollars, shall authorize such taxpayer to pay such taxes on an annual basis. For the purposes of this subsection, the taxes due under this article:

1. For taxpayers that are authorized to pay on a quarterly basis, are due and payable monthly in the form required by section 42-5018 for the amount of the tax, to the department, on or before the twentieth day of the month next succeeding the quarter in which the tax accrues.

2. For taxpayers that are authorized to pay on an annual basis, are due and payable monthly in the form required by section 42-5018 for the amount of the tax, to the department, on or before the twentieth day of January next succeeding the year in which the tax accrues.

3. Are delinquent as follows:

(a) For taxpayers that are required or elect to file and pay electronically in any quarter, if not received by the department on or before the last business day of the month.

(b) For all other taxpayers that are required to file and pay quarterly, if not received by the department on or before the business day preceding the last business day of the month.

(c) For taxpayers that are required or elect to file and pay electronically on an annual basis, if not received by the department on or before the last business day of January.

(d) For all other taxpayers that are required to file and pay annually, if not received by the department on or before the business day preceding the last business day of January.

C. The department may require a taxpayer whose business is of a transient character to file the return and remit the taxes imposed by this article on a daily, a weekly or a transaction by transaction basis, and those returns and payments are due and payable on the date fixed by the

department without a grace period otherwise allowed by this section. For the purposes of this subsection, "business of a transient character" means sales activity by a taxpayer not regularly engaged in selling within the state conducted from vehicles, portable stands, rented spaces, structures or booths, or concessions at fairs, carnivals, circuses, festivals or similar activities for not more than thirty consecutive days.

D. If the business entity under which a taxpayer reports and pays income tax under title 43 has an annual total tax liability under this article, article 6 of this chapter and chapter 6, article 3 of this title of one million dollars or more, based on the actual tax liability in the preceding calendar year, regardless of the number of offices at which the taxes imposed by this article, article 6 of this chapter or chapter 6, article 3 of this title are collected, or if the taxpayer can reasonably anticipate such liability in the current year, the taxpayer shall report on a form prescribed by the department and pay an estimated tax payment each June. Any other taxpayer may voluntarily elect to pay the estimated tax payment pursuant to this subsection. The payment shall be made on or before June 20 and is delinquent if not received by the department on or before the business day preceding the last business day of June for those taxpayers electing to file by mail, or delinquent if not received by the department on the business day preceding the last business day of June for those taxpayers electing to file in person. The estimated tax paid shall be credited against the taxpayer's tax liability under this article, article 6 of this chapter and chapter 6, article 3 of this title for the month of June for the current calendar year. The estimated tax payment shall equal either:

1. One-half of the actual tax liability under this article plus one-half of any tax liability under article 6 of this chapter and chapter 6, article 3 of this title for May of the current calendar year.
2. The actual tax liability under this article plus any tax liability under article 6 of this chapter and chapter 6, article 3 of this title for the first fifteen days of June of the current calendar year.

E. An online lodging marketplace, as defined in section 42-5076, that is registered with the department pursuant to section 42-5005, subsection L:

1. Shall remit to the department the applicable taxes payable pursuant to section 42-5076 and chapter 6 of this title with respect to each online lodging transaction, as defined in section 42-5076, facilitated by the online lodging marketplace.
2. Shall report the taxes monthly and remit the aggregate total amounts for each of the respective taxing jurisdictions.
3. Shall not be required to list or otherwise identify any individual online lodging operator, as defined in section 42-5076, on any return or any attachment to a return.

F. A person who is licensed pursuant to title 32, chapter 20 and who is licensed with the department pursuant to section 42-5005, subsection M shall:

1. File a consolidated return monthly with respect to all managed properties for which the licensee files an electronic consolidated tax return pursuant to section 42-6013.
2. Remit to the department the aggregate total amount of the applicable taxes payable pursuant to this chapter and chapter 6 of this title for all of the respective taxing jurisdictions with respect to the managed properties.

G. The taxpayer shall prepare a return showing the amount of the tax for which the taxpayer is liable for the preceding month, and shall mail or deliver the return to the department in the same manner and time as prescribed for the payment of taxes in subsection A of this section. If the taxpayer fails to file the return in the manner and time as prescribed for the payment of taxes in subsection A of this section, the amount of the tax required to be shown on the return is subject to the penalty imposed pursuant to section 42-1125, subsection A, without any reduction for taxes paid on or before the due date of the return. The return shall be verified by the oath of the taxpayer or an authorized agent or as prescribed by the department pursuant to section 42-1105, subsection B.

H. Any person who is taxable under this article and who makes cash and credit sales shall report such cash and credit sales separately and on making application may obtain from the department an extension of time for payment of taxes due on the credit sales. The extension shall be granted by the department under such rules as the department prescribes. When the extension is granted, the taxpayer shall thereafter include in each monthly report all collections made on such credit sales during the month next preceding and shall pay the taxes due at the time of filing such report.

I. The returns required under this article shall be made on forms prescribed by the department and shall capture data with sufficient specificity to meet the needs of all taxing jurisdictions.

J. Any person who is engaged in or conducting business in two or more locations or under two or more business names shall file the return required under this article by electronic means.

K. The department, for good cause, may extend the time for making any return required by this article and may grant such reasonable additional time within which to make the return as it deems proper, but the time for filing the return shall not be extended beyond the first day of the third month next succeeding the regular due date of the return.

L. The department, with the approval of the attorney general, may abate small tax balances if the administration costs exceed the amount of tax due.

M. For the purposes of subsection D of this section, "taxpayer" means the business entity under which the business reports and pays state income taxes regardless of the number of offices at which the taxes imposed by this article, article 6 of this chapter or chapter 6, article 3 of this title are collected.

42-5009. Certificates establishing deductions; liability for making false certificate

A. A person who conducts any business classified under article 2 of this chapter may establish entitlement to the allowable deductions from the tax base of that business by both:

1. Marking the invoice for the transaction to indicate that the gross proceeds of sales or gross income derived from the transaction was deducted from the tax base.

2. Obtaining a certificate executed by the purchaser indicating the name and address of the purchaser, the precise nature of the business of the purchaser, the purpose for which the purchase was made, the necessary facts to establish the appropriate deduction and the tax license number of the purchaser to the extent the deduction depends on the purchaser conducting business classified under article 2 of this chapter and a certification that the person executing the certificate is

authorized to do so on behalf of the purchaser. The certificate may be disregarded if the seller has reason to believe that the information contained in the certificate is not accurate or complete.

B. A person who does not comply with subsection A of this section may establish entitlement to the deduction by presenting facts necessary to support the entitlement, but the burden of proof is on that person.

C. The department may prescribe a form for the certificate described in subsection A of this section. Under such rules as it may prescribe, the department may also describe transactions with respect to which a person is not entitled to rely solely on the information contained in the certificate provided for in subsection A of this section but must instead obtain such additional information as required by the rules in order to be entitled to the deduction.

D. If a seller is entitled to a deduction by complying with subsection A of this section, the department may require the purchaser that caused the execution of the certificate to establish the accuracy and completeness of the information required to be contained in the certificate that would entitle the seller to the deduction. If the purchaser cannot establish the accuracy and completeness of the information, the purchaser is liable in an amount equal to any tax, penalty and interest that the seller would have been required to pay under this article if the seller had not complied with subsection A of this section. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter. The amount shall be treated as tax revenues collected from the seller in order to designate the distribution base for purposes of section 42-5029.

E. If a seller is entitled to a deduction by complying with subsection B of this section, the department may require the purchaser to establish the accuracy and completeness of the information provided to the seller that entitled the seller to the deduction. If the purchaser cannot establish the accuracy and completeness of the information, the purchaser is liable in an amount equal to any tax, penalty and interest that the seller would have been required to pay under this article if the seller had not complied with subsection B of this section. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter. The amount shall be treated as tax revenues collected from the seller in order to designate the distribution base for purposes of section 42-5029.

F. The department may prescribe a form for a certificate used to establish entitlement to the deductions described in section 42-5061, subsection A, paragraph 46 and section 42-5063, subsection B, paragraph 3. Under rules the department may prescribe, the department may also require additional information for the seller to be entitled to the deduction. If a seller is entitled to the deductions described in section 42-5061, subsection A, paragraph 46 and section 42-5063, subsection B, paragraph 3, the department may require the purchaser who executed the certificate to establish the accuracy and completeness of the information contained in the certificate that would entitle the seller to the deduction. If the purchaser cannot establish the accuracy and completeness of the information, the purchaser is liable in an amount equal to any tax, penalty and interest that the seller would have been required to pay under this article. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter. The amount shall be treated as tax revenues collected from the seller in order to designate the distribution base for purposes of section 42-5029.

G. If a seller claims a deduction under section 42-5061, subsection A, paragraph 25 and establishes entitlement to the deduction with an exemption letter that the purchaser received from

the department and the exemption letter was based on a contingent event, the department may require the purchaser that received the exemption letter to establish the satisfaction of the contingent event within a reasonable time. If the purchaser cannot establish the satisfaction of the event, the purchaser is liable in an amount equal to any tax, penalty and interest that the seller would have been required to pay under this article if the seller had not been furnished the exemption letter. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter. The amount shall be treated as tax revenues collected from the seller in order to designate the distribution base for purposes of section 42-5029. For the purposes of this subsection, "reasonable time" means a time limitation that the department determines and that does not exceed the time limitations pursuant to section 42-1104.

H. The department shall prescribe forms for certificates used to establish the satisfaction of the criteria necessary to qualify the sale of a motor vehicle for the deductions described in section 42-5061, subsection A, paragraph 14, paragraph 28, subdivision (a) and paragraph 44 and subsection U. Except as provided in subsection J of this section, to establish entitlement to these deductions, a motor vehicle dealer shall retain:

1. A valid certificate as prescribed by this subsection completed by the purchaser and obtained prior to the issuance of the nonresident registration permit authorized by section 28-2154.
2. A copy of the nonresident registration permit authorized by section 28-2154.
3. A legible copy of a current valid driver license issued to the purchaser by another state or foreign country that indicates an address outside of this state. For the sale of a motor vehicle to a nonresident entity, the entity's representative must have a current valid driver license issued by the same jurisdiction as that in which the entity is located.
4. For the purposes of the deduction provided by section 42-5061, subsection A, paragraph 14, a certificate documenting the delivery of the motor vehicle to an out-of-state location.

I. Notwithstanding subsection A, paragraph 2 of this section, if a motor vehicle dealer has established entitlement to a deduction by complying with subsection H of this section, the department may require the purchaser who executed the certificate to establish the accuracy and completeness of the information contained in the certificate that entitled the motor vehicle dealer to the deduction. If the purchaser cannot establish the accuracy and completeness of the information, the purchaser is liable in an amount equal to any tax, penalty and interest that the motor vehicle dealer would have been required to pay under this article and under articles IV and V of the model city tax code as defined in section 42-6051. Payment of the amount under this subsection exempts the purchaser from liability for any tax imposed under article 4 of this chapter and any tax imposed under article VI of the model city tax code as defined in section 42-6051. The amount shall be treated as tax revenues collected from the motor vehicle dealer in order to designate the distribution base for purposes of section 42-5029.

J. To establish entitlement to the deduction described in section 42-5061, subsection A, paragraph 44, a public consignment auction dealer as defined in section 28-4301 shall submit the valid certificate prescribed by subsection H of this section to the department and retain a copy for its records.

K. Notwithstanding any other law, compliance with subsection H of this section by a motor vehicle dealer entitles the motor vehicle dealer to the exemption provided in section 42-6004, subsection A, paragraph 4.

L. The department shall prescribe a form for a certificate to be used by a person that is not subject to tax under section 42-5075 when the person is engaged by a contractor that is subject to tax under section 42-5075 for a project that is taxable under section 42-5075. The certificate permits the person purchasing tangible personal property to be incorporated or fabricated by the person into any real property, structure, project, development or improvement to provide documentation to a retailer that the sale of tangible personal property qualifies for the deduction under section 42-5061, subsection A, paragraph 27, subdivision (b). A prime contractor shall obtain the certificate from the department and shall provide a copy to any such person working on the project. The prime contractor shall obtain a new certificate for each project to which this subsection applies. For the purposes of this subsection, the following apply:

1. The person that is not subject to tax under section 42-5075 may use the certificate issued pursuant to this subsection only with respect to tangible personal property that will be incorporated into a project for which the gross receipts are subject to tax under section 42-5075.
2. The department shall issue the certificate to the prime contractor on receiving sufficient documentation to establish that the prime contractor meets the requirements of this subsection.
3. If any person uses the certificate provided under this subsection to purchase tangible personal property to be used in a project that is not subject to tax under section 42-5075, the person is liable in an amount equal to any tax, penalty and interest that the seller would have been required to pay under this article if the seller had not complied with subsection A of this section. Payment of the amount under this section exempts the person from liability for any tax imposed under article 4 of this chapter. The amount shall be sourced under section 42-5040, subsection A, paragraph 2.

M. Notwithstanding any other law, compliance with subsection L of this section by a person that is not subject to tax under section 42-5075 entitles the person to the exemption allowed by section 465, subsection (k) of the model city tax code when purchasing tangible personal property to be incorporated or fabricated by the person into any real property, structure, project, development or improvement.

N. The requirements of subsections A and B of this section do not apply to owners, proprietors or tenants of agricultural lands or farms who sell livestock or poultry feed that is grown or raised on their lands to any of the following:

1. Persons who feed their own livestock or poultry.
2. Persons who are engaged in the business of producing livestock or poultry commercially.
3. Persons who are engaged in the business of feeding livestock or poultry commercially or who board livestock noncommercially.

O. A vendor who has reason to believe that a certificate prescribed by this section is not accurate or complete will not be relieved of the burden of proving entitlement to the exemption. A vendor that accepts a certificate in good faith will be relieved of the burden of proof and the purchaser

may be required to establish the accuracy of the claimed exemption. If the purchaser cannot establish the accuracy and completeness of the information provided in the certificate, the purchaser is liable for an amount equal to the transaction privilege tax, penalty and interest that the vendor would have been required to pay if the vendor had not accepted the certificate.

P. Notwithstanding any other law, an online lodging operator, as defined in section 42-5076, shall be entitled to an exclusion from any applicable taxes for any online lodging transaction, as defined in section 42-5076, facilitated by an online lodging marketplace, as defined in section 42-5076, for which the online lodging operator has obtained from the online lodging marketplace written notice that the online lodging marketplace is registered with the department to collect applicable taxes for all online lodging transactions facilitated by the online lodging marketplace, and transaction history documenting tax collected by the online lodging marketplace, pursuant to section 42-5005, subsection L.

42-5022. Burden of proving sale not at retail

The burden of proving that a sale of tangible personal property was not a sale at retail shall be on the person who made the sale, unless either:

1. The person has taken from the purchaser a certificate signed by and bearing the name and address of the purchaser that the property was purchased for resale in the ordinary course of business and that he has a valid license, with the number thereof, to sell the kind of property purchased.
2. The person is exempt from the requirement of a certificate pursuant to section 42-5009, subsection N.

42-5154. Registration of retailers

Every retailer shall, before selling any tangible personal property for storage, use or consumption within this state, register with the department upon forms prescribed by the department.

42-5162. Monthly return; time for payment; extension of time; quarterly payment

A. Every retailer engaged in the business of making sales of tangible personal property the use, storage or consumption of which is subject to the tax imposed by this article, and every person who purchases for use, storage or consumption any such property for which the tax is not paid to the retailer, shall file a return with the department on or before the twentieth day of the month next succeeding the month in which the tangible personal property is brought into this state for use, storage or consumption. The return shall be on a form prescribed by the department and shall show the tangible personal property sold for use, storage or consumption or purchased for use, storage or consumption within the state during the preceding calendar month. Such return shall be verified by oath or affirmation of the retailer or person making the report, or his agent, and shall be accompanied by payment of the tax shown to be due. The return and tax are delinquent if not received by the department on or before the business day preceding the last business day of the month when due.

B. Notwithstanding subsection A of this section, a person who is required to file a return under chapter 5, article 1 of this title may report and pay the tax liability under this article on the same return and filing basis as the taxes reported under chapter 5, article 1 of this title.

C. For good cause shown the department may extend the time for making a return and paying the tax, but the time for filing the return shall not be extended beyond the first day of the third month next succeeding the regular due date of the return.

42-5160. Liability for tax

Any person who uses, stores or consumes any tangible personal property upon which a tax is imposed by this article and upon which the tax has not been collected by a registered retailer or utility business shall pay the tax as provided by this article, but every retailer and utility business maintaining a place of business in this state and making sales of tangible personal property for storage, use or other consumption in this state shall collect the tax from the purchaser or user unless the property is exempt under this article or the purchaser or user pays the tax directly to the department as provided by section 42-5167. In the case of a manufactured building that is purchased from a dealer outside this state and brought into this state, any person who is hired to set up the manufactured building and who is licensed pursuant to title 41, chapter 37, article 4 shall collect the tax from the owner and remit the tax with any tax that is due under the prime contracting classification.

42-1105. Taxpayer identification, verification and records; retention

A. The federal taxpayer identification number, assigned pursuant to section 6109 of the internal revenue code, is the taxpayer identifier for purposes of the taxes administered pursuant to this article. Each person who is required to make a return, statement or other document shall include the identifier in order to secure the person's proper identification. If the return, statement or other document is made, electronically or otherwise, by another person on behalf of the taxpayer, the taxpayer shall furnish the identifier to the other person, and the person shall furnish both the taxpayer's identifier and his own identifier with the return, statement or document.

B. The department may prescribe by administrative rule alternative methods for signing, subscribing or verifying a return, statement or other document required or authorized to be filed with the department that have the same validity and consequence as the actual signature or written declaration of the taxpayer or other person required to sign, subscribe or verify the return, statement or other document. While the department is adopting a rule prescribing alternative methods for signing, subscribing or verifying a return, statement or other document, the director, by tax ruling, may waive the requirement of a signature for a particular type or class of return, statement or other document required to be filed with the department. For purposes of this subsection, "tax ruling" has the same meaning prescribed in section 42-2052.

C. A person who is a return preparer or an electronic return preparer shall furnish a completed copy of the return, statement or other document to the taxpayer no later than the time the return, statement or other document is presented for the taxpayer's signature.

D. Except as provided in section 42-3010, every person who is subject to the taxes administered pursuant to this article shall keep and preserve copies of filed tax returns, including any attachments to the tax return, any signature documents used for the tax return, suitable records and other books and accounts necessary to determine the tax for which the person is liable for the period prescribed in section 42-1104. The books, records and accounts shall be open for inspection at any reasonable time by the department or its authorized agent.

E. Except as provided in section 42-3010, a return preparer or electronic return preparer shall keep copies of the return, statement or other document for six years for transaction privilege and use tax returns and four years for all other returns, statements and other documents following the date on which the return, statement or other document was due to be filed or was presented to the taxpayer for signature, whichever is later.

F. Except as provided in section 42-3010, the department may require by administrative rule electronic return preparers to keep for each prepared return, statement or other document the following documents for six years for transaction privilege and use tax returns and four years for all other returns, statements and other documents following the later of either the date on which the return, statement or other document was due to be filed with the department or was presented to the taxpayer for signature:

1. The signature document or tax return form bearing the taxpayer's original signature in a manner prescribed by the department by administrative rule or tax ruling.

2. Any attachments to the return, statement or other document required to be submitted to the department if the return, statement or other document had not been electronically transmitted to the department.

G. The operator of a swap meet, flea market, fair, carnival, festival, circus or other transient selling event shall maintain a current list of vendors conducting business on the premises as sellers. The list shall include each vendor name, business name and business address. On written notice the department may require an operator to submit a copy of the list at any time to the department.

H. For at least the period of time prescribed by section 42-1104, the department shall retain records pursuant to sections 41-151.14, 41-151.15, 41-151.16, 41-151.17 and 41-151.19.

42-5152. Presumption

It shall be presumed that tangible personal property purchased by any person and brought into this state is purchased for storage, use or consumption in this state.

42-5156. Tangible personal property provided under a service contract or warranty; definition

A. The tax imposed by section 42-5155 shall be levied and collected at an amount equal to five and six-tenths per cent of the cost of the tangible personal property provided under the conditions of a warranty or service contract.

B. Every person storing, using or otherwise consuming in this state tangible personal property provided under the conditions of a warranty or service contract is liable for the tax. Such person's liability is not extinguished until the tax has been paid to this state, except that a receipt from a retailer maintaining a place of business in this state or from a retailer who is authorized by the department to collect the tax, under such rules as it may prescribe, and who is for the purposes of this article regarded as a retailer maintaining a place of business in this state, given to the purchaser in accordance with the provisions of section 42-5161 is sufficient to relieve the purchaser from further liability for the tax imposed upon the tangible personal property to which the receipt refers.

C. For the purpose of this section, "cost" means the cost of the tangible personal property to the provider of the warranty or contract.

DEPARTMENT OF ECONOMIC SECURITY (F-17-0702)
Title 6, Chapter 5, Article 49, Child Care Assistance



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

MEETING DATE: July 6, 2017

AGENDA ITEM: E-4

TO: Members of the Governor's Regulatory Review Council
FROM: Shama Thathi, Staff Attorney
DATE : June 20, 2017
SUBJECT: DEPARTMENT OF ECONOMIC SECURITY (F-17-0702)
Title 6, Chapter 5, Article 49, Child Care Assistance

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

This five-year-review report from the Arizona Department of Economic Security (Department) covers 22 rules and two appendices in A.A.C. Title 6, Chapter 5, Article 49, related to child care assistance program. The article specifies the requirements for a statewide subsidy program, which assists eligible families with child care costs and enables parents to participate in specific education and training activities related to employment. The rules establish the procedure for the program, including the application process guidelines, eligibility guidelines, and termination of assistance guidelines.

The rules were last amended in 1997 and 2006.

Proposed Action

The Department has worked closely with its stakeholders and prepared a Notice of Proposed Rulemaking, which is currently under review by the Attorney General's Office. The Department plans to submit a Notice of Final Rulemaking to the Council by October 2017. The Governor's Office approved the Department's exception to the moratorium on March 7, 2016.

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 that it is in 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 following rules are not effective:

- Section 4901: Definitions should be revised to reflect current practices.
- Section 4904: The rule should be modified to add additional method of filing an application and allow for written and electronic signatures on the application.
- Section 4905: The rule should eliminate the requirement of in-person interviews when certain circumstances are met.
- Section 4906: The rule should be amended to include R6-5-4912(C), "Verification of Eligible Activity or Need."
- Section 4908: The rule should be combined with R6-5-4920.
- Section 4909: Subsection G should state that an interview is mandatory when re-determining eligibility.
- Section 4911: Split this rule into two separate sections. Specifically, remove any requirements related to changes and create a new section specifying reporting requirements and procedures for changes in any criteria used to determine eligibility of an applicant.
- Section 4912: Language regarding verification of eligible activity should be moved to section 5206, which is related to verification of eligible information.
- Section 4913: Circumstances under which a client can receive child care assistance as a child care provider should be clarified.
- Section 4914: Various elements of countable and excludable income and income calculation processes for child care purposes should be clarified.
- Section 4915: Language regarding circumstances when families are exempt from copayment and penalties for nonpayment should be clarified.
- Section 4916: Former cash assistance recipients can receive transitional child care (TCC) if they are employed, the rule should be amended to reflect the current practice and avoid unnecessary administrative burden.
- Section 4918: The rule should limit child care service authorization to 23 units per child rather than 31. Also, the rule should clarify that children are not eligible for the child care assistance program when school is available for grades 1 through 12 during a regular school day.
- Section 4920: The rule should be combined with R6-5-4908, child care assistance approvals and denials.
- Section 4923: Definition of "Date of Discovery" should be revised.
- Section 4924: The rule should identify circumstances under which applicants and recipients are not entitled to a hearing to challenge benefits adjustments.
- Appendices A and B: Tables for child care assistance gross monthly income eligibility chart, fee schedule, and maximum reimbursement should be updated.

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 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. § 41-1954(A)(3) as general authority for the rules, under which the Department must “[a]dopt rules it deems necessary or desirable to further the objectives and programs of the [D]epartment.” In addition, A.R.S. § 46-809 requires the Department to “adopt rules it deems necessary to implement child care services and to further the objective of this article [Chapter 7, Child Care Services, Article 1, General Provisions].”

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

Yes. The Department indicates that the rules should be amended to maintain consistency with other rules and statutes. Sections 4901, 4914, 4915, 4917, 4918, and 4919 are inconsistent with A.R.S. § 8-451, as references to “Child Protective Services” or “CPS” should be changed to “Department of Child Safety” or “DCS.”

The Child Care and Development Fund (CCDF) regulations (45 CFR 98.21) establish that an agency shall reevaluate a child’s eligibility for child care services no earlier than 12 months after the initial determination, stipulate care must be authorized for a minimum of 12 months, and prohibit a reduction in services prior to re-determination. Additionally, state agencies may choose to discontinue services following a job loss or cessation of eligible activity only after allowing at least three months of continued service to enable a parent to obtain another job or eligible activity. Sections 4901, 4909, 4912, 4914, 4919 and appendices A and B should be amended to comply with CCDF regulations and changes to A.R.S. § 46-803.

Lastly, sections 4909, 4905, 4906, 4911, 4913, 4916, 4917, 4918 are consistent with state and federal law, but should be amended to comply with Department’s current policies and procedures.

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

Yes. The Department indicates that it enforces the rules, to the extent that they are consistent with statute and other rules. Due to changes made in September 2016, to the Child Care and Development Block Grant (CCDBG) Act of 2014, the Department does not enforce the following sections:

- Section 4904: The Department no longer waives the application requirement for cash assistance participants who need child care employment. As the lifetime limit for receiving cash assistance has been reduced from 24 to 12 months, the Department

requires cash assistance participants to submit an application prior to determining eligibility.

- Section 4912: The Department no longer enforces the limit based on client's education level and does not provide additional assistance for up to 60 days after clients terminate employment activities.
- Section 4914: The Department no longer requires employed clients to provide a 30-day period of income verification or enforce portions of income calculations that require the Department to exclude income until the date the first full payment is received.

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

Yes. The Department indicates that the issues regarding effectiveness and consistency with other rules and statutes adversely impact the clarity, conciseness, and understandability of the rules. Other than the issues identified above, the Department believes the rules are clear, concise, and understandable.

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

Yes. The Department indicates that the rules are not in conflict with corresponding federal laws, except for the sections identified under question 5 above.

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 were adopted prior to July 29, 2010.

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. In the five-year-review report approved in 2012, the Department planned to make amendments within two years of the expiration of the regulatory moratorium, or upon receipt of the exception from the moratorium. The Department was unable to comply with the proposed course of action due to other rulemaking priorities.

Conclusion

As noted above, the Department plans to submit a Notice of Final Rulemaking to the Council by October 2017. 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: July 6, 2017

AGENDA ITEM: E-4

TO: Members of the Governor's Regulatory Review Council
FROM: GRRC Economic Team
DATE : June 20, 2017
SUBJECT: DEPARTMENT OF ECONOMIC SECURITY (F-17-0505)
Title 6, Chapter 8, Article 1, Grievances and Hearings; Article 2, Adult Protective Services

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. Economic Impact Comparison

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available. The rules detail the requirements for a statewide subsidy program to assist eligible families with child care costs, enabling parents to participate in employment and specific education and training activities related to employment, or in certain other circumstances when parents are unable to provide care. In FY 2016, approximately \$129.7 million was expended to provide assistance to families eligible for Child Care Assistance. An average of 30,001 children received assistance each month and the average cost per child was \$360.35 each month. The total number of individual children served for the year was 51,719.

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 are mostly effective and impose the least burden and costs to the regulated community. The cost to comply with these rules is minimal.

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.

4. Conclusion

Staff finds that the report complies with A.R.S. § 41-1056 and recommends approval.



DEPARTMENT OF ECONOMIC SECURITY

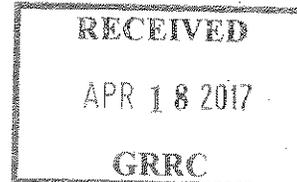
Your Partner For A Stronger Arizona

Douglas A. Ducey
Governor

Henry Darwin
Interim Director

APR 18 2017

Nicole A. Ong, Council Chair
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007



Dear Ms. Ong:

Enclosed is the Arizona Department of Economic Security's (Department) Five-Year Review Report on A.A.C. Title 6, Chapter 5, Article 49, Child Care Assistance. Included with the report are copies of the authorizing statutes, rules, and the economic impact statement associated with these rules.

Pursuant to A.R.S. § 41-1056(A) and A.A.C. R1-6-301(C)(4), the Department certifies that it is in compliance with A.R.S. § 41-1091.

Thank you for your attention to this report. The Department will be present at the Council meetings to respond to any questions the Council members may have about the report. If you have any questions, or require more information, please contact Christian Eide, Rules Analyst, Policy and Planning Administration, at (602) 542-9199.

Sincerely,

Henry Darwin
Interim Director

Enclosure: Five-Year Review Report for A.A.C. Title 6, Chapter 5, Article 49, Child Care Assistance

Arizona Department of Economic Security
Five-Year Review Report

Title 6. Economic Security

Chapter 5. Social Services

Article 49. Child Care Assistance

April 28, 2017

Introduction

Title 6, Chapter 5, Article 49 (“Article 49”) specifies the requirements for a statewide subsidy program to assist eligible families with child care costs, enabling parents to participate in employment and specific education and training activities related to employment, or in certain other circumstances when parents are unable to provide care. These rules specify the procedures for this program, including the application process guidelines, eligibility guidelines, and termination of assistance guidelines.

CHAPTER 5. DEPARTMENT OF ECONOMIC SECURITY

Child Care Assistance

A. STATUTORY AUTHORITY

General Authority: A.R.S. § 41-1954(A)(3).

Specific Authority: A.R.S. §§ 46-802, 46-805, and 46-809

B. OBJECTIVES

R6-5-4901. Definitions

The objective of this rule is to ensure uniform understanding of the terminology used by the Department with respect to the Child Care Assistance Program. The purpose of this rule is to define the terms used in A.A.C. Title 6, Chapter 5, Article 49.

R6-5-4904. Access to Child Care Assistance

The objective of this rule is to ensure the accessibility of Child Care Assistance to the general public. The purpose of this rule is to inform the general public of how they may access Child Care Assistance by application, by request, and by referral from DES Jobs Program, Department of Child Safety (DCS), and from Tribal Child Protective Services (CPS) programs.

R6-5-4905. Initial Eligibility Interview

The objective of this rule is to ensure that the public understands the process used by the Department to conduct an initial eligibility interview for Child Care Assistance. The purposes of this rule are to describe various interview methods that are available to meet the needs of

applicants (e.g., office visit, telephone, or home visit); and to specify the information the Department representative must provide to the applicant regarding the terms, conditions, obligations and limitations of the Child Care Assistance program, client appeal rights, and Departmental procedures pertinent to the eligibility determination.

R6-5-4906. Verification of Eligibility Information

The objective of this rule is to ensure that the eligibility information is verified by the Department for the purpose of Child Care Assistance. The purposes of this rule are to describe methods the Department may use to verify information; to identify the client as the responsible party regarding provision of required information; to specify the time frame in which the information must be verified; and to prescribe that the penalty for noncompliance is denial of the application.

R6-5-4907. Withdrawal of an Application

The objective of this rule is to ensure that the applicant has a right to withdraw the application for Child Care Assistance. The purpose of this rule is to describe the withdrawal procedures.

R6-5-4908. Child Care Assistance Approvals and Denials

The objective of this rule is to ensure that the eligibility determination to approve or deny the Child Care Assistance application takes place within 30 days of the application file date or referral receipt date. The purposes of the rule are to describe the actions the Department shall take to approve Child Care Assistance and to specify the information the Department is required to include in the approval notice.

R6-5-4909. 12-Month Review

The objective of this rule is to ensure that the Department reviews Child Care Assistance eligibility factors at least once every 12 months. The purposes of this rule are to permit the Department to conduct more frequent reviews at the Department's option and to ensure the Department informs the recipient of the need for a review at least 30 days prior to the review due date. The rule explains the Department may deny, reduce, or terminate assistance when the client refuses or fails to cooperate with the Department.

R6-5-4910. Reinstatement of Assistance

The objective of this rule is to ensure the reinstatement of Child Care Assistance when it is appropriate. The purpose of this rule is to specify under what conditions the Department shall reinstate assistance after termination of child care benefits and the time frame in which the Department shall reinstate Child Care Assistance if one of the specified conditions occurs.

R6-5-4911. General Eligibility Criteria

The objective of this rule is to ensure that the public understands the general eligibility determination requirements for Child Care Assistance. The purposes of this rule are to inform the applicant and recipient of their responsibility to comply with the Department's procedural requirements and to provide the Department with current, complete, and truthful information. The rule explains that denial, termination, or reduction of assistance will occur if the client refuses or fails to cooperate with the Department. The rule defines the general eligibility criteria for the receipt of Child Care Assistance and informs the public of the definitions for an eligible applicant and an eligible child for the purpose of determining Child Care Assistance eligibility. The rule lists allowable types of child care providers for DES Child Care Assistance and

describes under what conditions the Department is prohibited from authorizing Child Care Assistance to a noncertified relative provider.

R6-5-4912. Eligible Activity or Need

The objective of this rule is to specify all approved eligible activities for Child Care Assistance. The purposes of this rule are to identify all eligible activities and needs, and to explain the verification process of eligible activities.

R6-5-4913. Applicants and Recipients as Child Care Providers

The objective of this rule is to designate a special circumstance where child care providers may also receive Child Care Assistance to care for their own children. The purpose of this rule is to identify the conditions under which the child care provider may receive Child Care Assistance.

R6-5-4914. Income Eligibility Criteria

The objective of this rule is to ensure that the public understands the income eligibility determination requirements for Child Care Assistance. The purposes of this rule are to identify the types of applicants who may receive Child Care Assistance with or without regard to their income. The rule specifies that 165 percent of the Federal Poverty Level for the family size is the income maximum and lists income types that the Department considers countable or excluded and how they are calculated when determining eligibility. The rule explains allocation procedures and describes the requirements and procedures of income verification.

R6-5-4915. Fee Level and Copayment Assignment

The objective of this rule is to explain the placement of eligible families at an appropriate fee level that may result in copayment assignment and the requirement associated with the copayment. The purpose of this rule is to ensure that the placement is made utilizing the chart

reflected in Appendix A, and to explain the consequence of not fulfilling the copayment requirement.

R6-5-4916. Special Eligibility Criteria

The objective of this rule is to ensure that the public understands the Temporary Assistance for Needy Families (TANF) related eligibility requirements for Child Care Assistance. The purposes of this rule are to explain the circumstances under which eligible applicants would qualify for the Transitional Child Care Assistance program; specify the prohibition against receipt of Transitional Child Care for Cash Assistance case closure due to sanction; to specify that the Department treat Cash Assistance Grant Diversion participants as Cash Assistance participants during the three months covered by the Diversion payment, and that Diversion Participants are eligible for Transitional Child Care following the three month Diversion period provided that Transitional Child Care Criteria are met.

R6-5-4917. Waiting List for Child Care Assistance

The objective of this rule is to establish criteria for a waiting list for Child Care Assistance and to prioritize child care assistance for different eligibility categories. The purposes of this rule are to identify applicants who may be placed on the waiting list; preclude the Department from placing certain types of applicants on the waiting list; describe the criteria for prioritizing applicants subject to the waiting list and the subsequent release of those applicants; and provide the Department with a remedy when applicants are released from the waiting list in error.

R6-5-4918. Authorization of Child Care Assistance

The objective of this rule is to establish criteria when authorizing Child Care Assistance. The purposes of this rule are to identify the conditions under which authorizations can be made; describe the method the Department uses to determine units and length of care the client receives

per month for each child; and to explain the maximum number of children that may apply to certain categories of Child Care Assistance.

R6-5-4919. Time Limit for Child Care Assistance

The objective of this rule is to explain that Child Care Assistance is time-limited. The purposes of this rule are to define who is and who is not subject to the time limit; describe the method for calculating and applying the sixty-month time limit; state the start date to begin tracking the time-limited Child Care Assistance; permit the Department to grant six or twelve-month extensions on the time limit if the client demonstrates efforts toward self-sufficiency; and to define the qualifications for an extension of Child Care Assistance upon expiration of each child's limit.

R6-5-4920. Denial or Termination of Child Care Assistance

The objective of this rule is to ensure that the public understands the circumstances when Child Care Assistance is denied or terminated. The purpose of this rule is to identify situations in which the Department shall deny or terminate Child Care Assistance and provide written notification of ineligibility to the client.

R6-5-4921. Notification Requirements

The objective of this rule is to establish notification requirements. The purposes of this rule are to specify the time frames the Department shall follow when providing written notice to the client regarding a decision on an application, a positive action, a negative action, or a change in the amount of authorized units based on a change in need; identify situations in which the Department is not required to provide notice on a negative action; and identify the information the Department must provide to the client in a written notice.

R6-5-4923. Overpayments

The objective of this rule is to ensure overpayments are collected when necessary. The purposes of this rule are to require the Department pursue collection of all client and provider caused overpayments; require the Department to prepare an overpayment report within 90 days of when the overpayment is discovered; require the Child Care Administration refer the overpayment report to the Department's Office of Special Investigations if fraud is suspected to be the cause of the overpayment; preclude the Department from attempting to recover an overpayment from a person who is not a current recipient when the overpayment was not the result of fraud and the Department has exhausted reasonable efforts to collect; and to specify whom the Department shall pursue in the collection of various types of overpayments.

R6-5-4924. Appeals

The objective of this rule is to ensure that the public understands the client's right to appeal the Department's adverse actions and that all appeals are processed according to the requirements in a timely and appropriate manner. The purposes of the rule are to identify the Department actions that an applicant is entitled to contest through a hearing; specify the client's time frame for filing a written request for a fair hearing; describe how the file date on a hearing request is determined; inform the public that any document mailed by the Department is considered as having been given to the addressee on the date it is mailed to the addressee's last known address; advise the public that the Office of Appeals shall deny any hearing request that is not filed in a timely manner; require the Child Care Administration to prepare and forward a prehearing summary to the Office of Appeals within ten work days of receiving the request; require the Department to mail the appellant a copy of the summary; require the Department to continue assistance at the current level if a request for appeal has been filed within ten days of

the negative action notice date and to provide exceptions to this requirement; require the Department to postpone the negative action until receipt of an official written decision in favor of the Department and to list exceptions to this requirement; and to require that the Department prepare an overpayment for any assistance the family received in excess of the correct benefit amount while the hearing decision was pending.

R6-5-4925. Maximum Reimbursement Rates For Child Care

The objective of this rule is to establish the maximum reimbursement rate that the Department will pay to Child Care Providers by district and age range of child. The purposes of this rule are to indicate the gross income maximums and copay assignments for each fee level, and to indicate the maximum reimbursement rates for child care providers based on the fee level assigned.

C. EFFECTIVENESS

The rules in Title 6, Chapter 5, Article 49, need amendments to be effective in meeting the requirements established by the Child Care and Development Block Grant (CCDBG) Act of 2014 and associated regulations at 45 CFR Part 98. Amendments are needed to align with current state statutes, policies, and practices.

The following amendment is required wherever it appears:

- Amend the words “CPS” throughout the article to conform to the provisions of A.R.S. § 8-451 that created the Department of Child Safety (DCS).

R6-5-4901. Definitions

The following definitions should be revised or added to make this rule clear, concise, understandable, and effective.

- Add definition of “Application”.
- Add “Approved Medical Personnel” to include nurse practitioners and physician’s assistants in addition to physicians, psychiatrists, and psychologists.
- Add definition of “Business day”.
- Amend “CPS or Child Protective Services” to include both DCS and Tribal CPS.
- Add definition of “Employment”.
- Revise “Gap in employment” to be consistent with federal law requiring states to continue assistance for a minimum of three months following loss of eligible activity.
- Add definition of “Good cause”.
- Add definition of “Self-employment”.

R6-5-4904. Access to Child Care Assistance

The rule would be more effective if updated to make the following changes to conform to current federal and state statute, policies and practice.

- Add “via another Department approved method” as an additional method of filing an application.
- Add “written or electronic” as approved signatures on the application.

R6-5-4905. Initial Eligibility Interview

The rule would be more effective if updated to make the following change to conform to current federal and state statute, policies and practice.

- Remove the requirement of face-to-face interviews when certain circumstances are met.

This would give the Department the ability to utilize the most effective method of conducting an interview such as an interview by phone.

R6-5-4906. Verification of Eligibility Information

The rule would be more effective if updated to make the following change to conform to current federal and state statute, policies and practice.

- Move the verification requirements from the section for the Eligible Activity or Need to this section.

R6-5-4908. Child Care Assistance Approvals and Denials

The rule would be more effective in giving clear guidance to the public if updated:

- Combine this section with the section R6-5-4920.

R6-5-4909. 12-Month Review

The rule would be more effective if updated to make the following changes to conform to current federal and state statute, policies and practice.

- Adjust the language “at least” to state “no more than” to be in compliance with current A.R.S. § 46-803(L).
- Incorporate the exiting threshold of 85 percent State’s Median Income (SMI) to be in compliance with current A.R.S. § 46-803(B), (C), (D), and (F).
- Modify R6-5-4909(G) to state that an interview is mandatory when re-determining eligibility.

R6-5-4911. General Eligibility Criteria

The rule would be more effective if updated to make the following change. It would help the public to understand the rule.

- Remove any requirements related to changes from this section and create a new section specifying change reporting requirements and procedures.

- Adjust the reporting requirement from two to five business days from the date the change becomes known to be more practicable.
- Update U.S. Immigration and Naturalization Services to its current name, U.S. Citizenship and Immigration Services.

R6-5-4912. Eligible Activity or Need

The rule would be more effective if updated to make the following changes to conform to current federal and state statute, policies and practice.

- Revise the definition for eligible educational activities, educational level, and the number of months a client can receive Child Care Assistance for educational purposes to conform to state statute.
- Clarify that educational activities that are not Jobs Program-approved are eligible activities for Child Care Assistance if criteria for Child Care Assistance educational activities are met, to conform to state statute.
- Revise the Gaps in Employment section to effectively reflect the CCDBG Act of 2014 requirements. This section should be placed in the proposed change section.
- Move the Verification of Eligible Activity section to R6-5-5206, Verification of Eligible Information.

R6-5-4913. Applicants and Recipients as Child Care Providers

The rule would be more effective if updated to make the following change to conform to current policies and practice.

- Clarify when a client can receive Child Care Assistance as a child care provider.

R6-5-4914. Income Eligibility Criteria

The rule would be more effective if updated to make the following changes to conform to current federal and state statute, policies and practice.

- Establish reduced income maximums for Child Care Assistance when sufficient monies are not appropriated or available to pay for all eligibility levels.
- Clarify that advances or draws from a company, corporation, or business partnership are countable income for child care purposes.
- Clarify various elements of countable and excludable income and income calculation processes for child care purposes.

R6-5-4915. Fee Level and Copayment Assignment

The rule would be more effective if updated to make the following change to conform to current federal and state statutes, policies and practice.

- Clarify when a family is exempt from copayment and that penalties for nonpayment do not apply to Jobs and Cash Assistance participants when care is needed in support of TANF work activities or to support DCS-referred families who need care per a DCS case plan.

R6-5-4916. Special Eligibility Criteria

The rule would be more effective if updated to make the following change to conform to current federal and state statute, policies and practice.

- Clarify that sanctioned former Cash Assistance recipients can receive Transitional Child Care (TCC) if they are employed, to align with current practice and to avoid unnecessary administrative burden.

R6-5-4918. Authorization of Child Care Assistance

The rule would be more effective if updated to make the following changes to conform to current federal and state statute, policies and practice.

- Limit child care service authorization to 23 units per child rather than 31.
- Clarify that children are not eligible for DES child care assistance when school is otherwise available for grades 1-12 during a regular school day.

R6-5-4920. Denial or Termination of Child Care Assistance

The rule would be more effective if updated to make the following changes to conform to current federal and state statute, policies and practice.

- Add the income maximum of 85 percent SMI when terminating Child Care Assistance during the eligibility period.
- Move the entire section to combine the section with R6-5-4908, Child Care Assistance Approvals and Denials.

R6-5-4923. Overpayments

The rule would be more effective if updated to make the following change to conform to current policies and practice.

- Revise the definition for “Date of Discovery” of an overpayment. The “Date of Discovery” is the date the Department validates it, not the date it is determined.

R6-5-4924. Appeals

The rule would be more effective if updated to make the following changes to conform to current federal and state statute, policies and practice.

- Identify the circumstances under which applicants and recipients are not entitled to a hearing to challenge benefit adjustments.

- Disallow continuation of assistance pending the outcome of an appeal when the appellant is suspected of committing an Intentional Program Violation (IPV).
- Add sections to provide hearing policies to supplement Article 75 of this chapter, Appeal and Hearing Procedures for Adverse Action.
- Add a separate section within this Article to address IPV.

Appendices A and B

Tables for Child Care Assistance Gross Monthly Income Eligibility Chart, Fee Schedule, and Maximum Reimbursement Rates for Child Care should be updated with the current information to conform to current federal and state statute, policies and practice.

D. CONSISTENCY

Except for the rules listed below, the rules in Title 6, Chapter 5, Article 49 are consistent with federal and state law and regulations. With the following amendments, the rules in Article 49 will be consistent with the corresponding federal law, Public Law No. 113-186, the Child Care & Development Fund (CCDF) regulations at 45 CFR 98 and A.R.S. § 46-801 through A.R.S. § 46-810.

Title 6, Chapter 5, Article 49 is undergoing the formal rulemaking process. The Department anticipates completing changes to these rules this fall. The Department is operating under policies and procedures that align with federal and state statute and regulation until the amended rule is finalized. Additionally, the application form made available to Child Care Assistance applicants contains the current information that applicant's need to pursue participation in the program

The following rules are in need of a technical correction to change "CPS" or "Child

Protective Services” to “DCS” or “Department of Child Safety” and include both DCS and Tribal CPS in language regarding the Department of Child Safety as created by A.R.S. § 8-451.

- **R6-5-4901.** Definitions
- **R6-5-4914.** Income Eligibility Criteria
- **R6-5-4915.** Fee Level and Copayment Assignment
- **R6-5-4917.** Waiting List for Child Care Assistance
- **R6-5-4918.** Authorization of Child Care Assistance
- **R6-5-4919.** Time Limit for Child Care Assistance

The CCDF regulations at 45 CFR 98.21 specify a lead agency shall re-determine a child’s eligibility for child care services no sooner than 12 months following the initial determination, stipulate care must be authorized for a minimum of 12 months, and prohibit a reduction in services prior to re-determination. State agencies may opt to discontinue services following a job loss or cessation of eligible activity only after allowing a minimum of three full calendar months continued service to enable the parent/caretaker to engage in a job search or obtain another eligible activity.

Additionally, CCBDG Act of 2014 allows families whose income does not exceed 85 percent of the SMI to remain eligible. This created changes in the income maximum for child care assistance and necessitated a fee level that is equal to or less than 85 percent of the SMI to represent a maximum income for ongoing recipients.

The following rules are in need of amendment to comply with CCDF regulations at 45 CFR 98.21 and changes in A.R.S. § 46-803 resulting from the requirements of the CCDBG Act of 2014.

- **R6-5-4901.** Definitions

- **R6-5-4909.** 12-Month Review
- **R6-5-4912.** Eligible Activity or Need
- **R6-5-4914.** Income Eligibility Criteria
- **R6-5-4919.** Time Limit for Child Care Assistance
- **Appendix A.** Child Care Assistance Gross Monthly Income Eligibility Chart and Fee Schedule
- **Appendix B.** Maximum Reimbursement Rates for Child Care

R6-5-4901. Definitions

Some definitions within this rule are no longer consistent with state law, federal law, and Department policy regarding Child Care Assistance. Terms developed due to the CCDF Reauthorization Act of 2014 requirements are not yet listed or defined in this rule. Additionally, terms not used within the rules are needlessly defined and should be eliminated.

R6-5-4909. 12-Month Review

Due to the CCDF Reauthorization Act of 2014 requirements and changes to A.R.S. § 46-803 (L), this rule is not consistent with state law, federal CCDF regulations, and Department policy regarding the frequency the Department may conduct a review of the client’s information.

R6-5-4912. Eligible Activity or Need

This rule is inconsistent with both state and federal law. The CCDF Reauthorization Act of 2014 requirements prompted changes in Department policy regarding Child Care Assistance after a loss of employment or other eligible activity. Services may now continue for up to three full calendar months after a loss of eligible activity in accordance with the Act. Additionally, the limits imposed by this rule on an applicant’s educational level and the number of months a

person can receive Child Care Assistance for educational purposes do not reflect the changes implemented as prescribed by A.R.S. § 46-803(H).

R6-5-4914. Income Eligibility Criteria

This rule is no longer consistent with state law, federal law, and Department policy regarding Child Care Assistance due to the CCDBG Act of 2014 and changes in A.R.S. § 46-803 resulting from the requirements of the CCDBG Act of 2014.

The CCDBG Act of 2014, requires that a child shall reside with a family whose income does not exceed 85 percent of the SMI to be eligible for services. These requirements increase the maximum income limit to 85 percent of the SMI for ongoing recipients and make lead agencies take into account irregular income fluctuations. Department policy regarding earned income calculation is now based on the most recent paystub rather than the last 30 days of paystubs, and new income is counted immediately instead of waiting ten days after the first full check. Six months of records are now required for self-employment income to account for irregular income fluctuations.

R6-5-4919. Time Limit for Child Care Assistance

The CCDF Reauthorization Act of 2014 requirements necessitate a change from a six-month extension to a 12-month extension once a child has exhausted the 60-month time limit for Block Grant child care to align with the 12-month re-determination time-frame. This rule is in need of a minor correction to relate the actions required to demonstrate efforts toward self-sufficiency more closely with eligible activities for Child Care Assistance.

Appendix A. Child Care Assistance Gross Monthly Income Eligibility Chart and Fee Schedule

The CCDF Reauthorization Act of 2014 requirements necessitate adding Fee Level 7 to represent a maximum income for ongoing recipients that is equal to or less than 85 percent of the SMI.

Appendix B. Maximum Reimbursement Rates for Child Care

The CCDF Reauthorization Act of 2014 requirements necessitate adding Special Needs Rates for child care providers.

The following rules are consistent with both state and federal laws regarding Child Care Assistance, but do not accurately reflect current Departmental policies or procedures.

- **R6-5-4904.** Access to Child Care Assistance
- **R6-5-4905.** Initial Eligibility Interview
- **R6-5-4906.** Verification of Eligibility Information
- **R6-5-4911.** General Eligibility Criteria
- **R6-5-4913.** Applicants and Recipients as Child Care Providers
- **R6-5-4916.** Special Eligibility Criteria
- **R6-5-4917.** Waiting List for Child Care Assistance
- **R6-5-4918.** Authorization of Child Care Assistance

R6-5-4904. Access to Child Care Assistance

The Department no longer accepts a verbal request for Child Care Assistance and the rule is not consistent with Department policy regarding verbal requests for Child Care Assistance.

R6-5-4905. Initial Eligibility Interview

The rule is not consistent with Department policy regarding when a telephone interview may be conducted.

R6-5-4906. Verification of Eligibility Information

The rule is not consistent with Department policy regarding verification via data verification services utilized by the client's employer.

R6-5-4911. General Eligibility Criteria

The rule is not consistent with Department policy regarding time-frame requirements for change reporting. In practice, the Department allows clients five business days to report a change, rather than two business days.

R6-5-4913. Applicants and Recipients as Child Care Providers

The rule is consistent with current program policy and practice in listing the instances where a DES contracted child care provider may also receive Child Care Assistance for his or her own children in care, but the rule fails to mention the prohibitions against payment as a child care provider when the payment recipient is the spouse of the provider or is a member of the provider's corporation.

R6-5-4916. Special Eligibility Criteria

Department policy no longer requires the review of the Cash Assistance closure reasons to identify sanctioned status for those applicants who are potentially eligible for TCCA.

R6-5-4917. Waiting List for Child Care Assistance

The rule is not consistent with Department policy regarding time-frame requirements for change reporting. In practice, the Department allows clients five business days to report a change, rather than two business days.

R6-5-4918. Authorization of Child Care Assistance

The rule is not consistent with Department policy regarding the maximum allowable units of child care per child, per month. Procedurally, the Department no longer limits the number of

hours of Child Care Assistance to the client's stated hours needed to perform self-employment activities.

E. ENFORCEMENT

The Department enforces these rules to the extent that they do not conflict with state or federal law. Due to the CCDBG Act of 2014, CCDF federal regulations were updated in September 2016. The following rules are not enforced, due to the conflicts with the federal regulations as well as Arizona Revised Statutes.

R6-5-4904. Access to Child Care Assistance

The Department no longer waives the application requirement for cash assistance participants who need child care for employment. As a result of lifetime limits for receiving Cash Assistance being reduced from 24 to 12 months, the Department requires Cash Assistance participants who need Child Care Assistance for employment activities to complete an application prior to determining eligibility.

R6-5-4912. Eligible Activity or Need

The Department no longer enforces the limit based on the client's educational level or the lifetime limit of 24 months of Child Care Assistance for education and training purposes. A.R.S. § 46-803(H) provides supplemental child care for education and training when the education and training is reasonably related to employment goals, and the client is working at least a monthly average of 20 hours per week. S.B. 1357 established the statute in 1997 and, at that time, limited child care assistance for postsecondary education activities for up to 24 months or an equivalent of an associate degree. In 1998, H.B. 2620 changed the statutes, and the 24-month limitation was removed. The rule has not been adjusted to reflect the change.

The Department no longer enforces additional assistance for up to 60 days after clients stop employment activities. Due to the CCDBG Reauthorization Act of 2014, the Department expanded the time-frames for additional assistance for clients who lose their eligible activity for three full calendar months, or through the 12-month re-determination date, whichever occurs first.

R6-5-4914. Income Eligibility Criteria

The Department no longer requires employed clients to provide a 30 day period of income verification. This requirement was viewed as administratively burdensome for clients and child care staff resulting in the decision to streamline this process by requiring clients to provide their most recent pay stub for employment verification purposes.

The Department no longer enforces portions of income calculation that require the Department to exclude income until the date the first full payment is received. In response to requirements of the CCDBG Reauthorization Act of 2014, the Department considers new income sources available to the family immediately for determining eligibility or prioritization on the waiting list.

F. CLEAR, CONCISE AND UNDERSTANDABLE

The Department believes that the issues identified in Section C of this report as well as the inconsistencies identified in Section D of this report adversely impact the clarity, conciseness, and understandability of the listed rules. Other than those issues previously identified, the Department believes the rules in Article 49 are clear, concise, and understandable.

G. WRITTEN CRITICISMS

The Department has not received any written criticisms of the rules contained in this review.

H. ECONOMIC IMPACT COMPARISON

Because the rules in Article 49 were filed under an exemption from formal rulemaking procedures, the Department did not prepare an Economic Impact Statement for these rules.

These rules specify the procedures for this program, including the application process guidelines, eligibility guidelines, and termination of assistance guidelines.

General

The purpose of DES Child Care Assistance is to assist eligible families with child care costs, enabling parents to participate in employment and specific education and training activities related to employment, or in certain other circumstances when parents are unable to provide care.

DES Child Care Services may be provided for the following eligible activities or needs:

1. Participation in DES Jobs Program.
2. Employment.
3. Eligible education and training activities related to employment when working a minimum of 20 hours per week.
4. High school, GED or remedial education classes for teen parents.
5. Unable or unavailable to provide care for children due to a physical, mental, or emotional condition, participation in a drug treatment or rehabilitation program, or a court ordered community service program.
6. Residency in a homeless or domestic violence shelter.

7. Other needs as determined by Child Protective Services or foster care case plan.

Child care is provided for a portion of a 24-hour day when neither parent is available to provide care due to participation in eligible activities or needs listed above.

In fiscal year 2016 approximately \$129.7 million was expended to provide assistance to families eligible for Child Care Assistance. An average of 30,001 children received assistance each month and the average cost per child was \$360.35 each month. The total number of individual children served for the year was 51,719.

Stakeholders for the Child Care Assistance program include families who are approved or denied child care assistance, child care providers, employers, and taxpayers.

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 5-YEAR REVIEW REPORT

In the previous Five-Year Review, the Department stated that it had requested an exception from the regulatory moratorium to proceed with rulemaking to address the issues identified in the report. The Department stated that the request was under review and that, if approved, the Department proposed to make necessary amendments to the rules within two years of the expiration of the regulatory moratorium, or within two years of receiving an exception from the moratorium.

Since the previous Five-Year Review, the Department has continued to identify regulatory priorities and worked in close cooperation with the Governor's Office to seek exceptions for rule packages that met the criteria of the various regulatory moratoria, and that are operational priorities of the Department. Since the review, the Department received moratorium exception approval and completed four rulemakings that each adopted an updated Child Care Assistance Gross Monthly Income Eligibility Chart and Fee Schedule to adjust the eligibility limits for child care assistance contained in this Article, in order to reflect updated federal poverty guidelines.

The Department more recently received approval to make additional updates to this Article as discussed in L. Proposed Action below.

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 rules in Article 49 are not more stringent than, nor in conflict with, corresponding federal statutes and regulations except those identified in section **D. Consistency**. These rules need amendments to be effective in meeting the requirements established by the CCDBG Act of 2014, associated regulations at 45 CFR Part 98, and Public Law No. 113-186.

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

On March 7, 2016, the Department received moratorium exception approval to address matters identified in this report. The Department has worked closely with various stakeholders to prepare a draft Notice of Proposed Rulemaking that is currently under review by the Office of the Attorney General. The Department anticipates filing a Notice of Final Rulemaking that addresses the issues identified in the report in October of 2017.

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R6-5-2906. Repealed**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4).
Repealed effective December 17, 1993 (Supp. 93-4).

R6-5-2907. Repealed**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4).
Repealed effective December 17, 1993 (Supp. 93-4).

R6-5-2908. Repealed**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4).
Repealed effective December 17, 1993 (Supp. 93-4).

R6-5-2909. Repealed**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4).
Repealed effective December 17, 1993 (Supp. 93-4).

R6-5-2910. Repealed**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4).
Repealed effective December 17, 1993 (Supp. 93-4).

R6-5-2911. Repealed**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4).
Repealed effective December 17, 1993 (Supp. 93-4).

R6-5-2912. Repealed**Historical Note**

Adopted effective August 11, 1976 (Supp. 76-4).
Repealed effective December 17, 1993 (Supp. 93-4).

ARTICLE 30. REPEALED

Former Article 30, consisting of Sections R6-5-3001 through R6-5-3007, repealed effective August 29, 1984.

ARTICLE 31. REPEALED

Former Article 31, consisting of Sections R6-5-3101 through R6-5-3110, repealed effective November 8, 1982.

ARTICLE 32. REPEALED**R6-5-3201. Repealed****Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).
Repealed effective December 17, 1993 (Supp. 93-4).

R6-5-3202. Repealed**Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).
Repealed effective December 17, 1993 (Supp. 93-4).

R6-5-3203. Repealed**Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).
Repealed effective December 17, 1993 (Supp. 93-4).

R6-5-3204. Repealed**Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).
Repealed effective December 17, 1993 (Supp. 93-4).

R6-5-3205. Repealed**Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).
Repealed effective December 17, 1993 (Supp. 93-4).

R6-5-3206. Repealed**Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).
Repealed effective December 17, 1993 (Supp. 93-4).

R6-5-3207. Repealed**Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).
Repealed effective December 17, 1993 (Supp. 93-4).

R6-5-3208. Repealed**Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).
Repealed effective December 17, 1993 (Supp. 93-4).

R6-5-3209. Repealed**Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).
Repealed effective December 17, 1993 (Supp. 93-4).

R6-5-3210. Repealed**Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).
Repealed effective December 17, 1993 (Supp. 93-4).

R6-5-3211. Repealed**Historical Note**

Adopted effective November 22, 1978 (Supp. 78-6).
Repealed effective December 17, 1993 (Supp. 93-4).

ARTICLE 33. RESERVED**ARTICLE 34. RESERVED****ARTICLE 35. RESERVED****ARTICLE 36. RESERVED****ARTICLE 37. RESERVED****ARTICLE 38. RESERVED****ARTICLE 39. RESERVED****ARTICLE 40. RESERVED****ARTICLE 41. RESERVED****ARTICLE 42. RESERVED****ARTICLE 43. RESERVED****ARTICLE 44. RESERVED****ARTICLE 45. RESERVED****ARTICLE 46. RESERVED****ARTICLE 47. RESERVED****ARTICLE 48. RESERVED****ARTICLE 49. CHILD CARE ASSISTANCE**

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

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review and approval; and the Department was not required to hold public hearings on this Section.

R6-5-4901. Definitions

The following definitions apply to this Article:

1. "Adequate notice" means written notification that explains the action the Department intends to take, the reason for the action, the specific authority for the action, the client's appeal rights, and right to benefits pending appeal, and that is mailed before the effective date of the action.
2. "Appellant" means an applicant or recipient of assistance who is appealing a negative action by the Department.
3. "Availability" means the portion of time that a parent or caretaker can provide care to their own child, as determined by the Department, because the parent or caretaker is not participating in an eligible activity.
4. "Applicant" means a person who has filed an application for Child Care Assistance.
5. "Authorized" means the specific amount of Child Care Assistance approved by the Department for an eligible family for a specific period of time.
6. "CCA" means the DES Child Care Administration.
7. "Caretaker relative" means a relative who exercises the responsibility for the day-to-day physical care, guidance, and support of a child who physically resides with the relative.
8. "Cash Assistance" means the program administered by the Family Assistance Administration that provides temporary Cash Assistance to needy families.
9. "Cash Assistance participant" means a recipient of Cash Assistance.
10. "Child care" means the compensated service the Department provides to a child who is unaccompanied by a parent or guardian during a portion of a 24-hour day.
11. "Child Care Assistance" means money payments for child care services paid by the Department for the benefit of an eligible family.
12. "Child Care Provider" means a child care facility licensed under A.R.S. Title 36, Chapter 7.1, Article 4, child care home providers, in-home providers, noncertified relative providers, and regulated child care on military installations or federally recognized Indian Tribes.
13. "Client" means a person who has requested, has been referred for, or who is currently receiving Child Care Assistance.
14. "Countable income" means the gross income of individuals included in family size that the Department considers to determine eligibility and calculate an assistance amount.
15. "CPS or Child Protective Services" means the child welfare services administration within the Department's Division of Children, Youth, and Family Services.
16. "Day" means a calendar day unless otherwise specified.
17. "DDD" means the Division of Developmental Disabilities.
18. "Denial" means a formal decision of ineligibility on an application, referral, or request for Child Care Assistance.
19. "Department" means the Arizona Department of Economic Security.
20. "Dependent" child means a person less than age 18, who resides with the applicant and whom the applicant has the legal financial obligation to support.
21. "DES-certified child care provider" means a provider who is certified by the Department of Economic Security under A.R.S. § 46-807 and who provides care in either the child's or the provider's own home.
22. "DHS-certified group home" means a provider who is certified by the Department of Health Services under A.R.S. § 36-897.01.
23. "DHS-licensed child care center" means a provider who is licensed by the Department of Health Services as prescribed in A.R.S. § 36-881.
24. "EITC" means Earned Income Tax Credit and is a federal income tax credit for low-income working individuals and families.
25. "Eligibility criteria" means the requirements an individual or family must meet to receive Child Care Assistance.
26. "Eligible activity" means a specific type of activity that causes an applicant or recipient and any other parent or responsible person in the eligible family to be unavailable to provide care to their children for a portion of a 24-hour day, and that partially determines the amount of Child Care Assistance an eligible family shall receive.
27. "Eligible child" means a child less than 13 years of age.
28. "Eligible family" means a group of persons whose needs, income, and other circumstances are considered as a whole for the purpose of determining eligibility and amount of Child Care Assistance.
29. "Eligible need" means a specific type of need that causes an applicant or recipient, or any other parent or responsible person in the eligible family, to be unavailable or incapable to provide child care to their children for a portion of a 24-hour day, and that partially determines the amount of Child Care Assistance an eligible family shall receive.
30. "E.S.O.L." means English for Speakers of Other Languages.
31. "Existing client" means an individual who is currently receiving Child Care Assistance or who has an open Child Care Assistance case with the Department.
32. "Family size" means the number of individuals considered when determining income eligibility, and includes the applicant, other parent or responsible person, and their dependent children who reside in the same household, subject to R6-5-4914 (D).
33. "Federal poverty level" (FPL) means the poverty guidelines issued by the United States Department of Health and Human Services under Section 673(2) of the Omnibus Reconciliation Act of 1981; and reported annually in the Federal Register; which are converted into monthly amounts by the Department; which shall become effective for use in determining eligibility for Child Care Assistance on the first day of the state fiscal year immediately following the publication of the annual amount in the Federal Register.
34. "Foster care" means that the Department or an Arizona Tribe placed a child in the custody of a licensed foster parent.
35. "Foster parent" means any person licensed by the Department or an Arizona Tribe to provide for the out of home care, custody, and control of a child.
36. "Gap in employment" means a period of 30 consecutive days of Child Care Assistance that begins the first day after the last day worked and ends the 30th day after the last day worked for an existing client who has lost employment.
37. "G.E.D." means General Equivalency Diploma.
38. "Homebound" means a person who is confined to their home because of physical or mental incapacity.
39. "Homeless shelter" means a public or private nonprofit program that is targeted to assist homeless families and is designed to provide temporary or transitional living

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- accommodations and services to assist such families toward self-sufficiency.
40. "Income" means earned and unearned income combined.
 41. "Jobs" means the Department program that assists Cash Assistance participants to prepare for, obtain, and retain employment. "Jobs" Program also includes the Tribal Jobs Program and any other entities that contract with the state to perform this function.
 42. "Jobs participant" means a Cash Assistance participant who is participating in the Jobs program as a condition of receiving Cash Assistance.
 43. "Local office" means a CCA location that is designated as the location in which Child Care Assistance applications and other documents are filed with the Department and in which eligibility and assistance amounts are determined for a particular geographic area of the state.
 44. "Lump sum income" means a single payment of earned or unearned income, such as a retroactive monthly benefit, non-recurring pay adjustment or bonus, inheritance, or personal injury and workers' compensation award.
 45. "Mailing date" when used in reference to a document sent first-class, postage prepaid, through the United States mail, means the date:
 - a. Shown on the postmark;
 - b. Shown on the postage meter mark of the envelope, if there is no postmark; or
 - c. Entered on the document as the date of its completion, if there is no legible postmark or postage meter mark.
 46. "Minor parent" means a parent less than the age of 18 years.
 47. "Negative action" means one of the Department actions described in R6-5-4918, including action to terminate assistance or increase the fee level and copayment for Child Care Assistance.
 48. "Noncertified relative provider" means a person who is at least 18 years of age, who is by blood, marriage, or adoption the grandparent, great grandparent, sibling not residing in the same household, aunt, great aunt, uncle or great uncle of the eligible child, who provides child care services to an eligible child, and meets the Department's requirements to be a noncertified relative provider.
 49. "Notice date" means the date that appears as the official date of issuance on a document or official written notice the Department sends or gives to an applicant or recipient.
 50. "OSI" or "Office of Special Investigations" means the Department office to which CCA refers cases for investigation of certain eligibility information, investigation and preparation of fraud charges, coordination and cooperation with law enforcement agencies and other similar functions.
 51. "Other related child" means a child who is related to the applicant or recipient by blood, marriage, or adoption, and who is not the applicant's or recipient's natural, step, or adoptive child.
 52. "Overpayment" means a Child Care Assistance payment received by a child care provider or for an eligible family that exceeds the amount to which the provider or family was lawfully entitled.
 53. "Parent" means the biological mother or father whose name appears on the birth certificate, the person legally acknowledged as a mother or father, a father who has had an adjudication of paternity, or the adoptive mother or father of the child.
 54. "Positive action" means the approval, increase, or resumption of service such as increasing the amount of assistance or decreasing the fee level and copayment.
 55. "Recipient" means a person who is a member of an eligible family receiving Child Care Assistance.
 56. "Relative" means a person who is by blood, adoption, or marriage a parent, grandparent, great-grandparent, sibling of the whole or half blood, stepbrother, stepsister, aunt, uncle, great-aunt, great-uncle, or first cousin.
 57. "Request for Hearing" means a clear written expression by an applicant or recipient, or such person's representative, indicating a desire to appeal a Department decision to a higher authority.
 58. "Responsible person" means one or more persons, residing in the same household, who have the legal responsibility to financially support:
 - a. One or more of the children for whom Child Care Assistance is being requested, or
 - b. The applicant or recipient of Child Care Assistance.
 59. "Review" means the Department's review of all factors affecting an eligible family's eligibility and assistance amount.
 60. "Self-Sufficiency Declaration" means a written statement signed and dated by the child care recipient that lists the specific actions the recipient has taken during the most recent six or 12-month period to maintain or increase self-sufficiency.
 61. "Tax Claimant" means a relative more than age 17 who resides with a parent who has applied for or is receiving Child Care Assistance, and who states their intention to claim any member of the eligible family as a tax dependent on a federal or state income tax return for the current calendar year, to be filed in the following calendar year.
 62. "Tax Dependent" means a member of an eligible family applying for or receiving Child Care Assistance who is included in family size, and who the tax claimant states an intention to claim as a dependent on a federal or state income tax return for the current calendar year, to be filed in the following calendar year.
 63. "Time Limit" means that each child in the eligible family may receive no more than 60 cumulative months of Child Care Assistance in a lifetime, unless the parent, caretaker relative, or legal guardian of the child needing care can prove they are making efforts to improve skills and move toward self-sufficiency, under A.R.S. § 46-803(K)(1).
 64. "Unit" means a part or full day measurement of Child Care Assistance authorized by the Department to meet the needs of an eligible family based on the participation of parents, caretaker relatives, or legal guardians of the children needing care in an eligible activity.
 65. "Waiting List" means the prioritization of applicants by the Department to manage resources within available funding by placing applicants determined eligible for Child Care Assistance on a list, until the Department determines that sufficient funds are available to fund Child Care Assistance for families on the list.
 66. "Work" means the performance of duties on a regular basis for wages or salary.

Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

Editor's Note: The following Section was adopted and repealed under an exemption from the provisions of A.R.S. Title

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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.

R6-5-4902. Repealed**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section automatically repealed July 31, 1998 (Supp. 98-3).

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.

R6-5-4903. Repealed**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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.

R6-5-4904. Access to Child Care Assistance**A. Application for Child Care Assistance.**

1. Any person may apply for Child Care Assistance by filing, either in person or by mail, a Department-approved application form with any CCA office.
2. The application file date is the date any CCA office receives an identifiable application. An identifiable application contains, at a minimum, the following information:
 - a. The legible name and address of the person requesting assistance; and
 - b. The signature, under penalty of perjury, of the applicant or, if the applicant is incompetent or incapacitated, someone legally authorized to act on behalf of the applicant.
3. In addition to the identifiable information described in subsection (A)(2), a completed application shall contain:
 - a. The names of all persons living with the applicant and the relationship of those persons to the applicant, and
 - b. All other eligibility information requested on the application form.

B. Request for Child Care Assistance.

1. Cash Assistance participants who need Child Care Assistance for employment activities are not required to complete an application.

2. Child Care Assistance for Cash Assistance participants may begin effective the start date of the eligible activity but not earlier than the date that the participant requests Child Care Assistance from a local CCA office after the Department has verified eligibility criteria.
- C. Referral for Child Care Assistance.**
1. Jobs Participants. Cash Assistance participants in Jobs-approved work participation activities who request child care shall be referred by the Jobs Program for Child Care Assistance.
 2. Child Protective Services Families (CPS). CPS shall refer families that CPS deems eligible for Child Care Assistance on a case-by-case basis.
 3. CPS and DDD Foster Families - CPS or DDD shall determine eligibility for and refer children in the care, custody, and control of DES who need child care services as documented in a foster care case plan.

Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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R6-5-4905. Initial Eligibility Interview

- A.** Upon receipt of an identifiable application, the Department shall schedule an initial eligibility interview for the applicant. Upon request, the Department shall conduct the interview at the residence of a person who is homebound.
- B.** The applicant shall attend the interview. A person of the applicant's choosing may also attend the interview.
- C.** The Department may conduct a telephone interview if the applicant has previously verified citizenship or legal residency status as prescribed in R6-5-4911(E).
- D.** During the interview, a Department representative shall:
 1. Assist the applicant in completing the application form;
 2. Witness the signature of the applicant;
 3. Discuss information pertinent to the applicant's child care needs;
 4. Provide the applicant with written information explaining:
 - a. The terms, conditions, and obligations of the Child Care Assistance program;
 - b. Any additional verification information as prescribed in R6-5-4906 which the applicant must provide for the Department to conclude the eligibility evaluation;
 - c. The Department practice of exchanging eligibility and income information among Department programs;
 - d. The coverage and scope of the Child Care Assistance program;
 - e. The applicant's rights, including the right to appeal a negative action; and
 - f. The requirement to report all changes within two work days from the date the change becomes known;

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5. Review the penalties for perjury and fraud, as printed on the application;
 6. Explain to the applicant who is included in family size for the purpose of determining income eligibility, and whose availability is considered in determining the amount of Child Care Assistance authorized for each child needing care as prescribed in R6-5-4914(D);
 7. If the applicant is the parent of the children needing care, explain the tax claimant provision under R6-5-4914(D)(3);
 8. Provide the applicant with the tax claimant declaration form if there is a potential tax claimant in the household;
 9. Provide the following information to assist the family in continuing to move toward self-sufficiency:
 - a. Availability of the Earned Income Tax Credit (EITC). Provide the applicant with the current U.S. Department of Internal Revenue Service (IRS) EITC information if the applicant comes into the office for the initial interview;
 - b. Availability of child support services through the Division of Child Support Enforcement (DCSE) to assist with paternity establishment, establishment of a child support order, or enforcement of an existing child support order. Provide the applicant with written information regarding child support services if the applicant comes into the office for the initial interview; and
 - c. Availability of Department-sponsored or contracted employment services that may assist the applicant and spouse or other parent in finding a job, or pursuing a better job or career. Provide the applicant with written information regarding employment services if the applicant comes into the office for the initial interview;
 10. Explain to the applicant the 60-month per child time limit for Child Care Assistance:
 - a. Describe the child care programs to which the 60-month time limit applies;
 - b. Describe how child care utilization is measured per child to calculate the 60-month limit; and
 - c. Explain the criteria for extensions of the time limit based on continued efforts to improve job skills and move toward self-sufficiency;
 11. Discuss the six-child limit for Child Care Assistance:
 - a. Explain that no more than six children in a family may receive Child Care Assistance at any point in time; and
 - b. Explain the child care programs to which the six-child limit applies;
 12. Discuss the waiting list for Child Care Assistance:
 - a. Describe the programs to which it applies;
 - b. Explain prioritization for assistance based upon income for families on the waiting list;
 - c. Indicate whether the waiting list is currently in effect; and
 - d. Explain that, based on funding availability, the Department may implement a waiting list at any point in time;
 13. Review any verification information already provided;
 14. Explain the applicant's duties to:
 - a. Notify the Department regarding initial provider selection or changes in provider in advance of using services or changing providers;
 - b. Pay DES required copayments to the child care provider as assigned by the Department; and
 - c. Pay any additional charges to the provider for the cost of care in excess of the amount paid by the Department; and
15. Review all ongoing reporting requirements, and explain that the applicant may incur overpayments for failure to make timely reports.

Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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R6-5-4906. Verification of Eligibility Information

- A. The Department shall obtain independent verification or corroboration of information provided by the client when required by law, or when it is necessary to determine eligibility, fee level and copayment assignment, or service authorization amount.
- B. The Department may verify or corroborate information by any reasonable means including:
 1. Contacting third parties such as employers and educational institutions,
 2. Asking the client to provide written documentation such as pay stubs or school schedules, and
 3. Conducting a computer data match through other Department programs' computer systems.
- C. The client is responsible for providing all required verification. The Department shall offer to assist a client who has difficulty in obtaining the verification and requests help.
- D. A client shall provide the Department with all requested verification within 10 calendar days from the notice date of a written request for such information. When a client does not timely comply with a request for information, the Department shall deny the application as provided in R6-5-4908(B).

Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

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R6-5-4907. Withdrawal of an Application

- A. An applicant may withdraw an application at any time prior to its disposition by providing the Department with a written request for withdrawal signed by the applicant.
- B. If an applicant makes an oral request to withdraw an application:
 1. The Department shall accept the oral request, provide the applicant with a written withdrawal form, and request

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that the applicant complete the form and return it to the Department. The Department shall inform the applicant of the consequences of not returning the withdrawal form within 10 days of the notice date.

2. If the applicant fails to return the completed withdrawal form, the Department shall deny the application for failure to provide information unless the applicant rescinds the oral withdrawal request within 10 days of the date the Department provides the applicant a withdrawal form.
- C. A withdrawal is effective as of the application file date unless the applicant specifies a different date on the withdrawal form.
- D. An application that has been withdrawn shall not be reinstated; an applicant who has withdrawn an application shall reapply anew.

Historical Note

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R6-5-4908. Child Care Assistance Approvals and Denials

- A. The Department shall complete the eligibility determination within 30 calendar days of the application file date or referral receipt date, unless:
 1. The application or referral is withdrawn,
 2. The application or referral is rendered moot because the applicant has died or cannot be located, or
 3. There is a delay resulting from a Department request for additional verification information as provided in R6-5-4906(D).
- B. The Department shall deny Child Care Assistance when the applicant fails to:
 1. Complete the application and an eligibility interview, as described in R6-5-4905;
 2. Submit all required verification information within 10 days of the notice date of a written request for verification, or within 30 days of the application file date whichever is later; or
 3. Cooperate during the eligibility determination process as required by R6-5-4911(A).
- C. When an applicant satisfies all eligibility criteria, the Department shall determine the service authorization amount, the fee level and copayment amount (if applicable), approve Child Care Assistance, and send the applicant an approval notice. The approval notice shall include the amount of assistance, fee level and copayment information, and an explanation of the applicant's appeal rights.

Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

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mit 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.

R6-5-4909. 12-month Review

- A. The Department shall complete a review of all eligibility factors for each client at least once every 12 months, beginning with the 12th month following the first month of Child Care Assistance eligibility.
- B. The Department may elect to review eligibility factors more frequently than every 12 months.
- C. At least 30 days prior to the 12-month review date, the Department shall mail the client a notice advising of the need for a review, and the requirement to submit a completed review application and verification of income and other eligibility factors for the most recent calendar month.
- D. In response to such notice, the client shall mail or deliver to the Department a completed review application and verification by the date on the notice.
- E. The Department shall verify the client's income and any eligibility factors that have changed or are subject to change.
- F. The Department shall terminate Child Care Assistance effective the review date and deny the review application if the client:
 1. Fails to submit the review application by the review date, or
 2. Fails to submit requested verification by the review date as required by the Department for a redetermination of eligibility.
- G. If the client submits the review application and required verification within 30 days after the review date, the Department shall not require the client to appear for an intake interview and shall approve Child Care Assistance effective the date that the application and verification were received if other eligibility criteria are met.

Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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R6-5-4910. Reinstatement of Assistance

- A. If the Department has terminated Child Care Assistance, the Department shall not reinstate assistance unless the client files a new application.
- B. Notwithstanding subsection (A), the Department shall reinstate assistance within 10 calendar days when:
 1. Termination was due to Department error; the Department shall reinstate assistance effective the date following the date of termination;
 2. The Department receives a court order or administrative hearing decision mandating reinstatement; the Department shall reinstate assistance effective the date prescribed by the court order or hearing decision; or
 3. The recipient files a request for a fair hearing within 10 days of the notice date of the termination notice and requests that assistance be continued pending the out-

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come of an appeal; the Department shall reinstate assistance effective the date following the date of termination.

Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

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.

R6-5-4911. General Eligibility Criteria**A. Applicant and Recipient Responsibility.**

1. An applicant for or recipient of Child Care Assistance shall cooperate with the Department as a condition of initial and continuing eligibility. The client shall:
 - a. Give the Department complete and truthful information;
 - b. Within two business days from the date the change becomes known, inform the Department of all changes in:
 - i. Income;
 - ii. Eligible activities as described in R6-5-4912;
 - iii. Work or school schedules;
 - iv. Persons moving in or out of the household;
 - v. Tax claimants moving in or out of the household;
 - vi. Other circumstances affecting eligibility or the amount of assistance authorized; and
 - c. Comply with all the Department's procedural requirements.
2. The Department may deny an application for or reduce or terminate assistance, if the client fails or refuses to cooperate with the Department to determine eligibility.

B. Eligible Applicants.

1. In order to be considered an eligible applicant for Child Care Assistance, a client shall reside with the child needing care and shall be:
 - a. The parent of the child for whom assistance is being requested; or
 - b. The caretaker relative related by blood, adoption, or marriage to the child for whom assistance is requested, including a brother, sister, aunt, uncle, first cousin, grandmother, grandfather, and persons of preceding generations as denoted by "grand," "great," or "great-great."
 - c. A court-appointed legal guardian for the child for whom assistance is requested, or a person who can provide documentation from the court that the process of legal guardianship has been initiated.
2. When more than one applicant resides in the home, or the child resides with two different caretakers intermittently, the Department shall determine the eligible applicant for Child Care Assistance as follows:
 - a. If both the parent and a caretaker relative are in the home, the parent is the eligible applicant;
 - b. If both a legal guardian and the parent are in the home, the legal guardian is the eligible applicant;
 - c. If a caretaker relative whose legal guardianship has been terminated and the parent are both in the home, the parent is the eligible applicant;

- d. When the child resides with a caretaker relative or legal guardian who is acting as caretaker at least 51 percent of the time, and the parent either maintains a separate residence and visits the child intermittently, or resides outside of the child's home for an indefinite period of time, the caretaker relative or legal guardian of the child is the eligible applicant for the child.

- i. An eligible applicant cannot be the noncertified relative provider or certified provider of the child for whom he or she is applying for assistance.
 - ii. The Department shall not consider the tax claimant status of the caretaker relative or legal guardian under R6-5-4914(D) with respect to any member of the eligible family.
 - e. When the child resides with two or more caretaker relatives, the caretaker relative who will be claiming the child as a dependent for income tax purposes is the eligible applicant for Child Care Assistance.
3. Acceptable verification of guardianship shall include the following court documents:
 - a. Petition for Temporary Appointment of Guardian (date stamped as received by the court);
 - b. Petition for Permanent Appointment of Guardian (date stamped as received by the court);
 - c. Order of Appointment of a Temporary Guardian;
 - d. Order of Appointment of a Permanent Guardian;
 - e. Letters and Acceptance of Permanent Guardianship.
 4. If the client has not been appointed as a guardian when the Department authorizes Child Care Assistance, the client shall to continue the legal process for appointment in order to retain eligibility for Child Care Assistance.
 5. The client shall verify relationship or guardianship status as requested by the Department.
- C. Arizona Residency.** The client and the child for whom assistance is requested shall be Arizona residents and shall be physically present within Arizona.
 - D. Age of the Child.** An eligible child is birth through 12 years of age only; a child aged 13 or older is ineligible for Child Care Assistance.
 - E. Citizenship and Legal Residency Requirements.**
 1. The client shall be a United States citizen or shall be a legal resident of the United States.
 2. The client shall verify citizenship or legal residency status as requested by the Department by providing a birth certificate, naturalization documentation, or alien or immigration registration documentation from the U.S. Immigration and Naturalization Service (INS).
 - F. Eligible Activity or Need.**
 1. The client, and any other parent or responsible person in the household shall be engaged in an eligible activity, or have an eligible need for Child Care Assistance as prescribed in R6-5-4912 that causes each client, parent, or responsible person to be unavailable to provide care to the child for whom assistance is requested.
 2. The Department does not require a tax claimant to be engaged in an eligible activity, unless the tax claimant is the other parent of a child receiving Child Care Assistance.
 - G. Availability of the Client, Parent, and Responsible Person.**
 1. The Department shall consider the availability of the client, and any other parent or responsible person in the household in determining eligibility and the amount of Child Care Assistance authorized for each individual child needing care.

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2. The client, parent, and any other responsible person in the household shall be unavailable to provide care to the child for whom assistance is being requested for a portion of a 24-hour day due to an eligible activity or need.
 3. In a family with more than one parent or responsible person, the Department shall authorize Child Care Assistance for the period of time that neither the parent nor the responsible person is available due to an eligible activity or need.
 4. The Department shall not consider the availability of a tax claimant in determining eligibility or amount of Child Care Assistance authorized for the client's children, unless the tax claimant is the other parent of a child receiving Child Care Assistance.
- H. Provider Selection and Arrangements.
1. The Department shall not authorize Child Care Assistance until the applicant has selected a child care provider. An allowable child care provider for DES Child Care Assistance:
 - a. Shall be one of the following:
 - i. A DHS-licensed child care center;
 - ii. A DHS-certified group home;
 - iii. A DES-certified family child care home;
 - iv. A DES-certified in home care provider;
 - v. A DES-noncertified relative provider;
 - vi. A regulated provider meeting requirements established by military installations or federally recognized Indian Tribes.
 - b. Shall have a registration agreement with the Department.
 2. The Department shall not authorize Child Care Assistance with a noncertified relative provider when Child Care Assistance is requested for a CPS referred family, or a CPS or DDD foster family;
 3. The Department shall not authorize Child Care Assistance with a noncertified relative or certified provider when:
 - a. The relative or certified provider is the natural, step, or adoptive parent of the child for whom assistance is requested;
 - b. Child Care Assistance is requested by a Cash Assistance participant and the relative or certified provider is included in the same Cash Assistance grant as the child care applicant; or
 - c. The relative or certified provider is included in family size as prescribed in R6-5-4914(D), is the applicant for Child Care Assistance, or is the applicant's spouse.
1. Employment. Full or part-time employment for monetary compensation;
 2. Self Employment. Full or part time self employment for monetary compensation.
 3. Education and Training Activities with Minimum Work Requirement. A client who is employed shall be eligible to receive Child Care Assistance for education and training activities as prescribed in subsections (A)(3)(a), (b), and (c).
 - a. Post-secondary education in a college or trade school.
 - i. The client is employed an average of at least 20 hours per week, per calendar month.
 - ii. A self-employed client meets the 20-hour work requirement if the client's monthly net profit, divided by the current minimum wage standard, equates to the average 20-hour weekly work requirement.
 - iii. The education or training activity is related to the client's employment goal.
 - iv. The client's educational level is freshman or sophomore as defined by the educational institution, or the educational activities are in pursuit of an Associate Degree, or the client is in training at a vocational or trade school.
 - v. The client shall maintain satisfactory progress in the educational activity and remain in good standing, as defined by the educational institution.
 - vi. The client has not received more than the lifetime limit of 24 months of Child Care Assistance for education and training activities. Child Care Assistance authorized for educational activities before August 1, 1997, does not count toward the 24-month limit.
 - vii. Countable months toward the 24-month limit are those calendar months in which the Department authorized additional child care services for education and training needs; the Department shall not calculate the 24-month limit based on monthly usage.
 - viii. The client assumes full responsibility for employment goals and educational choices made; the Department is under no obligation to provide Child Care Assistance until educational or employment goals are attained.
 - ix. The Department shall authorize Child Care Assistance for actual class time, time between classes as determined by the Department, and travel time to and from school only.
 - x. Correspondence courses, home study courses, and study time are not eligible educational activities for Child Care Assistance.
 - b. High School, G.E.D., E.S.O.L., and Remedial Educational Activities for Adults age 20 and Older.
 - i. The client is employed an average of at least 20 hours per week, per month.
 - ii. A self-employed client meets the 20-hour work requirement if the person's monthly net profit, divided by the current minimum wage standard, equates to the average 20-hour weekly work requirement.
 - iii. The educational or training activity is related to the client's employment goal.
 - iv. The client shall maintain satisfactory progress in the educational activity and remain in good

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R6-5-4912. Eligible Activity or Need

- A. Eligible activities and needs for Child Care Assistance are described in this subsection:

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- standing, as defined by the educational institution.
- v. The client has not received more than the lifetime limit of 12 months of Child Care Assistance for education and training activities described in this Section. Child Care Assistance authorized for educational activities before August 1, 1997, does not count toward the 12-month limit.
 - vi. Countable months toward the 12-month limit are those calendar months in which the Department authorized additional child care services for education and training needs. The Department shall not calculate the 12-month limit based on monthly usage.
 - vii. The client assumes full responsibility for employment goals and educational choices made; the Department is under no obligation to provide Child Care Assistance until educational and employment goals are attained.
 - viii. Allowable educational activities are attendance at high school, G.E.D. or E.S.O.L. classes, or remedial educational activities as determined allowable by the Department.
 - ix. The Department shall authorize Child Care Assistance for actual class time, time between classes as determined by the Department, and travel time to and from school only.
 - x. Correspondence courses, home study courses, and study time are not allowable educational activities for DES Child Care Assistance.
- c. Cash Assistance participants who are sanctioned due to Jobs noncompliance are ineligible for Child Care Assistance for education and training activities in any month when a Jobs sanction is applied to the Cash Assistance case, unless the education and training activities are Jobs approved.
4. Teen Parents in Education and Training Activities. Teen parents are eligible for Child Care Assistance for education and training activities according to the following criteria:
 - a. The teen parent is under age 20.
 - b. The teen parent is attending high school, G.E.D., or E.S.O.L. classes, or remedial educational activities in pursuit of a high school diploma.
 - c. Child Care Assistance for teen parents for the educational activities described in this Section is not time-limited. The teen parent shall continue to receive assistance for the educational activity if eligibility criteria are met and until the teen parent:
 - i. Receives a diploma or certificate; or
 - ii. Attains the age of 20 years, whichever occurs first.
 - d. If the teen parent attends post-secondary educational activities, the eligibility criteria outlined under "Post- Secondary Education" in subsection (A)(3)(a) shall apply.
 - e. The Department shall authorize Child Care Assistance for actual class time, time between classes as determined by the Department, and travel time to and from school only.
 - f. Correspondence courses, home study courses, and study time are not allowable educational activities for Child Care Assistance.
 - g. Cash Assistance participants who have been sanctioned due to Jobs noncompliance are ineligible for Child Care Assistance for education and training activities in any month that a Jobs noncompliance sanction is applied to the Cash Assistance case, unless the education and training activities are Jobs approved.
 5. Participation in Jobs Approved Activities. Individuals participating in the Jobs Program and who receive Cash Assistance shall be eligible for Child Care Assistance if the following criteria are met.
 - a. The individual is referred by a Jobs Program Specialist to CCA for Child Care Assistance.
 - b. The individual is required to contact a local DES Child Care Office to notify CCA of the selection of a provider, and to cooperate with CCA to arrange child care services.
 - c. The Child Care service authorization shall be based on the days and hours of the approved Jobs activity as specified by the Jobs Program Specialist in the Jobs referral.
 - d. Jobs participants shall receive Child Care Assistance for Jobs approved educational and training activities only. Educational and training activities that are not Jobs approved are not eligible activities for Child Care Assistance for Jobs participants.
 6. Unable or Unavailable to Provide Care. Clients who are unable or unavailable to care for their own children for a portion of a 24-hour day are eligible for Child Care Assistance according to the following criteria.
 - a. Clients who are unable to care for their own children due to a physical, mental, or emotional disability are eligible for Child Care Assistance when the diagnosis, inability to care for the children, and anticipated recovery date (or the date of the next medical evaluation) have been verified by a licensed physician, certified psychologist, or certified behavioral health specialist.
 - b. The Department shall authorize Child Care Assistance to cover:
 - i. The amount of time the client is unable to care for the child; and
 - ii. The amount of time needed for ongoing treatment for the specified condition as verified by the physician, certified psychologist, or certified behavioral health specialist.
 - c. Child Care Assistance shall not cover intermittent and routine appointments that are not part of an ongoing treatment plan.
 - d. Clients participating in a drug rehabilitation program are eligible for Child Care Assistance to participate in activities as specified by the drug rehabilitation program.
 - e. Clients participating in a court-ordered community service program are eligible for Child Care Assistance to support required community service participation as specified by the court.
 - f. Clients who are residents of a homeless or domestic violence shelter are eligible for Child Care Assistance based on shelter residency, and on verification provided by an authorized representative at the shelter. Child Care Assistance shall cover:
 - i. The days and hours that the client is unavailable to provide care to their own child due to participation in shelter-directed activities as verified by an authorized representative of the shelter; and

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- ii. The days and hours that the client is unable to provide care to the client's own child due to a physical, mental, or emotional disability as verified by a licensed physician, certified psychologist, or a certified behavioral health specialist.
- B. Gaps In Employment.** Clients receiving Child Care Assistance are eligible for continued assistance during gaps in employment.
1. The Department shall continue Child Care Assistance for each parent, legal guardian, or relative caretaker in the eligible family during no more than two gaps in employment of 30 days in each 12-month period.
 2. The Department shall authorize Child Care Assistance during a 30-day gap in employment beginning the day after the last day worked, after the client provides verification of his or her job termination date.
 3. Gaps in employment may be consecutive (if requested).
 - a. The Department shall continue Child Care Assistance for an additional 30 days upon request of the client, if the client has not already used Child Care Assistance during two gaps in employment in the most recent 12-month period immediately preceding the job termination date.
 - b. The second gap in employment shall begin the day after the last day of the first gap in employment.
 4. The Department shall continue to authorize the same number of units of Child Care Assistance as previously authorized for the employment activity.
 5. The Department shall decrease the client's fee level and copayment under Appendix A, based on the loss of earned income effective the date that terminated employment has been verified, or the day after the last day worked, whichever is the later date.
 6. The Department shall end Child Care Assistance during a gap in employment on the 30th day after the client's last day worked, or on the 60th day after the client's last day worked if two consecutive gaps were authorized, unless the client can verify participation in a new eligible activity.
 7. When a client fails to report job loss timely as described under R6-5-4911(A)(1), and continues to use Child Care Assistance, the Department shall automatically reduce the overpayment period by subtracting any unused gaps in employment in lieu of the corresponding months of overpayment.
 8. Child care utilized during a gap in employment shall count toward the 60 month per child time limit for Child Care Assistance under R6-5-4919.
 9. CPS Referred Families and CPS and DDD Foster Families.
 - a. Child Care Assistance shall be provided to families requiring assistance as documented in a CPS case plan, or to children who are in the care, custody, and control of the Department, and who need Child Care Assistance as documented in a foster care case plan.
 - b. Eligibility for Child Care Assistance under this provision shall be determined by CPS and DDD on a case by case basis.
- C. Verification of Eligible Activity or Need.** The client shall verify eligible activities and needs as requested by the Department. Acceptable verification shall include:
1. Pay stubs for the most recent 30-day period;
 2. Employer's statement verifying start date, hourly rate of pay, work schedule, and frequency of pay including:
 - a. The date of receipt of the first full paycheck if the client is newly employed; and
 - b. The last day worked, if the client's employment has terminated.
 3. Quarterly or annual tax statement for the most recent calendar quarter or year to verify self-employment activities;
 4. Self-employment log to document self-employment activities and income accompanied by receipts for gross sales and business expenses for the most recent calendar month or quarter;
 5. Written verification from an educational institution to verify days and hours of attendance, start and end dates of the activity, educational level, and satisfactory progress;
 6. Written verification from a licensed physician, certified psychologist, or certified behavioral health specialist indicating the diagnosis, inability to care for the child, days and hours that child care is needed, and the anticipated recovery date;
 7. Written verification from a homeless or domestic violence shelter indicating the days, hours, and duration that child care is needed as prescribed in subsection (A)(6)(f).

Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).
Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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.

R6-5-4913. Applicants and Recipients as Child Care Providers

- A.** The client for Child Care Assistance may also be the child care provider for any child for whom assistance is requested when:
1. The client works for but is not the DES contracted party for the provision of Child Care Assistance;
 2. The client receives monetary compensation for work performed as a child care provider;
 3. The client cares for other unrelated children, for whom client does not receive Child Care Assistance, as well as for the child for whom the client has applied for Child Care Assistance; and
 4. The client is unavailable to provide care to the child for whom assistance is requested. When the client is also the child care provider, this is defined as:
 - a. There is no "not for compensation" slot available for the child; and
 - b. Caring for the child as well as for the other children for whom the child care provider receives compensation, would exceed the ratio per state certification or licensing standards pursuant to A.R.S. § 36-897.01 and 6 A.A.C. 5, Article 52.
- B.** If there is no "not for compensation" slot available for the child, and other eligibility criteria described in this Article are met, the client for Child Care Assistance may also be the child care provider for the child for whom assistance is requested.

Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3).

Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pur-

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suant 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.

R6-5-4914. Income Eligibility Criteria

- A. Child Care Assistance Without Regard to Income.** The Department shall not determine income eligibility for Child Care Assistance for the following:
1. Jobs participants who need Child Care Assistance to participate in the Jobs Program, and who are referred to CCA as prescribed in R6-5-4904(B).
 2. Cash Assistance participants who need Child Care Assistance to maintain employment.
 3. CPS referred families, and CPS or DDD foster families who need Child Care Assistance as documented in a CPS or foster care case plan, and who are referred to CCA as prescribed in R6-5-4904(B).
- B. Child Care Assistance With Regard to Income.** The Department shall determine income eligibility for Child Care Assistance for the following:
1. Former Cash Assistance participants who need Child Care Assistance to maintain employment as prescribed in R6-5-4916(A).
 2. Clients who are not Cash Assistance participants but who need Child Care Assistance to maintain employment.
 3. Teen parents who need Child Care Assistance for educational activities as prescribed in R6-5-4912(A)(4).
 4. Clients who need Child Care Assistance because they are unable or unavailable to care for their own children due to physical, mental or emotional disability, participation in a drug treatment or court-ordered community service program, or residency in a homeless or domestic violence shelter as prescribed in R6-5-4912(A)(6).
- C. Income Maximum for Child Care Assistance.** The Department shall determine income eligibility by calculating the gross monthly income of all family members included in family size unless otherwise excluded as prescribed in subsections (D), (E), (F), and (H).
1. If the gross monthly income for the family is equal to or less than 165% FPL, the family meets the income eligibility requirements for Child Care Assistance.
 2. If the gross monthly income for the family exceeds 165% FPL, the family does not meet the income eligibility requirements for Child Care Assistance.
- D. Family Size Determination.** The Department shall include the countable income of every person included in family size for the purpose of determining income eligibility as prescribed in this subsection.
1. Family size shall consist of:
 - a. The applicant for Child Care Assistance;
 - b. The applicant's natural, adoptive, and step children;
 - c. Any other parent or responsible person living in the household who is legally and financially responsible for either the applicant, or for the children needing care;
 - d. The children of the other parent or responsible person residing in the same household; and
 - e. The tax claimant under subsection R6-5-4914(D)(3).
 2. When a parent applies for Child Care Assistance for a natural, adoptive, or step child, the Department shall:
 - a. If the applicant and other adult in the household are married, or have children in common who need child care, make one family size determination for the family.
 - b. Count the income of both parents.
 3. When a tax claimant resides in the household with a parent who is applying for or receiving Child Care Assistance, the Department shall include the tax claimant in family size if:
 - a. The tax claimant states an intention to claim any of the following members of the eligible family residing in the same household as a dependent on the tax claimant's federal or state income tax return for the current calendar year:
 - i. The parent who is the applicant;
 - ii. The parent's natural, adoptive, or step children less than 18 years of age;
 - iii. The parent's spouse;
 - iv. The other parent of the children for whom assistance is requested, or who are receiving Child Care Assistance; or
 - v. The dependent children of the other parent residing in the household, and who are included in family size.
 - b. The tax claimant signs a declaration stating the intention to claim specific members of the eligible family as tax dependents for the current calendar year.
 4. The Department shall include the tax claimant's dependent children under age 18 and spouse residing in the same household in family size.
 5. When the applicant and his or her spouse are legally married and do not reside in the same household, but have the intention of remaining a family, the Department shall include the spouse in family size if the absent spouse is engaged in an eligible activity under R6-5-4912.
 6. When a caretaker relative applies for Child Care Assistance for another related child only:
 - a. Family size shall consist of the other related child or children only; and
 - b. The Department shall exclude both the caretaker relative and his or her spouse from the family size determination.
 7. When the applicant applies for Child Care Assistance for natural, adoptive, or step children, and also for another related child, the Department shall make one family size determination for the family:
 - a. Family size shall consist of the applicant, the applicant's child, any other related eligible children who need care, and any other parent or responsible person in the household.
 - b. Any income received by or for an "other related" child less than 13 years of age shall be counted.
 - c. If there is another relative in the household who states an intention to claim an other related child as a dependent for income tax purposes, this tax claimant must be the applicant for the child. The Department shall determine family size separately for this child under R6-5-4914(D)(6).
 8. When an unwed minor parent applies for Child Care Assistance for his or her own child, and resides with his or her parents:
 - a. The Department shall include the following in family size, unless the minor parent or the minor parent's children are tax dependents as described under subsection (d) below:
 - i. The minor parent; and
 - ii. The minor parent's child.

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- b. The Department shall not include the parents and siblings of the unwed minor parent in family size.
 - c. The Department shall deem a portion of the monthly gross countable income received by the parent of the minor parent to be available to meet the needs of the unwed minor parent and his or her children as described in this subsection, unless the parent of the minor parent is a tax claimant, under subsection (d) below.
 - i. The Department shall calculate the monthly gross countable income of the parents of the unwed minor parent;
 - ii. The Department shall subtract the amount of monthly gross countable income that equates to 165% FPL as specified in Appendix A, for the number of parents and siblings of the unwed minor parent residing in the same household only; and
 - iii. The Department shall count the remaining monthly gross countable income received by the parents of the unwed minor parent as available to meet the needs of the unwed minor parent and his or her children in the income eligibility determination.
 - d. If a parent of the minor parent is a tax claimant who intends to claim the minor parent or the minor parent's child as a tax dependent, the Department shall determine family size as follows:
 - i. The Department shall include the tax claimant, the tax claimant's spouse, and the tax claimant's dependent children residing in the same household in family size with the minor parent, and his or her child; and
 - ii. The Department shall count all countable income received by the tax claimant and the tax claimant's spouse in the income eligibility determination.
9. When a married, separated, widowed, or divorced minor parent applies for Child Care Assistance for his or her own children:
- a. The Department shall include the minor parent and his or her own dependent children in family size;
 - b. The Department shall include monthly gross countable income received by the minor parent and the other parent or responsible person residing in the home in the income eligibility determination;
 - c. The Department shall not consider income received by the parent of the minor parent in the income eligibility determination, unless the parent of the minor parent is a tax claimant, under subsection (8)(d); and
 - d. The Department shall not include parents and siblings of the minor parent in family size, unless the parent of the minor parent is a tax claimant, under subsection (8)(d).
10. If a tax claimant included in family size is also a parent who needs Child Care Assistance for his or her own child, the tax claimant shall submit a separate application.
- a. The Department shall make a separate eligibility and family size determination for the tax claimant's dependent children less than age 18.
 - b. The Department shall include the parent, spouse or other parent or responsible person, and their dependent children in family size.
11. When a guardian applies for Child Care Assistance for a child in guardianship only, the Department shall:
- a. Make one family-size determination for the child in guardianship.
 - b. Include all children in guardianship in family size.
 - c. Exclude the guardian and the guardian's spouse from family size.
 - d. Count the income received by or for the children in guardianship.
 - e. If the parent of the child needing care is also in the household, the Department shall not include the parent in family size; and shall not count his or her income.
12. When the applicant applies for Child Care Assistance for natural, step, or adoptive children in addition to the children in guardianship, the Department shall:
- a. Make one family-size determination.
 - b. Include in family size the applicant, the applicant's children, the children in guardianship less than 13 years of age who need care, and any other parent or responsible person in the household.
 - c. Count the applicant's and other parent's or responsible person's income.
 - d. Count the income received by or for the children in guardianship less than 13 years of age.
13. When a foster parent applies for Child Care Assistance for his or her own children:
- a. The Department shall include the applicant, other parent or responsible person, and their children in family size; and
 - b. The Department shall not include the foster child in family size unless the foster child is a relative.
- E. Verification of Tax Claimant Status**
1. The Department shall verify tax claimant status as described in R6-5-4914(D) by requiring:
- a. The client to submit a signed and dated declaration stating that no relative 18 years of age or older residing in the same household intends to claim any member of the eligible family as a tax dependent for the current calendar year; or,
 - b. The client and the relative 18 years of age or older residing in the same household who intends to claim a member of the eligible family as a tax dependent for the current calendar year to:
 - i. Submit a signed and dated declaration stating that fact; and,
 - ii. State the name of the family member whom the relative intends to claim as a tax dependent.
2. The Department shall include the tax claimant, his or her spouse, and dependent children in family size upon receipt of the signed declaration.
3. If the tax claimant no longer intends to claim a member of the eligible family as a tax dependent, the client must sign and date a new declaration.
- a. The new declaration shall specify that the tax claimant no longer intends to claim a member of the eligible family as a tax dependent.
 - b. The Department shall remove the tax claimant, tax claimant's spouse, and his or her dependent children from family size after receipt of the signed declaration.
- F. Countable Income.** The Department shall count the gross monthly income of a family as prescribed in subsection (D); countable income shall include:
1. Gross earnings received for work including wages, salary, armed forces pay (with the exception of specifically designated allotments for food and shelter costs), commis-

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- sions, tips, overtime, piece-rate payments, and cash bonuses earned, before any deductions.
2. Net income from non-farm self employment including gross receipts minus business expenses. Gross receipts include the value of all goods sold and services rendered. Business expenses include costs of goods and services purchased or produced, rent, heat, light, power, depreciation charges, wages, and salaries paid, business taxes, and other expenses incurred in operating the business. The value of salable merchandise consumed by the proprietors of retail stores is not included as part of net income. Payments on loans or mortgages obtained to increase capital investments in property or equipment are not allowed as deductible expenses.
 3. Net income from farm self employment which includes gross receipts minus operating expenses. Gross receipts include the value of all products sold, government crop loans, money received from the rental of farm equipment to others, and incidental receipts from the sale of wood, sand, gravel, and similar items. Operating expenses include costs of feed, fertilizer, seed, and other farming supplies, wages paid to farmhands, depreciation charges, cash rent, interest on farm mortgages, farm building repairs, farm taxes, and other expenses incurred in operation of the farm. The value of fuel, food, or other farm products used for family living is not included as part of net income. Payments on loans or mortgages obtained to increase capital investments in property or equipment are not allowed as deductible expenses.
 4. Social Security payments prior to deductions for medical insurance including Social Security benefits and "survivors" benefits, and permanent disability insurance payments made by the Social Security Administration.
 5. Railroad retirement insurance income.
 6. Dividends including interest on savings, stocks and bonds, income and receipts from estates or trusts, net rental income or royalties, receipts from boarders or lodgers (net income received from furnishing room and board shall be 1/3 of the total amount charged). Interest on Series H. United States Government Savings bonds.
 7. Mortgage payments received shall be prorated on a monthly basis.
 8. Public assistance payments including payments from the following programs: Cash Assistance, Supplemental Security Income (SSI), State Supplementary Payments (SSP), General Assistance (GA), Bureau of Indian Affairs General Assistance (BIAGA), and Tuberculosis Control (TC).
 9. Pensions and annuities including pensions or retirement benefits paid to a retired person or their survivors by a former employer or by a union, or distributions or withdrawals from an individual retirement account.
 10. Unemployment Insurance payments including compensation received from government unemployment insurance agencies or private companies during periods of unemployment, and any strike benefits received from union funds.
 11. Workers' compensation payments.
 12. Money received from the Domestic Volunteer Act when the adjusted hourly payment is equal to or greater than minimum wage; Action Volunteer Programs include VISTA, Foster Grandparent Program (FGP), Retired Senior Volunteer Program (RSVP), and Senior Companion Program (SCP).
 13. Alimony or spousal maintenance which shall be counted the month received.
 14. Child support which shall be counted the month received.
 15. Veterans' pensions including benefits and disability payments paid periodically by the Veterans Administration to members of the Armed Forces or to a survivor of deceased veterans.
 16. Cash gifts received on a monthly basis from relatives, other individuals, and private organizations, as a direct payment in the form of money.
 17. Money received through the lottery, sweepstakes, contests, or through gambling ventures whether received on an annuity or lump sum basis.
 18. Any other source of income not specifically excluded in subsection (F).
- G. Excluded Income.** The Department shall exclude the items listed in this subsection when determining a family's gross monthly income.
1. Per capita payments to or funds held in trust for any individual in satisfaction of a judgment of the Indian Claims Commission or the Court of Claims;
 2. Payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under Section 21(a) of the Act;
 3. Money or capital gains received as a lump sum, from the sale of personal or real property, such as stocks, bonds, or a car (unless the person was engaged in the business of selling such property, in which case the net proceeds would be counted as income from self employment);
 4. Withdrawals of bank deposits;
 5. Loans; money borrowed;
 6. Tax refunds;
 7. Any monies received through the federal Earned Income Credit (EIC);
 8. One time lump sum awards or benefits, including:
 - a. Inherited funds;
 - b. Insurance awards;
 - c. Damages recovered in a civil suit;
 - d. Monies contributed by a client to a retirement fund that are later withdrawn prior to actual retirement; and
 - e. Retroactive public assistance payments;
 9. The value of U.S. Department of Agriculture (USDA) Food Stamps;
 10. The value of USDA-donated food;
 11. The value of any supplemental food assistance received under the Child Nutrition Act of 1966 and special food service program for children under the National School Lunch Act, the Women, Infant, and Children Program (WIC), Child and Adult Care Food Program (C.A.C.F.P.), and the School Lunch Program;
 12. Any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (for example, Navajo/Hopi Relocation Act);
 13. Earnings of a child who is under the age of 18 and attending high school or other training program, and who is not a minor parent who needs Child Care Assistance for his or her own child;
 14. Home produce used for household consumption;
 15. Government-sponsored training program expenses (TRE payments) such as training-related expenses paid to JOBS participants and Job Training Partnership Act (JTPA) training expenses paid directly to the client;
 16. The value of goods or services received in exchange for work;
 17. Interest on Series E, United States Government Savings bonds;

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18. Foster care maintenance payments received for care of foster children;
 19. Adoption subsidy payments received for the care of adopted children;
 20. Educational loans, grants, awards, and scholarships regardless of their source, including Pell Grants, Supplemental Educational Opportunity Grants (SEOG), Bureau of Indian Affairs (BIA) Student Assistance Grants, college work-study income, Carl D. Perkins Vocational and Applied Technology Education Act income, and any other state or local, public, or private educational loans, grants, awards, and scholarships;
 21. Money received from the Domestic Volunteer Act when the adjusted hourly payment is less than minimum wage; Action Volunteer Programs include VISTA, Foster Grandparent Program (FGP), Retired Senior Volunteer Program (RSVP), and Senior Companion Program (SCP);
 22. Housing and Urban Development (HUD) benefits, cash allowances and credits against rent;
 23. Vendor payments including payments made directly to a third party by friends, relatives, charities, or agencies to pay bills for the client;
 24. Vocational Rehabilitation training-related expenses (TRE) which are reimbursements for expenses paid. Sub-sistence and maintenance allowances, and incentive payments not designated as wages;
 25. Disaster relief funds and emergency assistance provided under the Federal Disaster Relief Act, and comparable assistance provided by a state or local government, or disaster assistance organization;
 26. Energy assistance including all state or federal benefits designated as "energy assistance" or assistance from a municipal utility or non-profit agency;
 27. Agent Orange payments;
 28. Any other income specifically excluded by applicable state or federal law.
- H. Income Deduction.** Child support that is paid for dependents who do not reside in the same household with the eligible family shall be deducted from the monthly gross countable income prior to income calculation and fee level and copayment assignment as prescribed in subsection (I) and R6-5-4915.
- I. Income Calculation.** The Department shall calculate monthly income as prescribed in this subsection.
1. The Department shall include all income of all family members included in the family-size determination, other than income excluded as prescribed in R6-5-4914(F) in the determination of income eligibility.
 2. The Department shall calculate a monthly figure for each source of income separately with the appropriate method used for calculation.
 3. After calculating monthly income for each source of income, the Department shall add the monthly amounts from each source to obtain the total monthly income.
 4. The Department shall convert income received less often than monthly to a monthly figure as provided in this subsection.
 - a. The Department shall prorate the total income over the number of months that the income is intended to cover.
 - b. If the income is received on or after the date of application, a monthly share of income shall be considered beginning with its earliest possible effective date and for a number of months equal to the number of months which the income covers.
 - c. If the family receives the income prior to the date of application, the number of months that the income is intended to cover shall be equal to the number of months of coverage remaining.
5. The Department shall anticipate income for a current or future month based on the averaged income received in the most recent 30-day period, unless the Department receives new information that indicates that the income has changed, as verified under subsection (J).
- a. If the income received by the household has increased due to receipt of a new source of income, an increased work schedule, or a raise in salary or wages, the Department shall calculate the gross monthly countable income for the household based on the amount of income anticipated to be received on a monthly basis. The Department shall begin counting the new or increased income as described under subsection (6).
 - b. If the income received by the household has decreased due to loss of a source of income, a decreased work schedule, or a reduction in salary or wages, the Department shall cease counting the income effective the date that the client provides verification of the loss or reduction in income.
6. When a family receives a new or increased income source that will be received monthly, weekly, bi-weekly, or semi-monthly:
- a. The income shall not be considered available to the family until the date that the first full payment is received.
 - b. The Department shall not assess a new fee level or ineligibility to the client until the monies are available.
 - c. Once the client has already received the payment that includes the new or increased income source, and a higher fee level or ineligibility results:
 - i. The Department shall increase the fee level or terminate assistance no earlier than 10 days after the first full paycheck has been received; and
 - ii. The Department shall send a 10-day negative action notice prior to increasing the fee level or terminating assistance.
7. The Department shall convert income received more often than monthly, for a period covering less than a month, to a monthly amount by one of the methods listed below.
- a. If the income amount does not vary and is received monthly, weekly, bi-weekly, or semi-monthly, the conversion to a monthly amount will be obtained by multiplying the pay period amount by:
 - i. 1, if monthly;
 - ii. 4.3, if weekly;
 - iii. 2.15, if bi-weekly; or
 - iv. 2, if semi-monthly.
 - b. This amount shall be applied as income on an ongoing monthly basis until there is a change in the income.
 - c. If the monthly income received varies in amount and frequency, and exact monthly figures are unavailable, the Department shall use an average monthly figure.
8. When the Department calculates the gross monthly income for the family, the whole dollar amount only shall be used to determine income eligibility, and fee level and copayment assignment; any amount that is a fraction of a

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whole dollar shall be rounded down to the next whole dollar.

- J. Verification of Income. The client shall verify income by providing written documentation of income as requested by the Department such as:
1. Pay stubs for the most recent calendar month, or for any month of potential overpayment;
 2. Employer's statement verifying work schedule, hourly rate of pay, and frequency of pay;
 3. Benefit award statements for the most recent benefit period;
 4. Statements of account to verify interest income;
 5. Quarterly or annual tax returns for the most recent quarter or year for self-employment income;
 6. Self-employment log accompanied by gross sales receipts and business expense receipts for the most recent calendar month or quarter; and
 7. Other written documentation from the source of the income indicating the amount of income received, source of income, frequency received, and naming the payee.

Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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.

R6-5-4915. Fee Level and Copayment Assignment

- A. The Department shall assign a fee level to the family based on family size and monthly gross countable income, as specified in Appendix A.
- B. The Department shall assign individual minimum required copayment amounts for each child in the family based on the fee level assignment, and the number of children needing care, as specified in Appendix A.
- C. The Department shall not assign a fee level or minimum required copayment to Jobs participants, Cash Assistance participants who need Child Care Assistance for employment, or families determined eligible and referred by CPS or DDD.
- D. When a client fails to pay the DES-required copayment, or fails to make satisfactory arrangements for payment of the DES-required copayment with a child care provider, the client is ineligible for Child Care Assistance.
- E. When the Department has determined that an client is ineligible for Child Care Assistance due to nonpayment of the copayment, the client is ineligible for any Child Care Assistance program that requires a copayment until past-due copayments have been paid, or until satisfactory arrangement have been made with the provider for payment.

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Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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.

R6-5-4916. Special Eligibility Criteria**A. Transitional Child Care**

1. Former Cash Assistance participants who are attempting to achieve independence from the Cash Assistance program, who need Child Care Assistance for employment, and who are otherwise eligible shall receive up to 24 months of Transitional Child Care Assistance.
2. The former Cash Assistance participant shall have received Cash Assistance in Arizona in at least one month and shall apply for Child Care Assistance within six months after the Cash Assistance case closure date.
3. The former Cash Assistance participant and any other parent or responsible person in the household shall need Child Care Assistance to maintain employment.
4. The most recent Cash Assistance case closure shall not have been due to a sanction for Jobs or Child Support noncompliance, and the Cash Assistance participant shall not have been sanctioned due to intentional program violation (IPV) at the time of the most recent Cash Assistance case closure.

B. Cash Assistance Diversion Participants.

1. Applicants for Cash Assistance who are diverted from long-term Cash Assistance through the Cash Assistance Diversion program shall be treated as Cash Assistance participants during the three-month period that the Cash Assistance Diversion payment covers.
2. Cash Assistance Diversion participants shall be eligible for Child Care Assistance for employment activities without regard to income as prescribed in R6-5-4914(A) during the three-month Diversion period.
3. Cash Assistance Diversion participants shall be eligible for Child Care Assistance for job search activities during the three-month Diversion period.
4. Cash Assistance Diversion participants shall be eligible for Transitional Child Care after the three-month Diversion period if the income eligibility requirements in R6-5-4914(B) and the TCC requirements in subsection (A) of this provision are met.

Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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.

R6-5-4917. Waiting List for Child Care Assistance**A. Implementation of a Waiting List for Child Care Assistance.**

1. The Department may implement a waiting list for Child Care Assistance whenever it determines that sufficient funding is not available to sustain benefits for all of the applicants requesting assistance.

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- a. The Department may implement a waiting list for all applicants under subsection (B); or,
 - b. The Department may implement a partial waiting list and prioritize access to Child Care Assistance for applicants based on income under subsection (D).
2. When the waiting list is in effect, the Department shall place applicants determined to be eligible for Child Care Assistance on the waiting list under this subsection, and shall not authorize Child Care Assistance until the Department determines that sufficient funding is available.
- B. Applicants Who Are Subject To the Waiting List.** When the waiting list is in effect, the Department shall place applicants determined to be eligible for Child Care Assistance on the waiting list, including individuals who are reapplying for Child Care Assistance following case closure. The Department shall place the following applicants on the waiting list:
1. Applicants who are not Cash Assistance participants but who need Child Care Assistance to maintain employment under R6-5-4912(A).
 2. Teen parents who need Child Care Assistance for educational activities under R6-5-4912(D).
 3. Applicants who need Child Care Assistance because they are unable or unavailable to care for their own children due to physical, mental, or emotional disability, participation in a drug treatment or court-ordered community service program, or residency in a homeless or domestic violence shelter under R6-5-4912(F).
- C. Applicants Who Are Not Subject To the Waiting List.** When the waiting list is in effect, the Department shall not place the following applicants determined eligible for Child Care Assistance on the waiting list, and shall proceed to authorize Child Care Assistance under R6-5-4918.
1. Jobs participants who need Child Care Assistance to participate in the Jobs Program, and who are referred to CCA under R6-5-4904(B).
 2. Cash Assistance participants who need Child Care Assistance to maintain employment under R6-5-4904(B).
 3. CPS referred families, and CPS or DDD foster families who need Child Care Assistance as documented in a CPS or foster care case plan, and who are referred to CCA under R6-5-4904(B).
 4. Former Cash Assistance participants who need Child Care Assistance to maintain employment under R6-5-4916(A).
- D. Prioritization of Applicants for Child Care Assistance When the Waiting List Is In Effect.** The Department shall prioritize applicants for authorization of Child Care Assistance when the waiting list is in effect under this subsection.
1. **Prioritization Based On Income.**
 - a. Families with gross monthly incomes at or below 100% of the Federal Poverty Level (FPL) receive the highest priority for assistance;
 - b. The Department shall prioritize the remainder of families applying for Child Care Assistance when the waiting list is in effect in the following order:
 - i. Families with gross monthly incomes between 101% FPL and 110% FPL;
 - ii. Families with gross monthly incomes between 111% FPL and 120% FPL;
 - iii. Families with gross monthly incomes between 121% FPL and 130% FPL;
 - iv. Families with gross monthly incomes between 131% FPL and 140% FPL;
 - v. Families with gross monthly incomes between 141% FPL and 150% FPL;
 - vi. Families with gross monthly incomes between 151% FPL and 160% FPL;
 - vii. Families with gross monthly incomes between 161% FPL and 165% FPL;
 2. **Prioritization Based On Application Date.** The Department shall place clients determined eligible for Child Care Assistance on the waiting list effective the date that the Department receives an identifiable application, under R6-5-4904(A)(2).
- E. Cooperation Requirement for Clients on the Waiting List.**
1. Clients shall cooperate with the Department to maintain eligibility while on the waiting list, under R6-5-4911(A).
 2. If the family's household income changes, the client shall notify the Department of the change in income within 2 workdays.
 3. If someone moves in or out of the household, the client is required to notify the Department within 2 workdays.
 4. The Department shall recalculate gross household income and notify the client of any changes in priority status described under subsection (D) based on the change in income or family size.
- F. Loss of Employment While On the Waiting List.**
1. If the parent or caretaker of the child loses employment while on the waiting list, the family may remain on the waiting list without an eligible activity.
 2. When the Department selects the family for release from the waiting list under subsection (H), the Department shall require the parent or caretaker of the child to verify participation in an eligible activity under R6-5-4912 before the Department authorizes the family to receive Child Care Assistance.
- G. Determination of Ineligibility While On the Waiting List.**
1. If the family becomes ineligible for Child Care Assistance while on the waiting list, or during release from the waiting list under subsection (J), the Department shall remove the client from the waiting list and close the case.
 2. The client shall submit a new application and verify eligibility for Child Care Assistance in order to be added back onto the list effective the new application date.
- H. Selection from the Waiting List.**
1. The Department shall select clients for release from the waiting list within each level of income priority as described under subsection (D), and in application date order.
 2. When the Department notifies the client that he or she is being released from the waiting list, the Department may require the client to verify income, employment, other household circumstances or provider selection prior to being authorized for Child Care Assistance.
- I. Clients Determined Eligible Upon Selection for Release from the Waiting List.**
1. The Department shall authorize Child Care Assistance effective a date specified by the Department based on the availability of funding, after the client has submitted any requested verification and the Department has determined that the family remains eligible for Child Care Assistance.
 2. If the client is eligible for Child Care Assistance, the Department shall authorize Child Care Assistance, and shall notify the client in writing regarding:
 - a. The start date of Child Care Assistance;
 - b. The amount of assistance authorized for each child under R6-5-4918; and
 - c. The assigned fee level and copayment for each child.

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- J. Clients Determined Ineligible Upon Selection for Release from the Waiting List.**
1. If the client is not eligible for Child Care Assistance as described in R6-5-4920, the Department shall notify the client regarding ineligibility under R6-5-4921.
 2. The Department shall require the client to submit a new application and verify eligibility for Child Care Assistance in order to be added back onto the list effective the new application date, if a waiting list remains in effect.
- K. Clients Selected for Release from the Waiting List in Error.**
1. If the Department determines that a client was not eligible for selection from the waiting list, and the waiting list remains in effect, the Department shall proceed as described under this subsection.
 2. If the Department determines that the client is currently at a lower level of priority for assistance under subsection (D)(1) due to a previously unreported change in income or family size, the Department shall not authorize Child Care Assistance.
 3. The Department shall reinstate the client on the waiting list effective the existing application date; and,
 4. Notify the family in writing of reinstatement to the waiting list and the newly assigned level of priority.
- Historical Note**
- Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-5-4917 renumbered to R6-5-4918; new R6-5-4917 made by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).
- 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.*
- R6-5-4918. Authorization of Child Care Assistance**
- A. Authorization Based on Eligible Activity or Need.** The Department shall authorize Child Care Assistance for a portion of each 24-hour day based on the verified eligible activity or need of the parent and responsible person for the child needing care.
- B. Authorization Based on Unavailability.** The amount of Child Care Assistance authorized by the Department shall be based on the amount of time that the client and any other parent or responsible person in the household are unavailable or incapable to provide care to their own children due to an eligible activity or need as prescribed in R6-5-4911(F) and R6-5-4912. When there are two or more parents or responsible persons in the household, Child Care Assistance shall be authorized for the amount of time that neither parent or responsible person is available due to an eligible activity or need.
- C. Authorization for Self-employment Activities.**
1. The Department shall authorize Child Care Assistance for self-employment activities based on monthly net income divided by the current hourly minimum wage standard.
 2. Authorization of Child Care Assistance for self-employment activities shall not exceed the lesser of:
 - a. The maximum number of Child Care Assistance units that can be authorized as prescribed in subsections (B) and (D), or
 - b. The number of hours calculated by dividing monthly net income from self-employment by the amount of the hourly minimum wage standard, or
 - c. The number of hours of Child Care Assistance needed by the client to perform self employment activities.
- D. Six-child Authorization Limit.**
1. The Department shall authorize no more than six children in the eligible family at any given point in time.
 - a. The six-child authorization limit applies to clients under this subsection.
 - i. Clients who are not Cash Assistance participants but who need Child Care Assistance to maintain employment;
 - ii. Teen parents who need Child Care Assistance for educational activities under R6-5-4912(D); and
 - iii. Clients who need Child Care Assistance because they are unable or unavailable to care for their own children due to physical, mental, or emotional disability, participation in a drug treatment or court-ordered community service program, or residency in a homeless or domestic violence shelter under R6-5-4912(F).
 - b. The six-child authorization limit shall not apply to the following clients:
 - i. Jobs participants who need Child Care Assistance to participate in the Jobs Program, and who are referred to CCA under R6-5-4904(B);
 - ii. Cash Assistance participants who need Child Care Assistance to maintain employment;
 - iii. CPS referred families, and CPS or DDD foster families who need Child Care Assistance as documented in a CPS or foster care case plan, and who are referred to CCA under R6-5-4904(B); and
 - iv. Former Cash Assistance participants who need Child Care Assistance to maintain employment under R6-5-4916(A).
 - c. For eligible families who are not subject to the six-child limit, there is no limit to the number of eligible children whom the Department can authorize to receive Child Care Assistance in the eligible family.
 2. If the eligible family requests Child Care Assistance for more than six children, the family shall select the six children to be authorized to receive Child Care Assistance.
 3. If the family fails to designate six children to receive Child Care Assistance as requested, the Department shall authorize the six youngest children.
 4. If the client is already receiving Child Care Assistance for six children and requests assistance for a new child, the Department shall not authorize assistance for the new child until the client notifies the Department which child will no longer receive Child Care Assistance.
- E. Units of Child Care Assistance.**
1. The Department shall authorize Child Care Assistance in full- and part-day units;
 2. The Department shall not authorize more than 31 units for each child, per child care provider in a calendar month;
 3. A part-day unit of Child Care Assistance is less than six hours;
 4. A full-day unit of Child Care Assistance is six hours or more;
 5. Each child care provider determines the upper limit of what constitutes a full day of care for that provider.

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- F. Date of Eligibility.** The Department shall approve eligibility for Child Care Assistance effective the application file date or referral receipt date as described in R6-5-4904 if the client satisfies all applicable conditions of eligibility as prescribed in this Article.
- G. Date of Authorization.**
1. The Department shall authorize Child Care Assistance to begin effective the start date of the eligible activity or need, but not earlier than application file date, request date, or referral receipt date as described in R6-5-4904.
 2. The Department may authorize Child Care Assistance with an effective date that precedes the referral receipt date when the referral is received untimely due to administrative delay and the eligible start date of the activity or need precedes the referral receipt date for clients who are referred for Child Care Assistance as described in R6-5-4904 (B).
- H. Exclusion from Authorization.** The Department shall not authorize Child Care for educational services for children enrolled in grades 1 through 12 when such services are provided during the regular school day.
- Historical Note**
- Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-5-4918 renumbered to R6-5-4920; new R6-5-4918 renumbered from R6-5-4917 and amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).
- 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.*
- R6-5-4919. Time Limit for Child Care Assistance**
Under A.R.S. § 46-803(K), each child shall receive time-limited Child Care Assistance, unless the child's parents or caretakers qualify for an extension under this Section.
- A. Clients Who Are Subject To the Time Limit.**
1. Clients who are not Cash Assistance participants but who need Child Care Assistance to maintain employment;
 2. Teen parents who need Child Care Assistance for educational activities under R6-5-4912(D); and
 3. Clients who need Child Care Assistance because they are unable or unavailable to care for their own children due to physical, mental, or emotional disability, participation in a drug treatment or court-ordered community service program, or residency in a homeless or domestic violence shelter under R6-5-4912(F).
- B. Clients Who Are Not Subject To the Time Limit.**
1. Jobs participants who need Child Care Assistance to participate in the Jobs Program, and who are referred to CCA under R6-5-4904(B);
 2. Cash Assistance participants who need Child Care Assistance to maintain employment;
 3. CPS referred families, and CPS or DDD foster families who need Child Care Assistance as documented in a CPS or foster care case plan, and who are referred to CCA under R6-5-4904(B); and
 4. Former Cash Assistance participants who need Child Care Assistance to maintain employment under R6-5-4916(A).
- C. Effective Date of the Time Limit.** The 60-month time limit shall begin:
1. For applicants of Child Care Assistance eligible under any of the categories listed in subsection (A) who file an application on or after January 1, 2007, on the date the application is received by the Department.
 2. For clients receiving Child Care Assistance on January 1, 2007 under subsection (A), January 1, 2007.
 3. For clients receiving Child Care Assistance on January 1, 2007 under subsection (B), the first date that the Department determines that the existing client is eligible for Child Care Assistance under one of the categories described in subsection (A).
- D. Calculation of the Time Limit.**
1. Each child receiving Child Care Assistance under subsection (A) shall receive time-limited assistance for:
 - a. Any combination of 1380 paid full or part day child care units; or
 - b. Child Care Assistance that spans 60 calendar months, whichever is later. A calendar month is one in which the Department pays for at least one full- or part-day unit.
 2. Any unit of assistance used by the child, and later identified as a provider or agency caused overpayment shall not count toward the child's time limit.
 3. Any unit of assistance used by the child, and later identified as a client-caused overpayment shall not count toward the child's time limit, if the family repays the overpayment.
 4. The Department shall apply the time limit individually to each child in the family, and not to the parent or caretaker of the child.
 - a. If a different caretaker applies for the child at a later point in time, each child will be entitled to the remaining portion of time-limited Child Care Assistance that has not yet been utilized.
 - b. Any Child Care Assistance utilized by the child as part of an eligible family that was exempt from the time limit under subsection (B) shall not count toward the child's time limit.
- E. Expiration of the Time Limit.**
1. When a child exhausts time-limited of Child Care Assistance under this subsection, the Department shall stop assistance for the child unless the parents or caretakers of the child qualify for an extension under Section (F).
 2. When all of the children in a family have exhausted the time limits of Child Care Assistance, the Department shall terminate assistance for the family unless the parents or caretakers:
 - a. Qualify for an extension under subsection (F); or,
 - b. Are no longer subject to the time limit as described in subsection (B).
- F. Extension of the Time Limit for Child Care Assistance.**
1. The Department shall grant a 6-month extension to the time limit if the parents or caretakers show efforts toward self-sufficiency during the most recent 6-month period. The Department may elect to grant extensions on a 12-month basis. In order to qualify for an extension, the parents or caretakers in the family shall:
 - a. Currently be engaged in an activity that promotes self-sufficiency, which means the parents or caretakers continue to:
 - i. Be employed a monthly average of 20 or more hours per week;
 - ii. Be employed less than 20 hours per week and earning at least minimum wage;

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- iii. Be employed a monthly average of at least 20 hours per week while attending school or training;
 - iv. Remain self-employed with a net profit equating to a monthly average of 20 hours per week times minimum wage;
 - v. Attend high school, G.E.D. classes, or remedial education for the attainment of a high school diploma for a teen parent under 20 years of age;
 - vi. Follow the treatment plan prescribed by a physician, psychiatrist, psychologist for the treatment of a specified mental, physical, or emotional condition, which precludes the parent or caretaker for caring for his or her own child for a portion of a 24-hour day;
 - vii. Participate in a drug/alcohol rehabilitation plan or court-ordered community service plan; or
 - viii. Participate in a homeless or domestic violence case plan while residing in a shelter; and,
- b. Sign and date the "Self-Sufficiency Statement" and declare that the parents or caretakers have taken at least one of the following actions during the most recent six or 12-month period to promote self-sufficiency:
- i. Received a job promotion, or an increase in wages, hours, or benefits;
 - ii. Remained consistently employed;
 - iii. Remained self-employed and consistently demonstrated a net profit;
 - iv. Applied for a better job;
 - v. Left one job for a better job (higher pay, more hours, better schedule, or better benefits);
 - vi. Registered with DES Employment Services (e.g., One Stop Career Center or DES Job Service) or another public or private employment agency, or job searched independently;
 - vii. Not requested Cash Assistance;
 - viii. Engaged in activities to pursue or maintain child support payments from an absent parent through DES Child Support Enforcement, the county attorney's office, or a private attorney;
 - ix. Attended work-related school or training, or pursued a degree or certificate that will lead to enhanced career opportunities;
 - x. Attended high school, remedial education for the attainment of a high school diploma or G.E.D. classes;
 - xi. Attended English for Speakers of Other Languages (E.S.O.L.) classes;
 - xii. Attended a trade or vocational school, college or university and made satisfactory progress in the activity;
 - xiii. Continued with a course of treatment under the direction of a physician, psychiatrist, or psychologist;
 - xiv. Followed a shelter case plan while residing in a domestic violence/homeless shelter;
 - xv. Participated in or completed a drug/alcohol rehabilitation or court-ordered community service program;
 - xvi. Participated in other employment-related activities or career-related training activities; or
 - xvii. Any other similar action acceptable to the Department that demonstrates that the parents or caretakers are moving toward self-sufficiency.
- 2. If the parents or caretakers do not meet the conditions specified at subsections (1)(a) and (b), the family does not qualify for an extension of the time limit.
 - 3. If the parents or caretakers meet the conditions specified at subsections (1)(a) and (b), and all other eligibility criteria are met, the family shall qualify for additional six or 12-calendar month extension periods if the parents or caretakers continue to meet the criteria at the end of each extension period.
- G. Extension of the Time Limit after Case Closure.** When a parent or caretaker applies for Child Care Assistance after the time limit for the child in care has been exhausted, the parent or caretaker of the child may qualify for an extension as follows:
- 1. The parent or caretaker shall be an eligible applicant under R6-5-4911(B), and shall meet the criteria for Child Care Assistance eligibility;
 - 2. All parents or caretakers shall meet the self-sufficiency criteria prescribed at R6-5-4919(F); and
 - 3. The parent or caretaker may qualify for successive extensions of the time limit under subsection (F).

Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-5-4919 renumbered to R6-5-4921; new R6-5-4919 made by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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.

R6-5-4920. Denial or Termination of Child Care Assistance

The Department shall deny or terminate Child Care Assistance and provide written notification as prescribed in R6-5-4921 when the client:

- 1. Is not an eligible applicant as prescribed in R6-5-4911(B);
- 2. Is not a U.S. citizen or legal resident of the U.S.;
- 3. Is not a resident of the state of Arizona;
- 4. Has no children under the age of 13;
- 5. Has income that exceeds the maximum allowable as prescribed in R6-5-4914(C);
- 6. Does not have an eligible need, and is not engaged in an eligible activity as prescribed in R6-5-4912;
- 7. Is available to care for the children for whom assistance is requested (or there is another parent or responsible person in the household who is not engaged in an eligible activity and is available to provide care);
- 8. Has not provided the information or documentation required for a determination or redetermination of eligibility;
- 9. Has failed to cooperate in the arrangement of child care services;
- 10. Has not selected a child care provider who is registered with the Department;
- 11. Has requested that the application be withdrawn or that assistance be terminated;
- 12. Is a member of a family that already has an active case or pending application on file for Child Care Assistance;

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13. Cannot be located by phone or mail and mail addressed to last known address has been returned;
14. Is deceased, incarcerated, or confined to an institution; or
15. Does not satisfy one or more eligibility criteria listed in R6-5-4904 through R6-5-4916;
16. Has exhausted the 60-month lifetime limit for all children in the eligible family under R6-5-4919(D) and does not qualify for an extension.

Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-5-4920 renumbered to R6-5-4923; new R6-5-4920 renumbered from R6-5-4918 and amended by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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.

R6-5-4921. Notification Requirements

- A. The Department shall mail or deliver written notice to the client as follows:
 1. On a decision about an application, within 30 calendar days of the date that the Department receives the completed application.
 2. On a positive action, the Department shall mail adequate notice on or before the date the action will become effective.
 3. On a change in the amount of authorized units based on a change in need, the Department shall mail adequate notice on or before the date the action will become effective.
 4. On a negative action, the Department shall mail the notice at least 10 calendar days in advance of the date the action will become effective.
 5. On changes in law or policy which affect entire classes or groups and concern issues not related to individual questions of fact, the Department shall issue notice of such action at least 10 calendar days in advance of the effective date of the action.
- B. The Department shall not provide notice on a negative action when:
 1. Child Care Assistance authorized for a specified period of time is terminated and the individual was informed in writing of the termination date when the Child Care Assistance was initiated;
 2. The applicant, client, or child is deceased; and
 3. There is a loss of contact with the client and mail addressed to the last known address has been returned.
- C. Written notice shall include a statement of the action to be taken, the reasons for the intended action, citation to the specific rule supporting the action, and an explanation of the client's rights regarding a request for a fair hearing.

Historical Note

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Former R6-5-4921 renumbered to R6-5-4924; new R6-5-4921 renumbered from R6-5-4919 by exempt

rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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.

R6-5-4922. Repealed**Historical Note**

Adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Section repealed by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

Editor's Note: The following Section was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 41-1005(A)(27). Exemption from A.R.S. Title 41, Chapter 6 means 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.

R6-5-4923. Overpayments

- A. Overpayments; Date of Discovery.
 1. The Department shall pursue collection of all client- and provider-caused overpayments.
 2. The Department discovers an overpayment on the date the Department determines that an overpayment exists.
 3. The Department shall write an overpayment report within 90 days of the discovery date.
 4. If the CCA office suspects that an overpayment was caused by fraudulent activity, it shall refer the overpayment report to the Department's Office of Special Investigations for potential prosecution.
 5. The Department shall not attempt to recover an overpayment from a person who is not a current recipient when the overpayment was not the result of fraud, and the Department has exhausted reasonable efforts to collect the overpayment and has determined that it is no longer cost effective to pursue the claim.
- B. Overpayments: Persons Liable. The Department shall pursue collection of an overpayment from:
 1. The client if the overpayment was caused by the client;
 2. Any individual member of the family who was included in family size as prescribed in R6-5-4914 (D) during the overpayment period if the overpayment was caused by the client; or
 3. The child care provider if the overpayment was caused by the provider.

Historical Note

Adopted effective July 1, 1998, under an exemption from the provisions of A.R.S. Title 41, Chapter 6; filed in the Secretary of State's Office June 30, 1998 (Supp. 98-2). Former R6-5-4923 renumbered to R6-5-4925; new R6-5-4923 renumbered from R6-5-4920 by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

R6-5-4924. Appeals

- A. Entitlement to a Hearing.

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1. An applicant for or recipient of Child Care Assistance is entitled to a hearing to contest the following Department actions:
 - a. Denial of the right to apply for assistance;
 - b. Complete or partial denial of an application for assistance;
 - c. Failure to make an eligibility determination on an application within 30 days of the application file date;
 - d. Suspension, termination, reduction, or withholding of assistance except as provided in subsection (B);
 - e. Increase in the fee level and DES-required copayment amount; or
 - f. The existence or amount of an overpayment attributed to the family or the terms of a plan to repay the overpayment.
 2. Applicants and recipients are not entitled to a hearing to challenge benefit adjustments made automatically as a result of changes in federal or state law, unless the Department has incorrectly applied such law to the individual seeking the hearing.
- B. Request for Hearing; Time Limits.**
1. A person who wishes to appeal a negative action shall file a written request for a fair hearing with a local CCA office, within 10 days of the negative action notice date.
 2. A request for a hearing is deemed filed;
 - a. On the date it is mailed, if transmitted via the United States Postal Service or its successor. The mailing date is as follows:
 - i. As shown by the postmark;
 - ii. As shown by the postage meter mark of the envelope in which it is received, if there is no postmark; or
 - iii. The date entered on the document as the date of its completion, if there is no postmark or no postage meter mark, or if the mark is illegible.
 - b. On the date actually received by the Department, if not sent through the mail as provided in subsection (B)(2)(a).
 3. The submission of any document is considered timely if the appellant proves that delay in submission was due to Department error or misinformation, or to delay caused by the U.S. Postal Service or its successor.
 4. Any document mailed by the Department is considered as having been given to the addressee on date it is mailed to the addressee's last known address. The date mailed shall be presumed to be the date shown on the document, unless otherwise indicated by the facts.
 5. The Office of Appeals shall deny any request that is not timely filed. A party may appeal a decision on the timeliness of an appeal.
- C. Hearing Requests; Preparation and Processing.**
1. Within two work days of receiving a request for appeal, the local CCA office shall notify the Office of Appeals of the hearing request.
 2. Within 10 days of receiving a request for appeal, the local CCA office shall prepare and forward to the Office of Appeals a prehearing summary which shall include:
 - a. The appellant's name (and case name, if different);
 - b. The appellant's SSN (or case number, if different);
 - c. The local office responsible for the appellant's case;
 - d. A brief summary of the facts surrounding, and the grounds supporting, the negative action;
 - e. Citations to the specific provisions of this Article or the Department's CCA manual which support the Department's action; and
 - f. The decision notice and any other documents relating to the appeal.
3. The local office shall mail the appellant a copy of the summary. Upon receipt of a hearing request, the Office of Appeals shall schedule the hearings.
- D. Continuation of Assistance Pending Appeal; Exceptions.**
1. If an appellant files a request for appeal within 10 calendar days of the negative action notice date, the Department shall continue assistance at the current level unless:
 - a. The appellant waives continuation of current assistance;
 - b. The appeal results from a change in federal or state law which mandates an automatic adjustment for all classes of recipients and does not involve a misapplication of the law; or
 - c. The appellant is requesting continuation of TCC benefits for longer than the 24-month eligibility period.
 2. The negative action shall be stayed until receipt of an official written decision in favor of the Department, except in the following circumstances:
 - a. At the hearing and on the record, the hearing officer finds that the sole issue involves application of law, and the Department properly applied the law and computed the assistance due the appellant;
 - b. A change in eligibility or assistance amount occurs for reasons other than those being appealed, and the eligible family receives and fails to timely appeal a notice of negative action concerning such change;
 - c. Federal or state law mandates an automatic adjustment for classes of recipients;
 - d. The appellant withdraws the request for hearing; or
 - e. The appellant fails to appear for a scheduled hearing without prior notice to the Office of Appeals, and the hearing officer does not rule in favor of the appellant based upon the record.
 3. Upon receipt of a decision in favor of the Department, the Department shall write an overpayment for the amount of any assistance the family received in excess of the correct amount, while the stay was in effect.

Historical Note

Section R6-5-4924 renumbered from R6-5-4921 by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

R6-5-4925. Maximum Reimbursement Rates For Child Care
The Department shall pay the maximum reimbursement rates for child care as set forth in Appendix B.

Historical Note

Section R6-5-4925 renumbered from R6-5-4923 by exempt rulemaking at 13 A.A.R. 92, effective December 31, 2006 (Supp. 06-4).

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Appendix A. Child Care Assistance Gross Monthly Income Eligibility Chart and Fee Schedule

ARIZONA DEPARTMENT OF ECONOMIC SECURITY
CHILD CARE ASSISTANCE GROSS MONTHLY INCOME ELIGIBILITY CHART AND FEE SCHEDULE
Effective October 1, 2015

FAMILY SIZE	FEE LEVEL 1 (L1) INCOME MAXIMUM EQUAL TO OR LESS THAN 85% FPL*	FEE LEVEL 2 (L2) INCOME MAXIMUM EQUAL TO OR LESS THAN 100% FPL*	FEE LEVEL 3 (L3) INCOME MAXIMUM EQUAL TO OR LESS THAN 135% FPL*	FEE LEVEL 4 (L4) INCOME MAXIMUM EQUAL TO OR LESS THAN 145% FPL*	FEE LEVEL 5 (L5) INCOME MAXIMUM EQUAL TO OR LESS THAN 155% FPL*	FEE LEVEL 6 (L6) INCOME MAXIMUM EQUAL TO OR LESS THAN 165% FPL*
1	0 – 834	835 – 981	982 – 1,325	1,326 – 1,423	1,424 – 1,521	1,522 – 1,619
2	0 – 1,129	1,130 – 1,328	1,329 – 1,793	1,794 – 1,926	1,927 – 2,059	2,060 – 2,192
3	0 – 1,424	1,425 – 1,675	1,676 – 2,262	2,263 – 2,429	2,430 – 2,597	2,598 – 2,764
4	0 – 1,718	1,719 – 2,021	2,022 – 2,729	2,730 – 2,931	2,932 – 3,133	3,134 – 3,335
5	0 – 2,013	2,014 – 2,368	2,369 – 3,197	3,198 – 3,434	3,435 – 3,671	3,672 – 3,908
6	0 – 2,308	2,309 – 2,715	2,716 – 3,666	3,667 – 3,937	3,938 – 4,209	4,210 – 4,480
7	0 – 2,602	2,603 – 3,061	3,062 – 4,133	4,134 – 4,439	4,440 – 4,745	4,746 – 5,051
8	0 – 2,897	2,898 – 3,408	3,409 – 4,601	4,602 – 4,942	4,943 – 5,283	5,284 – 5,624
9	0 – 3,192	3,193 – 3,755	3,756 – 5,070	5,071 – 5,445	5,446 – 5,821	5,822 – 6,196
10	0 – 3,486	3,487 – 4,101	4,102 – 5,537	5,538 – 5,947	5,948 – 6,357	6,358 – 6,645**
11	0 – 3,781	3,782 – 4,448	4,449 – 6,005	6,006 – 6,450	6,451 – 6,783**	
12	0 – 4,076	4,077 – 4,795	4,796 – 6,474	6,475 – 6,922**		

MINIMUM REQUIRED COPAYMENTS

Per child in care	full day = \$1.00 part day = \$.50	full day = \$2.00 part day = \$1.00	full day = \$3.00 part day = \$1.50	full day = \$5.00 part day = \$2.50	full day = \$7.00 part day = \$3.50	full day = \$10.00 part day = \$5.00

For families receiving Transitional Child Care (TCC) there is no co-pay assigned beyond the third child in the family

Full day = Six or more hours; Part day = Less than six hours.

Families receiving Child Care Assistance based on Department of Child Safety Foster Care, the Jobs Program or those who are receiving Cash Assistance (CA) and are employed, do not have an assigned fee level or a minimum required copayment. However, all families may be responsible for charges above the minimum required copayments if a provider's rates exceed allowable state reimbursement maximums or the provider has other additional charges.

*Federal Poverty Level (FPL) = US Department of Health and Human Services 2015 poverty guidelines. The Arizona state statutory limit for child care assistance is 165 percent of the Federal Poverty Level.

**The Federal Child Care & Development Fund (CCDF) statutory limit for child care assistance is 85 percent of the Low Income Home Energy Assistance Program State Median Income (SMI) Estimates for Federal Fiscal Year (FFY) 2016, October 1, 2015 through September 30, 2016. 80 FR, Page 32958-32959, June 10, 2015.

Historical Note

Appendix A adopted effective July 31, 1997, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 97-3). Appendix A repealed; new Appendix A adopted effective July 1, 1998, under an exemption from the provisions of A.R.S. Title 41, Chapter 6; filed with the Office of the Secretary of State June 30, 1998 (Supp. 98-2). Appendix A repealed; new Appendix A adopted by exempt rulemaking at 5 A.A.R. 2379, effective July 1, 1999 (Supp. 99-3). Amended by exempt rulemaking at 6 A.A.R. 2726, effective July 1, 2000 (Supp. 00-2). Amended by exempt rulemaking at 7 A.A.R. 3111, effective July 1, 2001 (Supp. 01-2). Amended by exempt rulemaking at 8 A.A.R. 2952, effective July 1, 2002 (Supp. 02-2). Amended by exempt rulemaking at 9 A.A.R. 3207, effective July 1, 2003 (Supp. 03-3). Amended by exempt rulemaking at 10 A.A.R. 2938, effective July 1, 2004 (Supp. 04-3). Appendix A repealed; new Appendix A made by exempt rulemaking at 11 A.A.R. 2731, effective July 1, 2005 (Supp. 05-2). Appendix A repealed; new Appendix A made by exempt rulemaking at 11 A.A.R. 4137, effective October 1, 2005 (Supp. 05-3). Appendix A repealed; new Appendix A made by exempt rulemaking at 12 A.A.R. 2700, effective July 1, 2006 (Supp. 06-3). Appendix A amended by exempt rulemaking at 13 A.A.R. 2583, effective July 1, 2007 (Supp. 07-2). Appendix A amended by exempt rulemaking at 14 A.A.R. 2859, effective July 1, 2008 (Supp. 08-2). Appendix A amended by exempt rulemaking at 15 A.A.R. 702, effective April 1, 2009 (Supp. 09-1). Appendix A repealed; new Appendix A made by exempt rulemaking at 15 A.A.R. 1222, effective July 1, 2009 (Supp. 09-2). Appendix A repealed; new Appendix A made by exempt rulemaking at 17 A.A.R. 1334, effective July 1, 2011 (Supp. 11-2). Appendix A repealed; new Appendix A made by exempt rulemaking at 18 A.A.R. 2070, effective July 1, 2012 (Supp. 12-3). Appendix A repealed; new Appendix A made by exempt rulemaking at 19 A.A.R. 1988, effective July 1, 2013 (Supp. 13-3). Appendix A repealed; new Appendix A made by exempt rulemaking at 22

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A.A.R. 1603, effective October 1, 2014, with an automatic repeal date of September 30, 2015; filed June 3, 2016, therefore these exempt rules were in effect prior to the release of Supp. 16-1 (Supp. 16-1). Appendix A repealed; new Appendix A made by exempt rulemaking at 22 A.A.R. 1607, effective October 1, 2015; filed June 3, 2016, therefore these exempt rules were in effect prior to the release of Supp. 16-2 (Supp. 16-2).

Editor's Note: The following Appendix was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 41-1005(A)(27). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit this Appendix to the Governor's Regulatory Review Council for review and approval; and the Department was not required to hold public hearings on this Appendix.

Appendix B. Maximum Reimbursement Rates for Child Care

**ARIZONA DEPARTMENT OF ECONOMIC SECURITY
DIVISION OF EMPLOYMENT AND REHABILITATION SERVICES
CHILD CARE ADMINISTRATION
MAXIMUM REIMBURSEMENT RATES FOR CHILD CARECENTERS
(effective for services provided on or after 7/1/2007)**

Age Group	District I	District II	District III	District IV	District V	District VI
Birth < 1 yr: Full day Part day	31.71 23.52	28.35 20.79	23.52 19.32	22.05 19.95	31.50 26.25	33.60 26.25
1 yr < 3 yrs: Full day Part day	27.93 21.00	26.25 19.07	21.84 18.90	19.95 18.90	29.40 15.75	21.84 18.48
3 yrs < 6 yrs: Full day Part day	24.99 17.85	23.19 16.80	21.00 15.75	18.90 16.80	21.00 13.02	19.95 13.65
6 yrs < 13 yrs: Full day Part day	24.57 16.80	23.10 15.75	17.85 14.70	17.85 15.75	20.10 14.00	19.95 13.65

GROUP HOMES

Age Group	District I	District II	District III	District IV	District V	District VI
Birth < 1 yr: Full day Part day	25.20 16.80	23.10 16.80	24.15 24.15	21.00 14.70	19.95 13.13	22.26 18.90
1 yr < 3 yrs: Full day Part day	23.10 15.75	23.10 16.80	23.10 15.75	18.90 12.60	19.95 12.60	22.31 17.85
3 yrs < 6 yrs: Full day Part day	21.00 15.75	21.00 16.80	23.10 14.65	18.90 12.60	19.95 12.60	19.43 16.80
6 yrs < 13 yrs: Full day Part day	18.90 14.70	21.00 16.60	17.85 14.65	18.90 12.60	19.95 12.60	19.42 17.85

CERTIFIED FAMILY HOMES AND CERTIFIED IN-HOME PROVIDERS

Age Group	District I	District II	District III	District IV	District V	District VI
Birth < 1 yr: Full day Part day	21.00 14.70	19.95 12.60	18.90 10.50	18.90 11.03	21.00 12.60	18.90 10.50
1 yr < 3 yrs: Full day Part day	21.00 13.65	18.90 12.60	17.85 10.50	17.85 11.03	20.10 11.55	17.85 10.50
3 yrs < 6 yrs: Full day Part day	18.90 12.60	18.90 12.60	16.80 10.50	17.85 11.03	18.90 10.50	16.80 10.50
6 yrs < 13 yrs: Full day Part day	17.85 12.60	18.90 11.55	16.80 10.50	16.80 10.50	18.90 10.50	16.80 10.50

The actual reimbursement amount is equal to the reimbursement rate minus any DES designated co-payment. However, in no event shall the amount reimbursed exceed the lesser of the provider's actual charges or the maximum reimbursement rate minus any DES designated co-payment.

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Payment Rates for Non-Certified Relative Providers (NCRPs) will be \$11.03 for Full day and \$6.30 for Part day, minus any DES designated co-payment. This rate will be paid to NCRPs statewide for care provided to children of all ages.

The maximum reimbursement rates may be increased by up to ten percent for child care providers who are nationally accredited.

Full day = six or more hours per day. Part day = less than six hours per day.

Historical Note

Appendix B adopted effective July 1, 1998, under an exemption from the provisions of A.R.S. Title 41, Chapter 6; filed with the Office of the Secretary of State June 30, 1998 (Supp. 98-2). Appendix B repealed; new Appendix B adopted by exempt rulemaking at 5 A.A.R. 2379, effective July 1, 1999 (Supp. 99-3). "Non-Certified Relative Providers" section amended by exempt rulemaking at 6 A.A.R. 2726, effective July 1, 2000 (Supp. 00-2). "Centers," "Group Homes," and "Certified Family Homes and Certified In-home Providers" sections amended by exempt rulemaking at 7 A.A.R. 4884, effective October 1, 2001 (Supp. 01-4). Amended by exempt rulemaking at 9 A.A.R. 3207, effective July 1, 2003 (Supp. 03-3). Appendix B amended by exempt rulemaking at 13 A.A.R. 2443, effective July 1, 2006 (Supp. 07-1). Appendix B amended by exempt rulemaking at 13 A.A.R. 2586, effective July 1, 2007 (Supp. 07-2).

ARTICLE 50. CHILD CARE RESOURCE AND REFERRAL SYSTEM**R6-5-5001. Definitions**

The following definitions apply in this Article.

1. "ADE" means the Arizona Department of Education, which administers the CACFP at the state level.
2. "Alternate approval" means a status the ADE confers on an uncertified, unlicensed provider that demonstrates compliance with CACFP child care standards to the ADE.
3. "Caregiver state licensing ratio requirements" means Arizona Department of Health Services (DHS) regulations that mandate DHS oversight of child care facilities with five or more children in care for compensation where child care is provided for periods of less than 24 hours per day.
4. "Child care" means a compensated service that is provided to a child unaccompanied by a parent or guardian during a portion of a 24-hour day. The service includes supervised and planned care, training, recreation, and socialization.
5. "CACFP" means the Child and Adult Care Food Program, funded and administered at the federal level by the Food and Consumer Services, a program of the U.S. Department of Agriculture.
6. "CCR&R" means child care resource and referral, a service the Department administers under A.R.S. § 41-1967.
7. "Center" means the same as "child care facility" in A.R.S. § 36-881(3).
8. "Certified" or "licensed" means a provider holds a license as prescribed in A.R.S. § 36-882, or is certified under A.R.S. § 46-807 or A.R.S. § 36-897.
9. "Child with special needs" means a child who needs increased supervision, modified equipment, modified activities, or a modified facility, within a child care setting, due to any physical, mental, sensory, or emotional delay, or medical condition, and includes a child with a disability.
10. "Compensation" means something given or received in return for child care, such as money, goods, or services.
11. "Contractor" means an agency with which the Department contracts for provision of CCR&R services.
12. "Customer" means a person who is requesting information from a CCR&R contractor.
13. "Database" means a computerized collection of CCR&R facts, figures, and information for licensed, certified, and registered providers and customers arranged for ease and speed of retrieval.
14. "Department" or DES means the Arizona Department of Economic Security.
15. "Dropped for cause" means an ADE Sponsoring Organization has terminated a family child care provider from participation in the CACFP.
16. "Exclude" means to refuse to include a particular provider in or to remove a provider from the CCR&R database.
17. "Family child care" means child care provided by a certified or registered provider in the provider's own home.
18. "In-home child care" means child care provided in a child's own home.
19. "Information only listing" means a provider listed on the CCR&R who will receive training information and other information about child care issues and activities, but who will not receive any referrals.
20. "Listing status" means the condition under which a provider may receive a referral (referral listing) or is restricted from receiving a referral (information only listing).
21. "Over-Ratio Referral Form" means a communication tool used to relay to the Department of Health Services (DHS) information concerning a potential violation of caregiver state licensing ratio requirements.
22. "Personally identifiable information" means any information about a person other than a provider, that, when considered alone, or in combination with other information, identifies or permits another person to readily identify the person who is the subject of the information. Personally identifiable information includes:
 - a. Name, address, and telephone number;
 - b. Date of birth or age;
 - c. Physical description;
 - d. School;
 - e. Place of employment; and
 - f. Any unique identifying number, such as driver's license number, a social security number, or regulatory license number.
23. "Program Administrator" means the person who oversees the Child Care Administration, a unit of the Department.
24. "Provider" means an adult who, or a facility that, provides child care services.
25. "Provider type" means a category of provider or program such as a center, family child care, and in-home child care.
26. "Referral" means the information listed in R6-5-5005(C), (D), and (E), that a Contractor gives to a customer.
27. "Referral listing" means that a contractor may refer a provider listed on the CCR&R registry or database to customers, and the provider may receive training and other information about child care issues and activities.
28. "Registered provider" means a family child care provider who is an adult and is not licensed or certified by any

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Title 6. Economic Security

Chapter 5. Social Services

Article 49. Child Care Assistance

STATUTES

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.

46-802. Child care services

The department shall establish and administer child care services. Child care services include:

1. Child care assistance to eligible families.
2. Certification of child care home and in-home providers who are not required to be licensed pursuant to title 36, chapter 7.1 for the purposes of caring for children eligible for child care assistance.
3. Establishment of rights and duties of providers and the department for the provision of child care assistance and services.
4. Consumer education to families and the public, including activities that help families make informed decisions about child care options.
5. Activities that improve the quality and availability of child care.
6. Consultation, technical assistance, training and resources to improve the provision and expand the access to child care services.

46-805. Child care assistance; rates

A. The department shall establish payment rates for child care assistance. Payment rates shall provide for equal access for eligible families to comparable child care services provided to families who are not eligible to receive child care assistance.

B. Payment rates shall be identical in form for all child care assistance.

C. The department may pay different levels of child care assistance according to the category of child care provider, age of children, geographic area, level of national accreditation or another state-approved quality indicator, varying child care costs for children with special needs or other circumstances to meet the child care needs of eligible families.

D. The department shall establish a sliding fee scale and formula for determining child care assistance based on:

1. Income and earnings of the family.
2. Family size.
3. Number of children receiving child care assistance.
4. Child support to other minor dependent children of the parent living outside the family unit.
5. Income and earnings of a family member who is at least eighteen years of age and who is residing in the home with a parent who is receiving child care assistance, if the family member claims any member of a family unit applying for assistance as a dependent on a federal or state income tax return.
6. Income and earnings of a nonfamily member who is at least eighteen years of age and who is residing in the home of and cohabiting with a parent who is receiving child care assistance if the cohabiting nonfamily member claims any member of a family unit applying for assistance as a dependent on a federal or state income tax return.
7. Other factors of a similar nature.

E. All child care providers shall remain in good standing with licensing and certification laws and adopted rules.

46-809. Rules

The department shall adopt rules it deems reasonable or necessary to implement child care services and to further the objectives of this article. Rules adopted by the department shall include:

1. Criteria for making child care assistance eligibility determinations.

2. Criteria for certifying child care home and in-home providers.
3. Criteria for operating child care resource and referral services and for suspending and terminating referrals to participating child care providers pursuant to section 41-1967.

RULES

R6-5-4901. Definitions

The following definitions apply to this Article:

1. “Adequate notice” means written notification that explains the action the Department intends to take, the reason for the action, the specific authority for the action, the client’s appeal rights, and right to benefits pending appeal, and that is mailed before the effective date of the action.
2. “Appellant” means an applicant or recipient of assistance who is appealing a negative action by the Department.
3. “Availability” means the portion of time that a parent or caretaker can provide care to their own child, as determined by the Department, because the parent or caretaker is not participating in an eligible activity.
4. “Applicant” means a person who has filed an application for Child Care Assistance.
5. “Authorized” means the specific amount of Child Care Assistance approved by the Department for an eligible family for a specific period of time.
6. “CCA” means the DES Child Care Administration.
7. “Caretaker relative” means a relative who exercises the responsibility for the day-to-day physical care, guidance, and support of a child who physically resides with the relative.
8. “Cash Assistance” means the program administered by the Family Assistance Administration that provides temporary Cash Assistance to needy families.
9. “Cash Assistance participant” means a recipient of Cash Assistance.
10. “Child care” means the compensated service the Department provides to a child who is unaccompanied by a parent or guardian during a portion of a 24-hour day.
11. “Child Care Assistance” means money payments for child care services paid by the Department for the benefit of an eligible family.

12. “Child Care Provider” means a child care facility licensed under A.R.S. Title 36, Chapter 7.1, Article 4, child care home providers, in-home providers, noncertified relative providers, and regulated child care on military installations or federally recognized Indian Tribes.
13. “Client” means a person who has requested, has been referred for, or who is currently receiving Child Care Assistance.
14. “Countable income” means the gross income of individuals included in family size that the Department considers to determine eligibility and calculate an assistance amount.
15. “CPS or Child Protective Services” means the child welfare services administration within the Department’s Division of Children, Youth, and Family Services.
16. “Day” means a calendar day unless otherwise specified.
17. “DDD” means the Division of Developmental Disabilities.
18. “Denial” means a formal decision of ineligibility on an application, referral, or request for Child Care Assistance.
19. “Department” means the Arizona Department of Economic Security.
20. “Dependent” child means a person less than age 18, who resides with the applicant and whom the applicant has the legal financial obligation to support.
21. “DES-certified child care provider” means a provider who is certified by the Department of Economic Security under A.R.S. § 46-807 and who provides care in either the child’s or the provider’s own home.
22. “DHS-certified group home” means a provider who is certified by the Department of Health Services under A.R.S. § 36-897.01.
23. “DHS-licensed child care center” means a provider who is licensed by the Department of Health Services as prescribed in A.R.S. § 36-881.
24. “EITC” means Earned Income Tax Credit and is a federal income tax credit for low-income working individuals and families.
25. “Eligibility criteria” means the requirements an individual or family must meet to receive Child Care Assistance.
26. “Eligible activity” means a specific type of activity that causes an applicant or recipient and any other parent or responsible person in the eligible family to be unavailable to provide care to their children for a portion of a 24-hour day, and that partially determines the amount of Child Care Assistance an eligible family shall receive.
27. “Eligible child” means a child less than 13 years of age.

28. “Eligible family” means a group of persons whose needs, income, and other circumstances are considered as a whole for the purpose of determining eligibility and amount of Child Care Assistance.
29. “Eligible need” means a specific type of need that causes an applicant or recipient, or any other parent or responsible person in the eligible family, to be unavailable or incapable to provide child care to their children for a portion of a 24-hour day, and that partially determines the amount of Child Care Assistance an eligible family shall receive.
30. “E.S.O.L.” means English for Speakers of Other Languages.
31. “Existing client” means an individual who is currently receiving Child Care Assistance or who has an open Child Care Assistance case with the Department.
32. “Family size” means the number of individuals considered when determining income eligibility, and includes the applicant, other parent or responsible person, and their dependent children who reside in the same household, subject to R6-5-4914 (D).
33. “Federal poverty level” (FPL) means the poverty guidelines issued by the United States Department of Health and Human Services under Section 673(2) of the Omnibus Reconciliation Act of 1981; and reported annually in the Federal Register; which are converted into monthly amounts by the Department; which shall become effective for use in determining eligibility for Child Care Assistance on the first day of the state fiscal year immediately following the publication of the annual amount in the Federal Register.
34. “Foster care” means that the Department or an Arizona Tribe placed a child in the custody of a licensed foster parent.
35. “Foster parent” means any person licensed by the Department or an Arizona Tribe to provide for the out of home care, custody, and control of a child.
36. “Gap in employment” means a period of 30 consecutive days of Child Care Assistance that begins the first day after the last day worked and ends the 30th day after the last day worked for an existing client who has lost employment.
37. “G.E.D.” means General Equivalency Diploma.
38. “Homebound” means a person who is confined to their home because of physical or mental incapacity.
39. “Homeless shelter” means a public or private nonprofit program that is targeted to assist homeless families and is designed to provide temporary or transitional living accommodations and services to assist such families toward self-sufficiency.
40. “Income” means earned and unearned income combined.
41. “Jobs” means the Department program that assists Cash Assistance participants to prepare for, obtain, and retain employment. “Jobs” Program also includes the Tribal Jobs Program and any other entities that contract with the state to perform this function.

42. “Jobs participant” means a Cash Assistance participant who is participating in the Jobs program as a condition of receiving Cash Assistance.
43. “Local office” means a CCA location that is designated as the location in which Child Care Assistance applications and other documents are filed with the Department and in which eligibility and assistance amounts are determined for a particular geographic area of the state.
44. “Lump sum income” means a single payment of earned or unearned income, such as a retroactive monthly benefit, non-recurring pay adjustment or bonus, inheritance, or personal injury and workers’ compensation award.
45. “Mailing date” when used in reference to a document sent first-class, postage prepaid, through the United States mail, means the date:
- a. Shown on the postmark;
 - b. Shown on the postage meter mark of the envelope, if there is no postmark; or
 - c. Entered on the document as the date of its completion, if there is no legible postmark or postage meter mark.
46. “Minor parent” means a parent less than the age of 18 years.
47. “Negative action” means one of the Department actions described in R6-5-4918, including action to terminate assistance or increase the fee level and copayment for Child Care Assistance.
48. “Noncertified relative provider” means a person who is at least 18 years of age, who is by blood, marriage, or adoption the grandparent, great grandparent, sibling not residing in the same household, aunt, great aunt, uncle or great uncle of the eligible child, who provides child care services to an eligible child, and meets the Department’s requirements to be a noncertified relative provider.
49. “Notice date” means the date that appears as the official date of issuance on a document or official written notice the Department sends or gives to an applicant or recipient.
50. “OSI” or “Office of Special Investigations” means the Department office to which CCA refers cases for investigation of certain eligibility information, investigation and preparation of fraud charges, coordination and cooperation with law enforcement agencies and other similar functions.
51. “Other related child” means a child who is related to the applicant or recipient by blood, marriage, or adoption, and who is not the applicant’s or recipient’s natural, step, or adoptive child.
52. “Overpayment” means a Child Care Assistance payment received by a child care provider or for an eligible family that exceeds the amount to which the provider or family was lawfully entitled.

53. “Parent” means the biological mother or father whose name appears on the birth certificate, the person legally acknowledged as a mother or father, a father who has had an adjudication of paternity, or the adoptive mother or father of the child.
54. “Positive action” means the approval, increase, or resumption of service such as increasing the amount of assistance or decreasing the fee level and copayment.
55. “Recipient” means a person who is a member of an eligible family receiving Child Care Assistance.
56. “Relative” means a person who is by blood, adoption, or marriage a parent, grandparent, great-grandparent, sibling of the whole or half blood, stepbrother, stepsister, aunt, uncle, great-aunt, great-uncle, or first cousin.
57. “Request for Hearing” means a clear written expression by an applicant or recipient, or such person’s representative, indicating a desire to appeal a Department decision to a higher authority.
58. “Responsible person” means one or more persons, residing in the same household, who have the legal responsibility to financially support:
- a. One or more of the children for whom Child Care Assistance is being requested, or
 - b. The applicant or recipient of Child Care Assistance.
59. “Review” means the Department’s review of all factors affecting an eligible family’s eligibility and assistance amount.
60. “Self-Sufficiency Declaration” means a written statement signed and dated by the child care recipient that lists the specific actions the recipient has taken during the most recent six or 12-month period to maintain or increase self-sufficiency.
61. “Tax Claimant” means a relative more than age 17 who resides with a parent who has applied for or is receiving Child Care Assistance, and who states their intention to claim any member of the eligible family as a tax dependent on a federal or state income tax return for the current calendar year, to be filed in the following calendar year.
62. “Tax Dependent” means a member of an eligible family applying for or receiving Child Care Assistance who is included in family size, and who the tax claimant states an intention to claim as a dependent on a federal or state income tax return for the current calendar year, to be filed in the following calendar year.
63. “Time Limit” means that each child in the eligible family may receive no more than 60 cumulative months of Child Care Assistance in a lifetime, unless the parent, caretaker relative, or legal guardian of the child needing care can prove they are making efforts to improve skills and move toward self-sufficiency, under A.R.S. § 46-803(K)(1).

64. “Unit” means a part or full day measurement of Child Care Assistance authorized by the Department to meet the needs of an eligible family based on the participation of parents, caretaker relatives, or legal guardians of the children needing care in an eligible activity.
65. “Waiting List” means the prioritization of applicants by the Department to manage resources within available funding by placing applicants determined eligible for Child Care Assistance on a list, until the Department determines that sufficient funds are available to fund Child Care Assistance for families on the list.
66. “Work” means the performance of duties on a regular basis for wages or salary.

R6-5-4904. Access to Child Care Assistance

A. Application for Child Care Assistance.

1. Any person may apply for Child Care Assistance by filing, either in person or by mail, a Department-approved application form with any CCA office.

2. The application file date is the date any CCA office receives an identifiable application. An identifiable application contains, at a minimum, the following information:

- a. The legible name and address of the person requesting assistance; and
- b. The signature, under penalty of perjury, of the applicant or, if the applicant is incompetent or incapacitated, someone legally authorized to act on behalf of the applicant.

3. In addition to the identifiable information described in subsection (A)(2), a completed application shall contain:

- a. The names of all persons living with the applicant and the relationship of those persons to the applicant, and
- b. All other eligibility information requested on the application form.

B. Request for Child Care Assistance.

1. Cash Assistance participants who need Child Care Assistance for employment activities are not required to complete an application.

2. Child Care Assistance for Cash Assistance participants may begin effective the start date of the eligible activity but not earlier than the date that the participant requests Child Care Assistance from a local CCA office after the Department has verified eligibility criteria.

C. Referral for Child Care Assistance.

1. Jobs Participants. Cash Assistance participants in Jobs-approved work participation activities who request child care shall be referred by the Jobs Program for Child Care Assistance.

2. Child Protective Services Families (CPS). CPS shall refer families that CPS deems eligible for Child Care Assistance on a case-by-case basis.
3. CPS and DDD Foster Families - CPS or DDD shall determine eligibility for and refer children in the care, custody, and control of DES who need child care services as documented in a foster care case plan.

R6-5-4905. Initial Eligibility Interview

- A. Upon receipt of an identifiable application, the Department shall schedule an initial eligibility interview for the applicant. Upon request, the Department shall conduct the interview at the residence of a person who is homebound.
- B. The applicant shall attend the interview. A person of the applicant's choosing may also attend the interview.
- C. The Department may conduct a telephone interview if the applicant has previously verified citizenship or legal residency status as prescribed in R6-5-4911(E).
- D. During the interview, a Department representative shall:
 1. Assist the applicant in completing the application form;
 2. Witness the signature of the applicant;
 3. Discuss information pertinent to the applicant's child care needs;
 4. Provide the applicant with written information explaining:
 - a. The terms, conditions, and obligations of the Child Care Assistance program;
 - b. Any additional verification information as prescribed in R6-5-4906 which the applicant must provide for the Department to conclude the eligibility evaluation;
 - c. The Department practice of exchanging eligibility and income information among Department programs;
 - d. The coverage and scope of the Child Care Assistance program;
 - e. The applicant's rights, including the right to appeal a negative action; and
 - f. The requirement to report all changes within two work days from the date the change becomes known;
 5. Review the penalties for perjury and fraud, as printed on the application;

6. Explain to the applicant who is included in family size for the purpose of determining income eligibility, and whose availability is considered in determining the amount of Child Care Assistance authorized for each child needing care as prescribed in R6-5-4914(D);
7. If the applicant is the parent of the children needing care, explain the tax claimant provision under R6-5-4914(D)(3);
8. Provide the applicant with the tax claimant declaration form if there is a potential tax claimant in the household;
9. Provide the following information to assist the family in continuing to move toward self-sufficiency:
 - a. Availability of the Earned Income Tax Credit (EITC). Provide the applicant with the current U.S. Department of Internal Revenue Service (IRS) EITC information if the applicant comes into the office for the initial interview;
 - b. Availability of child support services through the Division of Child Support Enforcement (DCSE) to assist with paternity establishment, establishment of a child support order, or enforcement of an existing child support order. Provide the applicant with written information regarding child support services if the applicant comes into the office for the initial interview; and
 - c. Availability of Department-sponsored or contracted employment services that may assist the applicant and spouse or other parent in finding a job, or pursuing a better job or career. Provide the applicant with written information regarding employment services if the applicant comes into the office for the initial interview;
10. Explain to the applicant the 60-month per child time limit for Child Care Assistance:
 - a. Describe the child care programs to which the 60-month time limit applies;
 - b. Describe how child care utilization is measured per child to calculate the 60-month limit; and
 - c. Explain the criteria for extensions of the time limit based on continued efforts to improve job skills and move toward self-sufficiency;
11. Discuss the six-child limit for Child Care Assistance:
 - a. Explain that no more than six children in a family may receive Child Care Assistance at any point in time; and
 - b. Explain the child care programs to which the six-child limit applies;
12. Discuss the waiting list for Child Care Assistance:
 - a. Describe the programs to which it applies;
 - b. Explain prioritization for assistance based upon income for families on the waiting list;

- c. Indicate whether the waiting list is currently in effect; and
- d. Explain that, based on funding availability, the Department may implement a waiting list at any point in time;
- 13. Review any verification information already provided;
- 14. Explain the applicant's duties to:
 - a. Notify the Department regarding initial provider selection or changes in provider in advance of using services or changing providers;
 - b. Pay DES required copayments to the child care provider as assigned by the Department; and
 - c. Pay any additional charges to the provider for the cost of care in excess of the amount paid by the Department; and
- 15. Review all ongoing reporting requirements, and explain that the applicant may incur overpayments for failure to make timely reports.

R6-5-4906. Verification of Eligibility Information

- A.** The Department shall obtain independent verification or corroboration of information provided by the client when required by law, or when it is necessary to determine eligibility, fee level and copayment assignment, or service authorization amount.
- B.** The Department may verify or corroborate information by any reasonable means including:
 - 1. Contacting third parties such as employers and educational institutions,
 - 2. Asking the client to provide written documentation such as pay stubs or school schedules, and
 - 3. Conducting a computer data match through other Department programs' computer systems.
- C.** The client is responsible for providing all required verification. The Department shall offer to assist a client who has difficulty in obtaining the verification and requests help.
- D.** A client shall provide the Department with all requested verification within 10 calendar days from the notice date of a written request for such information. When a client does not timely comply with a request for information, the Department shall deny the application as provided in R6-5-4908(B).

R6-5-4907. Withdrawal of an Application

- A.** An applicant may withdraw an application at any time prior to its disposition by providing the Department with a written request for withdrawal signed by the applicant.
- B.** If an applicant makes an oral request to withdraw an application:
 - 1. The Department shall accept the oral request, provide the applicant with a written withdrawal form, and request that the applicant complete the form and return it to the Department. The Department shall inform the applicant of the consequences of not returning the withdrawal form within 10 days of the notice date.
 - 2. If the applicant fails to return the completed withdrawal form, the Department shall deny the application for failure to provide information unless the applicant rescinds the oral withdrawal request within 10 days of the date the Department provides the applicant a withdrawal form.
- C.** A withdrawal is effective as of the application file date unless the applicant specifies a different date on the withdrawal form.
- D.** An application that has been withdrawn shall not be reinstated; an applicant who has withdrawn an application shall reapply anew.

R6-5-4908. Child Care Assistance Approvals and Denials

- A.** The Department shall complete the eligibility determination within 30 calendar days of the application file date or referral receipt date, unless:
 - 1. The application or referral is withdrawn,
 - 2. The application or referral is rendered moot because the applicant has died or cannot be located, or
 - 3. There is a delay resulting from a Department request for additional verification information as provided in R6-5-4906(D).
- B.** The Department shall deny Child Care Assistance when the applicant fails to:
 - 1. Complete the application and an eligibility interview, as described in R6-5-4905;
 - 2. Submit all required verification information within 10 days of the notice date of a written request for verification, or within 30 days of the application file date whichever is later; or
 - 3. Cooperate during the eligibility determination process as required by R6-5-4911(A).
- C.** When an applicant satisfies all eligibility criteria, the Department shall determine the service authorization amount, the fee level and copayment amount (if applicable), approve Child

Care Assistance, and send the applicant an approval notice. The approval notice shall include the amount of assistance, fee level and copayment information, and an explanation of the applicant's appeal rights.

R6-5-4909. 12-month Review

- A.** The Department shall complete a review of all eligibility factors for each client at least once every 12 months, beginning with the 12th month following the first month of Child Care Assistance eligibility.
- B.** The Department may elect to review eligibility factors more frequently than every 12 months.
- C.** At least 30 days prior to the 12-month review date, the Department shall mail the client a notice advising of the need for a review, and the requirement to submit a completed review application and verification of income and other eligibility factors for the most recent calendar month.
- D.** In response to such notice, the client shall mail or deliver to the Department a completed review application and verification by the date on the notice.
- E.** The Department shall verify the client's income and any eligibility factors that have changed or are subject to change.
- F.** The Department shall terminate Child Care Assistance effective the review date and deny the review application if the client:
 - 1. Fails to submit the review application by the review date, or
 - 2. Fails to submit requested verification by the review date as required by the Department for a redetermination of eligibility.
- G.** If the client submits the review application and required verification within 30 days after the review date, the Department shall not require the client to appear for an intake interview and shall approve Child Care Assistance effective the date that the application and verification were received if other eligibility criteria are met.

R6-5-4910. Reinstatement of Assistance

- A.** If the Department has terminated Child Care Assistance, the Department shall not reinstate assistance unless the client files a new application.

B. Notwithstanding subsection (A), the Department shall reinstate assistance within 10 calendar days when:

1. Termination was due to Department error; the Department shall reinstate assistance effective the date following the date of termination;
2. The Department receives a court order or administrative hearing decision mandating reinstatement; the Department shall reinstate assistance effective the date prescribed by the court order or hearing decision; or
3. The recipient files a request for a fair hearing within 10 days of the notice date of the termination notice and requests that assistance be continued pending the outcome of an appeal; the Department shall reinstate assistance effective the date following the date of termination.

R6-5-4911. General Eligibility Criteria

A. Applicant and Recipient Responsibility.

1. An applicant for or recipient of Child Care Assistance shall cooperate with the Department as a condition of initial and continuing eligibility. The client shall:
 - a. Give the Department complete and truthful information;
 - b. Within two business days from the date the change becomes known, inform the Department of all changes in:
 - i. Income;
 - ii. Eligible activities as described in R6-5-4912;
 - iii. Work or school schedules;
 - iv. Persons moving in or out of the household;
 - v. Tax claimants moving in or out of the household;
 - vi. Other circumstances affecting eligibility or the amount of assistance authorized; and
 - c. Comply with all the Department's procedural requirements.
2. The Department may deny an application for or reduce or terminate assistance, if the client fails or refuses to cooperate with the Department to determine eligibility.

B. Eligible Applicants.

1. In order to be considered an eligible applicant for Child Care Assistance, a client shall reside with the child needing care and shall be:
 - a. The parent of the child for whom assistance is being requested; or

- b. The caretaker relative related by blood, adoption, or marriage to the child for whom assistance is requested, including a brother, sister, aunt, uncle, first cousin, grandmother, grandfather, and persons of preceding generations as denoted by “grand,” “great,” or “great-great.”
 - c. A court-appointed legal guardian for the child for whom assistance is requested, or a person who can provide documentation from the court that the process of legal guardianship has been initiated.
2. When more than one applicant resides in the home, or the child resides with two different caretakers intermittently, the Department shall determine the eligible applicant for Child Care Assistance as follows:
 - a. If both the parent and a caretaker relative are in the home, the parent is the eligible applicant;
 - b. If both a legal guardian and the parent are in the home, the legal guardian is the eligible applicant;
 - c. If a caretaker relative whose legal guardianship has been terminated and the parent are both in the home, the parent is the eligible applicant;
 - d. When the child resides with a caretaker relative or legal guardian who is acting as caretaker at least 51 percent of the time, and the parent either maintains a separate residence and visits the child intermittently, or resides outside of the child’s home for an indefinite period of time, the caretaker relative or legal guardian of the child is the eligible applicant for the child.
 - i. An eligible applicant cannot be the noncertified relative provider or certified provider of the child for whom he or she is applying for assistance.
 - ii. The Department shall not consider the tax claimant status of the caretaker relative or legal guardian under R6-5-4914(D) with respect to any member of the eligible family.
 - e. When the child resides with two or more caretaker relatives, the caretaker relative who will be claiming the child as a dependent for income tax purposes is the eligible applicant for Child Care Assistance.
3. Acceptable verification of guardianship shall include the following court documents:
 - a. Petition for Temporary Appointment of Guardian (date stamped as received by the court);
 - b. Petition for Permanent Appointment of Guardian (date stamped as received by the court);
 - c. Order of Appointment of a Temporary Guardian;
 - d. Order of Appointment of a Permanent Guardian;
 - e. Letters and Acceptance of Permanent Guardianship.

4. If the client has not been appointed as a guardian when the Department authorizes Child Care Assistance, the client shall to continue the legal process for appointment in order to retain eligibility for Child Care Assistance.
 5. The client shall verify relationship or guardianship status as requested by the Department.
- C. Arizona Residency.** The client and the child for whom assistance is requested shall be Arizona residents and shall be physically present within Arizona.
- D. Age of the Child.** An eligible child is birth through 12 years of age only; a child aged 13 or older is ineligible for Child Care Assistance.
- E. Citizenship and Legal Residency Requirements.**
1. The client shall be a United States citizen or shall be a legal resident of the United States.
 2. The client shall verify citizenship or legal residency status as requested by the Department by providing a birth certificate, naturalization documentation, or alien or immigration registration documentation from the U.S. Immigration and Naturalization Service (INS).
- F. Eligible Activity or Need.**
1. The client, and any other parent or responsible person in the household shall be engaged in an eligible activity, or have an eligible need for Child Care Assistance as prescribed in R6-5-4912 that causes each client, parent, or responsible person to be unavailable to provide care to the child for whom assistance is requested.
 2. The Department does not require a tax claimant to be engaged in an eligible activity, unless the tax claimant is the other parent of a child receiving Child Care Assistance.
- G. Availability of the Client, Parent, and Responsible Person.**
1. The Department shall consider the availability of the client, and any other parent or responsible person in the household in determining eligibility and the amount of Child Care Assistance authorized for each individual child needing care.
 2. The client, parent, and any other responsible person in the household shall be unavailable to provide care to the child for whom assistance is being requested for a portion of a 24-hour day due to an eligible activity or need.
 3. In a family with more than one parent or responsible person, the Department shall authorize Child Care Assistance for the period of time that neither the parent nor the responsible person is available due to an eligible activity or need.
 4. The Department shall not consider the availability of a tax claimant in determining eligibility or amount of Child Care Assistance authorized for the client's children, unless the tax claimant is the other parent of a child receiving Child Care Assistance.
- H. Provider Selection and Arrangements.**

1. The Department shall not authorize Child Care Assistance until the applicant has selected a child care provider. An allowable child care provider for DES Child Care Assistance:
 - a. Shall be one of the following:
 - i. A DHS-licensed child care center;
 - ii. A DHS-certified group home;
 - iii. A DES-certified family child care home;
 - iv. A DES-certified in home care provider;
 - v. A DES-noncertified relative provider;
 - vi. A regulated provider meeting requirements established by military installations or federally recognized Indian Tribes.
 - b. Shall have a registration agreement with the Department.
2. The Department shall not authorize Child Care Assistance with a noncertified relative provider when Child Care Assistance is requested for a CPS referred family, or a CPS or DDD foster family;
3. The Department shall not authorize Child Care Assistance with a noncertified relative or certified provider when:
 - a. The relative or certified provider is the natural, step, or adoptive parent of the child for whom assistance is requested;
 - b. Child Care Assistance is requested by a Cash Assistance participant and the relative or certified provider is included in the same Cash Assistance grant as the child care applicant; or
 - c. The relative or certified provider is included in family size as prescribed in R6-5-4914(D), is the applicant for Child Care Assistance, or is the applicant's spouse.

R6-5-4912. Eligible Activity or Need

- A. Eligible activities and needs for Child Care Assistance are described in this subsection:
 1. Employment. Full or part-time employment for monetary compensation;
 2. Self Employment. Full or part time self employment for monetary compensation.
 3. Education and Training Activities with Minimum Work Requirement. A client who is employed shall be eligible to receive Child Care Assistance for education and training activities as prescribed in subsections (A)(3)(a), (b), and (c).
 - a. Post-secondary education in a college or trade school.

- i. The client is employed an average of at least 20 hours per week, per calendar month.
 - ii. A self-employed client meets the 20-hour work requirement if the client's monthly net profit, divided by the current minimum wage standard, equates to the average 20-hour weekly work requirement.
 - iii. The education or training activity is related to the client's employment goal.
 - iv. The client's educational level is freshman or sophomore as defined by the educational institution, or the educational activities are in pursuit of an Associate Degree, or the client is in training at a vocational or trade school.
 - v. The client shall maintain satisfactory progress in the educational activity and remain in good standing, as defined by the educational institution.
 - vi. The client has not received more than the lifetime limit of 24 months of Child Care Assistance for education and training activities. Child Care Assistance authorized for educational activities before August 1, 1997, does not count toward the 24-month limit.
 - vii. Countable months toward the 24-month limit are those calendar months in which the Department authorized additional child care services for education and training needs; the Department shall not calculate the 24-month limit based on monthly usage.
 - viii. The client assumes full responsibility for employment goals and educational choices made; the Department is under no obligation to provide Child Care Assistance until educational or employment goals are attained.
 - ix. The Department shall authorize Child Care Assistance for actual class time, time between classes as determined by the Department, and travel time to and from school only.
 - x. Correspondence courses, home study courses, and study time are not eligible educational activities for Child Care Assistance.
- b. High School, G.E.D., E.S.O.L., and Remedial Educational Activities for Adults age 20 and Older.
- i. The client is employed an average of at least 20 hours per week, per month.
 - ii. A self-employed client meets the 20-hour work requirement if the person's monthly net profit, divided by the current minimum wage standard, equates to the average 20-hour weekly work requirement.
 - iii. The educational or training activity is related to the client's employment goal.
 - iv. The client shall maintain satisfactory progress in the educational activity and remain in good standing, as defined by the educational institution.
 - v. The client has not received more than the lifetime limit of 12 months of Child Care Assistance for education and training activities described in this Section. Child Care Assistance

authorized for educational activities before August 1, 1997, does not count toward the 12-month limit.

vi. Countable months toward the 12-month limit are those calendar months in which the Department authorized additional child care services for education and training needs. The Department shall not calculate the 12-month limit based on monthly usage.

vii. The client assumes full responsibility for employment goals and educational choices made; the Department is under no obligation to provide Child Care Assistance until educational and employment goals are attained.

viii. Allowable educational activities are attendance at high school, G.E.D. or E.S.O.L. classes, or remedial educational activities as determined allowable by the Department.

ix. The Department shall authorize Child Care Assistance for actual class time, time between classes as determined by the Department, and travel time to and from school only.

x. Correspondence courses, home study courses, and study time are not allowable educational activities for DES Child Care Assistance.

c. Cash Assistance participants who are sanctioned due to Jobs noncompliance are ineligible for Child Care Assistance for education and training activities in any month when a Jobs sanction is applied to the Cash Assistance case, unless the education and training activities are Jobs approved.

4. Teen Parents in Education and Training Activities. Teen parents are eligible for Child Care Assistance for education and training activities according to the following criteria:

a. The teen parent is under age 20.

b. The teen parent is attending high school, G.E.D., or E.S.O.L. classes, or remedial educational activities in pursuit of a high school diploma.

c. Child Care Assistance for teen parents for the educational activities described in this Section is not time-limited. The teen parent shall continue to receive assistance for the educational activity if eligibility criteria are met and until the teen parent:

i. Receives a diploma or certificate; or

ii. Attains the age of 20 years, whichever occurs first.

d. If the teen parent attends post-secondary educational activities, the eligibility criteria outlined under "Post- Secondary Education" in subsection (A)(3)(a) shall apply.

e. The Department shall authorize Child Care Assistance for actual class time, time between classes as determined by the Department, and travel time to and from school only.

f. Correspondence courses, home study courses, and study time are not allowable educational activities for Child Care Assistance.

g. Cash Assistance participants who have been sanctioned due to Jobs noncompliance are ineligible for Child Care Assistance for education and training activities in any month that a Jobs noncompliance sanction is applied to the Cash Assistance case, unless the education and training activities are Jobs approved.

5. Participation in Jobs Approved Activities. Individuals participating in the Jobs Program and who receive Cash Assistance shall be eligible for Child Care Assistance if the following criteria are met.

a. The individual is referred by a Jobs Program Specialist to CCA for Child Care Assistance.

b. The individual is required to contact a local DES Child Care Office to notify CCA of the selection of a provider, and to cooperate with CCA to arrange child care services.

c. The Child Care service authorization shall be based on the days and hours of the approved Jobs activity as specified by the Jobs Program Specialist in the Jobs referral.

d. Jobs participants shall receive Child Care Assistance for Jobs approved educational and training activities only. Educational and training activities that are not Jobs approved are not eligible activities for Child Care Assistance for Jobs participants.

6. Unable or Unavailable to Provide Care. Clients who are unable or unavailable to care for their own children for a portion of a 24-hour day are eligible for Child Care Assistance according to the following criteria.

a. Clients who are unable to care for their own children due to a physical, mental, or emotional disability are eligible for Child Care Assistance when the diagnosis, inability to care for the children, and anticipated recovery date (or the date of the next medical evaluation) have been verified by a licensed physician, certified psychologist, or certified behavioral health specialist.

b. The Department shall authorize Child Care Assistance to cover:

i. The amount of time the client is unable to care for the child; and

ii. The amount of time needed for ongoing treatment for the specified condition as verified by the physician, certified psychologist, or certified behavioral health specialist.

c. Child Care Assistance shall not cover intermittent and routine appointments that are not part of an ongoing treatment plan.

d. Clients participating in a drug rehabilitation program are eligible for Child Care Assistance to participate in activities as specified by the drug rehabilitation program.

e. Clients participating in a court-ordered community service program are eligible for Child Care Assistance to support required community service participation as specified by the court.

f. Clients who are residents of a homeless or domestic violence shelter are eligible for Child Care Assistance based on shelter residency, and on verification provided by an authorized representative at the shelter. Child Care Assistance shall cover:

i. The days and hours that the client is unavailable to provide care to their own child due to participation in shelter-directed activities as verified by an authorized representative of the shelter; and

ii. The days and hours that the client is unable to provide care to the client's own child due to a physical, mental, or emotional disability as verified by a licensed physician, certified psychologist, or a certified behavioral health specialist.

B. Gaps In Employment.

Clients receiving Child Care Assistance are eligible for continued assistance during gaps in employment.

1. The Department shall continue Child Care Assistance for each parent, legal guardian, or relative caretaker in the eligible family during no more than two gaps in employment of 30 days in each 12-month period.

2. The Department shall authorize Child Care Assistance during a 30-day gap in employment beginning the day after the last day worked, after the client provides verification of his or her job termination date.

3. Gaps in employment may be consecutive (if requested).

a. The Department shall continue Child Care Assistance for an additional 30 days upon request of the client, if the client has not already used Child Care Assistance during two gaps in employment in the most recent 12-month period immediately preceding the job termination date.

b. The second gap in employment shall begin the day after the last day of the first gap in employment.

4. The Department shall continue to authorize the same number of units of Child Care Assistance as previously authorized for the employment activity.

5. The Department shall decrease the client's fee level and copayment under Appendix A, based on the loss of earned income effective the date that terminated employment has been verified, or the day after the last day worked, whichever is the later date.

6. The Department shall end Child Care Assistance during a gap in employment on the 30th day after the client's last day worked, or on the 60th day after the client's last day worked if two consecutive gaps were authorized, unless the client can verify participation in a new eligible activity.

7. When a client fails to report job loss timely as described under R6-5-4911(A)(1), and continues to use Child Care Assistance, the Department shall automatically reduce the

overpayment period by subtracting any unused gaps in employment in lieu of the corresponding months of overpayment.

8. Child care utilized during a gap in employment shall count toward the 60 month per child time limit for Child Care Assistance under R6-5-4919.

9. CPS Referred Families and CPS and DDD Foster Families.

a. Child Care Assistance shall be provided to families requiring assistance as documented in a CPS case plan, or to children who are in the care, custody, and control of the Department, and who need Child Care Assistance as documented in a foster care case plan.

b. Eligibility for Child Care Assistance under this provision shall be determined by CPS and DDD on a case by case basis.

C. Verification of Eligible Activity or Need. The client shall verify eligible activities and needs as requested by the Department. Acceptable verification shall include:

1. Pay stubs for the most recent 30-day period;

2. Employer's statement verifying start date, hourly rate of pay, work schedule, and frequency of pay including;

a. The date of receipt of the first full paycheck if the client is newly employed; and

b. The last day worked, if the client's employment has terminated.

3. Quarterly or annual tax statement for the most recent calendar quarter or year to verify self-employment activities;

4. Self-employment log to document self-employment activities and income accompanied by receipts for gross sales and business expenses for the most recent calendar month or quarter;

5. Written verification from an educational institution to verify days and hours of attendance, start and end dates of the activity, educational level, and satisfactory progress;

6. Written verification from a licensed physician, certified psychologist, or certified behavioral health specialist indicating the diagnosis, inability to care for the child, days and hours that child care is needed, and the anticipated recovery date;

7. Written verification from a homeless or domestic violence shelter indicating the days, hours, and duration that child care is needed as prescribed in subsection (A)(6)(f).

R6-5-4913. Applicants and Recipients as Child Care Providers

A. The client for Child Care Assistance may also be the child care provider for any child for whom assistance is requested when:

1. The client works for but is not the DES contracted party for the provision of Child Care Assistance;
 2. The client receives monetary compensation for work performed as a child care provider;
 3. The client cares for other unrelated children, for whom client does not receive Child Care Assistance, as well as for the child for whom the client has applied for Child Care Assistance; and
 4. The client is unavailable to provide care to the child for whom assistance is requested. When the client is also the child care provider, this is defined as:
 - a. There is no “not for compensation” slot available for the child; and
 - b. Caring for the child as well as for the other children for whom the child care provider receives compensation, would exceed the ratio per state certification or licensing standards pursuant to A.R.S. § 36-897.01 and 6 A.A.C. 5, Article 52.
- B.** If there is no “not for compensation” slot available for the child, and other eligibility criteria described in this Article are met, the client for Child Care Assistance may also be the child care provider for the child for whom assistance is requested.

R6-5-4914. Income Eligibility Criteria

A. Child Care Assistance Without Regard to Income. The Department shall not determine income eligibility for Child Care Assistance for the following:

1. Jobs participants who need Child Care Assistance to participate in the Jobs Program, and who are referred to CCA as prescribed in R6-5-4904(B).
2. Cash Assistance participants who need Child Care Assistance to maintain employment.
3. CPS referred families, and CPS or DDD foster families who need Child Care Assistance as documented in a CPS or foster care case plan, and who are referred to CCA as prescribed in R6-5-4904(B).

B. Child Care Assistance With Regard to Income. The Department shall determine income eligibility for Child Care Assistance for the following:

1. Former Cash Assistance participants who need Child Care Assistance to maintain employment as prescribed in R6-5-4916(A).
2. Clients who are not Cash Assistance participants but who need Child Care Assistance to maintain employment.
3. Teen parents who need Child Care Assistance for educational activities as prescribed in R6-5-4912(A)(4).

4. Clients who need Child Care Assistance because they are unable or unavailable to care for their own children due to physical, mental or emotional disability, participation in a drug treatment or court-ordered community service program, or residency in a homeless or domestic violence shelter as prescribed in R6-5-4912(A)(6).

C. Income Maximum for Child Care Assistance. The Department shall determine income eligibility by calculating the gross monthly income of all family members included in family size unless otherwise excluded as prescribed in subsections (D), (E), (F), and (H).

1. If the gross monthly income for the family is equal to or less than 165% FPL, the family meets the income eligibility requirements for Child Care Assistance.

2. If the gross monthly income for the family exceeds 165% FPL, the family does not meet the income eligibility requirements for Child Care Assistance.

D. Family Size Determination. The Department shall include the countable income of every person included in family size for the purpose of determining income eligibility as prescribed in this subsection.

1. Family size shall consist of:

a. The applicant for Child Care Assistance;

b. The applicant's natural, adoptive, and step children;

c. Any other parent or responsible person living in the household who is legally and financially responsible for either the applicant, or for the children needing care;

d. The children of the other parent or responsible person residing in the same household; and

e. The tax claimant under subsection R6-5-4914(D)(3).

2. When a parent applies for Child Care Assistance for a natural, adoptive, or step child, the Department shall:

a. If the applicant and other adult in the household are married, or have children in common who need child care, make one family size determination for the family.

b. Count the income of both parents.

3. When a tax claimant resides in the household with a parent who is applying for or receiving Child Care Assistance, the Department shall include the tax claimant in family size if:

a. The tax claimant states an intention to claim any of the following members of the eligible family residing in the same household as a dependent on the tax claimant's federal or state income tax return for the current calendar year:

i. The parent who is the applicant;

ii. The parent's natural, adoptive, or step children less than 18 years of age;

- iii. The parent's spouse;
 - iv. The other parent of the children for whom assistance is requested, or who are receiving Child Care Assistance; or
 - v. The dependent children of the other parent residing in the household, and who are included in family size.
- b. The tax claimant signs a declaration stating the intention to claim specific members of the eligible family as tax dependents for the current calendar year.
4. The Department shall include the tax claimant's dependent children under age 18 and spouse residing in the same household in family size.
5. When the applicant and his or her spouse are legally married and do not reside in the same household, but have the intention of remaining a family, the Department shall include the spouse in family size if the absent spouse is engaged in an eligible activity under R6-5-4912.
6. When a caretaker relative applies for Child Care Assistance for another related child only:
- a. Family size shall consist of the other related child or children only; and
 - b. The Department shall exclude both the caretaker relative and his or her spouse from the family size determination.
7. When the applicant applies for Child Care Assistance for natural, adoptive, or step children, and also for another related child, the Department shall make one family size determination for the family:
- a. Family size shall consist of the applicant, the applicant's child, any other related eligible children who need care, and any other parent or responsible person in the household.
 - b. Any income received by or for an "other related" child less than 13 years of age shall be counted.
 - c. If there is another relative in the household who states an intention to claim an other related child as a dependent for income tax purposes, this tax claimant must be the applicant for the child. The Department shall determine family size separately for this child under R6-5-4914(D)(6).
8. When an unwed minor parent applies for Child Care Assistance for his or her own child, and resides with his or her parents:
- a. The Department shall include the following in family size, unless the minor parent or the minor parent's children are tax dependents as described under subsection (d) below:
 - i. The minor parent; and
 - ii. The minor parent's child.

- b. The Department shall not include the parents and siblings of the unwed minor parent in family size.
- c. The Department shall deem a portion of the monthly gross countable income received by the parent of the minor parent to be available to meet the needs of the unwed minor parent and his or her children as described in this subsection, unless the parent of the minor parent is a tax claimant, under subsection (d) below.
 - i. The Department shall calculate the monthly gross countable income of the parents of the unwed minor parent;
 - ii. The Department shall subtract the amount of monthly gross countable income that equates to 165% FPL as specified in Appendix A, for the number of parents and siblings of the unwed minor parent residing in the same household only; and
 - iii. The Department shall count the remaining monthly gross countable income received by the parents of the unwed minor parent as available to meet the needs of the unwed minor parent and his or her children in the income eligibility determination.
- d. If a parent of the minor parent is a tax claimant who intends to claim the minor parent or the minor parent's child as a tax dependent, the Department shall determine family size as follows:
 - i. The Department shall include the tax claimant, the tax claimant's spouse, and the tax claimant's dependent children residing in the same household in family size with the minor parent, and his or her child; and
 - ii. The Department shall count all countable income received by the tax claimant and the tax claimant's spouse in the income eligibility determination.
- 9. When a married, separated, widowed, or divorced minor parent applies for Child Care Assistance for his or her own children:
 - a. The Department shall include the minor parent and his or her own dependent children in family size;
 - b. The Department shall include monthly gross countable income received by the minor parent and the other parent or responsible person residing in the home in the income eligibility determination;
 - c. The Department shall not consider income received by the parent of the minor parent in the income eligibility determination, unless the parent of the minor parent is a tax claimant, under subsection (8)(d); and
 - d. The Department shall not include parents and siblings of the minor parent in family size, unless the parent of the minor parent is a tax claimant, under subsection (8)(d).
- 10. If a tax claimant included in family size is also a parent who needs Child Care Assistance for his or her own child, the tax claimant shall submit a separate application.

a. The Department shall make a separate eligibility and family size determination for the tax claimant's dependent children less than age 18.

b. The Department shall include the parent, spouse or other parent or responsible person, and their dependent children in family size.

11. When a guardian applies for Child Care Assistance for a child in guardianship only, the Department shall:

a. Make one family-size determination for the child in guardianship.

b. Include all children in guardianship in family size.

c. Exclude the guardian and the guardian's spouse from family size.

d. Count the income received by or for the children in guardianship.

e. If the parent of the child needing care is also in the household, the Department shall not include the parent in family size; and shall not count his or her income.

12. When the applicant applies for Child Care Assistance for natural, step, or adoptive children in addition to the children in guardianship, the Department shall:

a. Make one family-size determination.

b. Include in family size the applicant, the applicant's children, the children in guardianship less than 13 years of age who need care, and any other parent or responsible person in the household.

c. Count the applicant's and other parent's or responsible person's income.

d. Count the income received by or for the children in guardianship less than 13 years of age.

13. When a foster parent applies for Child Care Assistance for his or her own children:

a. The Department shall include the applicant, other parent or responsible person, and their children in family size; and

b. The Department shall not include the foster child in family size unless the foster child is a relative.

E. Verification of Tax Claimant Status

1. The Department shall verify tax claimant status as described in R6-5-4914(D) by requiring:

a. The client to submit a signed and dated declaration stating that no relative 18 years of age or older residing in the same household intends to claim any member of the eligible family as a tax dependent for the current calendar year; or,

b. The client and the relative 18 years of age or older residing in the same household who intends to claim a member of the eligible family as a tax dependent for the current calendar year to:

i. Submit a signed and dated declaration stating that fact; and,

ii. State the name of the family member whom the relative intends to claim as a tax dependent.

2. The Department shall include the tax claimant, his or her spouse, and dependent children in family size upon receipt of the signed declaration.

3. If the tax claimant no longer intends to claim a member of the eligible family as a tax dependent, the client must sign and date a new declaration.

a. The new declaration shall specify that the tax claimant no longer intends to claim a member of the eligible family as a tax dependent.

b. The Department shall remove the tax claimant, tax claimant's spouse, and his or her dependent children from family size after receipt of the signed declaration.

F. Countable Income. The Department shall count the gross monthly income of a family as prescribed in subsection (D); countable income shall include:

1. Gross earnings received for work including wages, salary, armed forces pay (with the exception of specifically designated allotments for food and shelter costs), commissions, tips, overtime, piece-rate payments, and cash bonuses earned, before any deductions.

2. Net income from non-farm self employment including gross receipts minus business expenses. Gross receipts include the value of all goods sold and services rendered. Business expenses include costs of goods and services purchased or produced, rent, heat, light, power, depreciation charges, wages, and salaries paid, business taxes, and other expenses incurred in operating the business. The value of salable merchandise consumed by the proprietors of retail stores is not included as part of net income. Payments on loans or mortgages obtained to increase capital investments in property or equipment are not allowed as deductible expenses.

3. Net income from farm self employment which includes gross receipts minus operating expenses. Gross receipts include the value of all products sold, government crop loans, money received from the rental of farm equipment to others, and incidental receipts from the sale of wood, sand, gravel, and similar items. Operating expenses include costs of feed, fertilizer, seed, and other farming supplies, wages paid to farmhands, depreciation charges, cash rent, interest on farm mortgages, farm building repairs, farm taxes, and other expenses incurred in operation of the farm. The value of fuel, food, or other farm products used for family living is not included as part of net income. Payments on loans or mortgages obtained to increase capital investments in property or equipment are not allowed as deductible expenses.

4. Social Security payments prior to deductions for medical insurance including Social Security benefits and “survivors” benefits, and permanent disability insurance payments made by the Social Security Administration.
 5. Railroad retirement insurance income.
 6. Dividends including interest on savings, stocks and bonds, income and receipts from estates or trusts, net rental income or royalties, receipts from boarders or lodgers (net income received from furnishing room and board shall be 1/3 of the total amount charged). Interest on Series H. United States Government Savings bonds.
 7. Mortgage payments received shall be prorated on a monthly basis.
 8. Public assistance payments including payments from the following programs: Cash Assistance, Supplemental Security Income (SSI), State Supplementary Payments (SSP), General Assistance (GA), Bureau of Indian Affairs General Assistance (BIAGA), and Tuberculosis Control (TC).
 9. Pensions and annuities including pensions or retirement benefits paid to a retired person or their survivors by a former employer or by a union, or distributions or withdrawals from an individual retirement account.
 10. Unemployment Insurance payments including compensation received from government unemployment insurance agencies or private companies during periods of unemployment, and any strike benefits received from union funds.
 11. Workers’ compensation payments.
 12. Money received from the Domestic Volunteer Act when the adjusted hourly payment is equal to or greater than minimum wage; Action Volunteer Programs include VISTA, Foster Grandparent Program (FGP), Retired Senior Volunteer Program (RSVP), and Senior Companion Program (SCP).
 13. Alimony or spousal maintenance which shall be counted the month received.
 14. Child support which shall be counted the month received.
 15. Veterans’ pensions including benefits and disability payments paid periodically by the Veterans Administration to members of the Armed Forces or to a survivor of deceased veterans.
 16. Cash gifts received on a monthly basis from relatives, other individuals, and private organizations, as a direct payment in the form of money.
 17. Money received through the lottery, sweepstakes, contests, or through gambling ventures whether received on an annuity or lump sum basis.
 18. Any other source of income not specifically excluded in subsection (F).
- G. Excluded Income.** The Department shall exclude the items listed in this subsection when determining a family’s gross monthly income.

1. Per capita payments to or funds held in trust for any individual in satisfaction of a judgment of the Indian Claims Commission or the Court of Claims;
2. Payments made pursuant to the Alaska Native Claims Settlement Act to the extent such payments are exempt from taxation under Section 21(a) of the Act;
3. Money or capital gains received as a lump sum, from the sale of personal or real property, such as stocks, bonds, or a car (unless the person was engaged in the business of selling such property, in which case the net proceeds would be counted as income from self employment);
4. Withdrawals of bank deposits;
5. Loans; money borrowed;
6. Tax refunds;
7. Any monies received through the federal Earned Income Credit (EIC);
8. One time lump sum awards or benefits, including:
 - a. Inherited funds;
 - b. Insurance awards;
 - c. Damages recovered in a civil suit;
 - d. Monies contributed by a client to a retirement fund that are later withdrawn prior to actual retirement; and
 - e. Retroactive public assistance payments;
9. The value of U.S. Department of Agriculture (USDA) Food Stamps;
10. The value of USDA-donated food;
11. The value of any supplemental food assistance received under the Child Nutrition Act of 1966 and special food service program for children under the National School Lunch Act, the Women, Infant, and Children Program (WIC), Child and Adult Care Food Program (C.A.C.F.P.), and the School Lunch Program;
12. Any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (for example, Navajo/Hopi Relocation Act);
13. Earnings of a child who is under the age of 18 and attending high school or other training program, and who is not a minor parent who needs Child Care Assistance for his or her own child;
14. Home produce used for household consumption;
15. Government-sponsored training program expenses (TRE payments) such as training-related expenses paid to JOBS participants and Job Training Partnership Act (JTPA) training expenses paid directly to the client;

16. The value of goods or services received in exchange for work;
17. Interest on Series E, United States Government Savings bonds;
18. Foster care maintenance payments received for care of foster children;
19. Adoption subsidy payments received for the care of adopted children;
20. Educational loans, grants, awards, and scholarships regardless of their source, including Pell Grants, Supplemental Educational Opportunity Grants (SEOG), Bureau of Indian Affairs (BIA) Student Assistance Grants, college work-study income, Carl D. Perkins Vocational and Applied Technology Education Act income, and any other state or local, public, or private educational loans, grants, awards, and scholarships;
21. Money received from the Domestic Volunteer Act when the adjusted hourly payment is less than minimum wage; Action Volunteer Programs include VISTA, Foster Grandparent Program (FGP), Retired Senior Volunteer Program (RSVP), and Senior Companion Program (SCP);
22. Housing and Urban Development (HUD) benefits, cash allowances and credits against rent;
23. Vendor payments including payments made directly to a third party by friends, relatives, charities, or agencies to pay bills for the client;
24. Vocational Rehabilitation training-related expenses (TRE) which are reimbursements for expenses paid. Subsistence and maintenance allowances, and incentive payments not designated as wages;
25. Disaster relief funds and emergency assistance provided under the Federal Disaster Relief Act, and comparable assistance provided by a state or local government, or disaster assistance organization;
26. Energy assistance including all state or federal benefits designated as “energy assistance” or assistance from a municipal utility or non-profit agency;
27. Agent Orange payments;
28. Any other income specifically excluded by applicable state or federal law.

H. Income Deduction. Child support that is paid for dependents who do not reside in the same household with the eligible family shall be deducted from the monthly gross countable income prior to income calculation and fee level and copayment assignment as prescribed in subsection (I) and R6-5-4915.

I. Income Calculation. The Department shall calculate monthly income as prescribed in this subsection.

1. The Department shall include all income of all family members included in the family-size determination, other than income excluded as prescribed in R6-5-4914(F) in the determination of income eligibility.
2. The Department shall calculate a monthly figure for each source of income separately with the appropriate method used for calculation.
3. After calculating monthly income for each source of income, the Department shall add the monthly amounts from each source to obtain the total monthly income.
4. The Department shall convert income received less often than monthly to a monthly figure as provided in this subsection.
 - a. The Department shall prorate the total income over the number of months that the income is intended to cover.
 - b. If the income is received on or after the date of application, a monthly share of income shall be considered beginning with its earliest possible effective date and for a number of months equal to the number of months which the income covers.
 - c. If the family receives the income prior to the date of application, the number of months that the income is intended to cover shall be equal to the number of months of coverage remaining.
5. The Department shall anticipate income for a current or future month based on the averaged income received in the most recent 30-day period, unless the Department receives new information that indicates that the income has changed, as verified under subsection (J).
 - a. If the income received by the household has increased due to receipt of a new source of income, an increased work schedule, or a raise in salary or wages, the Department shall calculate the gross monthly countable income for the household based on the amount of income anticipated to be received on a monthly basis. The Department shall begin counting the new or increased income as described under subsection (6).
 - b. If the income received by the household has decreased due to loss of a source of income, a decreased work schedule, or a reduction in salary or wages, the Department shall cease counting the income effective the date that the client provides verification of the loss or reduction in income.
6. When a family receives a new or increased income source that will be received monthly, weekly, bi-weekly, or semi-monthly:
 - a. The income shall not be considered available to the family until the date that the first full payment is received.
 - b. The Department shall not assess a new fee level or ineligibility to the client until the monies are available.

c. Once the client has already received the payment that includes the new or increased income source, and a higher fee level or ineligibility results:

i. The Department shall increase the fee level or terminate assistance no earlier than 10 days after the first full paycheck has been received; and

ii. The Department shall send a 10-day negative action notice prior to increasing the fee level or terminating assistance.

7. The Department shall convert income received more often than monthly, for a period covering less than a month, to a monthly amount by one of the methods listed below.

a. If the income amount does not vary and is received monthly, weekly, bi-weekly, or semi-monthly, the conversion to a monthly amount will be obtained by multiplying the pay period amount by:

i. 1, if monthly;

ii. 4.3, if weekly;

iii. 2.15, if bi-weekly; or

iv. 2, if semi-monthly.

b. This amount shall be applied as income on an ongoing monthly basis until there is a change in the income.

c. If the monthly income received varies in amount and frequency, and exact monthly figures are unavailable, the Department shall use an average monthly figure.

8. When the Department calculates the gross monthly income for the family, the whole dollar amount only shall be used to determine income eligibility, and fee level and copayment assignment; any amount that is a fraction of a whole dollar shall be rounded down to the next whole dollar.

J. Verification of Income. The client shall verify income by providing written documentation of income as requested by the Department such as:

1. Pay stubs for the most recent calendar month, or for any month of potential overpayment;

2. Employer's statement verifying work schedule, hourly rate of pay, and frequency of pay;

3. Benefit award statements for the most recent benefit period;

4. Statements of account to verify interest income;

5. Quarterly or annual tax returns for the most recent quarter or year for self-employment income;

6. Self-employment log accompanied by gross sales receipts and business expense receipts for the most recent calendar month or quarter; and

7. Other written documentation from the source of the income indicating the amount of income received, source of income, frequency received, and naming the payee.

R6-5-4915. Fee Level and Copayment Assignment

A. The Department shall assign a fee level to the family based on family size and monthly gross countable income, as specified in Appendix A.

B. The Department shall assign individual minimum required copayment amounts for each child in the family based on the fee level assignment, and the number of children needing care, as specified in Appendix A.

C. The Department shall not assign a fee level or minimum required copayment to Jobs participants, Cash Assistance participants who need Child Care Assistance for employment, or families determined eligible and referred by CPS or DDD.

D. When a client fails to pay the DES-required copayment, or fails to make satisfactory arrangements for payment of the DES-required copayment with a child care provider, the client is ineligible for Child Care Assistance.

E. When the Department has determined that an client is ineligible for Child Care Assistance due to nonpayment of the copayment, the client is ineligible for any Child Care Assistance program that requires a copayment until past-due copayments have been paid, or until satisfactory arrangement have been made with the provider for payment.

R6-5-4916. Special Eligibility Criteria

A. Transitional Child Care

1. Former Cash Assistance participants who are attempting to achieve independence from the Cash Assistance program, who need Child Care Assistance for employment, and who are otherwise eligible shall receive up to 24 months of Transitional Child Care Assistance.

2. The former Cash Assistance participant shall have received Cash Assistance in Arizona in at least one month and shall apply for Child Care Assistance within six months after the Cash Assistance case closure date.

3. The former Cash Assistance participant and any other parent or responsible person in the household shall need Child Care Assistance to maintain employment.

4. The most recent Cash Assistance case closure shall not have been due to a sanction for Jobs or Child Support noncompliance, and the Cash Assistance participant shall not have been

sanctioned due to intentional program violation (IPV) at the time of the most recent Cash Assistance case closure.

B. Cash Assistance Diversion Participants.

1. Applicants for Cash Assistance who are diverted from long-term Cash Assistance through the Cash Assistance Diversion program shall be treated as Cash Assistance participants during the three-month period that the Cash Assistance Diversion payment covers.
2. Cash Assistance Diversion participants shall be eligible for Child Care Assistance for employment activities without regard to income as prescribed in R6-5-4914(A) during the three-month Diversion period.
3. Cash Assistance Diversion participants shall be eligible for Child Care Assistance for job search activities during the three-month Diversion period.
4. Cash Assistance Diversion participants shall be eligible for Transitional Child Care after the three-month Diversion period if the income eligibility requirements in R6-5-4914(B) and the TCC requirements in subsection (A) of this provision are met.

R6-5-4917. Waiting List for Child Care Assistance

A. Implementation of a Waiting List for Child Care Assistance.

1. The Department may implement a waiting list for Child Care Assistance whenever it determines that sufficient funding is not available to sustain benefits for all of the applicants requesting assistance.
 - a. The Department may implement a waiting list for all applicants under subsection (B); or,
 - b. The Department may implement a partial waiting list and prioritize access to Child Care Assistance for applicants based on income under subsection (D).
2. When the waiting list is in effect, the Department shall place applicants determined to be eligible for Child Care Assistance on the waiting list under this subsection, and shall not authorize Child Care Assistance until the Department determines that sufficient funding is available.

B. Applicants Who Are Subject To the Waiting List.

When the waiting list is in effect, the Department shall place applicants determined to be eligible for Child Care Assistance on the waiting list, including individuals who are reapplying for Child Care Assistance following case closure. The Department shall place the following applicants on the waiting list:

1. Applicants who are not Cash Assistance participants but who need Child Care Assistance to maintain employment under R6-5-4912(A).
2. Teen parents who need Child Care Assistance for educational activities under R6-5-4912(D).
3. Applicants who need Child Care Assistance because they are unable or unavailable to care for their own children due to physical, mental, or emotional disability, participation in a drug treatment or court-ordered community service program, or residency in a homeless or domestic violence shelter under R6-5-4912(F).

C. Applicants Who Are Not Subject To the Waiting List.

When the waiting list is in effect, the Department shall not place the following applicants determined eligible for Child Care Assistance on the waiting list, and shall proceed to authorize Child Care Assistance under R6-5-4918.

1. Jobs participants who need Child Care Assistance to participate in the Jobs Program, and who are referred to CCA under R6-5-4904(B).
2. Cash Assistance participants who need Child Care Assistance to maintain employment under R6-5-4904(B).
3. CPS referred families, and CPS or DDD foster families who need Child Care Assistance as documented in a CPS or foster care case plan, and who are referred to CCA under R6-5-4904(B).
4. Former Cash Assistance participants who need Child Care Assistance to maintain employment under R6-5-4916(A).

D. Prioritization of Applicants for Child Care Assistance When the Waiting List Is In Effect.

The Department shall prioritize applicants for authorization of Child Care Assistance when the waiting list is in effect under this subsection.

1. **Prioritization Based On Income.**
 - a. Families with gross monthly incomes at or below 100% of the Federal Poverty Level (FPL) receive the highest priority for assistance;
 - b. The Department shall prioritize the remainder of families applying for Child Care Assistance when the waiting list is in effect in the following order:
 - i. Families with gross monthly incomes between 101% FPL and 110% FPL;
 - ii. Families with gross monthly incomes between 111% FPL and 120% FPL;
 - iii. Families with gross monthly incomes between 121% FPL and 130% FPL;
 - iv. Families with gross monthly incomes between 131% FPL and 140% FPL;

- v. Families with gross monthly incomes between 141% FPL and 150% FPL;
 - vi. Families with gross monthly incomes between 151% FPL and 160% FPL;
 - vii. Families with gross monthly incomes between 161% FPL and 165% FPL;
2. Prioritization Based On Application Date.

The Department shall place clients determined eligible for Child Care Assistance on the waiting list effective the date that the Department receives an identifiable application, under R6-5-4904(A)(2).

E. Cooperation Requirement for Clients on the Waiting List.

- 1. Clients shall cooperate with the Department to maintain eligibility while on the waiting list, under R6-5-4911(A).
- 2. If the family's household income changes, the client shall notify the Department of the change in income within 2 workdays.
- 3. If someone moves in or out of the household, the client is required to notify the Department within 2 workdays.
- 4. The Department shall recalculate gross household income and notify the client of any changes in priority status described under subsection (D) based on the change in income or family size.

F. Loss of Employment While On the Waiting List

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- 1. If the parent or caretaker of the child loses employment while on the waiting list, the family may remain on the waiting list without an eligible activity.
- 2. When the Department selects the family for release from the waiting list under subsection (H), the Department shall require the parent or caretaker of the child to verify participation in an eligible activity under R6-5-4912 before the Department authorizes the family to receive Child Care Assistance.

G. Determination of Ineligibility While On the Waiting List

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- 1. If the family becomes ineligible for Child Care Assistance while on the waiting list, or during release from the waiting list under subsection (J), the Department shall remove the client from the waiting list and close the case.
- 2. The client shall submit a new application and verify eligibility for Child Care Assistance in order to be added back onto the list effective the new application date.

H. Selection from the Waiting List.

1. The Department shall select clients for release from the waiting list within each level of income priority as described under subsection (D), and in application date order.

2. When the Department notifies the client that he or she is being released from the waiting list, the Department may require the client to verify income, employment, other household circumstances or provider selection prior to being authorized for Child Care Assistance.

I. Clients Determined Eligible Upon Selection for Release from the Waiting List.

1. The Department shall authorize Child Care Assistance effective a date specified by the Department based on the availability of funding, after the client has submitted any requested verification and the Department has determined that the family remains eligible for Child Care Assistance.

2. If the client is eligible for Child Care Assistance, the Department shall authorize Child Care Assistance, and shall notify the client in writing regarding:

a. The start date of Child Care Assistance;

b. The amount of assistance authorized for each child under R6-5-4918; and

c. The assigned fee level and copayment for each child.

J. Clients Determined Ineligible Upon Selection for Release from the Waiting List.

1. If the client is not eligible for Child Care Assistance as described in R6-5-4920, the Department shall notify the client regarding ineligibility under R6-5-4921.

2. The Department shall require the client to submit a new application and verify eligibility for Child Care Assistance in order to be added back onto the list effective the new application date, if a waiting list remains in effect.

K. Clients Selected for Release from the Waiting List in Error.

1. If the Department determines that a client was not eligible for selection from the waiting list, and the waiting list remains in effect, the Department shall proceed as described under this subsection.

2. If the Department determines that the client is currently at a lower level of priority for assistance under subsection (D)(1) due to a previously unreported change in income or family size, the Department shall not authorize Child Care Assistance.

3. The Department shall reinstate the client on the waiting list effective the existing application date; and,

4. Notify the family in writing of reinstatement to the waiting list and the newly assigned level of priority.

R6-5-4918. Authorization of Child Care Assistance

A. Authorization Based on Eligible Activity or Need. The Department shall authorize Child Care Assistance for a portion of each 24-hour day based on the verified eligible activity or need of the parent and responsible person for the child needing care.

B. Authorization Based on Unavailability. The amount of Child Care Assistance authorized by the Department shall be based on the amount of time that the client and any other parent or responsible person in the household are unavailable or incapable to provide care to their own children due to an eligible activity or need as prescribed in R6-5-4911(F) and R6-5-4912. When there are two or more parents or responsible persons in the household, Child Care Assistance shall be authorized for the amount of time that neither parent or responsible person is available due to an eligible activity or need.

C. Authorization for Self-employment Activities.

1. The Department shall authorize Child Care Assistance for self-employment activities based on monthly net income divided by the current hourly minimum wage standard.

2. Authorization of Child Care Assistance for self-employment activities shall not exceed the lesser of:

a. The maximum number of Child Care Assistance units that can be authorized as prescribed in subsections (B) and (D), or

b. The number of hours calculated by dividing monthly net income from self-employment by the amount of the hourly minimum wage standard, or

c. The number of hours of Child Care Assistance needed by the client to perform self-employment activities.

D. Six-child Authorization Limit.

1. The Department shall authorize no more than six children in the eligible family at any given point in time.

a. The six-child authorization limit applies to clients under this subsection.

i. Clients who are not Cash Assistance participants but who need Child Care Assistance to maintain employment;

ii. Teen parents who need Child Care Assistance for educational activities under R6-5-4912(D); and

iii. Clients who need Child Care Assistance because they are unable or unavailable to care for their own children due to physical, mental, or emotional disability, participation in a drug treatment or court-ordered community service program, or residency in a homeless or domestic violence shelter under R6-5-4912(F).

b. The six-child authorization limit shall not apply to the following clients:

- i. Jobs participants who need Child Care Assistance to participate in the Jobs Program, and who are referred to CCA under R6-5-4904(B);
- ii. Cash Assistance participants who need Child Care Assistance to maintain employment;
- iii. CPS referred families, and CPS or DDD foster families who need Child Care Assistance as documented in a CPS or foster care case plan, and who are referred to CCA under R6-5-4904(B); and
- iv. Former Cash Assistance participants who need Child Care Assistance to maintain employment under R6-5-4916(A).

c. For eligible families who are not subject to the six-child limit, there is no limit to the number of eligible children whom the Department can authorize to receive Child Care Assistance in the eligible family.

2. If the eligible family requests Child Care Assistance for more than six children, the family shall select the six children to be authorized to receive Child Care Assistance.

3. If the family fails to designate six children to receive Child Care Assistance as requested, the Department shall authorize the six youngest children.

4. If the client is already receiving Child Care Assistance for six children and requests assistance for a new child, the Department shall not authorize assistance for the new child until the client notifies the Department which child will no longer receive Child Care Assistance.

E. Units of Child Care Assistance.

1. The Department shall authorize Child Care Assistance in full- and part-day units;

2. The Department shall not authorize more than 31 units for each child, per child care provider in a calendar month;

3. A part-day unit of Child Care Assistance is less than six hours;

4. A full-day unit of Child Care Assistance is six hours or more;

5. Each child care provider determines the upper limit of what constitutes a full day of care for that provider.

F. Date of Eligibility. The Department shall approve eligibility for Child Care Assistance effective the application file date or referral receipt date as described in R6-5-4904 if the client satisfies all applicable conditions of eligibility as prescribed in this Article.

G. Date of Authorization.

1. The Department shall authorize Child Care Assistance to begin effective the start date of the eligible activity or need, but not earlier than application file date, request date, or referral receipt date as described in R6-5-4904.

2. The Department may authorize Child Care Assistance with an effective date that precedes the referral receipt date when the referral is received untimely due to administrative delay and the eligible start date of the activity or need precedes the referral receipt date for clients who are referred for Child Care Assistance as described in R6-5-4904 (B).

H. Exclusion from Authorization. The Department shall not authorize Child Care for educational services for children enrolled in grades 1 through 12 when such services are provided during the regular school day.

R6-5-4919. Time Limit for Child Care Assistance

Under A.R.S. § 46-803(K), each child shall receive time-limited Child Care Assistance, unless the child's parents or caretakers qualify for an extension under this Section.

A. Clients Who Are Subject To the Time Limit.

1. Clients who are not Cash Assistance participants but who need Child Care Assistance to maintain employment;

2. Teen parents who need Child Care Assistance for educational activities under R6-5-4912(D); and

3. Clients who need Child Care Assistance because they are unable or unavailable to care for their own children due to physical, mental, or emotional disability, participation in a drug treatment or court-ordered community service program, or residency in a homeless or domestic violence shelter under R6-5-4912(F).

B. Clients Who Are Not Subject To the Time Limit.

1. Jobs participants who need Child Care Assistance to participate in the Jobs Program, and who are referred to CCA under R6-5-4904(B);

2. Cash Assistance participants who need Child Care Assistance to maintain employment;

3. CPS referred families, and CPS or DDD foster families who need Child Care Assistance as documented in a CPS or foster care case plan, and who are referred to CCA under R6-5-4904(B); and

4. Former Cash Assistance participants who need Child Care Assistance to maintain employment under R6-5-4916(A).

C. Effective Date of the Time Limit.

The 60-month time limit shall begin:

1. For applicants of Child Care Assistance eligible under any of the categories listed in subsection (A) who file an application on or after January 1, 2007, on the date the application is received by the Department.

2. For clients receiving Child Care Assistance on January 1, 2007 under subsection (A), January 1, 2007.

3. For clients receiving Child Care Assistance on January 1, 2007 under subsection (B), the first date that the Department determines that the existing client is eligible for Child Care Assistance under one of the categories described in subsection (A).

D. Calculation of the Time Limit.

1. Each child receiving Child Care Assistance under subsection (A) shall receive time-limited assistance for:

a. Any combination of 1380 paid full or part day child care units; or

b. Child Care Assistance that spans 60 calendar months, whichever is later. A calendar month is one in which the Department pays for at least one full- or part-day unit.

2. Any unit of assistance used by the child, and later identified as a provider or agency caused overpayment shall not count toward the child's time limit.

3. Any unit of assistance used by the child, and later identified as a client-caused overpayment shall not count toward the child's time limit, if the family repays the overpayment.

4. The Department shall apply the time limit individually to each child in the family, and not to the parent or caretaker of the child.

a. If a different caretaker applies for the child at a later point in time, each child will be entitled to the remaining portion of time-limited Child Care Assistance that has not yet been utilized.

b. Any Child Care Assistance utilized by the child as part of an eligible family that was exempt from the time limit under subsection (B) shall not count toward the child's time limit.

E. Expiration of the Time Limit.

1. When a child exhausts time-limited of Child Care Assistance under this subsection, the Department shall stop assistance for the child unless the parents or caretakers of the child qualify for an extension under Section (F).

2. When all of the children in a family have exhausted the time limits of Child Care Assistance, the Department shall terminate assistance for the family unless the parents or caretakers:

a. Qualify for an extension under subsection (F); or,

b. Are no longer subject to the time limit as described in subsection (B).

F. Extension of the Time Limit for Child Care Assistance.

1. The Department shall grant a 6-month extension to the time limit if the parents or caretakers show efforts toward self-sufficiency during the most recent 6-month period. The

Department may elect to grant extensions on a 12-month basis. In order to qualify for an extension, the parents or caretakers in the family shall:

- a. Currently be engaged in an activity that promotes self-sufficiency, which means the parents or caretakers continue to:
 - i. Be employed a monthly average of 20 or more hours per week;
 - ii. Be employed less than 20 hours per week and earning at least minimum wage;
 - iii. Be employed a monthly average of at least 20 hours per week while attending school or training;
 - iv. Remain self-employed with a net profit equating to a monthly average of 20 hours per week times minimum wage;
 - v. Attend high school, G.E.D. classes, or remedial education for the attainment of a high school diploma for a teen parent under 20 years of age;
 - vi. Follow the treatment plan prescribed by a physician, psychiatrist, psychologist for the treatment of a specified mental, physical, or emotional condition, which precludes the parent or caretaker for caring for his or her own child for a portion of a 24-hour day;
 - vii. Participate in a drug/alcohol rehabilitation plan or court-ordered community service plan; or
 - viii. Participate in a homeless or domestic violence case plan while residing in a shelter; and,
- b. Sign and date the “Self-Sufficiency Statement” and declare that the parents or caretakers have taken at least one of the following actions during the most recent six or 12-month period to promote self-sufficiency:
 - i. Received a job promotion, or an increase in wages, hours, or benefits;
 - ii. Remained consistently employed;
 - iii. Remained self-employed and consistently demonstrated a net profit;
 - iv. Applied for a better job;
 - v. Left one job for a better job (higher pay, more hours, better schedule, or better benefits);
 - vi. Registered with DES Employment Services (e.g., One Stop Career Center or DES Job Service) or another public or private employment agency, or job searched independently;
 - vii. Not requested Cash Assistance;
 - viii. Engaged in activities to pursue or maintain child support payments from an absent parent through DES Child Support Enforcement, the county attorney’s office, or a private attorney;
 - ix. Attended work-related school or training, or pursued a degree or certificate that will lead to enhanced career opportunities;

- x. Attended high school, remedial education for the attainment of a high school diploma or G.E.D. classes;
- xi. Attended English for Speakers of Other Languages (E.S.O.L.) classes;
- xii. Attended a trade or vocational school, college or university and made satisfactory progress in the activity;
- xiii. Continued with a course of treatment under the direction of a physician, psychiatrist, or psychologist;
- xiv. Followed a shelter case plan while residing in a domestic violence/homeless shelter;
- xv. Participated in or completed a drug/alcohol rehabilitation or court-ordered community service program;
- xvi. Participated in other employment-related activities or career-related training activities; or
- xvii. Any other similar action acceptable to the Department that demonstrates that the parents or caretakers are moving toward self sufficiency.

2. If the parents or caretakers do not meet the conditions specified at subsections (1)(a) and (b), the family does not qualify for an extension of the time limit.

3. If the parents or caretakers meet the conditions specified at subsections (1)(a) and (b), and all other eligibility criteria are met, the family shall qualify for additional six or 12-calendar month extension periods if the parents or caretakers continue to meet the criteria at the end of each extension period.

G. Extension of the Time Limit after Case Closure.

When a parent or caretaker applies for Child Care Assistance after the time limit for the child in care has been exhausted, the parent or caretaker of the child may qualify for an extension as follows:

1. The parent or caretaker shall be an eligible applicant under R6-5-4911(B), and shall meet the criteria for Child Care Assistance eligibility;
2. All parents or caretakers shall meet the self-sufficiency criteria prescribed at R6-5-4919(F); and
3. The parent or caretaker may qualify for successive extensions of the time limit under subsection (F).

R6-5-4920. Denial or Termination of Child Care Assistance

The Department shall deny or terminate Child Care Assistance and provide written notification as prescribed in R6-5-4921 when the client:

1. Is not an eligible applicant as prescribed in R6-5-4911(B);
2. Is not a U.S. citizen or legal resident of the U.S.;
3. Is not a resident of the state of Arizona;
4. Has no children under the age of 13;
5. Has income that exceeds the maximum allowable as prescribed in R6-5-4914(C);
6. Does not have an eligible need, and is not engaged in an eligible activity as prescribed in R6-5-4912;
7. Is available to care for the children for whom assistance is requested (or there is another parent or responsible person in the household who is not engaged in an eligible activity and is available to provide care);
8. Has not provided the information or documentation required for a determination or redetermination of eligibility;
9. Has failed to cooperate in the arrangement of child care services;
10. Has not selected a child care provider who is registered with the Department;
11. Has requested that the application be withdrawn or that assistance be terminated;
12. Is a member of a family that already has an active case or pending application on file for Child Care Assistance;
13. Cannot be located by phone or mail and mail addressed to last known address has been returned;
14. Is deceased, incarcerated, or confined to an institution; or
15. Does not satisfy one or more eligibility criteria listed in R6-5-4904 through R6-5-4916;
16. Has exhausted the 60-month lifetime limit for all children in the eligible family under R6-5-4919(D) and does not qualify for an extension.

R6-5-4921. Notification Requirements

- A. The Department shall mail or deliver written notice to the client as follows:

1. On a decision about an application, within 30 calendar days of the date that the Department receives the completed application.
2. On a positive action, the Department shall mail adequate notice on or before the date the action will become effective.
3. On a change in the amount of authorized units based on a change in need, the Department shall mail adequate notice on or before the date the action will become effective.
4. On a negative action, the Department shall mail the notice at least 10 calendar days in advance of the date the action will become effective.
5. On changes in law or policy which affect entire classes or groups and concern issues not related to individual questions of fact, the Department shall issue notice of such action at least 10 calendar days in advance of the effective date of the action.

B. The Department shall not provide notice on a negative action when:

1. Child Care Assistance authorized for a specified period of time is terminated and the individual was informed in writing of the termination date when the Child Care Assistance was initiated;
2. The applicant, client, or child is deceased; and
3. There is a loss of contact with the client and mail addressed to the last known address has been returned.

C. Written notice shall include a statement of the action to be taken, the reasons for the intended action, citation to the specific rule supporting the action, and an explanation of the client's rights regarding a request for a fair hearing.

R6-5-4923. Overpayments

A. Overpayments; Date of Discovery.

1. The Department shall pursue collection of all client- and provider-caused overpayments.
2. The Department discovers an overpayment on the date the Department determines that an overpayment exists.
3. The Department shall write an overpayment report within 90 days of the discovery date.
4. If the CCA office suspects that an overpayment was caused by fraudulent activity, it shall refer the overpayment report to the Department's Office of Special Investigations for potential prosecution.

5. The Department shall not attempt to recover an overpayment from a person who is not a current recipient when the overpayment was not the result of fraud, and the Department has exhausted reasonable efforts to collect the overpayment and has determined that it is no longer cost effective to pursue the claim.

B. Overpayments: Persons Liable. The Department shall pursue collection of an overpayment from:

1. The client if the overpayment was caused by the client;
2. Any individual member of the family who was included in family size as prescribed in R6-5-4914 (D) during the overpayment period if the overpayment was caused by the client; or
3. The child care provider if the overpayment was caused by the provider.

R6-5-4924. Appeals

A. Entitlement to a Hearing.

1. An applicant for or recipient of Child Care Assistance is entitled to a hearing to contest the following Department actions:

- a. Denial of the right to apply for assistance;
 - b. Complete or partial denial of an application for assistance;
 - c. Failure to make an eligibility determination on an application within 30 days of the application file date;
 - d. Suspension, termination, reduction, or withholding of assistance except as provided in subsection (B);
 - e. Increase in the fee level and DES-required copayment amount; or
 - f. The existence or amount of an overpayment attributed to the family or the terms of a plan to repay the overpayment.
2. Applicants and recipients are not entitled to a hearing to challenge benefit adjustments made automatically as a result of changes in federal or state law, unless the Department has incorrectly applied such law to the individual seeking the hearing.

B. Request for Hearing; Time Limits.

1. A person who wishes to appeal a negative action shall file a written request for a fair hearing with a local CCA office, within 10 days of the negative action notice date.
2. A request for a hearing is deemed filed;

- a. On the date it is mailed, if transmitted via the United States Postal Service or its successor. The mailing date is as follows:
 - i. As shown by the postmark;
 - ii. As shown by the postage meter mark of the envelope in which it is received, if there is no postmark; or
 - iii. The date entered on the document as the date of its completion, if there is no postmark or no postage meter mark, or if the mark is illegible.
 - b. On the date actually received by the Department, if not sent through the mail as provided in subsection (B)(2)(a).
3. The submission of any document is considered timely if the appellant proves that delay in submission was due to Department error or misinformation, or to delay caused by the U.S. Postal Service or its successor.
4. Any document mailed by the Department is considered as having been given to the addressee on date it is mailed to the addressee's last known address. The date mailed shall be presumed to be the date shown on the document, unless otherwise indicated by the facts.
5. The Office of Appeals shall deny any request that is not timely filed. A party may appeal a decision on the timeliness of an appeal.
- C. Hearing Requests; Preparation and Processing.**
1. Within two work days of receiving a request for appeal, the local CCA office shall notify the Office of Appeals of the hearing request.
 2. Within 10 days of receiving a request for appeal, the local CCA office shall prepare and forward to the Office of Appeals a prehearing summary which shall include:
 - a. The appellant's name (and case name, if different);
 - b. The appellant's SSN (or case number, if different);
 - c. The local office responsible for the appellant's case;
 - d. A brief summary of the facts surrounding, and the grounds supporting, the negative action;
 - e. Citations to the specific provisions of this Article or the Department's CCA manual which support the Department's action; and
 - f. The decision notice and any other documents relating to the appeal.
 3. The local office shall mail the appellant a copy of the summary. Upon receipt of a hearing request, the Office of Appeals shall schedule the hearings.
- D. Continuation of Assistance Pending Appeal; Exceptions.**

1. If an appellant files a request for appeal within 10 calendar days of the negative action notice date, the Department shall continue assistance at the current level unless:
 - a. The appellant waives continuation of current assistance,
 - b. The appeal results from a change in federal or state law which mandates an automatic adjustment for all classes of recipients and does not involve a misapplication of the law, or
 - c. The appellant is requesting continuation of TCC benefits for longer than the 24-month eligibility period.
2. The negative action shall be stayed until receipt of an official written decision in favor of the Department, except in the following circumstances:
 - a. At the hearing and on the record, the hearing officer finds that the sole issue involves application of law, and the Department properly applied the law and computed the assistance due the appellant;
 - b. A change in eligibility or assistance amount occurs for reasons other than those being appealed, and the eligible family receives and fails to timely appeal a notice of negative action concerning such change;
 - c. Federal or state law mandates an automatic adjustment for classes of recipients;
 - d. The appellant withdraws the request for hearing; or
 - e. The appellant fails to appear for a scheduled hearing without prior notice to the Office of Appeals, and the hearing officer does not rule in favor of the appellant based upon the record.
3. Upon receipt of a decision in favor of the Department, the Department shall write an overpayment for the amount of any assistance the family received in excess of the correct amount, while the stay was in effect.

R6-5-4925. Maximum Reimbursement Rates For Child Care

The Department shall pay the maximum reimbursement rates for child care as set forth in Appendix B.

DEPARTMENT OF ENVIRONMENTAL QUALITY (F-17-0606)

Title 18, Chapter 16, Article 2, Preliminary Investigations and Site Scoring; Article 3, Public Information; Article 4, Remedy Selection; Article 5, Interim Remedial Actions



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

MEETING DATE: July 6, 2017

AGENDA ITEM: E-5

TO: Members of the Governor's Regulatory Review Council

FROM: Justin Larson, Legal Intern

DATE : June 20, 2017

SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY (F-17-0606)
Title 18, Chapter 16, Article 2, Preliminary Investigations and Site Scoring; Article 3, Public Information; Article 4, Remedy Selection; Article 5, Interim Remedial Actions

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

The purpose of Department of Environmental Quality ("Department") is "to consolidate and focus responsibility for environmental management and administration of water quality, air quality, solid waste and hazardous waste regulation with the goal of increasing effectiveness, efficiency and public acceptance of environmental regulation." Laws 2009, Ch. 23, § 3. This report covers 25 sections and one (1) appendix in A.A.C. Title 18, Chapter 16 related to the implementation of Arizona's Water Quality Assurance Revolving Fund (WQARF) program.

The WQARF program is Arizona's version of the federal Superfund program known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). WQARF was established in 1986 to address the threat of contaminated soil and groundwater sites in the state.

Article 2 concerns preliminary investigations and site scoring; Article 3 outlines procedures regarding public notifications, public comment, and public information repositories; Article 4 governs remedy selection; and Article 5 governs interim remedial actions before remedy selection under Article 4. These rules were made through exempt rulemaking in 2002.

Proposed Action

The Department has identified numerous corrections that could be made throughout the rules. The Department describes these changes as "minor." Although the Department does not plan to amend the rules in the near future, if any material changes are required to be made to Chapter 16, the Department will also make the minor changes identified in the report.

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 certifies that it is in 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 individual 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 has not received any written criticisms on these rules in the last five years.

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

Yes. The Department cites applicable statutory authority for the rules reviewed. The Department's Director is required to "[a]dopt, modify, repeal and enforce . . . rules which are reasonably necessary to carry out the director's functions under [A.R.S. Title 49, Chapter 2, Water Quality Control]." A.R.S. § 49-203(A)(9). The Director is also required to adopt rules necessary to implement statutory provisions governing remedial action. A.R.S. § 49-282.06(B). These include rules related to interim remedial actions, site scoring, no further action determinations, remedy selection, use of innovative remedial technologies, and provision of information to communities. A.R.S. §§ 49-282.03(D); 49-282.06(B)(2) through (5); and 49-289.03(B), respectively.

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

Yes. The Department indicates that the rules are generally consistent with other rules and statutes with five exceptions:

- R18-16-401 Change "hazardous substances" to "hazardous substance" to match A.R.S. § 49-281(8); update the citation to the definition of "vadose zone" from A.R.S. § 49-201(39) to A.R.S. § 49-201(40).
- R18-16-408 Correct four citations so that the references in the rule use capital letters.
- R18-16-415 Change reference from R18-7-209 to R18-7-210 due to renumbering.
- R18-16-501 Correct the definition of "public water system, changing the citation from 42 U.S.C. § 300(f) to 42 U.S.C. § 300f.
- R18-16-503 Change the citation in subsection (A)(7) from 12 A.A.C. 7, Article 15 to 12 A.A.C. 15, Article 7 [the numbers 7 and 15 were transposed].

Additionally, the Department notes that the update requirement for community involvement plans in A.A.C. R18-16-404(C) (“annually”) is stricter than, but nonetheless consistent with A.R.S. § 49-287.03(D) (“*at least* every two years”) (emphasis added).

Lastly, the WQARF program is similar to CERCLA in its overall purpose. The Department is authorized to adopt CERCLA rules “by reference,” which would require that such rules be consistent with WQARF statutes. However, after evaluating CERCLA, the Department determined that it was not consistent with the latest WQARF statutes; indeed, the Department noted that the WQARF statutes were “in large part a repudiation of CERCLA.” Specifically, the WQARF statutes differ from CERCLA in three key respects:

- The community involvement requirements for WQARF sites begin earlier, have more stages, and require more at each stage than CERCLA.
- WQARF contains more criteria for setting remedial objectives than CERCLA.
- Unlike CERCLA, which requires evaluation of numerous remedial alternatives regardless of the remedial objectives for the site, the WQARF rules minimize the development and evaluation of remedies that will not meet the remedial objectives.

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

Yes. The Department indicates that, except for R18-16-201(L), which is currently enforced, Articles 2 and 3 do not establish regulatory schemes and therefore are not enforceable. Article 2 explains the process the Department uses for preliminary investigations and score sites, and Article 3 explains the process for public notice of WQARF sites. The Department certifies that it complies with the requirements of these Articles.

The Department currently enforces the rules in Articles 4 and 5, despite the citation errors noted above.

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:

- R18-16-201 The passive voice in subsection (I) should be changed to active voice.
- R18-16-202 The ADEQ address is stated twice; the second one should be deleted.
- R18-16-402 The second sentence in subsection (B) should be more clearly worded.

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

Yes. The Department indicates that there is no federal or state requirement that the WQARF rules be consistent with CERCLA, insofar as the Department does not adopt CERCLA rules by reference. (See discussion in 5 above)

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?

Yes. The Department indicates that the rules do not require the issuance of a regulatory 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. Many of the technical errors stated above were identified in the previous five-year review report. The Department proposed to correct those errors if any material changes were made to Chapter 16, which did not occur. However, the Department indicates that these errors have not caused any confusion to those subject to the rules.

Conclusion

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



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

MEETING DATE: July 6, 2017

AGENDA ITEM: E-5

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : June 20, 2017

SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY (F-17-0606)
Title 18, Chapter 16, Article 2, Preliminary Investigations and Site Scoring;
Article 3, Public Information; Article 4, Remedy Selection; Article 5, Interim
Remedial Actions

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. Economic Impact Comparison

The economic, small business, and consumer impact statement (EIS) from the most recent rulemakings were made available for this review. The rules address the management of the Water Quality Assurance Revolving (WQARF) Program. The WQARF program supports the Department in identifying, prioritizing, assessing and resolving the threat of contaminated soil and groundwater sites in the states.

There are currently 38 sites on the WQARF registry. In the last 5 years, the Department has spent over \$28.3 million to investigate and remediate sites. It is noted that these costs include preliminary investigation activities, site scoring activities, and remediation activities. Key stakeholders that are impacted by the Chapter 16 rules are the Department, businesses and landowners who may be put on the WQARF registry, and the public. The Department incurs costs associated with rule enforcement and public health protection. Business and land owners incur costs associated with rule compliance. The public incur costs through potential health risks.

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 regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective.

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.

4. Conclusion

Staff finds that the report complies with A.R.S. § 41-1056 and recommends approval.



Douglas A. Ducey
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera
Director

March 30, 2017

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

Re: Submission of Five-Year Review Report for 18 A.A.C. 16-Water Quality Assurance Revolving Fund Program

Dear Ms. Ong:

Pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, the Arizona Department of Environmental Quality submits the attached five-year-review report for Chapter 16 of Title 18, Arizona Administrative Code, to the Governor's Regulatory Review Council. I have included copies of the rules that were reviewed, and the authorizing statutes. No economic impact statement is included because these rules were made by exempt rulemaking.

In the process of conducting the five-year-review report, the Department conducted a thorough analysis of the existing rules subject to the review to determine whether each rule has adequate authority; objectives are being met; the rules are effective, consistent with other state and federal laws, being enforced and clear, concise and understandable. The Department also reviewed its records for any written comments received during the last five years on the rules, and changes to the economic impact of the rules since the time of their adoption.

There is no rule in Chapter 16 for which review was omitted with the intention that the rule expire under A.R.S. § 41-1056(J). Also, Chapter 16 does not contain any rule for which review was omitted because the Council rescheduled the review of the rule under A.R.S. § 41-1056(H). I certify that this agency is in compliance with A.R.S. § 41-1091.

The report identifies a number of minor corrections that could be made in Chapter 16 rules and proposes a course of action to make those corrections. The Department will continue to review and seek comment on the existing rules as permitted under the moratorium.

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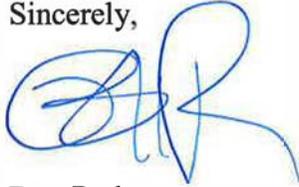
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Nicole Ong, Chair
Page 2 of 2

Please do not hesitate to contact us if there are any questions we can answer for you regarding this report. If you have any questions, please contact Mark Lewandowski at 602-771-2230. Thank you for your assistance in reviewing the Department's rules.

Sincerely,

A handwritten signature in blue ink, appearing to be "Bret Parke". The signature is stylized with a large, looped initial "B" and a long, sweeping tail.

Bret Parke
Deputy Director

ADEQ FIVE-YEAR REVIEW REPORT

18 A.A.C. 16

WATER QUALITY ASSURANCE REVOLVING FUND PROGRAM ARTICLES 1 THROUGH 5

Introduction. 18 A.A.C. 16 contains 5 articles, 25 sections, and an appendix that provide specific rules for implementation of Arizona's Water Quality Assurance Revolving Fund (WQARF) program. None of the rule sections have been created or updated since the last five-year review report. The Chapter 16 Articles are:

- Article 1. Reserved
- Article 2. Preliminary Investigations and Site Scoring
- Article 3. Public Information
- Article 4. Remedy Selection
- Article 5. Interim Remedial Actions

Created under the Environmental Quality Act of 1986, the WQARF program supports ADEQ in identifying, prioritizing, assessing and resolving the threat of contaminated soil and groundwater sites in the state. The program conducts statewide efforts using state funds and oversees privately funded cleanups as well.

• **How Does a Site Become a WQARF Site?** -- The WQARF process begins when ADEQ receives information about a release or potential release of a hazardous substance. This information may come from a citizen complaint, from an investigation conducted by ADEQ or from an investigation conducted by an outside party. ADEQ assesses whether the information is credible, if another regulatory program has jurisdiction, or if the site is already being cleaned up voluntarily.

• **Preliminary Investigation** -- If a potential release has occurred and no other regulatory program has jurisdiction, a WQARF Preliminary Investigation (PI) is initiated. The purpose of the PI is to confirm the release or potential release and determine whether further investigation or

action is necessary. The PI is not a full investigation to determine the extent of the contamination nor is its purpose to identify the parties potentially responsible for the contamination. If no further investigation or action is necessary, the site is removed from further consideration. If ADEQ determines that additional investigation or action is necessary, the site is scored using an eligibility and evaluation model and is eligible for listing on the WQARF Registry.

- **Site Prioritization** — Sites are prioritized with a greater emphasis on risk to human health. The statute provides a process to score sites according to actual and potential exposure to hazardous substances. This score and other factors are considered when prioritizing the expenditure of WQARF funds.
- **Cleanup Methods and Goals** — WQARF reform provides increased flexibility in selecting groundwater cleanup methods and levels. ADEQ adopted and applies remedy selection rules that incorporates an analysis of a range of cleanup options.
- **Community Involvement** — Enhanced community involvement is required at all stages of cleanup. The statute establishes a process to encourage active community involvement, including provisions for notices, plans and the formation of a Community Advisory Board (CAB) for each site.
- **What these rules do not cover.** – These rules do not cover any procedures or requirements related to identification of Responsible Parties, which are provided for in statute.

The five Articles of 18 A.A.C. 16 are discussed individually below.

ARTICLE 1. RESERVED

ARTICLE 2. PRELIMINARY INVESTIGATIONS AND SITE SCORING

Section

R18-16-201. Preliminary Investigations

R18-16-202. Site Scoring

ARTICLE 3. PUBLIC INFORMATION

Section

R18-16-301. Public Notification and Opportunities for Public Comment

R18-16-302. Location of Information Repositories

ARTICLE 4. REMEDY SELECTION

Section

R18-16-401. Definitions

R18-16-402. Applicability

R18-16-403. Scope of Work, Fact sheet, Outline of Community Involvement Plan, and Notification of Availability

R18-16-404. Community Involvement Requirements

R18-16-405. Early Response Actions

R18-16-406. Remedial Investigations

R18-16-407. Feasibility Study

R18-16-408. Proposed Remedial Action Plan

R18-16-409. Remedial Action Cost Credits

R18-16-410. Record of Decision

R18-16-411. Design, Implementation, Operation and Maintenance of the Early Response Action or Remedy

R18-16-412. Innovative Technologies

R18-16-413. Approval of Remedial Actions Under A.R.S. § 49-285(B)

R18-16-414. Determination of No Further Action

R18-16-415. Soil Remediation

R18-16-416. Satisfaction of Settlement Agreement and Achievement of Remedial Objectives

Appendix A. Standard of Measurements for Comparison of Remedial Alternatives

ARTICLE 5. INTERIM REMEDIAL ACTIONS

Section

R18-16-501. Definitions

R18-16-502. Eligibility

R18-16-503. Request for Interim Remedial Action

R18-16-504. Review and Approval of Requests for Interim Remedial Action
R18-16-505. Reimbursement

INFORMATION THAT IS IDENTICAL FOR ARTICLE 2 RULES

R18-16-201 and 202

1. General and Specific Statutes Authorizing the Rules: The rules in 18 A.A.C. 16, Article 2 are authorized generally by A.R.S. §§ 41-1003, 49-104(B)(4), and 49-203. Specific authorization for the rules is found at A.R.S. §§ 49-282.06, 287.01 and Laws 1997, Chapter 287, Section 56.

3. Effectiveness of the Rules in Achieving their Objectives: The rules in 18 A.A.C. 16, Article 2 are effective in achieving their individual objectives.

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: Although there is similar federal law known as CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act of 1980), there is no federal or state requirement that the Arizona WQARF rules (which govern cleanup with state funds) be consistent with CERCLA (federally funded cleanups). Although ADEQ was authorized to adopt CERCLA rules “by reference”, (see A.R.S. § 49-282.06.B) any CERCLA rules adopted by reference would have had to be consistent with the WQARF statutes. The Department evaluated the CERCLA rules, guidance, and procedures and determined that, as a whole, they were not consistent with the goals and intent of the new WQARF statutes or the recommendations of the Joint Select Committee on WQARF. When ADEQ adopted the current rules in 2002, it stated that the WQARF statutes were “in large part a repudiation of CERCLA” and adoption of CERCLA regulations would have “required extensive modification which precluded the possibility of their incorporation by reference.”

5. Status of agency enforcement policy regarding the rules: With the exception of A.A.C. R18-

16-201(L), Article 2 does not establish a regulatory scheme and therefore the agency's enforcement policy is not applicable. This Article explains the process that the department uses to conduct preliminary investigations and score sites for the WQARF registry. The department complies with the requirements of this Article. The department enforces A.A.C. R18-16-201(L).

7. Written criticisms of the rules received within the last five years: No written criticisms of the rules in Article 2 have been received by ADEQ.

8. Current economic, small business, and consumer impact of the rules as compared to the economic, small business and consumer impact statement at the last rule adoption: The rulemaking for these rules was exempt from the provisions of Title 41, Chapter 6, Article 3 under session law at Laws 1997, Chapter 287, Section 56(B), and did not include an Economic, Small Business, and Consumer Impact Statement. The department presented an economic impact discussion when it submitted a Five-Year Review Report on this Chapter and Article in 2007. The impact of these rules remains the same; however, the department has updated some of the information. Please see number 11 below and the economic impact discussion at the end of this report.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No such analysis was submitted for any rules in this Article.

11. Cost benefit determination; least burden and cost: These two rules impose costs on ADEQ by requiring that the department investigate potential releases to determine whether soil contamination or water quality exceeds standards. If a potential risk to human health and the environment exists, the site is scored and is placed on the WQARF registry. After a preliminary investigation has begun, there are two ways, subsections (C) and (E), for the preliminary investigation to result in no further action.

The department spends about \$250,000 per year on preliminary investigations. Of the

approximately 48 preliminary investigations conducted over the last 5 years, 34, or more than half, resulted in a determination that no further investigation or action was necessary. With the information gained in the PI, 5 of the sites have become scored sites. The rules act to eliminate from further consideration those sites that pose no threat to public health or the environment.

The Department has determined that the benefits exceed the costs of these two rules, and that they are the least burdensome and costly ways to achieve the Article's objectives of identifying, prioritizing, assessing and resolving the threat of contaminated soil and groundwater sites in the state. Cautious data collection and testing before there can even be entry into the program allows the department to exclude sites as soon as it is indicated that no standard is violated. The scoring of those that get onto the WQARF registry allows funds and other department resources to be prioritized among the sites.

12. Stringency compared to corresponding federal law: ADEQ believes that there is no corresponding federal law to Article 2.

13. Compliance with A.R.S. § 41-1037: The rules in this Article do not require the issuance of a regulatory permit, license or agency authorization.

14. Proposed Course of Action: ADEQ would make some technical changes. See below.

ANALYSIS OF INDIVIDUAL RULES IN ARTICLE 2

R18-16-201. Preliminary Investigations

1. General and Specific Statutes Authorizing the Rules: General authorizing statute: A.R.S. § 49-282.06; Specific authorizing statute: A.R.S. § 49-287.01

2. Objective of the Rule: The rule outlines required steps and procedures for preliminary investigations at sites with reported releases or threatened releases of hazardous substances.

6. Clarity, Conciseness, and Understanding of the Rule: There is some passive voice that

should be changed to active voice at R18-16-201(I).

10. Completion of previous proposed courses of action: There was no previous proposed course of action.

14. Proposed Course of Action: The department does not plan to amend this rule in the near future; however, if any material changes are made to 18 A.A.C. 16, the department will change subsection (I) to active voice.

R18-16-202. Site Scoring

1. Authorization of the rules by existing statutes: General authorizing statute: A.R.S. § 49-282.06; Specific authorizing statute: A.R.S. § 49-287.01(B)

2. Objective of the Rule: The objective of the rule is to establish a site scoring procedure for ADEQ to rank sites by risk to public health, welfare and the environment as part of the preliminary investigation.

6. Clarity, conciseness, and understandability of the rule: The address of ADEQ needs to be updated. The last sentence is repetitive.

10. Completion of previous proposed courses of action: ADEQ proposed to fix the incorrect address and redundant sentence in R18-16-202. This has not been done because even though incorrect, the department's address has not been a source of any confusion to those subject to the rules.

14. Proposed Course of Action: Due to other rulemaking priorities, the department does not plan to amend this rule in the near future; however, if any material changes are made to 18 A.A.C. 16, the department will address the minor clarity issues noted above in the next rulemaking.

INFORMATION THAT IS IDENTICAL FOR ARTICLE 3 RULES

R18-16-301 and 302

1. General and Specific Statutes Authorizing the Rules:

The rules in 18 A.A.C. 16, Article 3 are authorized generally by A.R.S. §§ 41-1003, 49-104(B)(4), and 49-203. The specific authorization for the rules is found at A.R.S. §§ 49-289.02, 49-289.03, and Laws 1997, Chapter 287, Section 56.

3. Effectiveness of the Rules in Achieving Their Objectives:

The rules in 18 A.A.C. 16, Article 3 are effective and helpful to the department as it implements the Community Involvement Program for WQARF.

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:

No consistency with federal CERCLA rules is required by state or federal law. A related CERCLA regulation was amended by EPA in 2015 to allow other methods of notice to be substituted for newspaper publication. (See e.g. 40 CFR 300.415(n)(2)(i)). However, the rules in 18 A.A.C. 16, Article 3 are consistent with the administrative rules and statutes of Arizona.

5. Status of agency enforcement policy regarding the rules:

Article 3 does not establish regulatory requirements for entities outside the department and therefore the agency's enforcement policy is not applicable. This Article explains the process that the department uses to notify the public about WQARF sites. The department complies with the requirements of this Article.

6. Clarity, Conciseness, and Understanding of the Rules:

The department has not identified any issues with clarity, conciseness, or understandability in Article 3.

7. Written criticisms of the rules received within the last five years:

There have been no written criticisms of the rules in 18 A.A.C. 16, Article 3 submitted to the department within the last five years.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption:

The rulemaking for these rules was exempt from the provisions of Title 41, Chapter 6, Article 3 under session law at Laws 1997, Chapter 287, Section 56(B), and did not include an Economic, Small Business, and Consumer Impact Statement. The department presented an economic impact discussion when it submitted a Five-Year Review Report on this Chapter and Article in 2007. The impact of these rules has not changed significantly; however, the department has updated some of the information. Please see number 11 below and the economic impact discussion at the end of this report.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No such analysis was submitted for any rules in this Article.

10. Completion of previous proposed courses of action: None proposed to this Article.

11. Cost benefit determination; least burden and cost: The department has approximately 1.5 FTEs to implement the community involvement program and budgets program expenses in the \$35K to \$60K range depending on the exact year covering things like travel and publication of notices for the approximately 38 sites on the Registry.

The department makes an effort to place newspaper notices as cost-effectively as possible within the restrictions of the rule which requires, by default, publication once in a daily publication or twice in a publication that is not daily. Such economy is justified with the knowledge that a robust web site provides the necessary information and from experience gained over the years relative to the type of notice the community prefers for various stages of community involvement.

The internet in general, and the department’s website has also accelerated evolution of the concepts of “repository” and “public notice” as stated in both statute (A.R.S. § 49-289.03) and rule (R18-16-302). The statute requires the repositories to be at a “location”. Most often the department has utilized a local library for the repository. The department believes that a small fraction of the public may still use the local physical repositories to access site information. However, staff at libraries commonly used as public repositories indicate more and more often that nobody comes in. Thus the department engages the community through its website and direct mail. Public preference for direct mail of periodic notices continues.

In spite of the diminishing community interest in visiting local repositories, the department believes it is employing the least costly and least burdensome alternatives available under its statutory obligation and that the public notice benefits of this Article outweigh the costs.

12. Stringency compared to corresponding federal law: No federal law corresponds to this Article. No federal or state law requires consistency. In general, the community involvement requirements in these rules for ADEQ’s WQARF sites begin earlier, have more stages, and require more at each stage than the CERCLA regulations.

13. Compliance with A.R.S. § 41-1037: The rules in this Article do not require the issuance of a regulatory permit, license or agency authorization.

14. Proposed Course of Action: No changes proposed.

ANALYSIS OF INDIVIDUAL ARTICLE 3 RULES

R18-16-301 Public Notification and Opportunities for Public Comment

2. Objective of the Rule:

The rule provides minimum requirements for notification by newspaper publication, direct mail, and timeframes for public comments when not specified in statute.

R18-16-302 Location of Information Repositories

2. Objective of the Rule:

The rule provides direction on what places can be used as repositories for WQARF program public information.

INFORMATION THAT IS IDENTICAL FOR ARTICLE 4 RULES

R18-16-401 through 416 and Appendix A;

1. General and Specific Statutes Authorizing the Rules: The rules in 18 A.A.C. 16, Article 4 are authorized generally by A.R.S. §§ 41-1003, 49- 104(B)(4), and 49-203. The specific authorization for the rules is found at A.R.S. §§ 49- 282.06, 49-289.03, and Laws 1997, Chapter 287, Section 56.

3. Effectiveness of the Rules in Achieving the Objectives: Unless otherwise stated in an individual rule analysis, the rules in 18 A.A.C. 16, Article 4 are effective in achieving their individual objectives.

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: Although there is similar federal law known as CERCLA, there is no federal or state requirement that the Arizona WQARF rules be consistent with CERCLA. The state's WQARF program has the same goals as CERCLA, the federal superfund statute, but different methods and strategies for achieving those goals.

5. Status of agency enforcement policy regarding the rules: Unless otherwise stated in an individual rule analysis, the rules in 18 A.A.C. 16, Article 4 are currently enforced by the department.

6. Clarity, Conciseness, and Understandability of the Rules: The department has analyzed the

clarity, conciseness, and understandability of its rules, and unless otherwise stated in an individual rule analysis, concludes that the rules in 18 A.A.C 16, Article 4 are clear, concise, and understandable. ADEQ has determined that minor technical fixes could be made to R18-16-401; 402, 408, and 415.

7. Written criticisms of the rules received within the last five years: There have been no written criticisms of the rules in 18 A.A.C. 16, Article 4 submitted to the department within the last five years.

8. Current Economic, small business, and consumer impact of the rules as compared to EIS at last rule adoption: The rulemaking for these rules was exempt from the provisions of Title 41, Chapter 6, Article 3 under session law at Laws 1997, Chapter 287, Section 56(B), and did not include an Economic, Small Business, and Consumer Impact Statement. The department presented an economic impact discussion when it submitted a Five-Year Review Report on this Chapter and Article in 2007. The impact of these rules has not changed significantly; however, the department has updated some of the information. Please see the economic impact discussion at number 11 below and at the end of this report.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No such analysis was submitted for any rules in this Article.

10. Completion of previous proposed courses of action: In 2012, ADEQ stated that it had no plans to amend Article 4 rules but if it did it would fix the following minor technical errors:

1. Changing the incorrect citation in the "vadose zone" definition and making "hazardous substances" singular in R18-16-401;
2. Correct four incorrect cross-references in R18-16-408; and
3. Changing the citation in R18-16-415 from R18-7-209 to R18-7-210.

These changes were not made because even though incorrect, they have not been a source of any confusion to those subject to the rules.

11. Cost benefit determination; least burden and cost: The WQARF fund that the department administers pays out an average of \$6 million per year for remediation related costs. The remedy selection rules in this Article are important for determining that a sufficient amount is spent to achieve the remedial objectives, but no more. The Article is set up to allow affected parties multiple opportunities to weigh in on the remedy selection; from the public notice requirements, to the step by step process required to reach a Record of Decision (ROD), to the comparison of alternatives that exists in the Feasibility Study section and Appendix A. Because of this, the department believes that these rules represent the least burden and cost to stakeholders and Arizona citizens. ADEQ also believes that the benefits of the Article as a whole exceed the costs because the rules are necessary to achieve cleanup in an efficient, organized, and economical way.

One example of how this Article achieves lowest cost cleanups is the Early Response Action (ERA) Section at R18-16-405. As stated in the 2002 preamble to this rule:

ERAs are certain remedial actions initiated by the Department or any person prior to selection of a remedy at a site. In many instances, ERAs may involve “spending a penny today to save a dollar tomorrow.” ERAs may prevent spreading or exacerbation of contamination by containing or removing the source of contamination or may prevent the loss of water supply. In other instances, ERAs may address a current risk to human health, welfare and the environment that cannot or should not go unaddressed until a final remedy is developed. ERAs may be relatively inexpensive short-term actions, such as fencing or providing bottled water, or they may involve an expensive large-scale groundwater treatment system.

12. Stringency compared to corresponding federal law: ADEQ believes that no rule or definition in Article 4 is more stringent than corresponding federal law.

13. Compliance with A.R.S. § 41-1037: The rules in this Article do not require the issuance of a regulatory permit, license or agency authorization.

14. Proposed Course of Action: Due to other rulemaking priorities, the department does not plan to amend this Article in the near future. However, if any material changes are made to Article 4,

the department would make the minor technical changes noted below in that rulemaking. See individual rules R18-16-401, 402, 408, and 415 below.

ANALYSIS OF INDIVIDUAL ARTICLE 4 RULES

R18-16-401 Definitions

2. Objective of the Rule: The rule provides definitions necessary for the administration of 18 A.A.C. 16, Article 4.

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: While this rule is generally consistent with state and federal statutes and rules, the following minor inconsistencies were noted during this review:

The rule states that "hazardous substances" has the same meaning as defined in A.R.S. § 49-281(8). That statutory reference defines the singular term "hazardous substance."

The definition of "vadose zone" in this rule contains an incorrect citation. The definition references A.R.S. § 49-201(39). A better reference would be A.R.S. § 49-201.

14. Proposed Course of Action: The department does not plan to amend this rule in the near future; however, if any material changes are made to 18 A.A.C. 16, the department will update this rule by correcting the two items as discussed in number 4 above.

R18-16-402 Applicability

2. Objective of the Rule: The rule answers various general questions related to when the rules in the Article apply, especially as to remedial work that occurred before the rules took effect in 2002. Article does not apply to corrective action for underground storage tank releases.

6. Clarity, Conciseness, and Understanding of the Rules:

The second sentence in subsection (B) would be clearer if reworded as follows: “Nothing in this Article is intended to require a remedial action, including a remedy or early response action, to ~~provide for or~~ cover any costs that a property owner, a well owner, or water provider would have incurred anyway if the release of hazardous substances ~~that is the subject of~~ leading to the remedial action had not affected the property or water supply of the property owner, well owner ~~or water provider~~ occurred.”

R18-16-403 Scope of Work, Fact Sheet, Outline of Community Involvement Plan, Notification of Availability

2. Objective of the Rule: The rule lists specific required steps after contamination is found and a preliminary investigation is done. It also addresses community involvement and notice requirements that take effect before the department initiates work at a site unless the remedial action can be completed in less than 180 days.

R18-16-404 Community Involvement Requirements

2. Objective of the Rule:

The rule provides details for meeting the community involvement requirements generally outlined in A.R.S. § 49-289.03.

4. Consistency of the Rule with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency:

The state's WQARF program has the same goals and is organized similarly to CERCLA, the federal superfund statute, but no consistency with CERCLA is required by either state or federal law. The Arizona community involvement requirements differ in the following way from the federal: under the federal program, public comment is not requested until after the remedial investigation/feasibility study is completed and a proposed remedy is selected. In the Arizona rule, active community involvement is incorporated from the beginning to the end of the process.

The update requirement for community involvement plans in subsection (C) of this rule (“annually”) is stricter than the statutory requirement in A.R.S. § 49-287.03(D) (“at least every two years”) but the rule is still consistent.

R18-16-405 Early Response Actions

2. Objective of the Rule: The rule states conditions for the implementation of certain remedial actions prior to selection of a remedy for the site under A.A.C. R18-16-410.

11. Cost benefit determination; least burden and cost: As stated in the 2002 preamble to this rule:

Early response actions (ERA) are certain remedial actions initiated by the Department or any person prior to selection of a remedy at a site. In many instances, ERAs may involve “spending a penny today to save a dollar tomorrow.” ERAs may prevent spreading or exacerbation of contamination by containing or removing the source of contamination or may prevent the loss of water supply. In other instances, ERAs may address a current risk to human health, welfare and the environment that cannot or should not go unaddressed until a final remedy is developed. ERAs may be relatively inexpensive short-term actions, such as fencing or providing bottled water, or they may involve an expensive large-scale groundwater treatment system.

Even though these are “early” response actions, a certain amount of study and analysis takes place prior to implementation of an early response action. Compare the alternative of emergency response actions, which are provided for in statute at A.R.S. § 49-282.02.

Emergency response actions are outside of the remedy selection process, but are critical to the WQARF program. Emergency response actions are taken when a spill or some other action presents an immediate emergency situation. They are short-term actions to alleviate the emergency. The statutory provisions governing emergency response actions are sufficiently specific that no rules regarding emergency response actions have been promulgated.

ADEQ believes that Early Response Actions fill the gap between emergency response actions and standard remedial actions in a broader, more flexible way than Interim Response Actions. The benefits exceed the costs because the alternative of no Early

Response Actions would result in delay of certain remedial actions, resulting in eventual higher cleanup costs and/or more serious impacts to human health and the environment.

R18-16-406 Remedial Investigations

2. Objective of the Rule: The rule establishes a framework for conducting a remedial investigation and establishing remedial objectives for a site.

4. Consistency of the Rule with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: The rule differs from comparable statutes and rules under CERCLA with regard to establishing remedial objectives for a site. (Although consistency is not required under either federal or state law.) Under the federal statutes, remedial objectives language is focused on setting cleanup levels within an aquifer or surface water body. Under this rule, remedial objectives are also based on uses of the land and water as determined by the community and refined by the department with significant community involvement.

11. Cost benefit determination; least burden and cost: ADEQ believes the benefits exceed the costs of this rule because the rule implements the common sense approach that the site be assessed and the goals stated before any action can take place. The alternative, that remediation could proceed while the site was being assessed and the remedial objectives refined, would end up paying for remediation activities that might later be judged unnecessary.

R18-16-407 Feasibility Study

2. Objective of the Rule: The rule identifies when alternative proposed remedies are required, whether they would be capable of achieving the remedial objectives by comparing the alternate remedies using benchmarks such as remedial efficiency and cost efficiency in Appendix A, and provisions for selecting a proposed remedy.

4. Consistency of the Rule with State and Federal Statutes and Rules, and a Listing of the

Statutes or Rules Used in Determining the Consistency: The rule is different from the federal CERCLA statutes with regard to the number of remedial alternatives evaluated. Under federal statutes, numerous alternatives, from no action to the most aggressive remedy, are evaluated regardless of the remedial objectives for the site. In addition, due to the differences in selecting remedial objectives, the CERCLA proposed remedy does not always address uses that are impaired or threatened to be impaired in the timeline used. In contrast, this rule minimizes the development and evaluation of remedies which will not meet the remedial objectives. The preferred remedy must meet the remedial objectives.

11. Cost benefit determination; least burden and cost: The rule reduces the process for choosing between remedies to a logical efficient process and provides the least burden by removing the requirement to develop alternatives for sites where groundwater isn't threatened. Use of cost and remedial efficiency parameters along with public involvement ensures a close and transparent examination of costs and benefits.

R18-16-408 Proposed Remedial Action Plan

2. Objective of the Rule: The rule explains how the public and potentially responsible parties will be informed of the proposed remedy for the site. A cost estimate and how completion of remedial objectives will be measured is also included.

4. Consistency of the Rule with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: While this rule is generally consistent with comparable state and federal statutes and rules, the following minor inconsistencies were noted during this review:

There is an incorrect citation at A.A.C. R18-16-408(B)(2). This rule references A.R.S. § 49-287.04(a); the reference should read A.R.S. § 49-287.04(A).

There is an incorrect citation at A.A.C. R18-16-408(C)(1). This rule references A.R.S. § 49-287.04(b); the reference should read A.R.S. § 49-287.04(B).

There is an incorrect citation at A.A.C. R18-16-408(C)(1)(a). This rule references A.R.S. § 49-287.04(c); the reference should read A.R.S. § 49-287.04(C).

There is an incorrect citation at A.A.C. R18-16-408(D). This rule references A.R.S. § 49-287.03(c); the reference should read A.R.S. § 49-287.03(C).

10. Completion of previous proposed courses of action: ADEQ proposed to fix the technical errors noted in number 4 above, but has not done so because no rulemaking for this Chapter was undertaken in the last five years.

14. Proposed Course of Action: Due to other rulemaking priorities, the department does not plan to amend this rule in the near future; however, if any material changes are made to 18 A.A.C. 16, the department will update this rule by correcting the cross references discussed above.

R18-16-409 Remedial Action Costs Credit

2. Objective of the Rule: The rule provides the sole process for parties to obtain credit against their share of potential liability at the site for remedial work completed and to object to costs submitted by other parties. The rule also provides a process for the department to approve remedial action costs.

R18-16-410 Record of Decision

2. Objective of the Rule: The rule provides a process for preparing a record of decision (ROD) that selects and documents the cleanup chosen for the site. It specifies that it must include an estimated cost, time-frames for the start and finish of the remediation, and a demonstration that the remedy will meet the remedial objectives.

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 nearest comparable federal rule is 40 CFR 300.160, “Documentation and cost recovery.” It is mostly concerned with documentation of costs.

R18-16-411 Design, Implementation, Operation and Maintenance of the Early Response Action or Remedy

2. Objective of the Rule: The rule provides a process for the design and implementation of the engineered design of the selected remedy and the implementation of the remedy through construction. Certain requirements apply as well to early response actions, which are implemented before a remedy is selected.

R18-16-412 Innovative Technologies

2. Objective of the Rule: The rule provides a process for reviewing and approving innovative technologies used to characterize and cleanup a site that would otherwise not be considered eligible under the standard technically feasible. In addition, the rule allows the department to provide incentives and to use WQARF funds for the use of innovative technologies.

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: EPA similarly allows for the use of innovative treatment technologies in CERCLA response actions in 40 CFR 300.430.

8. Current Economic, small business, and consumer impact of the rule as compared to EIS at last rule adoption: In the last 5 years, the department has not received any requests to approve innovative technologies, and no money has been used from WQARF funds to review or finance the use of innovative technology.

R18-16-413**Approval of Remedial Actions Under A.R.S. § 49-285(B)**

2. Objective of the Rule: The rule provides a process for a person who performs work at a site or a portion of a site to obtain the department's approval of the work for purposes of cost recovery. The rule does not provide for approval of the costs of doing the work, which is contained in R18-16-409.

8. Current Economic, small business, and consumer impact of the rule as compared to EIS at last rule adoption: No previous EIS was done because the rule was promulgated through an exempt rulemaking. Subsection (G) provides for reimbursement to the department of the costs for review and action related to approval by the person requesting approval. There have been 3 requests for approval under this Section in the last 5 years. The average total cost for the department in processing these requests was about \$1,000.

As stated in the authorizing statute, approval under this rule is not required to preserve cost recovery rights. Satisfaction of the statutory standard of “substantial compliance with the rules and procedures adopted pursuant to section 49-282.06” is sufficient for cost recovery. However, remedial action approved by the director is deemed to be in substantial compliance.

R18-16-414**Determination of No Further Action**

2. Objective of the Rule: The rule describes what is required for the department to determine that no further action is necessary at a site or portion of a site. The general standard, “no significant risk to the public health, welfare, or the environment”, is then clarified for the separate cases of soil, groundwater, and surface water contamination.

R18-16-415**Soil Remediation**

2. Objective of the Rule: The rule provides requirements for soil remediation whether conducted before or after the selection of a remedy under A.A.C. R18-16-410. The party conducting the soil remediation under this rule must meet the requirements of the Soil

Remediation Standards (18 A.A.C. 7, Article 2) and must conduct community involvement activities in accordance with A.A.C. R18-16-404.

4. Consistency of the Rule with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: While this rule is generally consistent with state and federal statutes and rules, the rule includes a cross reference to A.A.C. R18-7-209. A.A.C. Title 18, Chapter 7 was amended in May of 2007. During that rulemaking, R18-7-209 was renumbered to R18-7-210.

5. Status of agency enforcement policy regarding the rules: R18-16-415(A)(3), requiring Notices of Remediation, is enforced.

14. Proposed Course of Action: Due to other rulemaking priorities, the department does not plan to amend this rule in the near future; however, if any material changes are made to 18 A.A.C. 16, the department will update this rule by correcting the incorrect citation discussed above.

R18-16-416 Satisfaction of Settlement Agreement and Achievement of Remedial Objectives

2. Objective of the Rule: The rule requires certain project completion criteria in settlement agreements under WQARF or CERCLA. It also establishes processes to obtain a determination from the department that the work required by a settlement agreement has been completed and that the remedial objectives for the site have been satisfied and will continue to be satisfied.

Appendix A Standard Measurements for Comparison of Remedial Alternatives

2. Objective of the Rule: The rule lists standardized units of measurement that may be used when comparing alternative remedies under R18-16-407(E).

INFORMATION THAT IS IDENTICAL WITHIN GROUPS OF RULES

ARTICLE 5

R18-16-501 through 505

1. General and Specific Statutes Authorizing the Rules: General authorizing statutes: A.R.S. §§ 41-1003, 49-104, 49-203(A)(9), 49-282.06(B) and Laws 1997, Chapter 287, Section 56(B). Specific authorizing statute(s): A.R.S. § 49-282.03(D) authorizes rules on interim remedial actions.

3. Effectiveness of the Rules in Achieving the Objectives: Unless otherwise stated in an individual rule analysis, the rules in 18 A.A.C. 16, Article 5 are effective in achieving their individual objectives. The objectives of the rules in Article 5 are narrower than those of Early Response Actions in R18-16-405 in that Interim Remedial Actions are limited to addressing the loss or reduction of available water from a well on the site.

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 rules in this Article are consistent with A.R.S. Title 49, Chapter 2, and 18 A.A.C 7. The definition of “public water system” is consistent with A.R.S. § 49-352(B) and 42 U.S.C. 300f(4).

5. Status of agency enforcement policy regarding the rules: Unless otherwise stated in an individual rule analysis, the rules in 18 A.A.C. 16, Article 5 are currently enforced by the department to the extent that they are consistent with state and federal law.

6. Clarity, Conciseness, and Understandability of the Rules: The department has analyzed the clarity, conciseness, and understandability of its rules, and unless otherwise stated in an individual rule analysis, concludes that the rules in 18 A.A.C. 16, Article 5 are clear, concise, and understandable.

7. Summary of the Written Criticisms Received by the Agency: There have been no written

criticisms of the rules in 18 A.A.C. 16, Article 5 submitted to the department within the last five years.

8. Estimated Economic, Small Business, and Consumer Impact of the Rules as Compared with the Economic, Small Business, and Consumer Impact Statement Prepared on the Last Rulemaking: The rulemaking for these rules was exempt from the provisions of Title 41, Chapter 6, Article 3 under session law at Laws 1997, Chapter 287, Section 56(B), and did not include an Economic, Small Business, and Consumer Impact Statement. The department presented an economic impact discussion when it submitted a Five-Year Review Report on this Chapter and Article in 2007. The economic impact of this Article has not differed significantly from that described at that time. However, the department has updated some of the information. Please see the economic impact discussion at number 11 below and at the end of this report.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states: No such analysis was submitted for any rules in this Article.

10. Completion of previous proposed courses of action: In 2012, ADEQ stated that it had no plans to amend Article 5 rules but if it did, it would fix the incorrect citations in R18-16-501 and 503. The changes were not made, because even though incorrect, they have not been a source of confusion to those subject to the rule.

11. Cost benefit determination; least burden and cost: Article 5, Interim Remedial Actions, establishes a procedure that allows the Department to provide quick, short-term or interim solutions to water quality problems arising in wells due to the spread of hazardous contamination originating at a WQARF site. Interim remedial actions or IRAs are actions taken or funded by the Department to address the loss or reduction of available water from a well on the site. An IRA may be used in those cases where a person affected by contamination or potential contamination of a well wants to apply for funds or to have the Department undertake action to address the well before adequate information exists to make decisions regarding the cleanup. If the Department later determines that the IRA was not necessary or that the party

requesting the action is responsible for the contamination of the well, the requesting party must reimburse the Department. IRAs must be the minimum necessary to address the loss or reduction of available water from the well.

12. Stringency compared to corresponding federal law: ADEQ believes that no rule or definition in Article 5 is more stringent than corresponding federal law.

13. Compliance with A.R.S. § 41-1037: The rules in this Article do not require the issuance of a regulatory permit, license or agency authorization.

14. Proposed Course of Action: Due to other rulemaking priorities, the department does not plan to amend the rules in 18 A.A.C. 16, Article 5 in the near future. However, if any material changes are made to 18 A.A.C. 16, the department will correct the citations in R18-16-501 and 503 noted below.

ANALYSIS OF INDIVIDUAL ARTICLE 5 RULES

R18-16-501 Definitions

2. Objective of the Rule: The rule provides definitions necessary for the administration of 18 A.A.C. 16, Article 5.

4. Consistency of the Rule with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: While this rule is generally consistent with state and federal statutes and rules, the definition of "public water system" in this rule contains an incorrect citation. The definition references 42 U.S.C. § 300(f). The correct reference is 42 U.S.C. § 300f.

6. Clarity, Conciseness, and Understandability of the Rule: The citation in the "public water system" definition should be 42 U.S.C. § 300f.

14. Proposed Course of Action: Due to other rulemaking priorities, the department does not

plan to amend this rule in the near future; however, if any material changes are made to 18 A.A.C. 16, the department will update this rule by correcting the citation as discussed above.

R18-16-502 Eligibility

2. Objective of the Rule: The rule defines conditions that make a well eligible for consideration for funding or performance of interim remedial action if a remedy has not been selected.

R18-16-503 Request for Interim Remedial Action

2. Objective of the Rule: The rule states when a person can request that the department perform or provide a grant for an interim remedial action.

4. Consistency of the Rule with State and Federal Statutes and Rules, and a Listing of the Statutes or Rules Used in Determining the Consistency: While this rule is generally consistent with state and federal statutes and rules, there is an incorrect citation at A.A.C. R18-16-503(A)(7). This rule references 12 A.A.C. 7, Article 15; the reference should read 12 A.A.C. 15, Article 7.

14. Proposed Course of Action: Due to other rulemaking priorities, the department does not plan to amend this rule in the near future; however, if any material changes are made to 18 A.A.C. 16, the department will update this rule by correcting the cross reference as discussed above.

R18-16-504 Review and Approval of Requests for Interim Remedial Action

2. Objective of the Rule: The rule provides for the department to approve or deny requests for interim remedial actions or request modifications to the proposal.

R18-16-505 Reimbursement

2. Objective of the Rule: The rule provides for the department to seek reimbursement of grant funds from a person if the remedial action was later determined not to be necessary based on criteria established in A.R.S. § 49-282.06 or the person was determined to be a responsible party contributing to the contamination of the affected well.

ECONOMIC IMPACT DISCUSSION FOR A.A.C. TITLE 18, CHAPTER 16

Laws 1997, Chapter 287E, was an emergency measure that revised and modified the entire Water Quality Assurance Revolving Fund (WQARF) program "to provide a new liability allocation process that is based on each responsible party's proportionate share of liability, a community involvement process, settlement options and penalties for unsuccessful litigation." The legislation also required ADEQ to adopt interim rules to implement the new program and that were "exempt from the rulemaking process except that they must be published and a 60 day public comment period must be provided." (Final Revised Senate Fact Sheet, May 13, 1997)

Based on this legislation, ADEQ published proposed rules and held hearings in 2000, and adopted interim rules that were effective on March 4, 2002. In addition, no economic, small business and consumer impact statement was developed because the rulemaking was exempt from the rulemaking process.

Under A.R.S. § 41-1056(A)(6), the 5 year review report shall include a concise analysis of the estimated economic, small business and consumer impact as compared to the previous economic, small business and consumer impact statement. This statute was clarified by A.A.C. R1-6-301: "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" shall be provided. What follows is an up to date assessment of the actual economic, small business, and consumer impact of the rules in Chapter 16.

ASSESSMENT

The WQARF Registry lists sites within the state that may pose risk to public health, welfare, or the environment from the release of hazardous substances and for which there is current or

planned investigation and cleanup. There are currently 38 sites on the WQARF registry and they are broken down by County as follows:

Maricopa County - 22

Pima County - 8

Gila County - 2

Graham County – 1

Navajo County -- 1

La Paz County - 1

Yuma County – 1

Yavapai County -- 2

The *ADEQ WQARF Registry Report* provides a summary of each site and the current status in the WQARF process. It can be viewed by going to the following Web site:

http://apps.azsos.gov/public_services/register/2017/5/22_public_information.pdf

There are both positive and negative economic impacts to property owners when being placed on the WQARF Registry. Property owners and realtors generally view the listing of property on the state's WQARF list as a negative impact on property value. In general, if the property is within the WQARF boundary for the site, and was not or is not the source of the soil and/or groundwater contamination, then the negative impact on property value will be less than if the source was on the owner's parcel.

The community involvement requirements of Chapter 16 have a mixed effect on property values. Educating the public on the WQARF process and keeping them up to date on site status and explaining what the associated risks are to the public tends to reduce the stigma effect by compelling involved parties to deal with facts only. On the other hand, these same activities make knowledge of the contamination more widespread.

For properties where soil and/or groundwater contamination is present and ADEQ implements a remedy in accordance with the rules, the initial economic impact to a property owner could be negative if the remedial actions cause a disruption to business activities and/or utilize space on the property to house remediation systems. These impacts are inherently temporary and are

usually minimized, but could last years. In the long-term however, once the site has been remediated, the value of the property should increase to at least its pre WQARF registry value based on the reduction in risk associated with the property, the removal of uncertainty, and in some cases, the property being able to be put back to a beneficial use. An example of this would be the East Washington Fluff site where, prior to ADEQ implementing a remedy, the site was fenced off and unsafe for public use. After the WQARF program spent approximately 3 million dollars to clean-up the site, the property was sold to a private developer.¹ In March of 2013, it was removed from the WQARF registry and is currently scheduled for redevelopment into over 170,000 square feet of industrial warehouse space near downtown Phoenix.²

If the department determines that cost recovery may be appropriate at a site, the department initiates a responsible party search that proceeds concurrently with the remedy selection process. The statutory provisions governing responsible party search and allocation of liability are sufficiently specific and no rules regarding these subjects have been promulgated. Determining factors for conducting potentially responsible party (PRP) searches include an evaluation on what the cost of the PRP search will be compared what the state can recover from PRPs. The department uses information gathered in the responsible party search to determine the financial viability and the legal liability of PRPs. Factors used to evaluate whether to cost recover include the number of PRPs, the financial capability of each PRP, and the liability of each PRP. The department is required to use its best efforts to identify all persons who may be liable for cost recovery. Identification of PRPs enables the department to allocate proportional shares of liability among the identified responsible parties in order to finance the remedy.

Sites that are added to the Registry that are orphaned or have a limited number of financially viable parties from which to cost recover can cost the state millions of dollars to remediate in accordance with the Remedy Selection Rule process in Article 4. Examples of these sites are: East Washington Fluff (as referenced above) has cost the state approximately \$3 million; Vulture Mill has cost the state over \$9 million; and Payson PCE has cost the state over \$10 million to

¹ http://tucson.com/business/local/st-of-state-superfund-sites-removed-from-list/article_43555fb0-02e2-5d2a-886e-c76d9bd1583f.html;

² City of Phoenix Media Advisory, June 4, 2015

date and has projected operation and maintenance costs of another \$11 million over the next 30 years.³

In the last 5 years, the department has expended over \$28.3 million to investigate and remediate sites. Please note that this amount is for preliminary investigation activities, site scoring activities, and remediation activities combined.⁴

The following is a breakdown of economic impacts by rule:

ARTICLE 2. PRELIMINARY INVESTIGATIONS AND SITE SCORING

R18-16-201 Preliminary Investigations

R18-16-202 Site Scoring

Preliminary investigations and site scoring are activities performed by the department, utilizing department resources funded by WQARF or federal grants. A person may conduct any part of the preliminary investigation under a written agreement with the department. A person conducting preliminary investigation activities is doing so by choice, and therefore the expenditure of monies is voluntary.

ARTICLE 3. PUBLIC INFORMATION

R18-16-301 Public Notification and Opportunities for Public Comment

R18-16-302 Location of Information Repositories

Public notification for community involvement is required by statute. These rules specify the manner in which the public receives notification. The department currently spends approximately \$35,000 to \$60,000 per year on carrying out the requirements of these rules.⁵ This had not changed significantly in the last 5 years. The figure includes printing costs, postage costs, newspaper publication, mailing and address list pull costs, but not staff time for the 1.5 FTEs.

ARTICLE 4. REMEDY SELECTION

R18-16-401 Definitions

³ ADEQ WQARF site records

⁴ ADEQ Remedial Project section records

⁵ Remedial Projects Support Unit records

This rule provides definitions and has does not have a direct economic impact internally to the Department or externally on the public.

R18-16-402 Applicability

This rule limits the applicability of the Article and could have a positive economic impact on the state by restricting what remedial actions will be conducted at the site. It also has a positive economic impact on property owners by stating that property owners or well owners shall not be required to provide reimbursement for coincidental benefits that result from a remedial action that was conducted to address a release of or threatened release of a hazardous substance(s).

R18-16-403 Scope of Work, Fact Sheet, Outline of Community Involvement Plan, and Notification of Availability

R18-16-404 Community Involvement Requirements

These rules require extensive community involvement activities by the state. These labor hours are not cost recoverable, and the rules have a negative economic impact on the state. However, as stated above, the community outreach efforts may have a positive economic impact through education of the public on the WQARF process, which may reduce any negative impact on property values.

R18-16-405 Early Response Actions

If the early response action (ERA) is implemented by ADEQ, this rule has both a negative and positive economic impact on the state. Implementing an ERA will reduce the continued threat and spread of contamination which can significantly reduce long term remedial action costs. Implementing an ERA however, does cause an initial negative economic impact due to the upfront costs to pay for the ERA, which can be anywhere from hundreds of thousands and sometimes millions of dollars to implement. Unless a PRP (potentially responsible party) settles early, these costs are not cost recoverable until the site progresses through the WQARF process to the remedy selection phase (R18-16-410 - Record of Decision). If a responsible party implements an ERA in accordance with the rule, there is no negative economic impact to the state.

R18-16-406 Remedial Investigations

If the remedial investigation (RI) is implemented by ADEQ, this rule has both a negative and positive economic impact on the state. Implementing an ERA however, does cause an initial negative economic impact due to the upfront costs to pay for the RI, which can be anywhere

from hundreds of thousands and sometimes millions of dollars to implement. Unless a PRP settles early, these costs are not cost recoverable until the site progresses through the WQARF process to the remedy selection phase (R18-16-410 - Record of Decision). The rule has a positive economic impact by providing information on PRPs from which to build a stronger case for cost recovery and by adequately defining the extent and degree of contamination for more cost effective remedial action. The main economic impact is the development of remedial objectives that determine near uses for land and water within the WQARF site. This has a significant positive economic impact to the state and responsible parties by reducing remediation costs by cleaning up to protect a use rather than cleaning up to a soil or groundwater standard that assumes all property use is residential and all groundwater is being used for drinking water.

R18-16-407 Feasibility Study

This rule has a positive economic impact to the state by developing the most technically and cost effective option for remediating a site to achieve remedial objectives.

R18-16-408 Proposed Remedial Action Plans

This rule has a positive economic impact to the state by determining the past and proposed remediation costs for the site and notifying responsible parties that the state is seeking to recover costs and conduct a cost allocation hearing. This has resulted in parties seeking settlements prior to completion of the cost allocation process.

R18-16-409 Remedial Action Costs Credit

This rule allows parties to receive credit against potential liability for the costs of remedial actions that they have undertaken at the site. This rule has not been used yet.

R18-16-410 Record of Decision

This rule determines the final remedy for the site to achieve the remedial objectives and establishes past and projected remedial action costs. It has a positive economic impact to the state by triggering the ability of the state to recover remedial action costs.

R18-16-411 Design, Implementation, Operation and Maintenance of the Early Response Action or Remedy

Allows parties to implement an ERA or remedy in accordance with the provisions of the rule. This has a positive economic impact to the state since the working party is paying for the cost of the remedial action and ERAs are normally performed in order to save time and money later on.

R18-16-412 Innovative Technologies

No direct economic impact to the state.

R18-16-413 Approval of Remedial Actions Under A.R.S. § 49-285(B)

No economic impact to the state. The ability to move ahead with remedial action allows private parties to speed up the process at their option, a benefit.

R18-16-414 Determination of No Further Action

This rule facilitates positive economic impacts to property owners within a WQARF site by allowing a determination that no further remedial action is needed for the site. This increases property values and the ability of an owner to sell the property.

R18-16-415 Soil Remediation

This rule has a positive economic impact on the site and the party conducting the remediation since a party could conduct soil remediation before a remedy is selected, at a portion of a site.

R18-16-416 Satisfaction of Settlement Agreement and Achievement of Remedial Objectives

No direct economic impact. However, to the extent that settlements speed up and increase the efficiency of the remediation process, this rule is necessary to make sure that settlements are structured to perform as anticipated.

Appendix A. Standard Measurements for Comparison of Remedial Alternatives

This appendix has a positive economic benefit by ensuring that comparison of remedial alternatives are “apples to apples.”

ARTICLE 5 INTERIM REMEDIAL ACTIONS

R18-16-501 Definitions

This rule provides definitions and has does not have an economic impact internally to the Department or externally on the public.

R18-16-502 Eligibility

This rule limits the applicability of the Article and has a positive economic impact on the state by restricting what interim remedial actions (IRA) are eligible for funding from a WQARF grant. It also provides some certainty to well owners and those impacted by contaminated wells as to what actions can be reimbursed when taken before selection and implementation of a remedy.

R18-16-503 Request for Interim Remedial Action

This rule has a positive economic impact to the state by encouraging more technically and cost effective options for the IRA.

R18-16-504 Review and Approval of Requests for Interim Remedial Action

If the IRA is approved, this rule has both a negative and positive economic impact on the state. Implementing an IRA could reduce the spread of contamination which can significantly reduce long-term remedial action costs. Implementing an IRA however, does cause an initial negative economic impact due to the upfront costs to pay for the IRA, which can be anywhere from hundreds of thousands and sometimes millions of dollars to implement. This negative impact is controlled somewhat by subsection (F) which requires the IRA to be the minimum action necessary. Unless a PRP settles early, IRA costs are not cost recoverable until the site progresses through the WQARF process to the remedy selection phase.

R18-16-505 Reimbursement

This rule has a positive economic impact on the state by establishing conditions for which the state can be reimbursed for the IRA costs.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 16. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER QUALITY ASSURANCE REVOLVING FUND PROGRAM

Editor's Note: 18 A.A.C. 16 made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

ARTICLE 1. RESERVED

ARTICLE 2. PRELIMINARY INVESTIGATIONS AND SITE SCORING

Article 2, consisting of Sections R18-16-201 and R18-16-202, made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

Section

- R18-16-201. Preliminary Investigations
R18-16-202. Site Scoring

ARTICLE 3. PUBLIC INFORMATION

Article 3, consisting of Sections R18-16-301 and R18-16-302, made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

Section

- R18-16-301. Public Notification and Opportunities for Public Comment
R18-16-302. Location of Information Repositories

ARTICLE 4. REMEDY SELECTION

Article 4, consisting of Sections R18-16-401 through R18-16-416 and Appendix A, made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

Section

- R18-16-401. Definitions
R18-16-402. Applicability
R18-16-403. Scope of Work, Fact sheet, Outline of Community Involvement Plan, and Notification of Availability
R18-16-404. Community Involvement Requirements
R18-16-405. Early Response Actions
R18-16-406. Remedial Investigations
R18-16-407. Feasibility Study
R18-16-408. Proposed Remedial Action Plan
R18-16-409. Remedial Action Costs Credit
R18-16-410. Record of Decision
R18-16-411. Design, Implementation, Operation and Maintenance of the Early Response Action or Remedy
R18-16-412. Innovative Technologies
R18-16-413. Approval of Remedial Actions Under A.R.S. § 49-285(B)
R18-16-414. Determination of No Further Action
R18-16-415. Soil Remediation
R18-16-416. Satisfaction of Settlement Agreement and Achievement of Remedial Objectives
Appendix A. Standard Measurements for Comparison of Remedial Alternatives

ARTICLE 5. INTERIM REMEDIAL ACTIONS

Article 5, consisting of Sections R18-16-501 through R18-16-505, made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

Section

- R18-16-501. Definitions
R18-16-502. Eligibility
R18-16-503. Request for Interim Remedial Action
R18-16-504. Review and Approval of Requests for Interim Remedial Action
R18-16-505. Reimbursement

ARTICLE 1. RESERVED

ARTICLE 2. PRELIMINARY INVESTIGATIONS AND SITE SCORING

R18-16-201. Preliminary Investigations

- A. Based on information of a possible release or threatened release of a hazardous substance, the Department may conduct a preliminary investigation to obtain additional information necessary to determine the potential risk to public health, welfare, and the environment in order to score the site and include it on the registry established under A.R.S. § 49-287.01(D).
- B. Before conducting a preliminary investigation, the Department shall consider whether the possible release or threatened release of a hazardous substance:
1. Is being addressed by or should be referred to another applicable program administered by the Department or another federal, state or local governmental agency with jurisdiction over the matter; or
 2. Is being adequately addressed through voluntary action.
- C. At any time before or during a preliminary investigation, if the Department determines that a possible release or threatened release of a hazardous substance is being adequately addressed by another program or agency or voluntarily, the Department may suspend or terminate a preliminary investigation under this Section.
- D. A preliminary investigation is a screening level investigation based primarily upon existing information. The Department may collect existing information regarding a release or threatened release of a hazardous substance from any appropriate source, including Department programs, governmental agencies, water providers, complainants, and owners and operators of facilities where the release may have occurred. When existing information, such as soil or water sampling data, cannot be validated, or when sufficient data does not exist, additional data may be collected as necessary.
- E. The Department shall terminate the preliminary investigation prior to completion if:
1. The Department determines that the release of a hazardous substance has not occurred and is not likely to occur; or
 2. The Department determines:
 - a. Based on valid sampling data, that soil contaminated by a release of a hazardous substance meets the requirements of A.R.S. § 49-152 and 18 A.A.C. 7, Article 2; and
 - b. Based on valid sampling data, that the release or a threatened release of a hazardous substance does not and will not result in an exceedance of water quality standards, or if there is no water quality standard, a risk level approved by the Department to protect public health, welfare, and the environment.
- F. The Department shall notify affected water providers of the termination of a preliminary investigation under R18-16-201(E).
- G. If the Department does not terminate or suspend a preliminary investigation under subsections (C) or (E), the Department shall proceed with the preliminary investigation by collecting any additional information necessary to score a potential site using the eligibility and evaluation site scoring model under R18-16-202. The Department shall notify affected water providers and affected local governments of the initiation of the

preliminary investigation. A work plan shall be developed and implemented to collect additional information and shall include the following information:

1. The location and description of the potential site, including a map.
 2. A list of hazardous substances known or suspected to have been released.
 3. A proposal to search available records to determine:
 - a. The historic and current uses of facilities within the potential site.
 - b. The physical and environmental conditions within the potential site.
 - c. Any previous environmental investigations or regulatory involvement by federal, state, or local authorities.
 4. A proposal to obtain information from any affected water providers.
- H.** If the Department determines that additional information is necessary to score a potential site using the eligibility and evaluation site scoring model under R18-16-202, the work plan shall be supplemented with the following information:
1. A conceptual site model to determine:
 - a. Potential sources of contamination.
 - b. Potential exposure pathways.
 - c. Potential human, aquatic, and terrestrial receptors.
 2. If sampling is necessary, the work plan shall contain the following information:
 - a. The objectives of the sampling.
 - b. A quality assurance project plan.
 - c. A sampling and analysis plan to verify whether a suspected release has occurred, and if the release has occurred, to adequately characterize the release to score the site using the eligibility and evaluation site scoring model.
 - d. A health and safety plan consistent with 29 CFR. 1910.120.
- I.** Following completion of the preliminary investigation, a preliminary investigation report shall be prepared. The report shall contain the following information:
1. Information gathered and reviewed under subsection (G), including a summary of the information with references to relevant reports.
 2. If applicable, the conceptual site model developed under subsection (H).
 3. If sampling was conducted under subsection (H):
 - a. A description of the sampling activities.
 - b. Analytical results including a summary of the results with references to relevant reports.
 - c. A map of sample locations.
 - d. Data quality information including a summary with references to relevant reports.
- J.** The Department shall approve the preliminary investigation report prepared under subsection (I) if it contains sufficient valid information to score the site using the eligibility and evaluation site scoring model under R18-16-202 or to make a determination that no further investigation or action is needed under subsection (K).
- K.** Based on a review of the preliminary investigation report prepared under subsection (I), the Department shall:
1. Determine that no further investigation or action is needed using the criteria in subsection (E); or
 2. Prepare a draft site registry report under A.R.S. § 49-287.01(B).
- L.** The Department may allow any person to conduct any part of the preliminary investigation by written agreement. A person requesting to conduct all or any part of a preliminary investi-

gation shall submit a written request to the Department that includes the following information:

1. The name and address of the person making the request and the nature of the relationship of the person to the site.
2. The portion of the preliminary investigation the person wants to conduct.
3. A work plan to conduct the preliminary investigation in accordance with subsection (G).
4. A schedule for completion of the activities specified in the work plan.
5. If requested by the Department, information regarding the financial capability of the person to conduct the work plan.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-202. Site Scoring

In order to score a site or portion of a site, the Department shall use the eligibility and evaluation site scoring model established by the Department on October 3, 1996. The eligibility and evaluation site scoring model as established on October 3, 1996, is incorporated by reference. This incorporation by reference does not include any later amendments or editions. A copy of the incorporated material is available for inspection and reproduction at the Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona 85012-2809 and the Office of the Secretary of State. A copy of the incorporated material can be obtained from the Arizona Department of Environmental Quality, 3033 North Central Avenue, Phoenix, Arizona 85012-2809.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

ARTICLE 3. PUBLIC INFORMATION

R18-16-301. Public Notification and Opportunities for Public Comment

- A.** If notification by publication in a newspaper is required by A.R.S. Title 49, Chapter 2, Article 5 or by any community involvement plan created under A.R.S. § 49-287.03 and A.R.S. Title 49, Chapter 2, Article 5 does not specify the frequency of the notification, the Department or person publishing notice shall publish notice according to the following minimum requirements:
1. One day in a daily newspaper of general circulation in the county where the site is located; or
 2. If other than a daily newspaper, two days in a newspaper of general circulation in the county where the site is located.
- B.** If notification by direct mail is required by A.R.S. Title 49, Chapter 2, Article 5 or by any community involvement plan created under A.R.S. § 49-287.03 and A.R.S. Title 49, Chapter 2, Article 5 does not specify the form of the mailing, the Department or person providing the notification shall provide the notification according to the following requirements:
1. By bulk or first-class mailing; or
 2. If the bulk or first-class mailing would cause unreasonable delay in receiving time-sensitive materials, the Department or person shall provide the notification in a manner sufficient to timely reach those who may be impacted.
- C.** If an opportunity for public comment is required by A.R.S. Title 49, Chapter 2, Article 5 or by any community involvement plan under § A.R.S. 49-287.03 and A.R.S. Title 49, Chapter 2, Article 5 does not specify the duration during which the public may comment, the Department or person pro-

viding the opportunity for public comment shall provide at least 30 calendar days for public comment.

- D. The requirements of this Section shall not prevent or delay a timely remedial action that the Director has determined is necessary to address the release or threat of release of a hazardous substance that may present an immediate danger to public health, welfare, or the environment.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-302. Location of Information Repositories

Public information repositories required or authorized under A.R.S. Title 49, Chapter 2, Article 5 shall be located in at least one of the following areas:

1. An office of the Department.
2. A public or semi-public facility to which the public has reasonable access that is substantially equivalent to the access to the public information repository that is provided by the Department.
3. A private facility to which the public has reasonable access that is substantially equivalent to the access to the public information repository that is provided by the Department.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

ARTICLE 4. REMEDY SELECTION

R18-16-401. Definitions

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

“Alternative remedy” means a combination of remedial strategies and remedial measures different from the reference remedy that is capable of achieving remedial objectives. The alternative remedies are compared with the reference remedy for purposes of selecting a proposed remedy at the conclusion of the feasibility study.

“Comparison criteria” means risk, cost, benefit, and practicality, as those terms are described in R18-16-407(H)(3).

“Community involvement area” has the same meaning as defined in A.R.S. § 49-281(3).

“Contaminant of concern” means a hazardous substance that results from a release and that has been identified by the Department as the subject of remedial action at a site.

“Hazardous substances” has the same meaning as in A.R.S. § 49-281(8).

“Nonrecoverable costs” has the same meaning as in A.R.S. § 49-281(9).

“Proposed remedy” means a combination of remedial strategies and remedial measures which, as a whole, is capable of achieving remedial objectives that is identified at the conclusion of a feasibility study and is incorporated in the proposed remedial action plan.

“Reference remedy” means a combination of remedial strategies and remedial measures which, as a whole, is capable of achieving remedial objectives. The reference remedy is compared with the alternative remedies for purposes of selecting a proposed remedy at the conclusion of the feasibility study.

“Remedial measure” means a specific action taken in conjunction with remedial strategies as part of the remedy to achieve one or more of the remedial objectives. For example, remedial

measures may include well replacement, well modification, water treatment, provision of replacement water supplies, and engineering controls.

“Remedial objective” means the goal, as established through the process in R18-16-406, to be achieved by a remedy selected under this Article. Remedial objectives include the following elements:

Protecting against the loss or impairment of identified uses of land and waters of the state;

Restoring, replacing, or otherwise providing for identified uses of land and waters of the state;

Time-frames when action is needed to protect against or provide for the impairment or loss of the use; and

The projected duration of the action needed to protect or provide for the use.

“Remedial strategy” means one or a combination of the six general approaches described in R18-16-407(F) which may be employed in conjunction with remedial measures as part of the remedy to achieve the remedial objectives.

“Remedy” has the same meaning as in A.R.S. § 49-281(13).

“Site-specific human health risk assessment” means a scientific evaluation of the probability of an adverse effect to human health from exposure to specific types and concentrations of contaminants at or from a site. A site-specific human health risk assessment contains four components: identification of potential contaminants; an exposure assessment; a toxicity assessment; and a risk characterization.

“Site registry” or “registry” means the registry of scored sites maintained by the Department under A.R.S. § 49-287.01(D).

“Vadose zone” has the same meaning as in A.R.S. § 49-201(39).

“Water provider” means the owner or operator of a public water system, an agricultural improvement district, or an irrigation and water conservation district.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-402. Applicability

- A. This Article applies to sites on the site registry and as otherwise made applicable by law.
- B. This Article applies only to remedial actions as defined in A.R.S. § 49-281. Nothing in this Article is intended to require a remedial action, including a remedy or early response action, to provide for or cover any costs that a property owner, a well owner, or water provider would incur if the release of hazardous substances that is the subject of the remedial action had not affected the property or water supply of the property owner, well owner or water provider. A property owner, well owner or water provider shall not be required to provide reimbursement for coincidental benefits resulting from a remedial action otherwise necessary and appropriate to address a release or threatened release of a hazardous substance. Nothing in this Article shall be interpreted to require remedial action to address a land use that is impaired by properties of materials located on or under that land other than the current or potential exposure to hazardous substances contained in that material.
- C. For purposes of this Section, “transition site” means a site that is on the site registry where some remedial action has occurred prior to the effective date of this Article.

- D.** Any person who has performed any remedial action prior to the effective date of this Article at a transition site may submit a written request for the Department's approval of the remedial action under R18-16-413 if the remedial action has not been approved by the Department prior to the effective date of this Article. The request shall include a description of the remedial action, a demonstration that the work is reasonable and necessary and meets the applicable purposes of this Article, and copies of all documentation of the remedial action for which approval is requested. The Department shall approve:
1. Remedial investigation work performed prior to the effective date of this Article if the work meets the applicable purposes stated in R18-16-406(A),
 2. Feasibility study work performed prior to the effective date of this Article if the work meets the purposes stated in R18-16-407(A), and
 3. Early response action work performed prior to the effective date of this Article if the work meets the purposes stated in R18-16-405(A).
- E.** Remedial action work approved by the Department prior to the effective date of this Article shall be deemed approved for purposes of this Article. Remedial action work conducted under a work plan approved by the Department prior to the effective date of this Article shall be evaluated for approval by the Department under the terms of the approved work plan.
- F.** Notwithstanding subsections (D) and (E), neither a remedial investigation nor a feasibility study shall be considered complete under this Article until the information described in R18-16-406(D) is collected, a draft remedial investigation report is prepared and distributed under R18-16-406(F), and remedial objectives are selected under R18-16-406(I) and reported under R18-16-406(J). Thereafter, the procedures set forth in R18-16-407 through R18-16-412 shall apply to the selection of a remedy based upon the remedial investigation or feasibility study. To the extent that any of the alternative remedies discussed in a feasibility study that is substantially complete before the effective date of this Article will not achieve the remedial objectives, the feasibility study shall be modified so that the alternative remedies achieve remedial objectives. Additional evaluation of alternative remedies, if necessary, shall be conducted in accordance with R18-16-407 and reported in a supplemental report before preparation of a final feasibility study report under R18-16-407(I).
- G.** Notwithstanding anything to the contrary in this Article, this Article shall not apply to certain remedial action plans, written agreements, and court decrees or judgements approved, made or entered prior to the effective date of this Article as follows:
1. If prior to the effective date of this Article, the Department has approved a remedial action plan or entered into a written agreement for work under Title 49, Chapter 2, Article 5, Arizona Revised Statutes, that includes the implementation of a remedy or the substantial equivalent of a remedy for a site or a portion of a site, the terms and conditions of the Department's approval or agreement, and not this Article, shall govern work within the scope of the approved remedial action plan or agreement and any modification thereto.
 2. The terms and conditions of any court decree or judgement entered prior to the effective date of this Article, and not this Article, shall govern the work that is within the scope of the court decree and any modification thereto. If the work required by the court decree or judgement does not include the implementation of a remedy or the substantial equivalent of a remedy at a site or a portion of a site, then the selection of a remedy for the site or portion of the site shall be under this Article, and this Article may

require additional remedial actions before a remedy can be selected, but a party to the consent decree shall not be required to conduct or pay for the additional remedial actions if the liability of the party is resolved by the court decree.

3. If an approval, agreement, court decree or judgement subject to subsection (G)(1) or (2) addresses only a portion of a site on the site registry and includes the implementation of a remedy or the substantial equivalent of a remedy for that portion of the site, then the work covered by the approval, agreement or decree shall be included as part of the remedial action plan and the record of decision selecting a remedy under this Article for the remainder of the site if agreed to by the parties to the approval, agreement, court decree or judgement.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-403. Scope of Work, Fact Sheet, Outline of the Community Involvement Plan, and Notification of Availability

- A.** Unless the Department determines that the necessary remedy at a site can be completed within 180 calendar days, the Department shall prepare a scope of work for the remedial investigation and feasibility study, a fact sheet, and an outline of a community involvement plan for the site before the Department conducts a remedial investigation and feasibility study under A.R.S. § 49-287.03.
- B.** The scope of work for a remedial investigation shall generally describe the extent of the remedial investigation based upon site-specific conditions and information obtained from the preliminary investigation. The scope of work for a remedial investigation shall provide for the preparation of the following, as applicable:
1. Characterization of soil and vadose zone contamination, including identification of sources;
 2. Characterization of groundwater contamination, including identification of sources;
 3. Characterization of surface water contamination, including identification of sources;
 4. Identification of actual and potential human and ecological receptors;
 5. Identification of current and reasonably foreseeable uses of waters of the state that have been or are threatened to be impaired;
 6. Identification of current and reasonably foreseeable land uses that have been or are threatened to be impaired;
 7. Assessment of current risk to public health;
 8. Assessment of ecological risk;
- C.** The scope of work for a feasibility study shall generally describe the process for conducting the feasibility study as prescribed in R18-16-407, and may specify additional work to be performed taking into account the information gathered in the remedial investigation.
- D.** The fact sheet shall include, at a minimum, all of the following:
1. A brief history of the site;
 2. A general description of the results of the preliminary investigation, including the known extent of contamination;
 3. The site's score determined under R18-16-202;
 4. General information regarding the potential risk of and routes of exposure to the contaminants at the site; and
 5. The Department personnel to be contacted for further information regarding the site.

- E. The outline of a community involvement plan shall generally describe the activities which will be included in the community involvement plan as required by A.R.S. § 49-289.03 and R18-16-404(C).
- F. The Department shall provide written notice of the availability of the scope of work, the fact sheet, and the outline of the community involvement plan as required under A.R.S. § 49-287.03(C) to each person who, according to information available to the Department, may be liable for remedial actions. The notice shall state that any person, by written agreement with the Department may develop and implement a remedial investigation work plan or a feasibility study work plan for a site or a portion of a site under R18-16-406 or R18-16-407. The notice shall be provided in accordance with R18-16-301.
- G. The Department shall publish the newspaper notice required by A.R.S. § 49-287.03(C) and shall provide written notice by mail or other delivery to residents, owners or operators of facilities being investigated, commercial occupants, affected water providers and owners of known wells within the community involvement area of the availability of the scope of work, the fact sheet, and the outline of the community involvement plan. These notices shall comply with R18-16-301. These notices shall also provide an opportunity for a public meeting. If the remedial investigation is being performed within one year of the scoring of the site under A.R.S. § 49-287.01, the notices required by this Section may be combined with the notice required by A.R.S. § 49-289.02.
- H. Before implementing a work plan for a remedial investigation or feasibility study, the Department shall prepare a responsiveness summary addressing any public comments on the scope of work as required under A.R.S. § 49-287.03(D).
- I. Community involvement under this Article shall comply with Article 3 of this Chapter, except that the community involvement plan may provide for additional requirements.
- Historical Note**
- New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).
- R18-16-404. Community Involvement Requirements**
- A. The Department or any person who conducts remedial action work at a site on the registry shall conduct community involvement activities in accordance with the requirements of this Section.
- B. If the Department has prepared a community involvement plan under subsection (C) or adopted a plan under subsection (D)(1), the Department or any person conducting remedial action work at a site on the registry shall conduct community involvement activities at the site according to the community involvement plan. If the Department has issued a notice under A.R.S. § 49-287.03 for a site, a person may conduct community involvement activities only under a written agreement with the Department. However, a person who submits a notice of remediation under R18-16-415(A) may conduct community involvement activities for the soil remediation described in the notice according to the community involvement plan prepared or adopted by the Department for the site without a written agreement.
- C. Unless the Department determines that the necessary remedy at a site can be completed within 180 calendar days, the Department shall prepare and implement a community involvement plan prior to initiating or approving a work plan to implement the remedial investigation or a feasibility study under A.R.S. § 49-287.03. The community involvement plan shall:
1. Be updated annually and shall provide information, if applicable, regarding the establishment of a selection committee and community advisory board. The plan also shall provide for the following required activities:
 - a. Notification to interested persons of the availability of the work plan developed under R18-16-406(B) to implement the remedial investigation and the solicitation of information from interested persons under R18-16-406(D) regarding the current and reasonably foreseeable uses of the land and waters of the state.
 - b. Notice to the public of the opportunity to comment on the draft remedial investigation report developed under R18-16-406(F) and public meetings to establish remedial objectives under R18-16-406(I).
 - c. Notice to the public of the opportunity to comment on remedial objectives proposed under R18-16-406(I)(5) and the availability of the final report prepared by the Department under R18-16-406(J).
 - d. Notification to interested persons of the availability of the work plan developed under R18-16-407(B) to implement the feasibility study.
 - e. Notice to the public and notification to interested persons of the availability of the proposed remedial action plan prepared under R18-16-408(A) and of the opportunity to comment on the proposed remedial action plan.
 - f. Notice to the public of the availability of the record of decision and responsiveness summary prepared by the Department under R18-16-410.
 - g. Notice to the public and notification to interested persons of availability of and opportunity to comment on the operation and maintenance plan prepared under R18-16-411(E).
 - h. Notice to the public and notification to interested persons of a request for approval of work under R18-16-413.
 - i. Newsletters to be distributed to residents and interested persons regarding the status of the remedial action and other pertinent information.
 - j. Notice within the community involvement area regarding public meetings to provide and discuss information regarding sites on the registry.
 - k. The location of and types of information contained in a public document repository.
 - l. Notice to the public and notification to interested persons of a request for a waiver under A.R.S. § 49-290.
 - m. Notice to the public of field work that is conducted to remove contaminants of concern or that may result in noise, light, odor, dust or other adverse impacts off of the site.
 - n. Notice to the public of a determination under R18-16-416(B).
 - o. Notice to the public of community advisory board meetings.
 2. Describe the following procedures for conducting each of the required activities listed in subsection (C)(1).
 - a. Methods of notice and notification.
 - b. Identification of a spokesperson to inform the public and act as a liaison.
 - c. The means to identify interested persons to receive notices.
 - d. Coordination of community involvement activities with the Department for community involvement conducted by persons other than the Department.
 3. In determining how the community involvement activities are to be implemented, the Department shall consider the following:

- a. A community profile.
 - b. Assessment of community concerns and issues through community interviews, public comment, and other means.
 - c. Public health and environmental impacts.
- D.** If the Department has not provided notice under A.R.S. § 49-287.03(C) and has not prepared a community involvement plan under subsection (C) or adopted a plan under subsection (D)(1), a person who proposes to conduct remedial action work at a site on the registry shall either:
1. Prepare a community involvement plan for the site according to the requirements set forth in subsection (C) and submit a request under R18-16-413 for the Department to approve the plan and adopt it as the community involvement plan for the site. The Department may approve and adopt a community involvement plan if the plan complies with the requirements of subsection (C).
 2. Conduct community involvement activities appropriate to the scope and schedule of the work performed including, as applicable, all of the following:
 - a. For field work conducted to remove contaminants of concern or that may result in noise, light, odor, dust and other adverse impacts off of the site, provide general public notice prior to conducting the work. The general public notice may be in the form of signage, direct mailing, door hangings, news articles, or any other form of notice that is distributed in a manner sufficient to reach those who may be impacted. The general public notice shall provide a general description of the field work and anticipated adverse impacts, and the name and telephone number of a person who may be contacted for information regarding the field work.
 - b. Prior to conducting a remedial action that will take more than 180 calendar days to complete, provide general notice regarding the nature of the action and establish a document repository accessible to the public where information regarding the site and the remedial action is available for review. The general notice may be in the form of fact sheets, newsletters, or news articles distributed by direct mailings, door hangings or any other method of distribution sufficient to reach or be accessible to local government agencies, persons within the community involvement area for the site and other persons who have requested information regarding the site. Notice to affected water providers shall be by direct mail. The general notice shall describe the nature and progress of the remedial action, the location of the repository, and provide the name and telephone number of a person who may be contacted for information regarding the remedial action. The document repository shall be accessible during normal business hours and shall contain all documents and information required to be prepared or maintained by this Article and any other documents and information deemed appropriate by the person conducting the work. An updated general notice shall be provided at least once per year while the remedial action is being conducted.
 - c. Comply with the process for establishing remedial objectives under R18-16-406(F) through R18-16-406(J).
 - d. Provide notice of the availability of the proposed remedial action plan prepared under R18-16-408 and convene a public meeting prior to the close of the public comment period to provide information concerning the proposed remedial action plan.
- E.** Copies of notices and notifications required under this Section shall be provided to the Department five days before publication, mailing, posting, or other distribution.
- F.** Community involvement under this Article shall comply with Article 3 of this Chapter, except that the community involvement plan may provide for additional requirements.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-405. Early Response Actions

- A.** The Department or any person may perform an early response action if the action is initiated prior to selection of a remedy at a site under R18-16-410 and is necessary to:
1. Address current risk to public health, welfare, and the environment;
 2. Protect or provide a supply of water;
 3. Address sources of contamination; or
 4. Control or contain contamination where such actions are expected to reduce the scope or cost of the remedy needed at the site.
- B.** The method or technology used to implement the early response action shall be selected based upon best engineering, geological, or hydrogeological judgment following engineering, geological, or hydrogeological standards of practice, considering the following information:
1. Best available information characterizing the site;
 2. Best available scientific information concerning available remedial methods and technologies; and
 3. Best available information regarding whether the technology or method could increase the scope or costs of possible remedies for the site or result in increased risk to public health or welfare or the environment.
- C.** A written rationale shall be prepared for each early response action explaining how the early response action will achieve the applicable goals in subsection (A) and how the early response action is consistent with A.R.S. § 49-282.06(A). The written rationale shall identify the information used to select the early response action as provided in subsection (B), how that information was considered, and how the selected method or technology was selected. Performance of a remedial investigation or feasibility study shall not be required to select or conduct an early response action.
- D.** A work plan shall be prepared for each early response action. Each work plan shall include:
1. A description of work to be done, a description of known site conditions, and a plan for conducting the work;
 2. A description of community involvement activities for the early response action under R18-16-404; and
 3. A schedule.
- E.** If immediate action is necessary to address a current risk to public health or the environment, to protect a source of water, or to provide a supply of water, the work plan and written rationale may be prepared and the community involvement activities may be conducted after commencement of the early response action.
- F.** Approval of an early response action under this Section does not constitute approval of the remedy for the site. The remedy for a site where an early response action is conducted shall be selected in accordance with R18-16-406 through R18-16-410. An early response action may be addressed, incorporated and modified as needed in the remedy selected under R18-16-410.
- G.** After the Department has issued notice under A.R.S. § 49-287.03 for a site or a portion of a site, a person conducting an

early response action at a site or portion of a site shall notify the Department, in writing, of the early response action. The notice shall contain a brief description of the early response action and shall be given at least 15 calendar days before the early response action is commenced, or as soon thereafter as practicable depending upon the exigencies of the circumstances. If the early response action has commenced before the Department issues notice under A.R.S. § 49-287.03, written notice of the early response action shall be given within 15 calendar days after the Department's notice is given. After notice of a proposed remedial action plan has been given under R18-16-408(C), an early response action may be initiated only after the Department has approved the early response action.

H. Any person may submit a request to the Department under R18-16-413 to approve an early response action or a work plan for an early response action. The request shall include the work plan and the written rationale for the early response action. The Department shall approve the work plan or early response action if it complies with the following:

1. The requirements of this Section and A.R.S. § 49-282.06(A);
2. Community involvement activities under R18-16-404;
3. The work plan provides for modifications to address unknown or changed conditions; and
4. Any applicable requirements of R18-16-411 and R18-16-412.

I. In considering whether an early response action is necessary to protect or provide a supply of water because a well is threatened by contamination, a well located in the area within 1/4 mile upgradient, 1/2 mile cross-gradient and 1 mile downgradient of the areal extent of contamination at the site shall be presumed to be threatened by the contamination. This presumption may be rebutted by evidence of local hydrology, geology, or geochemistry or by available information regarding the capture zone or rate of flow. In considering whether wells a greater distance from the areal extent of contamination are threatened, any evidence regarding local hydrology, geology, geochemistry, zone of capture, or rate of flow may be considered.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-406. Remedial Investigations

A. The remedial investigation for a site or portion of a site shall:

1. Establish the nature and extent of the contamination and the sources thereof;
2. Identify current and potential impacts to public health, welfare, and the environment;
3. Identify current and reasonably foreseeable uses of land and waters of the state, and
4. Obtain and evaluate any other information necessary for identification and comparison of alternative remedial actions.

B. The Department or any person may perform all or any portion of a remedial investigation, except that once the Department has issued a notice under A.R.S. § 49-287.03 for a site, a person may perform such work only under a written agreement with the Department. A work plan shall be developed and implemented for all or any portion of a remedial investigation for a site or a portion of the site, as follows:

1. The work plan shall demonstrate that the work performed will meet the requirements of subsections (C) and (D) and that the work will be performed in accordance with guidance documents issued by the Department or standards or other guidance documents that are commonly accepted in

the scientific community. Standards or guidance documents are considered to be commonly accepted in the scientific community if they are published in peer-reviewed literature such as a professional journal or publication of standards of general circulation, and if there is general consensus within the scientific community about the guidance document or standard.

2. Each work plan shall include the following elements:
 - a. A description of the work, including any community involvement activities to satisfy any applicable requirements of R18-16-403 or R18-16-404, a statement of justification for the work, and a plan for conducting the work;
 - b. A quality assurance project plan;
 - c. A site location map;
 - d. A schedule;
 - e. A health and safety plan consistent with 29 CFR 1910.120; and
 - f. A sampling and analysis plan.
 3. A work plan may be modified as work proceeds to address unknown or changed conditions or access problems.
 4. Any person proposing to implement a work plan for all or a portion of a remedial investigation shall, before implementing the work plan, notify the Department in writing of the name and address of the working party and a general description of the work being performed. This notice is for the Department's information only and receipt of the notice shall not constitute approval of the work plan. A person seeking approval of a work plan by the Department shall submit a written request under R18-16-413.
- C.** The remedial investigation, which may be conducted in one or more phases to focus sampling efforts and increase the efficiency of the investigation, shall include field investigations to assess the following factors:
1. Physical characteristics of the site, including important surface features, soils, geology, hydrogeology, meteorology, and ecology;
 2. The extent and general characteristics of the hazardous substances released, including physical state, concentration, toxicity, propensity to bioaccumulate, persistence, and mobility;
 3. The extent, general characteristics, and degree of the source of the release;
 4. Current and reasonably foreseeable exposure routes for the hazardous substances released, such as inhalation, ingestion and dermal;
 5. Other factors, such as sensitive populations, that pertain to the characterization of the site or support the analysis of potential remedies; and
 6. Current and reasonably foreseeable impacts to aquatic and terrestrial biota.
- D.** The remedial investigation shall include the collection of information regarding current and reasonably foreseeable uses of land or of waters of the state that have been or are threatened to be impacted by the release, and projected time-frames for future changes in those uses. Reasonably foreseeable uses of land are those uses of land likely to occur at the site. Reasonably foreseeable uses of water are those likely to occur within 100 years unless a longer time period is shown to be reasonable based on site-specific circumstances. Information may be solicited from any interested person including any known well owner. Information collected shall include:
1. Information regarding current and reasonably foreseeable uses of water for each aquifer that is impacted or threatened to be impacted by the release, considering any

hydraulic connection between aquifers. The information shall include the locations and uses of existing wells, including all wells already impaired due to contamination, the locations and uses, if known, of any planned wells, and any written water management plans used by water providers whose water supplies may be impacted by the release. This information shall be collected in consultation with affected water providers.

2. Information regarding current and reasonably foreseeable uses of water for each segment of surface water impacted or threatened to be impacted by the release. This information shall be collected in consultation with affected water providers.
 3. Information regarding current and reasonably foreseeable uses of land impacted or threatened to be impacted by the release within the community involvement area. General land use information shall include the current type of use, density, character, and governmental jurisdictions. Future land use changes shall be considered using population projections, growth, plans for future development and local land use plans. This information shall be collected in consultation with local governments with land use jurisdiction. The information collected shall also include specific land uses and property ownership for properties where the land use is impacted or threatened to be impacted by the release.
- E. Using the data developed during the field investigation and information collected concerning uses of land and of waters of the state, a site-specific risk evaluation may be conducted to characterize the current risks to public health and the environment from contaminants of concern.
- F. Following the collection of data necessary to adequately characterize the site or portion of the site and the collection of information necessary to determine the uses of land and of waters of the state, a draft remedial investigation report shall be prepared, and if prepared by a person other than the Department, submitted to the Department. The draft remedial investigation report shall include the results of any risk evaluation conducted under subsection (E). The draft remedial investigation report may consist of a summary of the data and information collected with references to the supporting documentation and the location of the public repository where those documents may be reviewed. Copies of the draft remedial investigation report prepared by or approved for release by the Department shall be provided to the community advisory board, interested local government agencies, affected water providers, and the Department of Water Resources. Copies of the draft remedial investigation report also shall be made available to the community under the community involvement plan. Public notice shall be given of the opportunity to comment on the draft remedial investigation report. This notice may be combined with the notice given under subsection (I)(1).
- G. For remedial objectives used to select a soil remediation remedy, the landowner has the right to identify the type of land use in accordance with A.R.S. § 49-152 and 18 A.A.C. 7, Article 2. If the remedy for the site or portion of a site will address landfill or other non-soil materials other than waters of the state, the landowner may establish the current and reasonably foreseeable uses of its land provided that the remedial objectives for the site are not required to address land uses impaired by properties of materials located on or under the land other than the current or potential exposure to the hazardous substances contained in that material.
- H. If the remedy for the site or a portion of the site will not address waters of the state, a final remedial investigation report may be prepared containing the results of the site characterization and a listing of remedial objectives. The remedial objectives shall be based on the current and reasonably foreseeable uses of the property in accordance with subsection (G) and stated in accordance with subsection (I)(4). The report shall be accompanied by responsiveness summaries regarding comments, issues, and concerns regarding the draft remedial investigation report under subsection (F), and if the report is prepared by a person other than the Department, copies of the comments received. The report may be submitted to the Department for review under R18-16-413. If the Department approves the report, the procedures in subsections (I) and (J) do not apply, and the approved report may be used to select a remedy under R18-16-407(C) or R18-16-407(D). Notice of the availability of the final remedial investigation report shall be provided with the notice under R18-16-408(C).
- I. Except as provided in subsection (H), remedial objectives shall be developed as follows:
1. After the draft remedial investigation report is made available, the Department shall hold 1 or more public meetings to obtain information for purposes of establishing remedial objectives for the site. The Department shall provide notice of the public meeting. If a community advisory board has been formed for the site, public meeting arrangements shall be coordinated with the community advisory board. The initial public meeting shall be held not less than 45 calendar days and not more than 90 calendar days after release of the draft remedial investigation report, unless the Department sets a different date for good cause.
 2. At the public meeting, the Department shall solicit and consider proposed remedial objectives for the site. The Department also may receive and consider written information regarding proposed remedial objectives.
 3. Remedial objectives shall be generally consistent with the water management plans of all water providers whose water supplies are or may be impaired by the contamination and with the general land use plan established by the local land use jurisdiction.
 4. The Department shall prepare a report of the proposed remedial objectives for the site that shall list the current and reasonably foreseeable uses of land and the current and reasonably foreseeable beneficial uses of waters of the state. These uses shall be identified based upon information provided during the public meeting and any other information received. The report shall state the remedial objectives for each listed use in the following terms:
 - a. Protecting against the loss or impairment of each listed use that is threatened to be lost or impaired as a result of a release of a hazardous substance;
 - b. Restoring, replacing or otherwise providing for each listed use to the extent that it has been or will be lost or impaired as a result of a release of a hazardous substance;
 - c. Time-frames when action is needed to protect against or provide for the impairment or loss of the use; and
 - d. The projected duration of the action needed to protect or provide for the use.
 5. The Department shall provide notice and accept and consider public comment on the proposed remedial objectives in the remedial objectives report and shall hold at least 1 additional public meeting if significant public interest exists or if significant issues or information have been brought to the attention of the Department which have not been considered previously.

6. The Department shall prepare a final remedial objectives report.
- J.** Following the community involvement activities regarding the draft remedial investigation report and the remedial objectives report, a final remedial investigation report shall be prepared containing the results of the site characterization and the final remedial objectives report. The final remedial investigation report shall be accompanied by responsiveness summaries regarding comments, issues and concerns raised in the community involvement process and, if the report is prepared by a person other than the Department, copies of the comments received. After completion of the final remedial investigation report, changes to the remedial objectives are subject to the requirements of subsection (I). The Department shall provide notice of the availability of the final remedial investigation report.
- K.** Any person, other than a person proposing to perform work under an agreement under A.R.S. § 49-287.03(C), may submit a request under R18-16-413 for the Department to approve a work plan or a report for all or any portion of a remedial investigation. The Department shall approve a work plan for a remedial investigation if the request shows that the work will comply with this Section, community involvement activities will comply with R18-16-404, and the work plan provides for modifications to address unknown or changed conditions or access problems. The Department shall approve a draft remedial investigation report if the work is in compliance with an approved work plan or, if no work plan was approved, the remedial investigation complies with this Section and the community involvement activities have been conducted under this Article.
- Historical Note**
- New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).
- R18-16-407. Feasibility Study**
- A.** The feasibility study is a process to identify a reference remedy and alternative remedies that appear to be capable of achieving remedial objectives and to evaluate them based on the comparison criteria to select a remedy that complies with A.R.S. § 49-282.06.
- B.** The Department or any person may perform all or any portion of a feasibility study, except that once the Department has issued a notice under A.R.S. § 49-287.03 for a site, a person may perform such work only under a written agreement with the Department. The feasibility study process shall include community involvement procedures in compliance with R18-16-404 and may be reported concurrently with the remedial investigation. A work plan shall be developed and implemented for all or any portion of a feasibility study for a site or a portion of a site, as follows:
1. The work plan shall demonstrate that the work performed will meet the requirements of this Section.
 2. A work plan may be modified as appropriate.
 3. Any person proposing to implement a work plan for all or a portion of a feasibility study shall, before implementing the work plan, notify the Department in writing of the name and address of the working party and a general description of the work being performed. This notice is for the Department's information only and receipt of the notice shall not constitute approval of the work plan. A person seeking approval of a work plan by the Department shall proceed under R18-16-413.
- C.** For remedies addressing only soils, an analysis of alternative remedies is not required. A feasibility study report shall be prepared that demonstrates:
1. That the proposed remedy addresses the contaminated soil in a manner that achieves compliance with A.R.S. § 49-152 and 18 A.A.C. 7, Article 2 and will achieve the remedial objectives for the use of the property.
 2. That the proposed remedy was selected based upon best engineering, geological, or hydrogeological judgment following engineering, geological, or hydrogeological standards of practice, considering the following information:
 - a. The remedial investigation;
 - b. Best available scientific information concerning available remedial methods and technologies;
 - c. A written analysis explaining how the remedy is consistent with A.R.S. § 49-282.06, including a brief explanation of the comparison criteria as applied to the remedy.
- D.** For remedies addressing only landfills that have not and will not impact groundwater or similar sites or portions of sites that have not and will not impact groundwater, and that contain material not subject to A.R.S. § 49-152 and 18 A.A.C. 7, Article 2, an analysis of alternative remedies is not required. A feasibility study report shall be prepared that demonstrates:
1. That the proposed remedy is designed to prevent human exposure to hazardous substances through the achievement of:
 - a. Soil remediation levels established under 18 A.A.C. 7, Article 2, or
 - b. Site-specific remediation levels based on a site-specific human health risk assessment, meeting a cumulative excess lifetime cancer risk between 1×10^{-4} and 1×10^{-6} and a hazard index no greater than 1. The excess lifetime cancer risk shall be selected by the Department based upon site specific factors including the presence of multiple contaminants, the existence of multiple pathways of exposure, the uncertainty of exposure, and the sensitivity of the exposed population. With prior approval of the Department, a person may achieve a site specific remediation level based on the use of institutional and engineering controls. The approval shall be based in part on the demonstration that the institutional and engineering controls will be maintained.
 2. That the proposed remedy was selected based upon best engineering, geological, or hydrogeological judgment following engineering, geological, or hydrogeological standards of practice, considering the following information:
 - a. The remedial investigation;
 - b. Best available scientific information concerning available remedial methods and technologies;
 - c. A written analysis explaining how the remedy is consistent with A.R.S. § 49-282.06, including a brief explanation of the comparison criteria as applied to the remedy.
 3. That the proposed remedy will achieve all of the remedial objectives.
- E.** For remedies other than provided in subsections (C) and (D), the feasibility study shall provide for the development of a reference remedy and at least two alternative remedies as follows:
1. The reference remedy and alternative remedies shall be capable of achieving all of the remedial objectives. The reference remedy and each alternative remedy shall consist of a remedial strategy under subsection (F) and all remedial measures to be employed. The combination of the remedial strategy and the remedial measures for each

- alternative remedy shall achieve the remedial objectives. The reference remedy and any alternative remedy also may include contingent remedial strategies or remedial measures to address reasonable uncertainties regarding the achievement of remedial objectives or uncertain timeframes in which remedial objectives will be achieved. The reference remedy and other alternative remedies shall be developed and described in the feasibility study report in sufficient detail to allow evaluation using the comparison criteria, but plans at construction level detail are not required. The units of measure set forth in Appendix A may be used, as applicable, for comparison of the relevant factors. Where appropriate, the reference remedy and an alternative remedy may incorporate different strategies for different aquifers or portions of aquifers.
2. The reference remedy shall be developed based upon best engineering, geological, or hydrogeological judgment following engineering, geological, or hydrogeological standards of practice, considering the following:
 - a. The information in the remedial investigation;
 - b. The best available scientific information concerning available remedial technologies; and
 - c. Preliminary analysis of the comparison criteria and the ability of the reference remedy to comply with A.R.S. § 49-282.06.
 3. At a minimum, at least two alternative remedies shall be developed for comparison with the reference remedy. At least one of the alternative remedies must employ a remedial strategy or combination of strategies that is more aggressive than the reference remedy, and at least one of the alternative remedies must employ a remedial strategy or combination of strategies that is less aggressive than the reference remedy. For the purposes of this Section, a more aggressive strategy is a strategy that requires fewer remedial measures to achieve remedial objectives, a strategy that achieves remedial objectives in a shorter period of time, or a strategy that is more certain in the long term and requires fewer contingencies. With the Department's approval, one of the minimum required alternative remedies may use the same strategy as the reference remedy but use different viable technologies or a more intensive use of the same technology utilized in the reference remedy.
- F.** The remedial strategies to be developed under subsection (E) are listed below. Source control shall be considered as an element of the reference remedy and all alternative remedies, if applicable, except for the monitoring and no action alternatives. A strategy may incorporate more than one remediation technology or methodology, such as a plume remediation strategy that consists of a combination of pumping and treating in portions of an aquifer and monitored natural attenuation for other portions of the aquifer. The remedial strategies are:
1. Plume remediation is a strategy to achieve water quality standards for contaminants of concern in waters of the state throughout the site.
 2. Physical containment is a strategy to contain contaminants within definite boundaries.
 3. Controlled migration is a strategy to control the direction or rate of migration but not necessarily to contain migration of contaminants.
 4. Source control is a strategy to eliminate or mitigate a continuing source of contamination.
 5. Monitoring is a strategy to observe and evaluate the contamination at the site through the collection of data.
 6. No action is a strategy that consists of no action at a site.
- G.** Remedial measures necessary for each alternative remedy developed under subsection (E) to achieve remedial objectives or to satisfy the requirements of A.R.S. § 49-282.06(B)(4)(b) shall be identified in consultation with water providers or known well owners whose water supplies are affected by the release or threatened release of a hazardous substance. In identifying the remedial measures, the needs of the well owners and the water providers and their customers, including the quantity and quality of water, water rights and other legal constraints on water supplies, reliability of water supplies and any operational implications shall be considered. Such remedial measures may include, but are not limited to, well replacement, well modification, water treatment, provision of replacement water supplies, and engineering controls. Where remedial measures are relied upon to achieve remedial objectives, such remedial measures shall remain in effect as long as required to ensure the continued achievement of those objectives. The Department may require financial mechanisms to provide for the cost of implementation of the remedial measures.
- H.** The Department or any person who conducts a feasibility study by agreement with the Department shall conduct a comparative evaluation of the reference remedy and the alternative remedies developed under subsection (E). For each alternative, the evaluation shall be reported in a feasibility study report and shall include:
1. A demonstration that the remedial alternative will achieve the remedial objectives.
 2. An evaluation of consistency with the water management plans of affected water providers and the general land use plans of local governments with land use jurisdiction.
 3. An evaluation of the comparison criteria, including:
 - a. An evaluation of the practicability of the alternative, including its feasibility, short and long-term effectiveness, and reliability, considering site-specific conditions, characteristics of the contamination resulting from the release, performance capabilities of available technologies, and institutional considerations.
 - b. An evaluation of risk, including the overall protectiveness of public health and aquatic and terrestrial biota under reasonably foreseeable use scenarios and end uses of water. This evaluation shall address:
 - i. Fate and transport of contaminants and concentrations and toxicity over the life of the remediation;
 - ii. Current and future land and resource use;
 - iii. Exposure pathways, duration of exposure, and changes in risk over the life of the remediation;
 - iv. Protection of public health and aquatic and terrestrial biota while implementing the remedial action and after the remedial action; and
 - v. Residual risk in the aquifer at the end of remediation.
 - c. An evaluation of the cost of the remedial alternative, including the expenses and losses including capital, operating, maintenance, and life cycle costs. The cost analysis may include the analysis of uncertainties that may impact the cost of a remedial alternative, analysis of projected water uses and costs associated with use-based treatment, other use impairment costs of water not remediated to water quality standards, and the cost of measures such as alternative water supply or treatment. Transactional costs necessary to implement the remedial alternative, including the transactional costs of establishing

- long-term financial mechanisms, such as trust funds, for funding of an alternative remedy, shall be included in the cost estimate.
- d. An evaluation of the benefit, or value, of the remediation. This analysis includes factors such as:
 - i. Lowered risk to human and aquatic and terrestrial biota;
 - ii. Reduced concentration and reduced volume of contaminated water;
 - iii. Decreased liability; acceptance by the public;
 - iv. Aesthetics; preservation of existing uses;
 - v. Enhancement of future uses; and
 - vi. Improvements to local economies.
 - e. A discussion of the comparison criteria, as evaluated in relation to each other.
- I.** Based upon the evaluation and comparison of the reference remedy and the other alternative remedies developed under subsection (E), a proposed remedy shall be developed and described in the feasibility study report. The proposed remedy may be the reference remedy, any of the other alternative remedies evaluated in the feasibility study, or a different combination of remedial strategies and remedial measures that were included in the alternative remedies evaluated in the feasibility study. The feasibility study report shall describe the reasons for selection of the proposed remedy, including all of the following:
1. How the proposed remedy will achieve the remedial objectives;
 2. How the comparison criteria were considered; and
 3. How the proposed remedy meets the requirements of A.R.S. § 49-282.06.
- J.** Any person, other than a person proposing to perform work under an agreement under A.R.S. § 49-287.03(C), may submit a request in compliance with R18-16-413 for the Department to approve a work plan or a report for all or any portion of a feasibility study. The Department shall approve a work plan for a feasibility study if the request shows that the work will comply with this Section, community involvement activities will be performed in compliance with R18-16-404, and the work plan provides for modifications to comply with this Section. The Department shall approve a feasibility study report if the feasibility study complies with this Section and community involvement activities have been conducted under this Article.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-408. Proposed Remedial Action Plan

- A.** Following the completion of the feasibility study report under R18-16-407(I), the Department or any person shall prepare a proposed remedial action plan, except once the Department has issued a notice under A.R.S. § 49-287.03, a person may prepare a proposed remedial action plan only under a written agreement with the Department.
- B.** The proposed remedial action plan shall include the following:
 1. A description of the proposed remedy.
 2. The information required in A.R.S. § 49-287.04(a).
 3. A description of how the proposed remedy will achieve each of the remedial objectives identified in the final remedial investigation report under R18-16-406(J) and how accomplishment of the remedial objectives is to be measured.
 4. A description of all recharge, reinjection, discharge, transportation and use of remediated water as defined in A.R.S. § 49-283.01.
- C.** Notice of the proposed remedial action plan shall be provided as follows:
 1. At a site where the A.R.S. § 49-287.03 notice has been provided, notice shall be provided by the Department in accordance with A.R.S. § 49-287.04(b) and the community involvement plan prepared under R18-16-404. If the Department intends to seek recovery of costs and conduct a cost allocation proceeding for the site, the notice shall also include the following:
 - a. The information required by A.R.S. § 49-287.04(c).
 - b. A statement of costs incurred at the site by the Department prior to the date of the notice and projected future costs for the site.
 - c. All necessary information regarding the opportunities to submit costs, object to costs, or respond to objections to costs under R18-16-409, including a schedule for such submittal, review, objection and response to objection. The time period for submittal of costs shall not be less than 90 calendar days.
 - d. If on the basis of new information or investigation notice is required to newly-identified parties, the notice sent under A.R.S. § 49-287.04 shall also include the information required by this Section.
 2. At a site where the A.R.S. § 49-287.03 notice has not been provided, the person who prepared the plan shall provide notice under R18-16-404. The notice shall include the information contained in A.R.S. § 49-287.04(C).
- D.** Any person, other than a person proposing to perform work under an agreement under A.R.S. § 49-287.03(c), may submit a proposed remedial action plan to the Department for approval under R18-16-413. The plan may be accompanied by a request for a determination of whether cost recovery by the Department may be appropriate under A.R.S. § 49-287.02. If the Department determines that cost recovery by the Department is not appropriate, notice shall be provided under subsection (C)(2).

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-409. Remedial Action Costs Credit

- A.** Any person seeking credit against potential liability at a site may submit to the Department, within the time period established in the notice given under R18-16-408(D), evidence of costs it has incurred or will incur for remedial actions undertaken at the site. The evidence of costs submitted shall include:
 1. Two copies of an itemized statement of costs, including a certification by the person submitting the statement that the statement is true, accurate and complete;
 2. Sufficient supporting documentation to establish that the costs are consistent with A.R.S. § 49-282.06 and this Article; and
 3. An agreement in which the person submitting the evidence of costs agrees to reimburse the Department for the Department's costs under subsection (F).
- B.** Any itemized statements of costs submitted shall be available for review at both the repository for the site and the Department on or after the expiration of the time period established in subsection (A).
- C.** Within a reasonable period of time set by the Department but not less than 30 calendar days, any person may object in writing to costs submitted by the Department or any other person under this Section. Written objections shall identify the specific costs to which the party objects and shall state specific reasons for the objection. Two copies of the objections shall be

submitted to the Department and one copy of the objections shall be submitted to the person whose costs are the subject of objection.

- D. The Department and each person who submits an itemized statement of costs shall have an opportunity to respond to any objections within the time period specified in the notice given under R18-16-408 subsection (C) or (D). Two copies of the response shall be submitted to the Department and one copy of the response shall be submitted to the person objecting to the costs.
- E. The Department shall evaluate the statements of costs submitted, any objections to such statements, or other information available to the Department and shall approve those costs determined by the Department to be recoverable and in substantial compliance with A.R.S. § 49-282.06. The Department shall prepare a list of these approved costs for inclusion as part of the total estimated costs of the remedy in the record of decision under R18-16-410.
- F. Any person who requests the Department's approval of costs under this Section shall reimburse the Department for the total reasonable cost to the Department for the review unless the Department waives all or a part of the reimbursement. The total reasonable costs include direct and indirect costs to the Department in conducting these activities. Costs that are reimbursed to the Department by a person that obtains the Department's approval of costs under this Section constitute remedial action costs that may be recovered from responsible parties.
- G. The Department shall give credit not exceeding the amount of a person's liability for the costs approved under this Section. Nothing in this Article shall create a right of reimbursement from the fund for any costs incurred or to be incurred at a site.
- H. If the remedial action for which approval of costs is sought under this Section has not been previously approved by the Department, the submittal under subsection (A) shall be accompanied by a request for approval of the remedial action under R18-16-413.
- I. This Section is the exclusive process for the Department to approve the costs of a remedial action, and no other Department approval of a remedial action shall be considered as an approval of the costs of that remedial action.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-410. Record of Decision

- A. After the conclusion of all required public comment periods prescribed by A.R.S. § 49-287.04, the Department shall prepare a record of decision regarding the proposed remedial action plan. However, any person may prepare a proposed record of decision for consideration by the Department under R18-16-413 by submitting copies of the final remedial investigation report, the final feasibility study report, the proposed remedial action plan, all public comments and a proposed record of decision.
- B. The record of decision shall contain the following:
 - 1. A description of the remedy, including a description of any differences from the proposed remedial action plan.
 - 2. A comprehensive responsiveness summary regarding all comments received on the proposed remedial action plan.
 - 3. A description of how the process for selecting the remedy complied with A.R.S. Title 49, Chapter 2, Article 5 and this Article, including all public comment and community involvement requirements.
 - 4. A demonstration that the remedy selected will achieve the remedial objectives selected in R18-16-406 and will remain in place as long as necessary to ensure continued achievement of those objectives.
- 5. A demonstration that the remedy selected meets the requirements of A.R.S. § 49-282.06 and this Article.
- 6. A time for commencing implementation of the remedy and a specific time period for completing the remedy.
- 7. The total estimated cost of the remedy.
- 8. A time-frame for review of the remedy to determine the effectiveness of the remedy in achieving the remedial objectives.
- C. The total estimated cost of the remedy shall include:
 - 1. Remedial action costs other than nonrecoverable costs incurred by the Department, including credit given in a settlement.
 - 2. Remedial action costs other than nonrecoverable costs incurred by the state.
 - 3. Remedial action costs other than nonrecoverable costs that have been approved by the Department under R18-16-409.
 - 4. Projected future remedial action costs other than nonrecoverable costs.
- D. The record of decision shall be issued only by the Department. Notice of the record of decision shall be provided under A.R.S. § 49-287.04(G) and R18-16-404.
- E. A record of decision may be amended in accordance with A.R.S. § 49-289(B), (C), and (D).

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-411. Design, Implementation, Operation and Maintenance of the Early Response Action or Remedy.

- A. Any person who intends to implement all or any portion of a remedy or an early response action shall obtain the Department's approval when required in either a record of decision or under subsection (C) or (E). The design and implementation of the remedy shall conform with the remedial action plan as adopted in the record of decision.
- B. If the remedy or an early response action includes well replacement or provision of an alternative water supply, the Department or any person developing the design shall consult with the affected well owner or water provider. For a well owner, the design of that portion of the remedy or early response action shall meet the well owner's water quality and quantity needs in accordance with A.R.S. § 49-282.06(B)(4)(b) and R18-16-407(G). For a water provider, the design of that portion of the remedy or early response action shall:
 - 1. Comply with laws and regulations governing the water provider's obligations to its customers;
 - 2. Be implementable without significant alteration of the water provider's existing system; and
 - 3. Meet the water provider's water quality and quantity needs in accordance with A.R.S. § 49-282.06(B)(4)(b) and R18-16-407(G).
- C. The Department's approval of the design of any water treatment facilities is required prior to the construction as part of the remedy or an early response action. The design shall be based on an evaluation of potential treatment system failure that could affect public health and shall incorporate safeguards including any site-specific engineering and operation controls necessary to assure protection of public health against such failure. The safeguards shall incorporate, at a minimum, if applicable to the technology:
 - 1. Monitors and alarms on all key treatment system components, e.g. power, air flow.

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2. Automatic termination of discharge from the treatment system when monitors detect abnormal operation of key treatment system components.
- D.** If operation and maintenance of a remedy following completion of construction are necessary to ensure the continued achievement of the remedial objectives, an operation and maintenance plan shall be prepared and implemented.
- E.** The Department's approval of an operation and maintenance plan shall be required for each WQARF site where the remedy or an early response action involves treatment of water to remove contaminants of concern at the site. The community advisory board, if one has been established for the site, shall be provided with the opportunity to comment on the operations and maintenance plan. Notice and community involvement shall be in accordance with R18-16-404. The operation and maintenance plan shall include:
1. Certification by the Department that the elements of the operations and maintenance plan adequately protect public health against treatment system failure.
 2. A schedule and plan for water quality monitoring.
 3. A requirement that affected water providers receive a copy of the completed application and a copy of the final permit for any National Pollutant Discharge Elimination System permit for the site.
 4. A process for the treatment system operator to promptly notify potentially affected water providers of a failure of a key treatment system component that could affect the quality of a discharge of treated water.
 5. For a discharge to a water of the United States, operational, maintenance and management practices to assure achievement of water quality discharge standards established in 18 A.A.C. 11 prior to the point of discharge for those volatile organic compounds which are contaminants of concern at the site.
- F.** Any person who intends to implement any portion of a remedy may request the Department to approve the design or the operation and maintenance plan. A request for approval of a remedial design shall be submitted in accordance with R18-16-413. The Department shall approve any remedial design that is in compliance with this Section and the remedial action plan as adopted in the record of decision.
- G.** The well owner or water provider whose water use is being addressed may, in its sole discretion, elect to construct, operate, or construct and operate the water treatment, well replacement or alternative water supply component of the remedy or early response action which is designed to address its use. This election shall not alter the responsibility of the Department or any person under A.R.S. Title 49, Chapter 2, Article 5 to fund all or a portion of the remedy or early response action. The well owner or water provider shall enter into a written agreement with the appropriate person that will govern the terms of the construction, operation or construction and operation of the water treatment, well replacement or alternative water supply component of the remedy.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-412. Innovative Technologies

- A.** The Department may approve the use of an innovative technology for a site if the Department determines that the technology has been demonstrated to be reasonably likely to achieve its objectives and meets the other criteria set forth in this Article. Such a demonstration may be made through pilot or bench testing studies, peer reviewed studies, or other appropriate means of demonstration. If an innovative technology is

approved as part of a remedy, the remedial action plan shall provide for a contingency in the event that the technology fails to achieve its objectives.

- B.** The Department may use monies from the WQARF fund to contract for review of an innovative technology.
- C.** The Department may provide incentives for the selection of the innovative technology that may include the following:
1. The Department may agree not to assess penalties, issue a notice of violation, pursue an order, or take other enforcement action authorized by law for a delay that is caused by the use of the innovative technology provided that the party conducting the remedial action remains in compliance with the plans for implementing the innovative technology and implements a contingent remedial action in a timely manner.
 2. The Department may use monies from the Water Quality Assurance Revolving Fund to finance some or all of the use of the innovative technology.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-413. Approval of Remedial Actions Under A.R.S. § 49-285(B)

- A.** Any person who seeks approval of a remedial action at a site or a portion of a site on the registry under A.R.S. § 49-285(B) shall submit a written request to the Department that contains all of the following:
1. The name and address of the person submitting the request and the nature of the relationship of the person to the site, if any.
 2. The location and boundaries of the site or portion of the site addressed by the remedial action
 3. The nature, degree, and extent of the hazardous substance contamination, if known.
 4. A description of any remedial action performed before the request is submitted.
 5. A work plan for any remedial action to be performed after the request is submitted.
 6. A demonstration of how the remedial action complied, or will comply, with this Article.
 7. A proposal for public notice and an opportunity for public comment on the application for approval under this Section. The proposal shall include a list of the names and addresses of persons whom the applicant believes to be responsible parties under A.R.S. § 49-283 and a summary of the basis for that belief.
 8. An agreement in which the person requesting the approval agrees:
 - a. To grant access to the Department as necessary to evaluate the request for approval.
 - b. To reimburse the Department for the Department's costs under subsection (G).
 9. An original seal imprint and signature of a registered professional if required by the Arizona Board of Technical Registrations under A.R.S. Title 32, Chapter 1 and the rules made under that Chapter.
- B.** A request for approval under this Section may be combined with a no further action request under R18-16-414.
- C.** The Department may request additional information necessary to evaluate or to take action on the request for approval.
- D.** The Department shall provide notice of the request for approval and of the opportunity to comment on the request for approval.
- E.** The Department shall, after considering public comments, approve a remedial action under this Section if the Department

determines that the remedial action is in substantial compliance with this Article. The Department's approval shall be in writing and shall state the basis for the approval.

- F. The Department may deny approval of a remedial action under this Section if the remedial action does not meet the requirements of this Article, may request additional information, may request modification of the remedial action, or may condition approval of the remedial action on modifications necessary to achieve substantial compliance with this Article.
- G. The person making the request for approval shall reimburse the Department for the total reasonable cost of the Department's review and action under this Section, including costs of notices, unless the Department waives all or part of the reimbursement. The total reasonable costs include direct and indirect costs to the Department in conducting these activities.
- H. Approval of a remedial action under this Section does not constitute approval of the costs of conducting the remedial action.
- I. A remedial action approved by the Department under this Section shall be deemed to be in substantial compliance with this Article. The Department's approval under this Section is not required to preserve any right to recover remedial action costs under A.R.S. § 49-285.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-414. Determination of No Further Action

- A. The Department shall determine that no further action is necessary at a site or a portion of a site if, based upon the information submitted under A.R.S. § 49-287.01, the Department finds that the site or portion of the site does not present a significant risk to the public health, welfare, or the environment. The determination may be made by the Department based upon any of the following:
 - 1. A finding by the Department that the requirements of A.R.S. § 49-152 and 18 A.A.C. 7, Article 2 have been met shall be sufficient to support a determination that no further action is necessary for soils at the site or a portion of the site.
 - 2. A finding by the Department that no hazardous substances at the site or a portion of the site have impacted or will impact groundwater shall be sufficient to support a determination that the site or a portion of the site does not present a significant risk to groundwater.
 - 3. The determination of no further action for waters of the state at a site or a portion of the site may be made by the Department based upon any of the following:
 - a. A finding that the site or portion of a site has been remediated under a Title 49 program other than A.R.S. Title 49, Chapter 2, Article 5.
 - b. A finding that the release of a hazardous substance does not and will not exceed water quality standards in Title 18, Chapter 11 or if there is no water quality standard, a risk level approved by the Department to protect public health, welfare, and the environment.
 - c. A finding that there is no current or reasonably foreseeable use of water that would be impaired by the release, as determined by information collected under R18-16-406.
- B. A determination of no further action for a site or a portion of a site shall be published in the registry.
- C. If the remedial action for which a no further action determination is sought under this Section has not been previously approved by the Department, the submittal under subsection (A) may be accompanied by a request for approval of the remedial action under R18-16-413.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-415. Soil Remediation

- A. Soil remediation may be conducted as part of a remedy selected under R18-16-410 or may be conducted by any person at a site or portion of a site on the registry prior to the selection of a remedy if the following requirements are met:
 - 1. The soil remediation is performed in accordance with A.R.S. § 49-152 and 18 A.A.C. 7, Article 2.
 - 2. Community involvement activities are conducted in accordance with R18-16-404.
 - 3. A notice of remediation under R18-7-209 is prepared and submitted to the Department before the remediation is conducted. The notice of remediation shall be accompanied by a written report including the information described in R18-16-406(C)(1), (2), and (3). If the Department has issued a notice under A.R.S. § 49-287.03 for the site or portion of a site, the notice of remediation shall be submitted to the Department 15 calendar days before commencing the remediation or, if the remediation has commenced prior to the Department's notice, within 15 calendar days after the Department's notice is given.
- B. Submission of the information required under subsection (A) to the Department shall not be considered to be an approval of the soil remediation. Approval of a work plan for soil remediation work to be performed or approval for remediation performed under this Section may be obtained by submitting a request under R18-16-413. The Department shall approve the request if the request demonstrates that the soil remediation was conducted in accordance with this Section.
- C. The Department may request any additional information regarding the soil remediation in accordance with A.R.S. § 49-288.
- D. The Department may include information regarding soil remediation conducted under this Section in a record of decision for a remedy for the site or portion of the site under R18-16-410.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-416. Satisfaction of Settlement Agreement and Achievement of Remedial Objectives

- A. If the Department enters into a settlement under A.R.S. § 49-292 with a person who agrees to perform all or any portion of the remedy, the settlement agreement shall include criteria to determine when the work required by the settlement agreement is completed. A party to the settlement agreement who has performed all or a portion of a remedy may request a determination that the required work has been completed. The request shall describe how the requirements of the settlement agreement have been satisfied. The Department may require additional information to consider the request.
- B. Any person may request that the Department determine whether each of the remedial objectives for the site have been satisfied and will continue to be satisfied. The request shall demonstrate how the remedial objectives have been satisfied in accordance with the remedy and will continue to be satisfied, including information regarding any financial mechanisms in place to ensure the continued satisfaction of the remedial objectives. The Department may require additional information to consider the request. The Department shall issue notice of the request and provide an opportunity for public comment. Based upon the request and the public comments, the Department shall issue a written determination to approve or deny the request. If the request is approved, the

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written determination shall identify all actions that must continue to be taken to continue to satisfy the remedial objectives for the site.

- C. Following an approval under subsection (B), the Department shall not undertake or require additional remedial action under this Article for the site or portion of the site other than the actions stated in the determination under subsection (B). However, the Department may reopen an investigation and take or require additional remedial action for any of the following reasons:
 1. On discovery of new information which would result in the potential denial of a request under subsection (B).
 2. That information submitted to the Department under subsection (B) was inaccurate, misleading, or incomplete.
 3. The reopening of an investigation or the taking of a remedial action is necessary to respond to a release or the threat of a release of a hazardous substance that may present an imminent and substantial danger to the public health, welfare, or the environment.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

Appendix A. Standard Measurements for Comparison of Remedial Alternatives

Plume Characterization	Typical Units
Length	feet
Width	feet
Depth (thickness)	feet
Areal extent	acres
Volume	acre-feet
Plume leading edge advancement rate	feet/year
Plume volume expansion rate	acre-feet/year
Contaminant and Source Characterization	
Probable contributing sources	(number)
Number of contaminants	(number)
Maximum concentration of each contaminant	µg/l
Contaminant concentration vs. MCL	ratio
Contaminant mass in plume	pounds
Weighted average contaminant concentration in plume	µg/l
If present, estimated mass of LNAPL	pounds
If present, estimated mass of DNAPL	pounds
Sorbed contaminant mass in plume	pounds
Rate of downgradient contaminant mass transport	pounds/year
Remedial Efficiency	
Contaminant mass naturally degraded	pounds/year

Contaminant mass removed through remediation	pounds/year
Groundwater removed through remediation	acre-feet/year
Groundwater added (injected) by remediation	acre-feet/year
Net groundwater removed/added	acre-feet/year
Groundwater removed per year vs. plume volume expansion per year	percentage
Contaminant mass removed per year vs. pre-remedial contaminant mass transported downgradient per year	percentage
Time per first log cycle decline in average concentration	years per log cycle decline
Cost Efficiency	
Contaminant mass removal	\$ per pound
Groundwater removal	\$ per acre-foot
Cost per first cycle decline in average concentration	\$ per log cycle decline

Historical Note

New Appendix made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

ARTICLE 5. INTERIM REMEDIAL ACTIONS

R18-16-501. Definitions

In addition to the definitions set forth in A.R.S. § 49-281, the following definitions shall apply in this Article, unless the context otherwise requires:

“Abandoned well” means a well that has been permanently sealed or closed with cement or a cement-bentonite mixture that cannot be re-entered except by redrilling the wellbore, or a well that has been formally abandoned under R12-15-816.

“Currently supplies water” means a well that supplies water at the time the request for interim remedial action is submitted to the Department. Wells that supply water as needed to meet demand, including wells that serve water on an infrequent basis, are considered to currently supply water under this definition.

“Department” means the Arizona Department of Environmental Quality.

“Interim remedial action” means an action taken by the Department or by a well owner or operator under A.R.S. § 49-282.03.

“Part of a public water system” means a well that is owned or operated by an operator of a public water system, but has not been abandoned. A well that has been capped, air gapped or closed due to contamination, but not abandoned, shall be considered part of a public water system.

“Public water system” has the same meaning as defined in 42 U.S.C. § 300(f).

“Registry sites” means sites that have been investigated and placed on the Water Quality Assurance Revolving Fund registry of sites.

“Remedy” has the same meaning as defined in A.R.S. § 49-281(13).

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-502. Eligibility

- A.** A well is eligible for consideration for funding or performance of interim remedial action if a remedy has not been selected and the well meets the following criteria:
1. The well currently supplies water for municipal, domestic, irrigation, or agricultural use or is currently part of a public water system;
 2. The well produces water, or in the reasonably foreseeable future will produce water, that is not fit for its current or reasonably foreseeable end-use without treatment due to the release of hazardous substances at or from a site on the registry; and
 3. The well is not an abandoned well.
- B.** Only costs directly related to an interim remedial action approved by the Department are eligible for funding from a grant from the Water Quality Assurance Revolving Fund. Costs incurred by any person after the date of submittal of a complete request which meets the requirements of R18-16-503 are eligible for funding if the request and proposed interim remedial action are subsequently approved by the Department. Costs incurred by any person prior to the submittal of a request under R18-16-503 are not reimbursable by the Department.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-503. Request for Interim Remedial Action

- A.** Any person may request that the Department perform or provide a grant for an interim remedial action. The request shall be in writing and shall include a statement describing the eligibility of the well under R18-16-502 and a statement describing the reasons why interim remedial action is appropriate considering the factors in R18-16-504(A)(1) through (4). The request shall also include all of the following information that is in the possession of or is readily available to the person submitting the request:
1. A description of the well, including its location, Arizona Department of Water Resources registration number, construction details, and water production history.
 2. An explanation of any water rights associated with the well and uses of the well, including any quality and quantity requirements associated with the end use of the water.
 3. Any available water quality and water level data from the requesting party's wells that are the subject of the request.
 4. Information that demonstrates that the well is contaminated or threatened by contamination from a release of hazardous substance from a registry site.
 5. A proposal for interim remedial action, including a description of the proposed action, a schedule for implementation, and an estimate of the cost of the action.
 6. A description of reasonable alternate interim remedial actions, costs associated with each alternative, and documentation supporting a finding that the proposed interim remedial action is the minimum necessary to address the loss or reduction of available water until a remedy is selected.
 7. A description of any impacts the loss of the well would have on any assured water supply designation or any adequacy statement under 12 A.A.C. 7, Article 15, or on the

ability of the water system to meet its legal obligations or its customer or user needs.

8. A description of the person's interest in the well and any limitations on the owner or operator's legal rights to use the well.
- B.** If the person requesting interim remedial action intends to perform all or part of the remedial action work, the Department may require submittal of a detailed work plan for the proposed action.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-504. Review and Approval of Requests for Interim Remedial Action

- A.** The Department shall approve or deny requests for interim remedial action or request modifications to the proposal based on the following:
1. Whether immediate action may prevent contamination of the well.
 2. Whether immediate action is necessary to provide for supply of water because contamination of the well is imminent.
 3. Whether the well is currently contaminated, and there are water supply needs including needs related to drought or emergency supply that would be addressed by the well but for the contamination.
 4. Whether the well is critical to the ability to satisfy the water supply needs of the well's users, including drought or emergency supply needs.
 5. Whether the proposed action or alternative actions are the minimum necessary to address the loss or reduction of water.
 6. Whether a proposed action is likely to be inconsistent with the final remedy.
 7. Any information that might reasonably suggest that the party requesting the interim remedial action is responsible for the release of hazardous substances contaminating the well.
 8. Funding considerations of the Department.
- B.** The Department may gather additional information before making a decision under subsection (A).
- C.** The Department shall condition approval of the request for interim remedial action upon execution by the requesting party of the following:
1. A reimbursement agreement under R18-16-505(C).
 2. An agreement, as appropriate, to provide the Department access to the property at reasonable times for the purpose of conducting or overseeing the interim remedial action or to gather information necessary to evaluate the interim remedial action.
- D.** If any person other than the Department performs the work, the Department shall require that person to submit contracts, invoices or other evidence that the work was performed.
- E.** The Department may initiate an early response action in lieu of granting the request for interim remedial action if the requested remedial action meets the requirements of R18-16-405.
- F.** An interim remedial action shall be the minimum action necessary to address the loss or reduction of water available to well users during the period before selection and implementation of a final remedy at a site. The Department may approve an action that provides a permanent solution to the water supply problem if a temporary solution is unavailable, more expensive, or incapable of fully addressing the problem during the period before a final remedy is implemented for the site.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

R18-16-505. Reimbursement

- A.** If, in the record of decision, the Department determines that the interim remedial action taken was not necessary, based on criteria established in A.R.S. § 49-282.06, the Department shall require the person requesting the interim remedial action to reimburse all costs incurred in taking that action.
- B.** A person requesting the interim remedial action who is later determined by the Department to be a responsible party contributing to the contamination of the affected well shall reimburse the Department for all costs incurred by the Department in conducting or funding the interim remedial action.

- C.** The Department shall provide the person requesting the interim remedial action with a reimbursement agreement that clearly states the conditions under which the person requesting the interim remedial action must reimburse the Water Quality Assurance Revolving Fund. The person requesting the interim remedial action shall execute the reimbursement agreement as a prerequisite to approval of the interim remedial action. The Department may require that the person requesting the interim remedial action provide financial assurance for the obligation to reimburse the Water Quality Assurance Revolving Fund.

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 1491, effective March 4, 2002 (Supp. 02-1).

General and Specific Authorizing Statutes for 18 A.A.C. 16

General: A.R.S. §§ 41-1003, 49-104(B)(4), and 49-203(A)(9).

Specific: A.R.S. §§ 49-282.03(D), 49-282.06(B) and (C), 287.01 289.02, 289.03, and Laws 1997, Chapter 287, Section 56.

41-1003. Required rule making

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

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.
8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.
9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.
10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.

11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. Beginning in 2014, the department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.
12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.
13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.
14. Assist the department of health services in recruiting and training state, local and district health department personnel.
15. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
16. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
17. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph shall not be construed to adversely affect standards adopted by an Indian tribe under federal law.
18. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.
2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.
3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.
4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

49-203. Powers and duties of the director and department

A. The director shall:

1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.
2. Adopt, by rule, a permit program that is consistent with but no more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into navigable waters. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.
3. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into navigable waters.
4. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.
5. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.
6. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.
7. Adopt, by rule or as permit conditions, such discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and such other standards and conditions as are reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 5 of this subsection.
8. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this chapter. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided by law. Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection D, shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.
9. Adopt, modify, repeal and enforce other rules that are reasonably necessary to carry out the director's functions under this chapter.

49-282.03. Interim remedial actions; reimbursement of the fund; rules

A. On the request of any person, the director may take interim remedial actions to address the loss or reduction of available water from a well before the selection of a remedy, including making grants from the water quality assurance revolving fund to provide alternative water supplies, well replacement or water treatment if the director determines that both of the following apply:

1. The well currently supplies water for municipal, domestic, industrial, irrigation or agricultural uses or is currently part of a public water system.

2. The well produces water or, in the reasonably foreseeable future, will produce water that is not fit for its current or reasonably foreseeable end use without treatment due to the release of hazardous substances at or from a site on the registry established pursuant to section 49-287.01, subsection D.

B. The interim remedial action taken by the director pursuant to subsection A of this section shall be the minimum necessary to address the loss or reduction of available water until a remedy is selected. The director, to the extent possible, shall consider potential remedies when selecting the interim remedial action pursuant to subsection A of this section. The interim remedial action shall not include the costs of reimbursement for costs already incurred. The director may choose not to take interim remedial action pursuant to subsection A of this section if the director has sufficient information to reasonably establish that the person requesting the remedial action may be responsible under this article for the release of hazardous substances contaminating the well. Notwithstanding this section, the director shall select remedies pursuant to section 49-287.04.

C. Notwithstanding subsection A of this section, if the director, in the record of decision, determines that the remedial action taken pursuant to subsection A of this section was not necessary, based on the criteria in section 49-282.06 and the rules adopted pursuant to that section, or if the person requesting the remedial action pursuant to subsection A of this section is later determined to be responsible under this article for the release of hazardous substances which contaminated or threatened to contaminate the well, that person shall reimburse the water quality assurance revolving fund for the costs incurred in taking the remedial action. The person requesting the interim remedial action shall make arrangements for financial assurance for the obligation to the satisfaction of the director. The attorney general shall file an action for reimbursement of costs pursuant to this section if requested by the director and may file an action on his own initiative.

D. The director shall adopt rules governing when interim remedial action may be taken pursuant to subsection A of this section.

49-282.06. Remedial action criteria; rules

A. Remedial actions shall:

1. Assure the protection of public health and welfare and the environment.

2. To the extent practicable, provide for the control, management or cleanup of the hazardous substances in order to allow the maximum beneficial use of the waters of the state.

3. Be reasonable, necessary, cost-effective and technically feasible.

B. The director shall adopt rules necessary to implement this article. The director may adopt CERCLA rules, guidelines or procedures by reference to the extent consistent with this article. Rules adopted pursuant to this subsection shall include rules for:

1. The use of monies from the fund, including establishing priorities for the use of the monies from the fund.

2. The scoring and rescoring of sites or portions of sites.

3. The criteria for a finding of no further action for sites pursuant to section 49-287.01.

4. The selection of remedial actions including the establishment of the level and extent of cleanup at a site or a portion of a site. The rules shall provide for the selection of a remedial action by comparison of alternative remedial actions, which may include no action, monitoring, source control, controlled migration, physical containment, plume remediation and the consideration of the criteria in subsection C of this section. The rules also shall provide that the selected remedial action meet the requirements of subsection A of this section and the following:

(a) For remediation of soil, the selected remedial action shall be consistent with the soil remediation standards adopted pursuant to section 49-152.

(b) For remediation of waters of the state, the selected remedial action shall address, at a minimum, any well that at the time of selection of the remedial action either supplies water for municipal, domestic, industrial, irrigation or agricultural uses or is part of a public water system if the well would now or in the reasonably foreseeable future produce water that would not be fit for its current or reasonably foreseeable end uses without treatment due to the release of hazardous substances. The specific measures to address any such well shall not reduce the supply of water available to the owner of the well.

5. Incentives for initiating early remedial actions and implementing innovative remedial technologies.

C. In adopting the rules required by this section and in selecting remedial actions, the director shall consider the following factors:

1. Population, environmental and welfare concerns at risk.

2. Routes of exposure.

3. Amount, concentration, hazardous properties, environmental fate, such as the ability to bioaccumulate, persistence and probability of reaching the waters of the state, and the form of the substance present.

4. Physical factors affecting human and environmental exposure such as hydrogeology, climate and the extent of previous and expected migration.

5. The extent to which the amount of water available for beneficial use will be preserved by a particular type of remedial action.

6. The technical practicality and cost-effectiveness of alternative remedial actions applicable to a site.

7. The availability of other appropriate federal or state remedial action and enforcement mechanisms, including, to the extent consistent with this article, funding sources established under CERCLA, to respond to the release.

D. Notwithstanding this article, the director may approve a remedial action that may result in water quality exceeding water quality standards after the completion of the remedy if the director finds that the remedial action meets the requirements of this section.

E. The director's approval pursuant to this section does not affect the classification of an aquifer pursuant to section 49-224.

F. Remedial actions required by this article shall be consistent with the requirements of title 45, chapter 2, except as provided in section 49-290.01.

49-287.01. Investigation scoring and site registry; no further action

A. When information of a possible release or threatened release of a hazardous substance is received, the director may conduct a preliminary investigation to obtain additional information necessary to determine the potential risk to the public health or welfare or the environment in order to score the site or portion of the site and include it on the site registry. By written agreement, the director may allow any person to conduct any portion of the preliminary investigation.

B. After completing the preliminary investigation or at any time during the preliminary investigation, the director may suspend or terminate an investigation or determine that no further investigation or action is necessary. The director may reopen the preliminary investigation on a determination that the release or threatened release continues to present an imminent and substantial threat to the public health or welfare or the environment. If a preliminary investigation is completed, the director shall prepare a draft of the site registry report required under subsection D of this section. If the director drafts a site registry report pursuant to this section, the report shall contain a description of the site or portion of the site, including its geographical boundaries, and a score in accordance with the site scoring method established in rules adopted by the director.

C. Before finalizing the report and the score, the director shall furnish a copy to the current owners and operators of the site or portion of the site, if known, and shall provide fifteen days for review and comment. The director shall then place a copy in the public file and shall publish the score in a newspaper of general circulation within the county in which the site is located. The director shall provide thirty days for comment and shall consider any comments before issuing the final report and score.

D. The director shall maintain a registry of scored sites or portions of sites that includes a brief description of the site or portion of the site, its score and a brief description of the status of

investigative and remedial actions. The scoring of a site or portion of the site, its relative score or its placement on the registry does not necessarily represent a determination that the release of a hazardous substance from the site poses a threat to human health or welfare or the environment. Prior to approving any remedy that may result in water quality exceeding water quality standards after completion of the remedy, the director shall place a notice in the registry established pursuant to this subsection that the remedy may result in water quality exceeding water quality standards.

E. New scores shall be added to the registry as soon as practicable. The registry shall be published annually by the secretary of state in the Arizona administrative register. The department shall also publish notice of the availability of the registry in a newspaper of general statewide circulation.

F. Any person may request that the director make a determination that a site or portion of a site requires no further action or should be rescored. The request shall include information, including the specific hazardous substances released at or from the site or portion of the site, and a geographical description of the site or portion of the site sufficient for a determination by the director regarding the requested action. The director may request additional information from the requesting party within ninety days after receiving the party's request, and the director shall provide the reasons for requesting the additional information. The person making the request shall submit the additional information within sixty days after receiving the director's request for additional information. Within thirty days of receipt of the additional information, the director shall notify the requesting party if the additional information is complete. The submission of incomplete information may result in a denial of the no further action request. The parties may agree in writing to additional time for responses. In addition to requesting information, the director or the director's authorized representative may conduct an investigation of the site or portion of the site and shall be given access to the portion of the site under the control of the requestor. The director or the director's authorized representative shall be allowed access to the site as a requirement for making a no further action request. The director shall deny a request for a no further action determination if access to the site is not provided. A request pursuant to this subsection may only be made once per calendar year. After determining that the information submitted is sufficient for action on the request, the director shall publish notice of the request for rescoring or determination of no further action on a site or portion of the site and shall provide thirty days for public comment. Based on the information and comments received, and within sixty days after the close of the public comment period, unless extended by the director for good cause, the director shall determine whether the score should be changed or a determination of no further action should be made and shall give notice of that decision to the person who made the request and any persons who provided comment. The director shall make a final decision on a no further action or rescoring request within three hundred days after receiving the request unless the time is extended in writing by the parties. The director's decision shall contain the factual, technical and legal grounds for the decision. Any changes to a score or determinations of no further action shall be published in the registry.

G. A determination of no further action shall be made if the director finds that the site or portion of the site does not present a significant risk to the public health or welfare or the environment. The director's determination on a no further action request shall be based on the rules adopted by the department pursuant to section 49-282.06. A determination of no further action shall state whether it is for soils or the groundwater, or both. A determination of no further action regarding a site or a portion of the site means that the department shall not proceed with or require further remedial action under this article for the specific hazardous substances within the geographical

area covered by the determination, provided that the determination of no further action does not preclude the director from obtaining access to the area covered by the determination under this article or any other law. The department may reopen an investigation and take or require remedial action for any of the following reasons:

1. On discovery of new information that, based on the rules adopted by the department pursuant to section 49-282.06, would result in the potential denial of a no further action request.

2. That information submitted to the director pursuant to subsection F of this section was inaccurate, misleading or incomplete.

3. The reopening of an investigation or the taking of a remedial action is necessary to respond to a release or the threat of a release of a hazardous substance that may present an imminent and substantial danger to the public health or welfare or the environment.

H. The director's decision under subsection F of this section may be appealed pursuant to section 49-298, subsection B by the person who made the request or any party who will be adversely affected by the action and who submitted comments. A person who has previously filed an administrative appeal under this subsection or any provision of law in effect on or after April 29, 1997 concerning previous investigations by the director that resulted in the director's decision being upheld bears the burden of proving by clear and convincing evidence that the director's action that is being appealed was unsupported by the evidence in any further administrative appeals involving the same site or portion of the site and shall pay the director's cost of reviewing the request and the director's attorney fees and costs incurred in the appeal if the director's decision is upheld.

I. If the director determines that remediation of a site or a portion of a site will be addressed pursuant to a provision of this title other than this article, the director may suspend any further investigation or action under this article. If the site or portion of a site is listed on the registry, the suspension shall be reflected on the registry.

J. If a site has been placed on the registry and the director determines that remediation of a site or a portion of a site will be addressed pursuant to a provision of this title other than this article, the director may remove the site from the registry.

K. If the director determines that a site on the registry does not require further remedial action under this article, the director may remove the site from the registry.

L. The director shall maintain a list of sites removed from the registry. This list shall be available to the public.

M. A site that has been removed from the registry may be reopened and remedial action taken or required for any of the following reasons:

1. On discovery of new information that, based on the rules adopted by the department pursuant to section 49-282.06, would result in the potential denial of a no further action request.

2. Information submitted to the director pursuant to this section is inaccurate, misleading or incomplete.

3. The reopening of an investigation or the taking of a remedial action is necessary to respond to a release or the threatened release of a hazardous substance that may present an imminent and substantial danger to the public health or welfare or the environment.

49-289.02. Community information; public notice and comment

A. The director shall establish a preliminary community involvement area for each site on the registry established pursuant to section 49-287.01, subsection D, within ninety days after the site is entered into the registry.

B. The director shall provide written notice by mail or other delivery to residents, commercial occupants and owners of wells operated pursuant to groundwater withdrawal rights or permits within a preliminary community involvement area. If two or more community involvement areas are adjacent or overlapping, the director may make a single notice to avoid duplicate notice. This notice shall contain an opportunity for the recipient to elect to be added to the site's mailing list and to identify other persons who should receive similar notice. This notice also shall contain:

1. Available information regarding the hazardous substance contamination in the area.
2. The site's score and a brief statement regarding the actual and potential risk and routes of exposure to the contaminants at the site and the possible health impacts of that exposure, if any.
3. Identification of department personnel to be contacted for further information regarding the site.

49-289.03. Community involvement plan; community advisory boards; rules

A. The public shall receive notice and be provided an opportunity to comment to the director regarding the following actions taken by the director:

1. The placement of a site on the registry as provided in section 49-287.01.
2. The selection of a remedy as provided in section 49-287.04.
3. Entering into a prospective purchaser agreement with a person pursuant to section 49-285.01.
4. Entering into a settlement with a responsible party pursuant to section 49-292, 49-292.01 or 49-292.02.

B. The director shall adopt rules to implement this section and to govern the provision of information to communities and community involvement areas that include how to disseminate information, the location of public information repositories and notice requirements.

C. Before it implements a remedial investigation as provided in section 49-287.03, subsection D the department shall develop a community involvement plan for each site that does all of the following:

1. Establishes a community advisory board.
2. Designates a spokesperson to inform the public and to act as a liaison between the department, the local government and the responsible party.
3. Provides for newsletters with current information about the status of remedial action at the site and other pertinent information to be distributed to residents within the site.
4. Schedules community advisory board meetings and participates in the scheduling of public meetings pursuant to section 49-287.01, subsection E.

D. A selection committee shall be established for each site that is required to have a community involvement plan pursuant to section 49-287.03, subsection D. The selection committee shall consist of the following members:

1. One representative of the department.
2. One representative of a potentially responsible party, an owner or operator of a facility within the site or an affected business or industry.
3. One local elected official.
4. Two community members who are not employees of any responsible party, the department or the local government.

E. Each community advisory board shall advise the department, the public and the responsible parties of issues, concerns and opportunities related to the expeditious cleanup of the site. Each community advisory board shall be composed of at least five but not more than twenty members. The members of the community advisory board shall be chosen to represent a diversified cross section of the community with an appropriate balance of interested parties and affected groups. Applications for membership on the community advisory board and the names of the applicants shall be publicly available. Community advisory board members may serve on more than one community advisory board and multiple sites may share a community advisory board to avoid unnecessary multiple boards.

F. Each community advisory board shall:

1. Within ninety days after appointment of members by the selection committee, elect cochairpersons and other officers if needed and shall develop a charter defining at a minimum operating procedures, membership terms and obligations, goals for developing issues, concerns and opportunities related to expeditious cleanup of the site, and any other anticipated activities of the board for identifying and improving the public's access and understanding of information regarding the remediation processes at the site.

2. Meet at least four times each year with the department and any identified responsible parties to receive site briefings, progress reports and other pertinent information.

3. Coordinate with the department to establish local repositories for the dissemination of information about the site.

G. Each community advisory board may:

1. Make site visits and participate in public meetings related to cleanup opportunities and remedy selection decisions.

2. Participate in an annual meeting held by the department in each county that has a site undergoing a remedial investigation and feasibility study under section 49-287.03 or in the process of selecting or implementing a remedy for the purpose of facilitating public involvement and identifying funding priorities for site cleanups.

Laws 1997, Chapter 287, Section 56.

Sec. 56. Interim implementation of WQARF

A. Arizona administrative code title 18, chapter 7, article 1 is superseded by any rules adopted pursuant to subsection B.

B. The director of environmental quality shall adopt interim rules to implement the water quality assurance revolving fund program pursuant to title 49, chapter 2, article 5, Arizona Revised Statutes. The director of water resources shall adopt interim rules to implement the programs established pursuant to section 45-605, Arizona Revised Statutes. Interim rules are exempt from title 41, chapter 6, article 3, Arizona Revised Statutes, except that the department shall submit the rules for publication and the secretary of state shall publish the rules in the Arizona administrative register. The directors shall provide sixty days for interested persons to comment on the proposed rules after publication.

C. Interim rules are subject to review and approval pursuant to section 41-1044, Arizona Revised Statutes, and are effective until the director of environmental quality or the director of water resources adopts final rules that specifically identify and replace the interim rules.

D. In issuing the interim rules, the directors shall consider the recommendations of the joint select committee on the water quality assurance revolving fund established pursuant to Laws 1996, chapter 259. The interim rules shall adopt the eligibility and evaluation site scoring model that was established by the department of environmental quality in 1996. The director of environmental quality may use the eligibility and evaluation site scoring model before the adoption of the model in the interim rules. The interim rules shall include the rules for interim remedial actions pursuant to section 49-282.03, Arizona Revised Statutes, as added by this act.

E. The department of environmental quality is authorized to implement and enforce this act before the adoption of interim rules. Failure to adopt rules does not constitute a defense to any action to implement or enforce title 49, chapter 2, article 5, Arizona Revised Statutes.

F. The director of environmental quality shall comply with the requirements of section 49-289.02, Arizona Revised Statutes, as added by this act, with respect to each site on the former annual priority list as of the effective date of this act until the site is replaced by one or more sites scored pursuant to the eligibility and evaluation site scoring model and placed on the registry established pursuant to section 49-287.01, subsection D, Arizona Revised Statutes, as added by this act, or the director determines that no further action is appropriate for the site under title 49, chapter 2, article 5, Arizona Revised Statutes. For each site that does not have a community involvement plan approved by the department as of the effective date of this act for

which a community involvement plan would be required under section 49-287.03, subsection D, Arizona Revised Statutes, as added by this act, the department shall establish a selection committee pursuant to section 49-289.03, subsection B, Arizona Revised Statutes, as added by this act, on or before September 1, 1997.

G. Existing technical assistance grant committees, community advisory panels and other non-profit groups and organizations whose purpose includes participating in the decision making process for remedial actions at sites on the annual priority list as of the effective date of this act shall be considered when the department develops the community involvement plan for the site pursuant to subsection F of this section. In addition to the original function of these groups, these existing groups may also, through avenues outlined in the community involvement plan, advise the department of environmental quality, the community advisory board, the public and the responsible parties of issues, concerns and opportunities related to the expeditious cleanup of the site. Nothing in this subsection shall be interpreted to affect the status or funding of any of these types of groups under federal law.

H. The director of environmental quality is authorized to proceed with any remedial investigation or feasibility study that was commenced before the effective date of this act without first scoring the site or placing it on the registry pursuant to section 49-287.01, Arizona Revised Statutes, provided that the director shall comply with section 49-287.01, subsections B, C and D, Arizona Revised Statutes, with respect to the site within one year after the effective date of this act.